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COMMITTEE ON FOREIGN AFFAIRS
COMMITTEE ON FOREIGN RELATIONS

Legislation on Foreign Relations Through 2005

JOINT COMMITTEE PRINT

OCTOBER 2008

VOLUME III

CURRENT LEGISLATION AND
RELATED EXECUTIVE ORDERS

U.S. HOUSE OF REPRESENTATIVES

U.S. SENATE

Legislation on Foreign Relations Through 2005—Volume III

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Printed for the use of the Committees on Foreign Affairs and Foreign Relations of the House of Representatives and the Senate respectively

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FOREWORD

This volume of legislation and related material is part of a five volume set of laws and related material frequently referred to by the Committees on International Relations of the House of Representatives and Foreign Relations of the Senate, amended to date and annotated to show pertinent history or cross references.

Volumes I (A and B), II (A and B), III and IV contain legislation and related material and are republished with amendments and additions on a regular basis. Volume V, which contains treaties and related material, will be revised as necessary.

We wish to express our appreciation to Larry Q. Nowels and Dianne E. Rennack of the Foreign Affairs, Defense, and Trade Division of the Congressional Research Service of the Library of Congress and Suzanne Kayne of the U.S. Government Printing Office who prepared volume III of this year's compilation.

HOWARD L. BERMAN,
Chairman, Committee on Foreign Affairs.

JOSEPH R. BIDEN, JR.,
Chairman, Committee on Foreign Relations.

October 1, 2008.

EXPLANATORY NOTE

The body of statutory law set out in this volume was in force, as amended, at the end of 2005.

This volume sets out "session law" as originally enacted by Congress and published by the Archivist of the United States as "slip law" and later in the series *United States Statutes at Large* (as subsequently amended, if applicable). Amendments are incorporated into the text and distinguished by a footnote. Session law is organized in this series by subject matter in a manner designed to meet the needs of the Congress.

Although laws enacted by Congress in the area of foreign relations are also codified by the Law Revision Counsel of the House of Representatives, typically in title 22 United States Code, those codifications are not positive law and are not, in most instances, the basis of further amendment by the Congress. Cross references to the United States Code are included as footnotes for the convenience of the reader.

All Executive orders and State Department delegations of authority are codified and in force as of December 31, 2005.

Corrections may be sent to Dianne E. Rennack at the Library of Congress, Congressional Research Service, Washington, D.C., 20540–7460, or by e-mail at drennack@crs.loc.gov.

ABBREVIATIONS

Bevans	Treaties and Other International Agreements of the United States of America, 1776–1949, compiled under the direction of Charles I. Bevans.
CFR	Code of Federal Regulations.
EAS	Executive Agreement Series.
F.R	Federal Register.
LNTS	League of Nations Treaty Series.
I Malloy, II Malloy	Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States of America and Other Powers, 1776–1909, compiled under the direction of the United States Senate by William M. Malloy.
R.S.	Revised Statutes.
Stat	United States Statutes at Large.
TIAS	Treaties and Other International Acts Series.
TS	Treaty Series.
UNTS	United Nations Treaty Series.
U.S.C	United States Code.
UST	United States Treaties and Other International Agreements.

CONTENTS

	Page
FOREWORD	III
EXPLANATORY NOTE	V
ABBREVIATIONS	VI
I. INTERNATIONAL FINANCIAL INSTITUTIONS	1
1. Authorization for U.S. Participation	3
2. Authorization for Increased U.S. Participation	127
3. Other Legislation Relating to International Financial Institutions	150
J. FOREIGN ECONOMIC POLICY: TARIFF AND TRADE LAWS	249
1. Trade Legislation and Related Documents	256
2. Export-Import Bank	1215
3. Export Expansion	1332
4. Export Administration	1336
5. International Economic Sanctions	1458
6. Johnson Act—Financial Transactions With Foreign Governments (Public Law 80–772) (partial text)	1690
7. Foreign Investment in the United States	1691
8. Collection and Publication of Foreign Commerce and Trade Statistics (Public Law 87–826)	1717
9. Materials and Commodities	1724
10. Foreign Corrupt Practices	1741
APPENDICES	1759
INDEX	1805

I. INTERNATIONAL FINANCIAL INSTITUTIONS

CONTENTS

Page

1. Authorization for U.S. Participation 3
   a. International Monetary Fund/World Bank Group 3
      (1) Bretton Woods Agreements Act, as amended (Public Law 79–171) 3
      (2) Bretton Woods Agreements Act Amendments, 1980 (Public Law 96–389) (partial text) 37
      (3) Bretton Woods Agreements Act Amendments, 1978 (Public Law 95–435) (partial text) 39
      (4) International Development Association Act, as amended (Public Law 86–565) 41
      (5) Special Facility for Sub-Saharan Africa (Title I of H.R. 2253, as enacted into law by sec. 101(i) of Public Law 99–190) (partial text) 49
      (6) International Finance Corporation Act, as amended (Public Law 84–350) 51
      (7) Multilateral Investment Guarantee Agency Act (Title IV of H.R. 3570, as enacted into law by sec. 101(e) of Public Law 100–202) (partial text) 56
   b. Inter-American Development Bank 61
      (1) Inter-American Development Bank Act, as amended (Public Law 86–147) 61
      (2) Inter-American Investment Corporation Act (Title II of S. 2416, as introduced in the Senate on March 13, 1984 and enacted into law by Public Law 98–473) (partial text) 79
   c. Asian Development Bank Act, as amended (Public Law 89–369) 83
   d. African Development Bank Act (Public Law 97–35) (partial text) 96
   e. African Development Fund Act, as amended (Public Law 94–302) (partial text) 101
   f. European Bank for Reconstruction and Development Act (Public Law 101–513) (partial text) 108
   g. North American Development Bank 113
      (1) North American Development Bank Act (Public Law 103–182) (partial text) 113
      (2) North American Development Bank Amendments (Public Law 108–215) (partial text) 120
   h. Bank for Economic Cooperation and Development in the Middle East and North Africa Act (Public Law 104–208) (partial text) 124
2. Authorization for Increased U.S. Participation 127
   a. International Development and Finance Act of 1989 (Public Law 101–240) (partial text) 127
   b. Providing for U.S. Participation in a Capital Stock Increase for the International Bank for Reconstruction and Development and Replenishment of the African Development Fund (H.R. 4645, as passed by the House on September 28, 1988, and enacted into law by sec. 555 of Public Law 100–461) (partial text) 144
   c. Providing for Increased Participation by the United States in the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund (Public Law 96–259) (partial text) 148
3. Other Legislation Relating to International Financial Institutions 150
   a. International Financial Institutions Act (Public Law 95–118) (partial text) 150

b. Mexican Debt Disclosure Act of 1995 (Public Law 104–6) (partial text) 208
c. FREEDOM Support Act of 1992 (Public Law 102–511) (partial text) . 212
d. IFI Funding for Mines (Public Law 99–88) (partial text) 214
e. International Debt Forgiveness and International Financial Institutions Reform (Public Law 106–429) (partial text) 216
f. Foreign Operations Appropriations Instructions, Fiscal Year 2006 (Public Law 109–102) (partial text) 220
g. International Lending Supervision Act of 1983 (Title IX of Public Law 98–181) 225
h. Multilateral Development Banks—Sense of Congress (Title X of Public Law 98–181) (partial text) 234
i. Foreign Currency Reports (Public Law 93–110) (partial text) 236
j. Par Value Modification Act, as amended (Public Law 92–268) 242
k. Special Drawing Rights Act, as amended (Public Law 90–349) 243
l. Convention on the Settlement of Investment Disputes Act of 1966 (Public Law 89–532) (partial text) 245
m. National Advisory Council on International Monetary and Financial Policies (Executive Order 11269, as amended) 246

1. Authorization for U.S. Participation

a. International Monetary Fund/World Bank Group

(1) Bretton Woods Agreements Act, as amended

Public Law 79–171 [H.R. 3314], 59 Stat. 512, approved July 31, 1945; as amended by Public Law 80–472 [S. 2202], 62 Stat. 137, approved April 3, 1948; Public Law 81–142 [H.R. 4332], 63 Stat. 298, approved June 29, 1949; Public Law 82–165 [H.R. 5113], 65 Stat. 373, approved October 10, 1951; Reorganization Plan No. 7 of 1953, August 1, 1953, 18 F.R. 4541, 67 Stat. 639: Public Law 83–570 [S. 3589], 68 Stat. 677, approved August 9, 1954; Public Law 86–48 [S. 1094], 73 Stat. 80, approved June 17, 1959; Public Law 87–490 [H.R. 10162], 76 Stat. 105, approved June 19, 1962; Public Law 88–178 [H.R. 7405], 77 Stat. 334, approved November 13, 1963; Public Law 89–31 [H.R. 6497], 79 Stat. 119, approved June 2, 1965; Public Law 89–126 [S. 1742], 79 Stat. 519, approved August 14, 1965; Public Law 91–599 [H.R. 18306], 84 Stat. 1657, approved December 30, 1970; Public Law 93–94 [S. 1887], 87 Stat. 314, approved August 15, 1973; Public Law 94–564 [H.R. 13955], 90 Stat. 2660, approved October 19, 1976; Public Law 95–118 [International Financial Institutions Act; H.R. 5262], 91 Stat. 1067, approved October 3, 1977; Public Law 95–147 [H.R. 5675], 91 Stat. 1227 at 1228, approved October 28, 1977; Public Law 95–435 [Bretton Woods Agreements Act Amendments, 1978; H.R. 9214], 92 Stat. 1051, approved October 10, 1978; Public Law 96–389 [Bretton Woods Agreements Act Amendments, 1980; S. 2271], 94 Stat. 1551, approved October 7, 1980; Public Law 97–35 [Omnibus Budget Reconciliation Act of 1981; H.R. 3982], 95 Stat. 357 at 740 and 746, approved August 13, 1981, Public Law 98–181 [Supplemental Appropriations Act, 1984; H.R. 3959], 97 Stat. 1153, approved November 30, 1983; Public Law 99–190 [Further Continuing Appropriations, 1986; H.J. Res. 465], 99 Stat. 1185, approved December 19, 1985; Public Law 99–591 [Continuing Appropriations Act, 1987; H.J. Res. 738], 100 Stat. 3341, approved October 30, 1986; Public Law 100–202 [Continuing Appropriations, 1988; H.J. Res. 395], 101 Stat. 1329, approved December 22, 1987; H.R. 4645 as enacted by Public Law 100–461 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989; H.R. 4637], 102 Stat. 2268, approved October 1, 1988; Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989; Public Law 102–511 [FREEDOM Support Act, S. 2532], 106 Stat. 3320, approved October 24, 1992; Public Law 103–149 [South African Democratic Transition Support Act of 1993; H.R. 3225], 107 Stat. 1503, approved November 23, 1993; Public Law 105–277 [Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; H.R. 4328] 112 Stat. 2681–1, approved October 21, 1998; Public Law 106–36 [Miscellaneous Trade and Technical Corrections Act of 1999; H.R. 435] 113 Stat 127, approved June 25, 1999; Public Law 106–113 [Consolidated Appropriations Act, 2000; H.R. 3194] 113 Stat. 1501, approved November 29, 1999; and Public Law 106–429 [Foreign Operations, Export Financing and Related Programs Appropriations Act, 2001; H.R. 5526], 114 Stat. 1900, approved November 6, 2000

AN ACT To provide for the participation of the United States in the International Monetary Fund and the International Bank for Reconstruction and Development.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Bretton Woods Agreements Act."

ACCEPTANCE OF MEMBERSHIP

SEC. 2.[1] The President is hereby authorized to accept membership for the United States in the International Monetary Fund (herein after referred to as the "Fund"), and in the International Bank for Reconstruction and Development (hereinafter referred to as the "Bank"), provided for the Articles of Agreement of the Fund and the Articles of Agreement of the Bank as set forth in the Final Act of the United Nations Monetary and Financial Conference dated July 22, 1944, and deposited in the archives of the Department of State.

APPOINTMENT OF GOVERNORS, EXECUTIVE DIRECTORS, AND ALTERNATES

SEC. 3.[2] (a) The President, by and with the advice and consent of the Senate, shall appoint a governor of the Fund who shall also serve as governor of the Bank, and an executive director of the Fund and an executive director of the Bank. The executive directors so appointed shall also serve provisional executive directors of the Fund and the Bank for the purposes of the respective Articles of Agreement. The term of office for the governor of the Fund and of the Bank shall be five years. The term of office for the executive directors shall be two years, but the executive directors shall remain in office until their successors have been appointed.

(b) The President, by and with the advice and consent of the Senate, shall appoint an alternate for the governor of the fund and an alternate for the governor of the Bank.[3] The President, by and with the advice and consent of the Senate, shall appoint an alternate for each of the executive directors. The alternate for each executive director shall be appointed from among individuals recommended to the President by the executive director. The terms of office for alternates for the governor and the executive directors shall be the same as the terms specified in subsection (a) for the governor and executive directors.

(c)[4] Should the provisions of Schedule D of the Articles of Agreement of the Fund apply, the Governor of the Fund shall also serve as councillor, shall designate an alternate for the councillor, and may designate associates.

(d)[4] (1)[5] No person shall be entitled to receive any salary or other compensation from the United States for services as a Governor, executive director, councillor, alternate, or associate.

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[1] 22 U.S.C. 286.

[2] 22 U.S.C. 286a. See sec. 3 of the International Finance Corporation Act, page 51. See sec. 3 of the International Development Association Act, page 41.

[3] Public Law 93–94 (87 Stat. 314) struck out "who shall also serve as alternate for the governor of the bank" and inserted in lieu thereof "and an alternate for the governor of the Bank".

[4] Upon entry into force on April 1, 1978 of the amendments to the Articles of Agreement to the IMF, subsecs. (c) and (d), as provided for in sec. 2 of Public Law 94–564, became effective. The old subsec. (c) language that was struck out was essentially the same as the new subsec. (d)(1) but without references to the councillor or associate.

[5] Sec. 2 of Public Law 95–435 (92 Stat. 1051) added the paragraph designation "(1)" and added paras. (2) and (3).

(2)[5] The United States executive director of the Fund shall not be compensated by the Fund at a rate in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code. The United States alternate executive director of the Fund shall not be compensated by the Fund at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3)[5] The Secretary of the Treasury shall instruct the United States executive director of the Fund to present to the Fund's Executive Board a comprehensive set of proposals, consistent with maintaining high levels of competence of Fund personnel and consistent with the Articles of Agreement, with the objective of assuring that salaries and other compensation accorded Fund employees do not exceed those received by persons filling similar levels of responsibility within national government service or private industry. The Secretary shall report these proposals together with any measures adopted by the Fund's Executive Board to the Congress prior to February 1, 1979.

NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS

SEC. 4.[6] (a) In order to coordinate the policies and operations of the representatives of the United States on the Fund and the Bank and of all agencies of the Government which make or participate in making foreign loans or which engage in foreign financial, exchange or monetary transactions, there is hereby established the National Advisory Council on International Monetary and Financial Problems (hereinafter referred to as the "Council"), consisting of the Secretary of the Treasury, as Chairman, the Secretary of State, the Secretary of Commerce, the Chairman of the Board of Governors of the Federal Reserve System,[7] the President of the Export-Import Bank of Washington, and during such period as the

[6] 22 U.S.C. 286b. See sec. 5 of the International Finance Corporation Act, page 42. See sec. 4 of the International Development Association Act and sec. 4 of the Inter-American Development Bank Act, pages 51 and 62, respectively.

For revisions of functions and status of the Council, see Reorganization Plan No. 4 of 1965 (sec. 16, sec. 3(a) and sec. 3(b)). See also Executive Order 11269.

[7] The material following "Federal Reserve System," read as follows in the original Act: "and the Chairman of the Board of Trustees of the Export-Import Bank of Washington". Sec. 4(a) has been amended as follows:

(1) The Economic Corporation Act of 1948 (62 Stat. 141), sec. 106 of which amended sec. 4(a) so as to include the Administrator for Economic Cooperation "during such period as the Economic Cooperation Administration shall continue to exist";

(2) The Mutual Security Act of 1951 (65 Stat. 378), sec. 501(e)(2) of which amended sec. 4(a), by striking out "Economic Cooperation Administration" and "Administrator for Economic Cooperation" and inserting in lieu thereof "Mutual Security Agency" and "Director for Mutual Security", respectively;

(3) Reorganization Plan No. 5 of 1953, effective June 30, 1953 (67 Stat. 637), sec. 7 of which abolished the function of the Chairman of the Board of Directors of the Export-Import Bank of Washington of being a member of the National Advisory Council;

(4) Reorganization Plan No. 7 of 1953, effective August 1, 1953 (67 Stat. 6400), sec. 4 of which provided that the Director of the Foreign Operations Administration should be a member of the National Advisory Council; and

(5) Public Law 83–570 (68 Stat. 677, 678), sec. 2 of which inserted the part of the text quoted above following "the Federal Reserve System".

Executive Order 10610 (20 F.R. 3179; effective July 1, 1955), abolished the Foreign Operations Administration and the Office of Director of the Foreign Operations Administration, and the membership of the Director of the Foreign Operations Administration on the National Advisory Council thereby expired by operation of law effective on that date.

Foreign Operations Administration shall continue to exist, the Director of the Foreign Operations Administration.

(b)(1) The Council, after consultation with the representatives of the United States on the Fund and the Bank, shall recommend to the President general policy directives for the guidance of the representatives of the United States on the Fund and the Bank.

(2) The Council shall advise and consult with the President and the representatives of the United States on the Fund and the Bank on major problems arising in the administration of the Fund and the Bank.

(3) The Council shall coordinate, by consultation or otherwise, so far as is practicable, the policies and operations of the representatives of the United States on the Fund and the Bank, the Export-Import Bank of Washington and all other agencies of the Government to the extent that they make or participate in the making of foreign loans or engage in foreign, financial, exchange or monetary transactions.

(4) Whenever, under the Articles of Agreement of the Fund or the Articles of Agreement of the Bank, the approval, consent or agreement of the United States is required before an act may be done by the respective institutions, the decision as to whether such approval, consent, or agreement, shall be given or refused shall (to the extent such decision is not prohibited by section 5 of this Act) be made by the Council, under the general direction of the President. No governor, executive director, or alternate representing the United States shall vote in favor of any waiver of condition under article V, section 4, or in favor of any declaration of the United States dollar as a scarce currency under article VII, section 3, of the Articles of Agreement of the Fund, without prior approval of the Council.

(5)[8] The Council shall make such reports and recommendations to the President as he may from time to time request, or as the Council may consider necessary to more effectively or efficiently accomplish the purposes of this Act or the purposes for which the Council is created.

(6)[8] The general policy objectives of the guidance of the United States Executive Director of the Bank shall take into account the effect that development assistance loans have upon individual industry sectors and international commodity markets—

(A) to minimize projected adverse impacts; and

(B) to avoid, wherever possible, government subsidization of production and exports of international commodities without regard to economic conditions in the markets for such commodities.

---

[8] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(d)(1) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) repealed clauses (5) and (6), and redesignated clauses (7) and (8) as clauses (5) and (6), respectively. Clauses (5) and (6) formerly read as follows:

"(5) The Council shall transmit to the President and to the Congress an annual report with respect to the participation of the United States in the Fund and Bank.

"(6) Each such report shall contain such data concerning the operations and policies of the Fund and Bank, such recommendations concerning the Fund and Bank, and such other data and material as the Council may deem appropriate.".

(c) The representatives of the United States on the Fund and the Bank, and the Export-Import Bank of Washington (and all other agencies of the Government to the extent that they make or participate in the making of foreign loans or engage in foreign financial, exchange or monetary transactions) shall keep the Council fully informed of their activities and shall provide the Council with such further information or data in their possession as the Council may deem necessary to the appropriate discharge of its responsibilities under this Act.

CERTAIN ACTS NOT TO BE TAKEN WITHOUT AUTHORIZATION

SEC. 5.[9] Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States (a) request or consent to any change in the quota of the United States under article III, section 2(a), of the Articles of Agreement of the Fund; (b) propose a par value for the United States dollar under paragraph 2, paragraph 4, or paragraph 10 of schedule C of the Articles of Agreement of the Fund; (c) propose any change in the par value of the United States dollar under paragraph 6 of schedule C of the Articles of Agreement of the Fund, or approve any general change in par values under paragraph 11 of schedule C; (d) subscribe to additional shares of stock under article II, section 3, of the Articles of Agreement of the Bank; (e) accept any amendment under article XXVIII of the Articles of Agreement of the Fund on article VIII of the Articles of Agreement of the Bank; (f) make any loan to the Fund or the Bank; or (g)[10] approve any disposition of Fund gold, unless the Secretary certifies to the Congress that such disposition is necessary for the Fund to restitute gold to its members, or for the Fund to provide liquidity that will enable the Fund to meet member country claims on the Fund or to meet threats to the systemic stability of the international financial system. Unless Congress by law authorizes such action, no governor or alternate appointed to represent the United States shall vote for an increase of capital stock of the Bank under

[9] 22 U.S.C. 286c. Upon entry into force on April 1, 1978, of the amendments to the Articles of Agreement of the IMF, the first sentence of sec. 5, as provided for by sec. 3 of Public Law 94–564, was amended and restated. It formerly read as follows:

"Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States (a) request or consent to any change in the quota of the United States under article III, section 2, of the Articles of Agreement of the Fund; (b) propose or agree to any change in the par value of the United States dollar under article IV, section 5, or article XX, section 4, of the Articles of Agreement of the Fund, or approve any general change in par values under article IV, section 7; (c) subscribe to additional shares of stock under article II, section 3, of the Articles of Agreement of the Bank; (d) accept any amendment under article XVII of the Articles of Agreement of the Fund or article VIII of the Articles of Agreement of the Bank; (e) make any loan to the Fund or the Bank.".

[10] Clause (g), which had been added as part of the amendment described in footnote 9, was further amended by sec. 4(a)(1) of Public Law 95–147 (91 Stat. 1228) to read "approve either the disposition of more than 25 million ounces of Fund gold for the benefit of the Trust Fund established by the Fund on May 6, 1976, or the establishment of any additional trust fund whereby resources of the International Monetary Fund would be used for the special benefit of a single member, or of a particular segment of the membership, of the Fund." Although it never became effective, the original clause (g) read as follows:

"(g) approve the establishment of any additional trust fund, for the special benefit of a single member, or of a particular segment of the membership, of the Fund.".

Sec. 504(d)(1) of Public Law 106–113 (113 Stat. 1501A–317) further amended clause (g) by striking the clause as read above and inserting "approve any disposition of Fund gold, unless the Secretary certifies to the Congress that such disposition is necessary for the Fund to restitute gold to its members, or for the Fund to provide liquidity that will enable the Fund to meet member country claims on the Fund or to meet threats to the systemic stability of the international financial system."

article II, section 2, of the Articles of Agreement of the Bank, if such increase involves an increased subscription on the part of the United States.[11] Neither the President nor any person or agency shall, on behalf of the United States, consent to any borrowing (other than borrowing from a foreign government or other official public source) by the Fund or funds denominated in United States dollars, unless the Secretary of the Treasury transmits a notice of such proposed borrowing to both Houses of the Congress at least 60 days prior to the date on which such borrowing is scheduled to occur.[12]

DEPOSITORIES

SEC. 6.[13] Any Federal Reserve Bank which is requested to do so by the Fund or the Bank shall act as its depository or its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTIONS

SEC. 7. (a) Subsection (c) of section 10 of the Gold Reserve Act of 1934, as amended (U.S.C. title 31, sec. 822a),[14] is amended to read as follows:

"(c) The Secretary of the Treasury is directed to use $1,800,000,000 of the fund established in this section to pay part of the subscription of the United States to the International Monetary Fund; and any repayment thereof shall be covered into the Treasury as a miscellaneous receipt.".

(b)[15] The Secretary of the Treasury is authorized to pay the balance[16] of the subscription of the United States to the Fund not provided for in subsection (a) and to pay the subscription of the United States to the Bank from time to time when payments are required to be made to the Bank. For the purpose of making these payments, the Secretary of the Treasury is authorized to use as a public-debt transaction $8,675,000,000[16] of the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this subsection of the subscription of the United States to the Fund or the Bank and repayments thereof shall be treated as public-debt transactions of the United States.

(c) For the purpose of keeping to a minimum the cost to the United States of participation in the Fund and the Bank, the Secretary of the Treasury, after paying the subscription of the United States to the Fund, and any part of the subscription of the United States to the Bank required to be made under article II, section

[11] Sec. 1(2) of Public Law 89–126 (79 Stat. 519) inserted ", if such increase involves an increased subscription on the part of the United States".

[12] Sec. 811 of Public Law 98–181 (97 Stat. 1274) added this sentence.

[13] 22 U.S.C. 286d.

[14] Public Law 97–258 recodified title 31, U.S.C., and sec. 822a became sec. 5302. Public Law 97–258, in redesignating sec. 822a as sec. 5302, also amended the text, and the amendment made to subsec. (c) by this section was omitted.

[15] 22 U.S.C. 286e.

[16] Sec. 2 of Public Law 86–48 (73 Stat. 80) struck out "of $950,000,000" after "authorized to pay the balance", and struck out "$4,125,000,000" and inserted in lieu thereof "$8,675,000,000".

7(i), of the Articles of Agreement of the Bank, is authorized and directed to issue special notes of the United States from time to time at par and to deliver such notes to the Fund and the Bank in exchange for dollars to the extent permitted by the respective Articles of Agreement. The special notes provided for in this subsection shall be issued under the authority and subject to the provisions of the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include the purposes for which special notes are authorized and directed to be issued under the subsection, but such notes shall bear no interest, shall be non-negotiable, and shall be payable on demand of the Fund or the Bank, as the case may be. The face amount of special notes issued to the Fund under the authority of this subsection and outstanding at any one time shall not exceed in the aggregate the amount of the subscription of the United States actually paid to the Fund and the dollar equivalent of currencies and gold which the United States shall have purchased from the Fund in accordance with Articles of Agreement,[17] and the face amount of such notes issued to the Bank and outstanding at any one time shall not exceed in the aggregate the amount of the subscription of the United States actually paid to the Bank under article II, section 7(i), of the Articles of Agreement of the Bank.

(d) Any payment made to the United States by the Fund or the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

OBTAINING AND FURNISHING INFORMATION

SEC. 8.[18] (a) Whenever a request is made by the Fund to the United States as a member to furnish data under article VIII, section 5, of the Articles of Agreement, of the Fund, the President may, through any agency he may designate, require any person to furnish such information as the President may determine to be essential to comply with such request. In making such determination the President shall seek to collect the information only in such detail as is necessary to comply with the request of the Fund. No information so acquired shall be furnished to the Fund in such detail that the affairs of any person are disclosed.

(b) In the event any person refuses to furnish such information when requested to do so, the President, through any designated governmental agency, may by subpoena require such person to appear and testify or to appear and produce records and other documents, or both. In case of contumacy by, or refusal to obey a subpoena served upon any such person, the district court for any district in which such person is found or resides or transacts business, upon application by the President or any governmental agency designated by him, shall have jurisdiction to issue an order requiring such person to appear and give testimony or appear and produce records and documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

[17] Sec. 2 of Public Law 87–490 (76 Stat. 105) inserted "and the dollar equivalent of currencies and gold which the United States shall have purchased from the Fund in accordance with Articles of Agreement".

[18] 22 U.S.C. 286f.

(c) It shall be unlawful for any officer or employee of the Government, or for any adviser or consultant to the Government, to disclose, otherwise than in the course of official duty, any information obtained under this section, or to use such information for his personal benefit. Whoever violates any of the provisions of this subsection shall, upon conviction, be fined not more than, $5,000, or imprisoned for not more than five years, or both.

(d) The term "person" as used in this section means an individual, partnership, corporation or association.

FINANCIAL TRANSACTIONS WITH FOREIGN GOVERNMENTS IN DEFAULT

SEC. 9. The Act entitled "An Act to prohibit financial transactions with any foreign government in default of its obligations to the United States", approved April 13, 1934 (U.S.C. title 31, sec. 804a),[19] is amended by adding at the end thereof a new section to read as follows:

"SEC. 3. While any foreign government is a member both of the International Monetary Fund and of the International Bank for Reconstruction and Development, this Act shall not apply to the sale or purchase of bonds, securities, or other obligations of such government or any political subdivision thereof or of any organization or association acting for or on behalf of such government or political subdivision, or to the making of any loan to such government, political subdivision, organization, or association.".

JURISDICTION AND VENUE OF ACTIONS

SEC. 10.[20] For the purpose of any action which may be brought within the United States or its Territories or possessions by or against the Fund or the Bank in accordance with the Articles of Agreement of the Fund or the Articles of Agreement of the Bank, the Fund or the Bank, as the case may be, shall be deemed to be an inhabitant of the Federal judicial district in which its principal office in the United States is located, and any such action at law or in equity to which either the Fund or the Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of any such action. When either the Fund or the Bank is a defendant in any such action, it may, at any time before the trial thereof, remove such action from a State court into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES AND PRIVILEGES

SEC. 11.[21] The provisions of article IX, sections 2 to 9, both inclusive, and the first sentence of article VIII, section 2(b), of the Articles of Agreement of the Fund, and the provisions of article VI, section 5(i), and article VII, sections 2 to 9, both inclusive, of the Articles of Agreement of the Bank, shall have full force and effect in

[19] Sec. 21 of the Act of June 25, 1948 (62 Stat. 862) repealed 31 U.S.C. 804a. Matters related to financial transactions with foreign governments in default to the United States are now covered by 18 U.S.C. 955.

[20] 22 U.S.C. 286g.

[21] 22 U.S.C. 286h.

the United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of, the Fund and the Bank, respectively.

STABILIZATION LOANS BY THE BANK

SEC. 12.[22] The governor and executive director of the Bank appointed by the United States are hereby directed to obtain promptly an official interpretation by the Bank as to its authority to make or guarantee loans for programs of economic reconstruction and the reconstruction of monetary systems, including loan-term stabilization loans. If the Bank does not interpret its powers to include the making or guaranteeing of such loans, the governor of the Bank representing the United States is hereby directed to propose promptly and support an amendment to the Articles of Agreement for the purpose of explicitly authorizing the Bank, after consultation with the Fund, to make or guarantee such loans. The President is hereby authorized and directed to accept an amendment to that effect on behalf of the United States.

STABILIZATION OPERATIONS BY THE FUND

SEC. 13.[23] (a) The governor and executive director of the Fund appointed by the United States are hereby directed to obtain promptly an official interpretation by the Fund as to whether its authority to use its resources extends beyond current monetary stabilization operations to afford temporary assistance to members in connection with seasonal, cyclical, and emergency fluctuations in the balance of payments of any member for current transactions, and whether it has authority to use its resources to provide facilities for relief, reconstruction, or armaments, or to meet a large or sustained outflow of capital on the part of any member.

(b) If the interpretation by the Fund answers in the affirmative any of the questions stated in subsection (a), the governor of the Fund representing the United States is hereby directed to propose promptly and support an amendment to the Articles of Agreement for the purpose of expressly negativing such interpretation. The President is hereby authorized and directed to accept an amendment to that effect on behalf of the United States.

FURTHER PROMOTION OF INTERNATIONAL ECONOMIC RELATIONS

SEC. 14.[24] (a)[25] In the realization that additional measures of international economic cooperation are necessary to facilitate the expansion and balanced growth of international trade and render most effective the operations of the Fund and the Bank, it is hereby declared to be the policy of the United States to seek to bring about further agreement and cooperation among nations and international bodies, as soon as possible, on ways and means which will best reduce obstacles to and restrictions upon international trade, eliminate unfair trade practices, promote mutually advantageous commercial relations, and otherwise facilitate the expansion and

[22] 22 U.S.C. 286i.
[23] 22 U.S.C. 286j.
[24] 22 U.S.C. 286k.
[25] Sec. 4(a)(2) of Public Law 95–147 (91 Stat. 1228) added subsection designation "(a)" and a new subsec. (b).

balanced growth of international trade and promote the stability of international economic relations. In considering the policies of the United States in foreign lending and the policies of the Fund and the Bank, particularly in conducting exchange transactions, the Council and the United States representatives on the Fund and the Bank shall give careful consideration to the progress which has been made in achieving such agreement and cooperation.

(b)[25] The President shall, upon the request of any committee of the Congress with legislative or oversight jurisdiction over monetary policy or the International Monetary Fund, provide to such committee any appropriate information relevant to that committee's jurisdiction which is furnished to any department or agency of the United States by the International Monetary Fund. The President shall comply with this provision consistent with United States membership obligations in the International Monetary Fund and subject to such limitations as are appropriate to the sensitive nature of the information.

SEC. 15.[26] (a) Any securities issued by International Bank for Reconstruction and Development (including any guaranty by the Bank, whether or not limited in scope), and any securities guaranteed by the Bank as to both principal and interest, shall be deemed to be exempted securities within the meaning of paragraph (A)(2) of section 3 of the Act of May 27, 1933, as amended (U.S.C., title 15, sec. 77c), and paragraph (a)(12) of section 3 of the Act of June 6, 1934, as amended (U.S.C., title 15, sec. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest for the protection of investors.

(b)[27] * * * [Repealed—1989]

SEC. 16.[28] (a) The United States Governor of the Fund is authorized to request and consent to an increase of $1,375,000,000 in the quota of the United States under article III, section 2, of the articles of agreement of the Fund as proposed in the resolution of the Board of Governors of the Fund dated February 2, 1959.

(b) The United States Governor of the Bank is authorized (1) to vote for increases in the capital stock of the Bank under article II, section 2, of the Articles of Agreement of the Bank, as recommended in the resolution of the Board of Governors of the Bank dated February 2, 1959, and (2) if such increases become effective to subscribe on behalf of the United States to thirty-one thousand

[26] 22 U.S.C. 286k–1. Sec. 2 of Public Law 81–142 (63 Stat. 298–299) added sec. 15.

[27] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(d)(1) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) repealed sec. 15(b), which read as follows:

"The reports of the National Advisory Council provided for in section 4(a)(6) of the Bretton Woods Agreements Act shall also cover and include the effectiveness of the provisions of section 15(a) of this Act and the exemption for securities issued by the Bank provided by Section 8 of the National Bank Act in facilitating the operations of the Bank and the extent to which the operations of the Bank may assist in financing European recovery and the reconstruction and development of the economic resources of member countries of the Bank and the recommendations of the Council as to any modifications it may deem desirable in the provisions of this Act.".

[28] 22 U.S.C. 286e–1.

seven hundred and fifty additional shares of stock under article II, section 3, of the Articles of Agreement of the Bank.

SEC. 17.[29] (a) In order to carry out the purposes of the decision of January 5, 1962, and February 24, 1983, and January 27, 1997,[30] as amended in accordance with their terms,[31] of the Executive Directors of the International Monetary Fund, the Secretary of the Treasury is authorized to make loans, in an amount not to exceed the equivalent of 6,712,000,000[32] Special Drawing Rights, limited to such amounts as are provided in advance in appropriations Acts,[33] except that prior to activation, the Secretary of the Treasury shall certify that supplementary resources are needed to forestall or cope with an impairment of the international monetary system and that the Fund has fully explored other means of funding,[34] to the Fund under article VII, section 1(i),[35] of the Articles of Agreement of the Fund. Any loan under the authority granted in this subsection shall be made with due regard to the present and prospective balance of payments and reserve position of the United States.

(b) For the purpose of making loans to the International Monetary Fund pursuant to this section, there is hereby authorized to be appropriated 6,712,000,000 Special Drawing Rights, except that prior to activation, the Secretary of the Treasury shall certify whether supplementary resources are needed to forestall or cope with an impairment of the international monetary system and that the Fund has fully explored other means of funding,[36] to remain available until expended to meet calls by the International Monetary Fund. Any payments made to the United States by the International Monetary Funds as a repayment on account of the principal of a loan made under this section shall continue to be available for loans to the International Monetary Fund.

(c) Payments of interest and charges to the United States on account of any loan to the International Monetary Fund shall be covered into the Treasury as miscellaneous receipts. In addition to the amount authorized in subsection (b), there is hereby authorized to be appropriated such amounts as may be necessary for the payment of charges in connection with any purchases of currencies or gold by the United States from the International Monetary Fund.

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[29] 22 U.S.C. 286e–z. Public Law 87–490 (76 Stat. 105) added sec. 17.

[30] Sec. 609(1)(A) of Public Law 105–277 (112 Stat. 2681–224) struck out "and February 24, 1983" and inserted in lieu thereof "February 24, 1983, and January 27, 1997".

[31] Sec. 802(a)(1) of Public Law 98–181 (97 Stat. 1268) inserted "and February 24, 1983, as amended in accordance with their terms,".

[32] Sec. 609(1)(B) of Public Law 105–277 (112 Stat. 2681–224) struck out "4,250,000,000" and inserted in lieu thereof "6,712,000,000".

[33] Sec. 1101(b) of Public Law 98–181 (97 Stat. 1287) appropriated for an increase in loans to the IMF under the General Arrangements to Borrow, the dollar equivalent of 4,250 million Special Drawing Rights, less $2 billion previously appropriated by Public Law 87–872.

[34] Sec. 802(a)(1) of Public Law 98–181 (97 Stat. 1268) struck out "not to exceed $2,000,000,000 outstanding at any one time" and inserted in lieu thereof the words to this point beginning with "in an amount not to exceed the equivalent of".

[35] Upon entry into force of the amendments to the Articles of Agreement of the IMF on April 1, 1978, this reference to sec. 1(i) was substituted in lieu of a reference to sec. 2(i), as had been provided for by sec. 4 of Public Law 94–564.

[36] Sec. 802(a)(2) of Public Law 98–181 (97 Stat. 1268) struck out "$2,000,000,000" and inserted in lieu thereof "4,2500,000,000 Special Drawing Rights, except that prior to activation, the Secretary of the Treasury shall certify whether supplementary resources are needed to forestall or cope with an impairment of the international monetary system and that the Fund has fully explored other means of funding,".

Sec. 609(2) of Public Law 105–277 (112 Stat. 2681–224) subsequently struck out "4,250,000,000" and inserted in lieu thereof "6,712,000,000".

(d)[37] Unless the Congress by law so authorizes, neither the President, the Secretary of the Treasury, nor any other person acting on behalf of the United States, may instruct the United States Executive Director to the Fund to consent to any amendment to the Decision of February 24, 1983, or the Decision of January 27, 1997,[38] of the Executive Directors of the Fund, if the adoption of such amendment would significantly alter the amount, terms, or conditions of participation by the United States in the General Arrangements to Borrow or the New Arrangements to Borrow, as applicable.[39]

SEC. 18.[40] Any purchases of currencies or gold by the United States from the International Monetary Fund may be transferred to and administered by the Fund established by section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a),[41] for use in accordance with the provisions of that section. The Secretary of the Treasury is authorized to utilize the resources of that fund for the purpose of any repayments in connection with such transactions.

SEC. 19.[42] The United States Governor of the Bank is authorized to vote for an increase of $1,000,000,000 in the authorized capital stock of the Bank under Article II, section 2, of the Articles of Agreement of the Bank, as recommended in the report, dated November 6, 1962, to the Board of Governors of the Bank by the Bank's Executive Directors.

SEC. 20.[43] (a) The United States Governor of the Fund is authorized to consent to an increase of $1,035,000,000 in the quota of the United States in the Fund.

(b) In order to pay the increase in the United States subscription to the Fund provided for in this section, there is hereby authorized to be appropriated $1,035,000,000, to remain available until expended.

SEC. 21.[44] The United States Governor of the Bank is authorized to agree to an amendment to the Articles of Agreement of the Bank to permit the Bank to make, participate in, or guarantee loans to the International Finance Corporation for use in the lending operations of the latter.

SEC. 22.[45] (a) The United States Governor of the Bank is authorized to consent to an increase of $1,540,000,000 in the quota of the United States in the Fund.

(b) In order to pay the increase in the United States quota in the Fund provided for in this section, there is hereby authorized to be appropriated $1,540,000,000, to remain available until expended.

SEC. 23.[46] (a) The United States Governor of the Bank is authorized (1) to vote for an increase of $3,000,000,000 in the authorized

[37] Sec. 802(a)(3) of Public Law 98–181 (97 Stat. 1268) added subsec. (d).
[38] Sec. 609(3)(A) of Public Law 105–277 (112 Stat. 2681–224) inserted "or the Decision of January 27, 1997," after February 24, 1983,".
[39] Sec. 609(3)(B) of Public Law 105–277 (112 Stat. 2681–224) inserted "or the New Arrangements to Borrow, as applicable" before the period.
[40] 22 U.S.C. 286–3. Public Law 87–490 (76 Stat. 105) added sec. 18.
[41] Public Law 97–258 recodified title 31, U.S.C., and sec. 822a became sec. 5302.
[42] 22 U.S.C. 286e–1a. Public Law 88–178 (77 Stat. 234) added sec. 19.
[43] 22 U.S.C. 286e–1b. Public Law 89–31 (79 Stat. 119) added sec. 20.
[44] 22 U.S.C. 286e–4. Public Law 89–126 (79 Stat. 519) added sec. 21.
[45] 22 U.S.C. 286e–1c. Public Law 91–599 (84 Stat. 1657) added sec. 22.
[46] 22 U.S.C. 286e–1d. Public Law 91–599 (84 Stat. 1657) added sec. 23.

capital stock of the Bank, and (2) if such increase becomes effective, to subscribe on behalf of the United States to two thousand four hundred and sixty-one additional shares of the capital stock of the Bank.

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there is hereby authorized to be appropriated $246,100,000 to remain available until expended.

SEC. 24.[47] The United States Governor of the Bank is authorized to accept the amendments to the Articles of Agreement of the Fund approved in resolution numbered 31–4 of the Board of Governors of the Fund.

SEC. 25.[48] The United States Governor of the Bank is authorized to consent to an increase in the quota of the United States in the Fund equivalent to 1,705 million Special Drawing Rights.

SEC. 26.[49] The United States Governor of the Bank is directed to vote against the establishment of a Council authorized under Article XII, Section 1 of the Fund Articles of Agreement as amended, if under any circumstances the United States' vote in the Council would be less than its weighted vote in the Fund.

SEC. 27.[50] (a) The United States Governor of the Bank is authorized—

(1) to vote for an increase of seventy thousand shares in the authorized capital stock of the Bank; and

(2) if such increase becomes effective, to subscribe on behalf of the United States to thirteen thousand and five additional shares of the capital stock of the Bank: *Provided, however,* That any subscription to additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.[51]

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there are hereby authorized to be appropriated, without fiscal year limitations, $1,568,856,318 for payment by the Secretary of the Treasury.[52]

SEC. 28.[53] (a) For the purpose of participation of the United States in the Supplementary Financing Facility (hereinafter referred to as the "facility") established by the decision numbered 5508–(77/127) of the Executive Directors of the Fund, the Secretary of the Treasury is authorized to make resources available as provided in the decision numbered 5509–(77/127) of the Fund, in an

[47] 22 U.S.C. 286e–5. Sec. 1 of Public Law 94–564 (90 Stat. 2660) added sec. 24.

[48] 22 U.S.C. 286e–1e. Sec. 1 of Public Law 94–564 (90 Stat. 2660) added sec. 25.

[49] 22 U.S.C. 286e–6. Sec. 1 of Public Law 94–564 (90 Stat. 2660) added sec. 26.

[50] 22 U.S.C. 286e–1f. Sec. 201 of Public Law 95–118 (91 Stat. 1067) added sec. 27.

[51] Sec. 1312 of Public Law 97–35 (95 Stat. 740) amended and restated the proviso clause in para. (2). It formerly read as follows: "That any subscription to additional shares shall be made only after the amount required for such description has been appropriated.".

[52] U.S. payments for this increase were made in the following amounts and Public Laws: fiscal year 1978—$380 million ($38 million paid-in capital; $342 million callable capital) (Public Law 95–148); fiscal year 1979—$163.1 million ($16.3 million paid-in capital; $146.8 million callable capital) (Public Law 95–481); fiscal year 1980—$163.1 million ($16.3 million paid-in capital; $146.8 million callable capital) (Public Law 96–123); fiscal year 1981—$328 million ($32.8 million paid-in capital; $295.2 million callable capital) (Public Law 96–536); fiscal year 1982 $371.7 million ($37.2 million paid-in capital; $334.5 million callable capital) (Public Law 97–121); fiscal year 1983—$163.2 million ($16.3 million paid-in capital; $146.9 million callable capital) (Public Law 97–377).

[53] 22 U.S.C. 286e–7. Sec. 1 of Public Law 95–435 (92 Stat. 1051) added sec. 28.

amount not to exceed the equivalent of 1,450 million Special Drawing Rights.

(b) The Secretary of the Treasury shall account, through the Fund established by section 10 of the Gold Reserve Act of 1934 (31 U.S.C. 822a), for any adjustment in the value of monetary assets held by the United States in respect to United States participation in the facility.

(c) Notwithstanding any other provision of this section, the authority of the Secretary to enter into agreements making resources available under this section shall be limited to such amounts as are appropriated in advance in appropriation Acts. Effective October 1, 1978, there are hereby authorized to be appropriated to the Secretary of the Treasury, without fiscal year limitation, such sums as are necessary to carry out subsection (a) of this section, but not to exceed an amount of dollars equivalent to 1,450 million Special Drawing Rights.[54]

SEC. 29.[55] The Secretary of the Treasury shall instruct the United States executive director to seek to assure that no decision by the International Monetary Fund[56] undermines or departs from United States policy regarding the comparability of treatment of public and private creditors in cases of debt rescheduling where official United States credits are involved.

SEC. 30.[57] The Secretary of the Treasury shall instruct the United States executive director on the Executive Board of the International Monetary Fund to initiate a wide consultation with the managing director of the Fund and other member country executive directors with regard to encouraging the staff of the Fund to formulate stabilization programs[58] which, to the maximum feasible extent, foster a broader base of productive investment and employment, especially in those productive activities which are designed to meet basic human needs.

(b)[59] * * * [Repealed—1989]

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[54] Title V of Public Law 95–481 (92 Stat. 1600) stated:

"For the purpose of participation by the United States, in an amount equivalent to 1,450,000,000 Special Drawing Rights, in the Supplementary Financing Facility established by decision numbered 5508–(77/127) of the Executive Directors of the Fund, as provided in the decision numbered 5509–(77/127) of the Fund, and for the expenditures resulting therefrom, not to exceed $1,831,640,000, to remain available until the termination of the facility:".

[55] 22 U.S.C. 286e–8. Sec. 3 of Public Law 95–435 (92 Stat. 1052) added sec. 29.

[56] Sec. 5 of Public Law 96–389 (94 Stat. 1554) struck out "on the use of the facility" after "International Monetrary Fund".

[57] 22 U.S.C. 286e–9. Sec. 4 of Public Law 95–435 (92 Stat. 1052) added sec. 30. Sec. 541(f)(2) of International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) struck out subsec. designation "(a)".

[58] Sec. 2(b) of Public Law 96–389 (94 Stat. 1553) struck out "entered into pursuant to loans from the Supplementary Financing Facility" after "stabilization programs".

[59] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(d)(1) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) repealed subsec. (b). It formerly read as follows:

"(b) In order to gain a better understanding of the social, political and economic impact of the Fund's stabilization programs on borrowing countries, especially as it relates to the poor majority within those countries, the United States Governor of the Fund shall prepare and submit, not later than 180 days after the close of each calendar year, a report to the Congress. Such report shall evaluate, to the maximum extent feasible, with respect to countries to which loans are made during each year, the effects of policies of those countries which result from the standby agreements on basic human needs in such countries.".

SEC. 31.[60] * * * [Repealed—1981]

SEC. 32.[61] The United States Governor of the Fund is authorized to consent to an increase in the quota of the United States in the Fund equivalent to 4,202.5 million Special Drawing Rights, limited to such amounts as are appropriated in advance in appropriation Acts.[62]

SEC. 33.[63] (a) The President shall instruct the Secretary of the Treasury, the Secretary of State, and other appropriate Federal officials to use all appropriate means to encourage countries, in formulating economic adjustment programs to deal with their balance of payments difficulties, to design those programs so as to safeguard, to the maximum feasible extent, jobs, investment, real per capital income, policies to reduce the gap in wealth between rich and poor, and social programs such as health, housing, and education.

(b) To ensure the effectiveness of economic adjustment programs supported by Fund resources and the reinforcement of those programs by longer term efforts to promote sustained growth and improved living conditions—

(1) United States representatives to the Fund shall recommend and shall work for changes in Fund guidelines, policies, and decisions that would—

(A) permit stand-by arrangements to be extended beyond three years, as necessary to enable Fund members to implement their economic adjustment programs successfully;

(B) provide that in approving any economic adjustment program the Fund shall take into account the effect such program will have on jobs, investment, real per capita income, the gap in wealth between the rich and poor, and social programs such as health, housing, and education, in order to seek to minimize the adverse impact of those adjustment programs on basic human needs; and

(C) provide that letters of intent submitted to the Fund in support of an economic adjustment program reflect that the member country has taken into account the effect such program will have on the factors listed in subparagraph (B);

(2)(A) before voting on the approval of any standby arrangement with respect to any economic adjustment program, the United States Executive Director shall review—

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[60] Sec. 137(a)(1) of Public Law 97–35 (95 Stat. 746) repealed sec. 31, which had required the Secretary of the Treasury to submit an annual report to Congress on the status of human rights in countries drawing on funds made available under the Supplementary Financing Facility of the IMF. Originally added by sec. 4 of Public Law 95–435 (92 Stat. 1052). See sec. 701 of the International Financial Institutions Act. See also sec. 116 of the Foreign Assistance Act of 1961 (*Legislation on Foreign Relations Through 2005*, vol. I–A) for a reporting requirement on country human rights practices.

[61] 22 U.S.C. 286e–1g. Sec. 1 of Public Law 96–389 (94 Stat. 1551) added sec. 32.

[62] Sec. 11 of Public Law 96–389 (94 Stat. 1555) struck out "to such extent or in such amounts are provided in appropriation Acts" and inserted in lieu thereof "limited to such amounts as are appropriated in advance in appropriation Acts".

Public Law 96–544 (94 Stat. 3213) provided: "For an increase in the United States quota in the International Monetary Fund, the dollar equivalent of 4,202.5 million Special Drawing Rights (approximately $5,537,839,000), to remain available until expended, and balances equivalent to the current SDR value of the United States quota in the Fund shall be merged with this appropriation.".

[63] 22 U.S.C. 286s. Sec. 2(a) of Public Law 96–389 (94 Stat. 1551) added sec. 33.

(i) any analysis of factors prepared by the Fund or the member country in accordance with subparagraphs (B) and (C) of paragraph (1), or

(ii) if no such analysis is prepared and available for such review, an analysis which shall be prepared by the United States Governor of the Fund which examines the effect of the program on the factors listed in subparagraph (B) of paragraph (1); and

(B) the United States Executive Director of the Fund shall take into account the analysis reviewed pursuant to subparagraph (A) of this paragraph in voting on approval of that standby arrangement;

(3) United States representatives to the Fund, to the Bank and to other appropriate institutions shall work toward improving coordination among these institutions and, in particular, shall work toward formulation of programs in association with economic adjustment programs supported by Fund resources which (A) will, among other things, promote employment, investment, real income per capita, improvements in income distribution, and the objectives of social programs such as health, housing, and education, and (B) will, to the maximum extent feasible and consistent with the borrowing country's need to improve its balance of payments position within a reasonable period, ameliorate any adverse effects of economic adjustment programs on the poor;

(4) United States representatives to the Fund and the Bank shall seek amendments to decisions on policies on the use of Fund and Bank resources to provide that where countries are seeking Extended Fund Facility or upper credit tranche drawings from the Fund and are eligible to receive financing from the Bank, the Fund and Bank will coordinate their financing activities in order—

(A) to take into account the effects of economic adjustment programs on the areas listed in clause (A) of paragraph (3),

(B) to provide, to the extent feasible, Bank project loans designed to safeguard and further basic human needs in countries adopting economic adjustment programs supported by Fund resources, and

(C) to provide, as appropriate, Bank financing for programs of structural adjustment that will facilitate development of a productive economic base and greater attainment of basic human needs objectives over the longer term; and

(5) United States representatives to the Fund and the Bank shall request the Fund and the Bank to provide periodic analyses of the effects of economic adjustment programs supported by Fund or Bank financing on jobs, investment, real income per capita, income distribution, and social programs such as health, housing, and education.

(c)[64] * * * [Repealed—1989]

[64] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703

SEC. 34.[65] The Secretary of the Treasury, in consultation with the United States Executive Director of the Fund, shall study and, following consultations with member countries, shall report to the Congress prior to May 15, 1981, with respect to—

(1) the current adequacy of Fund resources, together with projected needs of the Fund over the next five years;

(2) the feasibility of increasing Fund liquidity by encouraging the Fund to borrow directly from the governments of oil exporting countries;

(3) the feasibility of increasing Fund liquidity by encouraging the Fund to borrow in private capital markets through the issuance of securities backed by Fund resources;

(4) the feasibility of an offer by the Fund of incentives to oil exporting countries, including financial guarantees by the Fund for government-to-government loans to countries with balance-of-payments deficits, in order to promote more direct recycling of oil surpluses; and

(5) methods to enhance cooperation between commercial banks and the Fund to promote the availability of adequate resources for balance-of-payments financing.

SEC. 35.[66] It is the sense of the Congress that the Secretary of the Treasury and the United States Executive Director of the Fund shall encourage member countries of the Fund to negotiate a dollar-Special Drawing Rights substitution account in which equitable burden sharing would exist among participants in the account.

SEC. 36.[67] It is the sense of the Congress that it is the policy of the United States that Taiwan (before January 1, 1979, known as the Republic of China) shall be granted appropriate membership in the Fund and that the United States Executive Director of the Fund shall so notify the Fund.

SEC. 37.[68] It is the policy of the United States that the Palestine Liberation Organization should not be given membership in the Fund or be given observer status or any other official status at any meeting sponsored by or associated with the Fund. The United States Executive Director of the Fund shall promptly notify the Fund of such policy.

In the event that the fund provides either membership, observer status, or any other official status to the Palestine Liberation Organization, such action would result in a serious diminution of United States support. Upon review of such action, the President would be required to report his recommendations to the Congress with regard to any further United States participation in the Fund.[69]

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and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(d)(1) repealed subsec. (c). It formerly read as follows:

"(c) The National Advisory Council on International Monetary and Financial Policies shall include in each of its annual reports to the Congress a statement detailing the actions and progress made in carrying out the requirements of subsections (a) and (b) of this section.".

[65] 22 U.S.C. 286t. Sec. 4(b) of Public Law 96–389 (94 Stat. 1553) added sec. 34.

[66] 22 U.S.C. 286u. Sec. 4(b) of Public Law 96–389 (94 Stat. 1554) added sec. 35. A report required by sec. 35 from the Secretary of the Treasury by May 15, 1981, concerning progress made in achieving the goal stated in the section, was struck out by sec. 1371(a)(2) of Public Law 97–35 (95 Stat. 746).

[67] 22 U.S.C. 286v. Sec. 6 of Public Law 96–389 (94 Stat. 1554) added sec. 36.

[68] 22 U.S.C. 286w. Sec. 7 of Public Law 96–389 (94 Stat. 1554) added sec. 37.

[69] Sec. 3 of the Middle East Peace Facilitation Act of 1993, as amended (Public Law 103–125; 107 Stat. 1309), authorized the President to suspend certain provisions of law as they applied

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SEC. 38.[70] It is the sense of the Congress that in providing assistance through loans or other means to any nation, in particular El Salvador and Nicaragua, the Fund and the Bank should encourage programs which assist the private sector to create an environment which will stabilize the economy of the nation; and that the United States representatives to the Fund and the Bank shall promote the use of assistance by the Fund and the Bank to encourage such programs.

SEC. 39.[71] (a) The United States Governor of the Bank is authorized—

(1) to vote to increase by three hundred and sixty-five thousand shares the authorized capital stock of the Bank; and

(2) to subscribe on behalf of the United States to not more than seventy-three thousand and ten shares of the capital stock of the Bank: *Provided, however,* That not more than seven and one-half percent ($658,305,195) of the price of the shares subscribed may be paid in to the Bank on subscription, with the remainder of that price ($8,149,256,155) being subject to call only when a call on unpaid subscriptions is required to meet obligations of the Bank for funds borrowed or on loans

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to the P.L.O. or entities associated with it if certain conditions were met and the President so certified and consulted with relevant congressional committees. This authority was continued in the Middle East Peace Facilitation Act of 1994 (Public Law 103–236), and again in the Middle East Peace Facilitation Act of 1995 (Public Law 104–107).

The President issued certifications, as provided for in the 1993, 1994, and 1995 Acts, in Presidential Determination No. 94–13 of January 14, 1994 (59 F.R. 4777), which was extended until January 1, 1995, by Presidential Determination No. 94–30 of June 30, 1994 (59 F.R. 35607); until July 1, 1995, by Presidential Determination No. 95–12 of December 31, 1994 (60 F.R. 2673); until August 15, 1995, by Presidential Determination No. 95–31 of July 2, 1995 (60 F.R. 35827); until October 1, 1995, by Presidential Determination No. 95–36 of August 14, 1995 (60 F.R. 44725); until November 1, 1995, by Presidential Determination No. 95–50 of September 30, 1995 (60 F.R. 53093); until December 31, 1995, by Presidential Determination No. 96–5 of November 13, 1995 (60 F.R. 57821); until March 31, 1996, by Presidential Determination No. 96–8 of January 4, 1996 (61 F.R. 2889); until June 15, 1996, by Presidential Determination No. 96–20 of April 1, 1996 (61 F.R. 26019); until August 12, 1996, by Presidential Determination No. 96–32 of June 14, 1996 (61 F.R. 32629); until February 12, 1997, by Presidential Determination No. 96–41 of August 12, 1996 (61 F.R. 43137); and until August 12, 1997, by Presidential Determination No. 97–17 of February 21, 1997 (62 F.R. 9903).

Authority to waive certain provisions is continued in general provisions of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102); see secs. 534(d), 544, 547, and 550. See also sec. 555, restricting aid unless the Secretary of State certifies that certain conditions have been met pertaining to Palestinian statehood, sec. 558, prohibiting assistance to the Palestinian Broadcasting Corporation, and sec. 559, West Bank and Gaza Program.

On December 5, 1997, the President waived the provisions of sec. 1003 of the Anti-Terrorism Act of 1987 (Public Law 100–204) through June 4, 1998 (Presidential Determination No. 98–8; 62 F.R. 66255); further waived through November 26, 1998 (Presidential Determination No. 98–29; June 3, 1998; 63 F.R. 32711); through May 24, 1999 (Presidential Determination No. 98–5; November 25, 1998; 63 F.R. 68145); through October 21, 1999 (Presidential Determination No. 99–25; May 24, 1999; 64 F.R. 29537); through April 21, 2000 (Presidential Determination 00–2; October 21, 1999; 64 F.R. 58755); through October 21, 2000 (Presidential Determination No. 2000–19; April 21, 2000; 65 F.R. 24852); through October 17, 2001 (Presidential Determination No. 01–13; April 17, 2001; 66 F.R. 20585); through April 16, 2002 (Presidential Determination No. 2002–03; October 16, 2001; 66 F.R. 53505); through October 16, 2002 (Presidential Determination No. 2002–14; April 16, 2002; 67 F.R. 20427); through April 16, 2003 (Presidential Determination No. 03–03; October 16, 2002; 67 F.R. 65471); through October 16, 2003 (Presidential Determination No. 2003–20; April 16, 2003; 68 F.R. 20327); through April 14, 2004 (Presidential Determination No. 2004–04; October 14, 2003; 68 F.R. 60841); through October 14, 2004 (Presidential Determination No. 2004–28; April 14, 2004; 69 F.R. 21679); through April 14, 2005 (Presidential Determination No. 2005–02; October 14, 2004; 69 F.R. 62795); through October 14, 2005 (Presidential Determination No. 2005–22; April 14, 2005; 70 F.R. 21611); and through April 14, 2006 (Presidential Determination No. 2006–01; October 14, 2005; 70 F.R. 62225).

[70] 22 U.S.C. 286x. Sec. 8 of Public Law 96–389 (94 Stat. 1554) added sec. 38.

[71] 22 U.S.C. 286e–1h. Sec. 1311 of Public Law 97–35 (95 Stat. 740) added sec. 39.

guaranteed by it and not for use by the Bank in its lending activities or for administrative expenses: *Provided further,* That any subscription to such additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) In order to pay for the paid-in portion of the United States subscription to the Bank provided for in this section, there is authorized to be appropriated, without fiscal year limitation, $658,305,195 for payment by the Secretary of the Treasury: *Provided further,* That not more than $109,720,549 of such sum may be made available for each of the fiscal years 1982, 1983, and 1984.[72]

PROMOTING CONDITIONS FOR EXCHANGE RATE STABILITY

SEC. 40.[73] (a) In order to help assure that the resources provided under section 41 are used to support pro-growth policies which will help establish the economic conditions necessary for more appropriate financial and exchange rate alignment and stability, it is the sense of Congress that the Secretary of the Treasury shall—

(1) in consultation with the Secretary of State and the United States Trade Representative, initiate discussions with other countries regarding the economic dislocations which result from structural exchange rate imbalances; and

(2) instruct the United States Executive Director of the Fund to work for adoption of policies in the Funds, both within the framework of Article IV (of the Articles of Agreement of the Fund) consultations and with respect to the conditions associated with Fund-supported balance or payments adjustments programs, which promote conditions contributing to the stability of exchange rates and avoid the manipulation of exchange rates between major currencies. Among other initiatives, the Secretary of the Treasury shall propose strengthening the article IV consultation procedures of the Fund to attempt to ensure that countries which are artificially maintaining undervalued or overvalued rates of exchange agree to adopt market determined exchange rates.

(b) In determining his vote on extensions of assistance to any Fund borrower, the United States Executive Director of the fund shall take into account whether such borrower's policies are consistent with the requirements of article IV of the Articles of Agreement of the Fund.

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[72] U.S. payments for this increase were made in the following amounts and Public Laws: fiscal year 1982—$1,462.9 million ($109.7 million paid-in capital; $1,353.2 million callable capital) (Public Law 97–121); fiscal year 1983—$1,463.1 million ($109.7 million paid-in capital; $1,353.4 million callable capital) (Public Law 97–377); fiscal year 1984—$1,062.9 million ($79.7 million paid-in capital; $983.2 million callable capital) (Public Law 98–151); fiscal year 1985—$1,462.9 million ($109.7 million paid in capital; $1,353.2 million callable capital) (Public Law 98–473); fiscal year 1985 supplemental—$400 million ($30 million paid-in capital; $370 million callable capital (Public Law 99–88); fiscal year 1986—$1,462.9 million ($109.7 million paid-in capital; $1.353.2 million callable capital) (Public Law 99–190), reduced by $4.7 million as a result of sequestration (Public Law 99–177); fiscal year 1987—$744.1 million ($55.8 million paid-in capital; $688.3 million callable capital) (Public Law 99–591); fiscal year 1988—$477.5 million ($40.2 million paid-in capital; $437.3 million callable capital) (Public Law 100–202).

[73] 22 U.S.C. 286y. Sec. 801 of Public Law 98–181 (97 Stat. 1267) added sec. 40.

QUOTA INCREASE

SEC. 41.[74] (a) The United States Governor of the Fund is authorized to consent to an increase in the quota of the United States in the Fund equivalent to 5,310,800,000 Special Drawing Rights, limited to such amounts as are provided in advance in appropriations Acts.[75]

(b)(1) The Secretary of the Treasury shall consult with the chairman and the ranking minority member of—

(A) the Committee on Banking, Finance and Urban Affairs[76] and the Committee on Appropriations of the House of Representatives, and any appropriate subcommittee of each such committee; and

(B) the Committee on Foreign Relations, the Committee on Appropriations, and the Committee on Banking, Housing, and Urban Affairs of the Senate, and any appropriate subcommittee of each such committee,

for purposes of discussing the position of the executive branch and the views of the Congress with respect to any international negotiations being held to consider any future quota increase for the International Monetary Fund which may involve an increased contribution, subscription, or loan by the United States.

(2) Such consultation shall be made—

(A) not later than thirty days before the initiation of such international negotiations;

(B) during the period in which such negotiations are being held, in a frequent and timely manner; and

(C) before a session of such negotiations is held at which the United States representatives may agree to such quota increase.

COLLECTION AND EXCHANGE OF INFORMATION ON MONETARY AND FINANCIAL PROBLEMS

SEC. 42.[77] (a) It is the sense of the Congress that—

(1) the lack of sufficient information currently available to allow members of the Fund to make sound and prudent decisions concerning their public and private sector international borrowing, and to allow lenders to make sound and prudent decisions concerning their international lending, threatens the stability of the international monetary system; and

(2) in recognition of the Fund's duties, as provided particularly by article VIII of the Articles of Agreement of the Fund, to act as a center for the collection and exchange of information on monetary and financial problems, the Fund should adopt necessary and appropriate measures to ensure that more complete and timely financial information will be available.

(b) To this end, the Secretary of the Treasury shall instruct the United States Executive Director of the Fund to initiate discussions

[74] 22 U.S.C. 286e–1i. Sec. 802(a)(4) of Public Law 98–181 (97 Stat. 1268) added sec. 41.

[75] Sec. 1101(a) of Public Law 98–181 (97 Stat. 1287) appropriated for an increase in the U.S. quota in the IMF, the dollar equivalent of 5,310,800,000 Special Drawing Rights.

[76] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

[77] 22 U.S.C. 286z. Sec. 802(4) of Public Law 98–181 (97 Stat. 1269) added sec. 42.

with other directors of the Fund and with Fund management, and to propose and vote for, the adoption of procedures, within the Fund—

(1) to collect and disseminate information, on a quarterly basis, from and to Fund members, and to such other persons as the Fund deems appropriate, concerning—

(A) the extension of credit by banks or nonbanks to private and public entities, including all government entities, instrumentalities, and central banks of member countries; and

(B) the receipt of such credit by those private and public entities of member countries, where such banks or nonbanks are not principally established within the borders of the member country to which the credits are extended; and

(2) to disseminate publicly information which is developed in the course of the Fund's collection, and to review and comment on efforts which the Fund determines would serve to enhance the informational base upon which international borrowing and lending decisions are taken.

(c) For purposes of this section, the term "credit" includes—

(1) outstanding loans to private and public entities, including government entities, instrumentalities, and central banks of any member, and

(2) unused lines of credit which have been made available to those private and public entities of any member,

where such loans or lines of credit are repayable in freely convertible currency.

(d) The President is authorized to use the authority provided under section 8 of this Act to require any person (as defined in such section) subject to the jurisdiction of the United States to provide such information as the Fund determines to be necessary in order to carry out the provisions of this section.

INSTRUCTIONS TO THE UNITED STATES EXECUTIVE DIRECTOR

SEC. 43.[78] The Congress hereby finds that Communist dictatorships result in severe constraints on labor and capital mobility and

[78] 22 U.S.C. 286aa. Sec. 804 of Public Law 98–181 (97 Stat. 1270) added sec. 43. Sec. 4(b)(6) of the South African Democratic Transition Support Act of 1993 (Public Law 103–149; 107 Stat. 1505) struck out subsec. designation "(a)" preceding the first paragraph in this section, and repealed subsec. (b), which formerly read as follows:

"(b) The Congress hereby finds that the practice of apartheid results in severe constraints on labor and capital mobility and other highly inefficient labor and capital supply rigidities which contribute to balance of payments deficits in direct contradiction of the goals of the International Monetary Fund. Therefore, the President shall instruct the United States Executive Director of the Fund to actively oppose any facility involving use of Fund credit by any country which practices apartheid unless the Secretary of the Treasury certifies and documents in writing, upon request, and so notifies and appears, if requested, before the Foreign Relations and Banking, Housing and Urban Affairs Committees of the Senate and the Banking, Finance and Urban Affairs Committee of the House of Representatives, at least twenty-one days in advance of any vote on such drawing, that such drawing: (1) would reduce the severe constraints on labor and capital mobility, through such means as increasing access to education by workers and reducing artificial constraints on worker mobility and substantial reduction of racially-based restrictions on the geographical mobility of labor; (2) would reduce other highly inefficient labor and capital supply rigidities; (3) would benefit economically the majority of the people of any country which practices apartheid; (4) is suffering from a genuine balance of payments imbalance that cannot be met by recourse to private capital markets. Should the Secretary not meet a request to appear before the aforementioned Committees at least twenty-one days in advance of any vote on

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other highly inefficient labor and capital supply rigidities which contribute to balance-of-payments deficits in direct contradiction of the goals of the International Monetary Fund. Therefore, the Secretary of the Treasury shall instruct the United States Executive Director of the Fund to actively oppose any facility involving use of Fund credit by any Communist dictatorship, unless the Secretary of the Treasury certifies and documents in writing upon request and so notifies and appears, if requested, before the Foreign Relations and Banking, Housing and Urban Affairs Committees of the Senate and the Banking, Finance and Urban Affairs Committee of the House of Representatives, at least twenty-one days in advance of any vote on such drawing that such drawing:

(1) provides the basis for correcting the balance of payments difficulties and restoring a sustainable balance of payments position;

(2) would reduce the severe constraints on labor and capital mobility or other highly inefficient labor and capital supply rigidities and advances market-oriented forces in that country; and

(3) is in the best economic interest of the majority of the people in that country.

Should the Secretary not meet a request to appear before the aforementioned Committees at least twenty-one days in advance of any vote on any facility involving use of Fund credit by any communist dictatorship and certify and document in writing that these three conditions have been met, the United States Executive Director shall vote against such program.

ELIMINATION OF AGRICULTURAL EXPORT SUBSIDIES

SEC. 44.[79] The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to propose and work for the adoption of a policy encouraging Fund members to eliminate all predatory agricultural export subsidies which might result in the reduction of other member countries' exports.

SUSTAINING ECONOMIC GROWTH

SEC. 45.[80] (a)(1) The President shall instruct the Secretary of the Treasury, the Secretary of State, and other appropriate Federal officials, and shall request the chairman of the board of Governors of the Federal Reserve System, to use all appropriate means to encourage countries to formulate economic adjustment programs to deal with their balance of payment difficulties and external debt owed to private banks.

(2) Such economic adjustment programs should be designed to safeguard, to the maximum extent feasible, international economic growth, world trade, employment, and long-term solvency of banks, and to minimize the likelihood of civil disturbances in countries needing economic adjustment programs.

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any facility involving use of Fund credit by any country practicing apartheid and certify and document in writing that these four conditions have been met, the United States Executive Director shall vote against such program.".

[79] 22 U.S.C. 286bb. Sec. 805 of Public Law 98–181 (97 Stat. 1271) added sec. 44.

[80] 22 U.S.C. 286cc. Sec. 806 of Public Law 98–181 (97 Stat. 1272) added sec. 45.

(b) To ensure the effectiveness of economic adjustment programs supported by Fund resources—

(1) the United States Executive Director of the Fund shall recommend and shall work for changes in Fund guidelines, policies, and decisions which would—

(A) convert short-term bank debt which was made at high interest rates into long-term debt at lower rates of interest;

(B) assure that the annual external debt service, which shall include principal, interest, points, fees, and other charges required of the country involved, is a manageable and prudent per centage of the projected annual export earning of such country; and

(C) provide that in approving any economic adjustment program the Fund shall take into account the number of countries applying to the Fund for economic adjustment programs and the aggregate effects that such programs will have on international economic growth, world trade, exports and employment of other member countries, and the long-term solvency of banks; and

(2) except as provided in subsection (c) of this section, the United States Executive Director of the Fund shall oppose and vote against providing assistance from the Fund for any economic adjustment program for a country in which the annual external debt service exceeds 85 per centum of the annual export earnings of such country, unless the Secretary of the Treasury first determines and provides written documentation to the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives that—[76]

(A) the economic adjustment program converts high interest rate, short-term bank debt into long-term debt at significantly narrower interest rate spreads than the average interest rate spreads prevailing on bank debt reschedulings negotiated between August 1982 and August 1983 for countries receiving assistance from the Fund for economic adjustment programs in order to minimize the burdens of adjustment on the debtor nation, provided that such interest rate spreads are consistent with that nation's need to obtain adequate external private financing;

(B) the annual external debt service required of the country involved is a manageable and prudent percentage of the projected annual export earnings of such country; and

(C) the economic adjustment program will not have an adverse impact on international economic growth, world trade, exports, and employment of other member countries, and the long-term solvency of banks.

(c) The provisions of subsection (b)(2) shall not apply in any case in which the Secretary of the Treasury first determines and provides written documentation to the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of

the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives that—[76]

(1) an emergency exists in a nation that has applied to the Fund for assistance that requires an immediate short-term loan to avoid disrupting orderly financial markets;

(2) a sudden decrease in export earnings in the country applying to the Fund for assistance has increased the ratio of annual external debt service to annual export earnings, to greater than 85 per centum for a period projected to be no more than one year; or

(3) other extraordinary circumstances exist which warrant waiving the provisions of subsection (b)(2).

OPPOSING FUND BAILOUTS OF BANKS

SEC. 46.[81] The Secretary of the Treasury shall instruct the United States Executive Director of the Fund—

(1) to oppose and vote against any Fund drawing by a member country where, in his judgment, the Fund resources would be drawn principally for the purpose of repaying loans which have been imprudently made by banking institutions to the member country; and

(2) to work to insure that the Fund encourages borrowing countries and banking institutions to negotiate, where appropriate, a rescheduling of debt which is consistent with safe and sound banking practices and the country's ability to pay.

INTERNATIONAL COOPERATION

SEC. 47.[82] The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to propose that the Fund adopt the following policies with respect to international lending:

(1) In its consultations with a member government on its economic policies pursuant to article IV of the Articles of Agreement of the Fund, the Fund should—

(A) intensify its examination of the trend and volume of external indebtedness of private and public borrowers in the member country and comment, as appropriate, in its report to the Executive Board from the viewpoint of the contribution of such borrowings to the economic stability of the borrower; and

(B) consider to what extent and in what form these comments might be made available to the international banking community and the public.

(2) As part of any Fund-approved stabilization program, the Fund should give consideration to placing limits on public sector external short- and long-term borrowing.

(3) As a part of its annual report, and at such times as it may consider desirable, the Fund should publish its evaluation of the trend and volume of international lending as it affects the economic situation of lenders, borrowers, and the smooth functioning of the international monetary system.

[81] 22 U.S.C. 286dd. Sec. 807 of Public Law 98–181 (97 Stat. 1273) added sec. 46.
[82] 22 U.S.C. 286ee. Sec. 809 of Public Law 98–181 (97 Stat. 1274) added sec. 47.

IMF INTEREST RATES

SEC. 48.[83] The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to propose and work for the adoption of Fund policies regarding the rate of remuneration paid on use of member's quota subscriptions and the rate of charges on Fund drawings to bring those rates in line with market rates.

TRADE PROVISIONS

SEC. 49.[84] (a)(1) The Secretary of the Treasury shall instruct the United States Executive Director of each of the multilateral development banks[85] (in this section referred to as the "banks") and of the Fund to initiate a wide consultation with the Managing Director of each of the banks[85] and of the Fund and the other directors of the banks[85] and of the Fund with regard to the development of financial assistance policies which, to the maximum feasible extent—

(A) reduce obstacles to and restrictions upon international trade and investment in goods and services;

(B) eliminate unfair trade and investment practices; and

(C) promote mutually advantageous economic relations.

(2) The Secretary of the Treasury shall work closely in this effort with the Trade Policy Committee.

(3) As part of this effort, the Secretary of the Treasury shall also instruct the United States Executive Director of each of the banks[85] and of the Fund to encourage close cooperation between their staff and the GATT Secretariat.

(b)(1) The Secretary of the Treasury shall instruct the United States Executive Director of each of the banks[85] and of the Fund, prior to the extension of any country of financial assistance by the banks[85] and by the Fund to work to have the banks[85] and the Fund obtain the agreement of such country to eliminate, in a manner consistent with its balance of payments adjustment program, unfair trade and investment practices with respect to goods and services which the United States Trade Representative, after consultation with the Trade Policy Committee, has determined to have a significant deleterious effect on the international trading system.

(2) Such practices include—

(A) the provision of predatory export subsidies, employed in connection with the exporting of agricultural commodities and products thereof to foreign countries;

(B) the provision of other export subsidies, such as government subsidized below-market interest rate financing for commodities or manufactured goods;

(C) unreasonable import restrictions;

(D) the imposition of trade-related performance requirements on foreign investment; and

[83] 22 U.S.C. 286ff. Sec. 810 of Public Law 98–181 (97 Stat. 1274) added sec. 48.

[84] 22 U.S.C. 286gg. Sec. 812 of Public Law 98–181 (97 Stat. 1275) added sec. 49.

[85] References to the multilateral development banks were added by sec. 555 of the Foreign Assistance and Related Programs Appropriations Act, 1987 (as contained in sec. 101(f) of the Continuing Appropriations, 1987 (Public Law 99–591; 100 Stat. 3341–240)).

(E) practices which are inconsistent with international agreements.

(c)(1) In determining the United States position on requests for periodic drawing under bank[85] and Fund programs, the Secretary of the Treasury shall take full account of the progress countries have made in achieving targets for eliminating or phasing out the practices referred to in subsection (b) of this section.

(2) In the event that the United States supports a request for drawing by a country that has not achieved the bank[85] and Fund targets relating to such practices specified in its program, the Secretary of the Treasury shall report to the appropriate committees of the Congress the reasons for the United States position.

(d)[86] For purposes of this section, the term "multilateral development banks" means the International Bank for Reconstruction and Development, the Inter-American Development Bank, the African Development Bank, and the Asian Development Bank.

SEC. 50.[87] * * * [Repealed—1989]

CAPITAL STOCK INCREASE

SEC. 51.[88] (a) The United States Governor of the Bank is authorized—

(1) to vote for an increase of seventy thousand shares in the authorized capital stock of the Bank; and

(2) to subscribe on behalf of the United States to twelve thousand four hundred and fifty-three additional shares of the capital stock of the Bank, except that any subscription to such additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $1,502,267,655 for payment by the Secretary of the Treasury.

SEC. 52.[89] The United States Governor of the Bank is hereby authorized to agree to and to accept the amendment to the Articles of Agreement in the proposed resolution entitled "Amendment to the Articles of Agreement of the Bank" forwarded to the United States on February 27, 1987.

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[86] Added by sec. 555(a) of the Foreign Assistance and Related Programs Appropriations Act, 1987 (sec. 101(f) of the Continuing Appropriations Act, 1987 (Public Law 99–591; 100 Stat. 3341)).

[87] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(d)(1) repealed sec. 50. For original text, see sec. 813 of Public Law 98–181 (97 Stat. 1276).

[88] 22 U.S.C. 286e–1j. The Selective Capital Increase (SCI) authorized by sec. 51 was added by sec. 301 of H.R. 2253, as enacted into law by sec. 101(i) of the Further Continuing Appropriations, 1986 (Public Law 99–190; 99 Stat. 1291).

[89] Added by sec. 601 of H.R. 3750, as introduced by the House Committee on Banking, Finance and Urban Affairs, on December 11, 1987, and enacted into law by reference in Title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e) of the Continuing Appropriations; 1988 (Public Law 100–202; 101 Stat. 1329–1340)).

SEC. 53.[90] CAPITAL STOCK INCREASE.

(a) INCREASE AUTHORIZED.—The United States Governor of the Bank is authorized—

(1) to vote for an increase of 620,000 shares in the authorized capital stock of the Bank; and

(2) to subscribe on behalf of the United States to 116,262 additional shares of the capital stock of the Bank, except that any subscription to such additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) AUTHORIZATION OF APPROPRIATIONS.—In order to pay for the increase in the United States subscription to the Bank provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $14,025,266,370 for payment by the Secretary of the Treasury.[91]

SEC. 54.[92] CONTRIBUTION TO THE INTEREST SUBSIDY ACCOUNT OF THE ENHANCED STRUCTURAL ADJUSTMENT FACILITY OF THE INTERNATIONAL MONETARY FUND.

(a) CONTRIBUTION AUTHORIZED.—

(1) IN GENERAL.—Subject to paragraph (2), the United States Governor of the Fund may contribute $150,000,000 to the Interest Subsidy Account of the Enhanced Structural Adjustment Facility of the Fund on behalf of the United States.

(2) CONDITION.—The United States Governor of the Fund may not make a commitment to contribute any amount authorized to be contributed under paragraph (1) before an amount equal to such amount has been appropriated for such purpose.

(b) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—To pay for the contribution authorized by subsection (a), there are authorized to be appropriated not to exceed $150,000,000, without fiscal year limitation, for payment by the Secretary of the Treasury.[93]

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[90] 22 U.S.C. 286e–1k. Added by sec. 1 of H.R. 4645, as reported by the Committee on Banking, Finance, and Urban Affairs on September 22, 1988, and enacted into law by reference in sec. 555 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461; 102 Stat. 2268–36).

[91] U.S. payment for this increase was made in the following amounts and Public Laws: fiscal year 1989—$2,342.9 million ($50 million paid-in capital; $2,292.9 million callable capital) (Public Law 100–461); fiscal year 1990—$49.8 million paid-in capital (Public Law 101–167); fiscal year 1991—$3,010.2 million ($110.59 million paid-in capital; $2,899.61 million callable capital) (Public Law 101–513); fiscal year 1992—$2,302.99 million ($69.09 million paid-in capital; $2,233.9 million callable capital) (Public Law 102–145, as amended by Public Law 102–266); fiscal year 1993—$2,072.69 million ($62.18 million paid-in capital; $2,010.51 million callable capital) (Public Law 102–391); fiscal year 1994—$1,860.7 million ($55.82 million paid-in capital; $1,804.88 million callable capital) (Public Law 103–87). Pursuant to Public Law 103–211 (108 Stat. 30), however, a portion of fiscal year 1994 funds were rescinded. Paid-in capital was reduced by $27.9 million, and callable capital was limited to not exceed $902.4 million. For fiscal year 1995—$766.9 million ($23.009 million paid-in capital; $743.9 million callable capital) (Public Law 103–306).

[92] 22 U.S.C. 286e–12. Sec. 301 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2500) added sec. 54.

[93] U.S. payment for this contribution was made in the following amounts and Public Laws: fiscal year 1990—$139.4 million (Public Law 101–167); fiscal year 1991—$10.6 million (Public Law 101–513), reduced by $0.2 million as a result of sequestration (Public Laws 99–177, 100–119, and 101–508), restored by $0.2 million by a 1991 sequestration restoration (Public law 102–27). For fiscal year 1992, sec. 115 of the Further Continuing Appropriations (Public Law 102–145, as amended by Public Law 102–266) "*Provided,* That no funds are provided by this joint resolution for 'Contribution to the Enhanced Structural Adjustment Facility of the International Monetary Fund'". For fiscal year 1995—$0.025 million was contributed (Public Law 103–306). No funds were appropriated for fiscal years 1996 through 2006.

NOTE.—Sec. 526(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (108 Stat. 1632), provided, in part, the following authorization requirement:

"(c) The Secretary of the Treasury may, to fulfill commitments of the United States, * * * (2) contribute to * * * the Interest Subsidy Account of the successor to the Enhanced Structural Adjustment Facility of the International Monetary Fund. * * * The amount authorized to be appropriated * * * for payment of the contribution to the Interest Subsidy Account of the successor to the Enhanced Structural Adjustment Facility of the International Monetary Fund is limited to $25,000,000. The amount to be paid in respect of each such contribution or subscription is authorized to be appropriated without fiscal year limitation. Each such subscription or contribution shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.".

Title I of Public Law 103–306 (108 Stat. 1610) made available $25 million, to remain available until expended, for the Interest Subsidy Account of the successor to the Enhanced Structural Adjustment Facility.

SEC. 55.[94] DISCUSSIONS TO ENHANCE THE CAPACITY OF THE FUND TO ALLEVIATE THE POTENTIALLY ADVERSE IMPACTS OF FUND PROGRAMS ON THE POOR AND THE ENVIRONMENT.

The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to seek policy changes by the Fund, through formal initiatives and through bilateral discussions, which will result in—

(1) the initiation of a systematic review of policy prescriptions implemented by the Fund, for the purpose of determining whether the Fund's objectives were met and the social and environmental impacts of such policy prescriptions; and

(2) the establishment of procedures which ensure the inclusion, in future economic reform programs approved by the Fund, of policy options which eliminate or reduce the potential adverse impact on the well-being of the poor or the environment resulting from such programs.

SEC. 56.[95] QUOTA INCREASE.

The United States Governor of the Fund may consent to an increase in the quota of the United States in the Fund equivalent to

[94] 22 U.S.C. 286kk. Sec. 302 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2500) added sec. 55.

[95] 22 U.S.C. 286e–1*l*. Sec. 1001 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3357) added sec. 56.

8,608,500,000 Special Drawing Rights, limited to such amounts as are provided in advance in appropriations Acts.[96]

SEC. 57.[97] ACCEPTANCE OF AMENDMENTS TO THE ARTICLES OF AGREEMENT OF THE FUND.

The United States Governor of the Fund may agree to and accept the amendments to the Articles of Agreement of the Fund as proposed in the resolution numbered 45–3 of the Board of Governors of the Fund that was approved by such Board on June 28, 1990.

SEC. 58.[98] APPROVAL OF FUND PLEDGE TO SELL GOLD TO PROVIDE RESOURCES FOR THE RESERVE ACCOUNT OF THE ENHANCED STRUCTURAL ADJUSTMENT FACILITY TRUST.

The Secretary of the Treasury is authorized to instruct the United States Executive Director of the Fund to vote to approve the Fund's pledge to sell, if needed, up to 3,000,000 ounces of the Fund's gold, to restore the resources of the Reserve Account of the Enhanced Structural Adjustment Facility Trust to a level that would be sufficient to meet obligations of the Trust payable to lenders which have made loans to the Loan Account of the Trust that have been used for the purpose of financing programs to Fund members previously in arrears to the Fund.

SEC. 59.[99] FUND POLICY CHANGES.

(a) POLICY CHANGES WITHIN THE IMF.—The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to promote regularly and vigorously in program discussions and quota increase negotiations the following proposals:

(1) POVERTY ALLEVIATION, REDUCTION OF BARRIERS TO ECONOMIC AND SOCIAL PROGRESS, AND PROGRESS TOWARD ENVIRONMENTALLY SOUND POLICIES AND PROGRAMS.—(A)(i) Considerations of poverty alleviation and the reduction of barriers to economic and social progress should be incorporated into all Fund programs and all consultations under article IV of the Articles of Agreement of the Fund.

(ii) Preparation of Policy Framework Papers should be extended to all nations which have Fund programs and active Bank or International Development Association lending programs, and existence of a Policy Framework Paper should be a precondition for new lending to such nations by the Fund.

(iii) All Policy Framework Papers should articulate the principal poverty, economic, and social measures that the borrowing nation needs to address, and this portion of the Policy Framework Paper (or a summary thereof that includes specific

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[96] Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391; 106 Stat. 1636), provided the following:

"INTERNATIONAL MONETARY FUND

"There is appropriated for an increase in the United States quota in the International Monetary Fund, the dollar equivalent of 8,608.5 million Special Drawing Rights, to remain available until expended and, among other uses, such funds may be used to promote efforts by the International Monetary Fund to support monetary stability in member countries through the instrumentality of currency boards.".

[97] 22 U.S.C. 286e–5b. Sec. 1001 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3357) added sec. 57.

[98] 22 U.S.C. 286e–13. Sec. 1001 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3357) added sec. 58.

[99] 22 U.S.C. 286*ll*. Sec. 1002 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3357) added sec. 59.

measures and timing) should be made available when the Policy Framework Paper is submitted to the Executive Directors of the Bank and of the Fund for consideration.

(iv) In considering whether to allocate resources of the Fund to a borrower, the Fund should take into consideration the nature of the program and commitment of the borrower to address the issues referred to in clause (iii).

(v) The Fund should establish procedures to enable the Fund to cooperate with the Bank in evaluating the effectiveness of the measures referred to in clause (iii), at the levels of policy, project design, monitoring, and reporting, in the international financial institutions and in the borrowing nations.

(B)(i) The Fund should be encouraged to make further progress toward environmentally sound policies and programs.

(ii) The Fund should incorporate environmental considerations into all Fund programs, including consultations under article IV of the Articles of Agreement of the Fund.

(iii) The Fund should be encouraged to support the efforts of nations to implement systems of natural resource accounting in their national income accounts.

(iv) The Fund should be encouraged to assist and cooperate fully with the statistical research being undertaken by the Organization for Economic Cooperation and Development and by the United Nations in order to facilitate development and adoption of a generally applicable system for taking account of the depletion or degradation of natural resources in national income accounts.

(v) The Fund should be encouraged to consider and implement, as appropriate, revisions in its national income reporting systems consistent with such new systems as are of general applicability.

(2) POLICY AUDITS.—(A) The Fund should conduct periodic audits to review systematically the policy prescriptions recommended and required by the Fund in the areas of poverty and the environment.

(B) The purposes of such audits would be—

(i) to determine whether the Fund's objectives were met; and

(ii) to evaluate the social and environmental impacts of the implementation of the policy prescriptions.

(C) Such audits would have access to all ongoing programs and activities of the Fund and the ability to review the effects of Fund-supported programs, on a country-by-country basis, with respect to poverty, economic development, and environment.

(D) Such audits should be made public as appropriate with due respect to confidentiality.

(3) ENSURING POLICY OPTIONS THAT INCREASE THE PRODUCTIVE PARTICIPATION OF THE POOR.—The Fund should establish procedures that ensure the focus of future economic reform programs approved by the Fund on policy options that increase the productive participation of the poor in the economy.

(4) PUBLIC ACCESS TO INFORMATION.—(A) The Fund should establish procedures for public access to information.

(B) Such procedures shall seek to ensure access of the public to information while paying due regard to appropriate confidentiality.

(C) Policy Framework Papers and the supporting documents prepared by the Fund's mission to a country are examples of documents that should be made public at an appropriate time and in appropriate ways.

(b) PROGRESS REPORT.—Each annual report of the National Advisory Council on International Monetary and Financial Policies shall describe the following:

(1) The actions that the United States Executive Director and other officials have taken to convince the Fund to adopt the proposals set forth in subsection (a) through formal initiatives before the Board and management of the Fund, through bilateral discussions with other member nations, and through any further quota increase negotiations.

(2) The status of the progress being made by the Fund in implementing the proposals set forth in subsection (a).

(c) STUDY.—The Secretary of the Treasury shall instruct the United States Executive Director to the Fund to urge the Fund—

(1) to explore ways to increase the involvement and participation of important ministries, national development experts, environmental experts, free-market experts, and other legitimate experts and representatives from the loan-recipient country in the development of Fund programs; and

(2) to report on the status of Fund efforts in this regard.

SEC. 60.[100] MEASURES TO REDUCE MILITARY SPENDING BY DEVELOPING NATIONS.

(a) DEVELOPMENT BY THE FUND OF MEANS TO MEASURE MILITARY SPENDING—

(1) POSITION OF THE UNITED STATES.—The United States Executive Director of the Fund shall use the voice and vote of the United States to urge the Fund, in consultation with the Bank, to continue to develop an economic methodology to measure the level of military spending by each developing country.

(2) PROGRESS REPORT TO THE CONGRESS.—No later than 1 year after the date of the enactment of this section, the Secretary of the Treasury shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives[76] and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate a report on the status of the development by the Fund of a workable economic methodology to measure military pending by developing countries.

(b) ANNUAL REPORTS BY FUND ON LEVELS OF MILITARY SPENDING.—The United States Executive Director of the Fund shall use the voice and vote of the United States to urge the Fund, beginning with 1994, to provide the Executive Board of the Fund with annual reports stating the estimate by the Fund of the level of military spending by each developing country in the immediately preceding calendar year (or, with respect to developing countries whose fiscal

[100] 22 U.S.C. 286mm. Sec. 1003 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3359) added sec. 60.

years are not calendar years, in the most recently completed fiscal year of the developing country), not later than the date of the annual fall Interim and Development Committee meetings.

(c) ANALYSIS AND ASSESSMENT OF MILITARY SPENDING TO BE INCLUDED IN ARTICLE IV CONSULTATIONS BY THE FUND.—The United States Executive Director of the Fund shall use the voice and vote of the United States to urge the Fund, beginning no later than the date of the first report provided as described in subsection (b), to include in every article IV consultation with a developing country an analysis of the level of military spending by the developing country in the immediately preceding calendar year (or, with respect to developing countries whose fiscal years are not calendar years, in the most recently completed fiscal year of the developing country).

SEC. 61.[101] QUOTA INCREASE.

(a) IN GENERAL.—The United States Governor of the Fund may consent to an increase in the quota of the United States in the Fund equivalent to 10,622,500,000 Special Drawing Rights.

(b) SUBJECT TO APPROPRIATIONS.—The authority provided by subsection (a) shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

SEC. 62.[102] APPROVAL OF CONTRIBUTIONS FOR DEBT REDUCTIONS FOR THE POOREST COUNTRIES.

For the purpose of mobilizing the resources of the Fund in order to help reduce poverty and improve the lives of residents of poor countries and, in particular, to allow those poor countries with unsustainable debt burdens to receive deeper, broader, and faster debt relief, without allowing gold to reach the open market or otherwise adversely affecting the market price of gold, the Secretary of the Treasury is authorized to instruct the United States Executive Director of the Fund to vote—

(1) to approve an arrangement whereby the Fund—

(A) sells a quantity of its gold at prevailing market prices to a member or members in nonpublic transactions sufficient to generate 2.226 billion Special Drawing Rights in profits on such sales;

(B) immediately after, and in conjunction with each such sale, accepts payment by such member or members of such gold to satisfy existing repurchase obligations of such member or members so that the Fund retains ownership of the gold at the conclusion of such payment; and

(C) uses the earnings on the investment of the profits of such sales through a separate subaccount, only for the pur-

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[101] 22 U.S.C. 286e–1m. Sec. 608 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (division A, sec. 101(d) of Public Law 105–277; 112 Stat. 2681–224), added sec. 61.

[102] 22 U.S.C. 286nn. Added by sec. 503(a) of the Foreign Operations, Export Financing, and Related Appropriations Act, 2000 (enacted by reference in sec. 1000(a)(5) of Public Law 106–113; 113 Stat. 1501A–287). Sec. 503(b) of the Act provided the following:

"(b) CERTIFICATION.—Within 15 days after the United States Executive Director casts the votes necessary to carry out the instruction described in section 62 of the Bretton Woods Agreements Act, the Secretary of the Treasury shall certify to the Congress that neither the profits nor the earnings on the investment of profits from the gold sales made pursuant to the instruction or of the funds attributable to United States participation in SCA–2 will be used to augment the resources of any reserve account of the International Monetary Fund for the purpose of making loans.".

pose of providing debt relief from the Fund under the modified Heavily Indebted Poor Countries (HIPC) Initiative (as defined in section 1623 of the International Financial Institutions Act); and

(D) * * * [Repealed—2000] [103]

(2) to support a decision that shall terminate the Special Contingency Account (SCA–2) of the Fund so that the funds in the SCA–2 shall be made available to the poorest countries. Any funds attributable to the United States participation in the SCA–2 shall be used only for debt relief from the Fund under the modified HIPC Initiative.

SEC. 63.[104] PRINCIPLES FOR INTERNATIONAL MONETARY FUND LENDING.

It is the policy of the United States to work to implement reforms in the International Monetary Fund (IMF) to achieve the following goals:

(1) SHORT-TERM BALANCE OF PAYMENTS FINANCING.—Lending from the general resources of the Fund should concentrate chiefly on short-term balance of payments financing.

(2) LIMITATIONS ON MEDIUM-TERM FINANCING.—Use of medium-term lending from the general resources of the Fund should be limited to a set of well-defined circumstances, such as—

(A) when a member's balance of payments problems will be protracted;

(B) such member has a strong structural reform program in place; and

(C) the member has little or no access to private sources of capital.

(3) PREMIUM PRICING.—Premium pricing should be introduced for lending from the general resources of the Fund, for greater than 200 per centum of a member's quota in the Fund, to discourage excessive use of Fund lending and to encourage members to rely on private financing to the maximum extent possible.

(4) REDRESSING MISREPORTING OF INFORMATION.—The Fund should have in place and apply systematically a strong framework of safeguards and measures to respond to, correct, and discourage cases of misreporting of information in the context of a Fund program, including—

(A) suspending Fund disbursements and ensuring that Fund lending is not resumed to members that engage in serious misreporting of material information until such time as remedial actions and sanctions, as appropriate, have been applied;

(B) ensuring that members make early repayments, where appropriate, of Fund resources disbursed on the basis of misreported information;

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[103] Sec. 101(a) of the Foreign Operations, Export Financing, and Related Appropriations Act, 2001 (enacted by reference in sec. 101(a) of Public Law 106–429; 114 Stat. 1900A–64), added "and" at the end of subpara. (B) and struck out subpara. (D), which read, "(D) shall not use more than 9/14 of the earnings on the investment of the profits of such sales; and".

[104] 22 U.S.C. 286oo. Added by sec. 805 of the Foreign Operations, Export Financing, and Related Appropriations Act, 2001 (enacted by reference in sec. 101(a) of Public Law 106–429; 114 Stat. 1900A–67).

(C) making public cases of serious misreporting of material information;

(D) requiring all members receiving new disbursements from the Fund to undertake annually independent audits of central bank financial statements and publish the resulting audits; and

(E) requiring all members seeking new loans from the Fund to provide to the Fund detailed information regarding their internal control procedures, financial reporting and audit mechanisms and, in cases where there are questions about the adequacy of these systems, undertaking an on-site review and identifying needed remedies.

(2) to support a decision that shall terminate the Special Contingency Account 2 (SCA–2) of the Fund so that the funds in the SCA–2 shall be made available to the poorest countries. Any funds attributable to the United States participation in SCA–2 shall be used only for debt relief from the Fund under the modified HIPC Initiative.

(2) Bretton Woods Agreements Act Amendments, 1980

Partial text of Public Law 96–389 [S. 2271], 94 Stat. 1551, approved October 7, 1980

AN ACT To amend the Bretton Woods Agreements Act to authorize consent to an increase in the United States quota in the International Monetary Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

NOTE.—Except for the provisions included below, Public Law 96–389 contained amendments to the Bretton Woods Agreements Act and to the Bretton Woods Agreements Acts Amendments, 1978. These are incorporated in the text at the appropriate locations.

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RECYCLING BALANCE-OF-PAYMENTS SURPLUSES

SEC. 4. (a)[1] It is the sense of the Congress that (1) the interests of the United States and those of other member countries require an effective International Monetary Fund equipped with resources adequate to facilitate orderly balance-of-payments adjustments; (2) persistent balance-of-payments surpluses in oil exporting countries have placed, and will continue to place, severe strains on the resources of oil importing countries and on the liquidity of the Fund; (3) these strains can only be relieved if the oil exporting countries assume a greater burden for financing balance-of-payments deficits through direct methods of recycling their surpluses and through proportionally greater contributions to the Fund and to the international lending institutions; and (4) the Fund must explore innovative proposals to encourage more direct recycling of oil surpluses and to increase its own liquidity.

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SEC. 9.[2] The United States Executive Director to the Fund shall seek to insure (a) that Fund salaries do not exceed those levels endorsed by the Fund Bank Joint Committee on Staff Compensation Issues; and (b) that travel costs are minimized by limiting first

[1] 22 U.S.C. 286t note.
[2] 22 U.S.C. 286a note.

class and supersonic travel to instances where no reasonable alternative exists.

ROLE OF GOLD IN INTERNATIONAL MONETARY SYSTEMS

SEC. 10.[3] (a) The Secretary of the Treasury shall establish and chair a commission consisting of—

(1) three members of the Board of Governors of the Federal Reserve System and two members of the Council of Economic Advisors, all of whom shall be designated by the Secretary of the Treasury;

(2) one majority and one minority member of each from (A) the Joint Economic Committee of the Congress, (B) the Committee on Banking, Housing, and Urban Affairs of the Senate, and (C) the Committee on Banking, Finance and Urban Affairs of the House of Representatives,[4] who shall be designated by the Speaker of the House of Representatives and the President of the Senate, respectively, upon the recommendations of the majority and minority leaders of the respective Houses; and

(3) four distinguished private citizens with business, finance, or academic backgrounds who shall be designated by the Secretary.

(b) The commission shall conduct a study to assess and make recommendations with regard to the policy of the United States Government concerning the role of gold in domestic and international monetary systems, and shall transmit to the Congress a report containing its findings and recommendations not later than one year after the date of enactment of this Act.

(c) Sums appropriated pursuant to section 5 of Public Law 95–612 shall be available to the commission to carry out its functions.[5]

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EFFECTIVE DATE

SEC. 12. This Act shall take effect on its date of enactment, except that funds may not be appropriated under any authorization contained in this Act for any period prior to October 1, 1980.

[3] 31 U.S.C. 5302 note.

[4] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

[5] Sec. 5 of Public Law 95–612 (92 Stat. 3092) authorized "not to exceed $24,000,000 for fiscal year 1979, including sums for official functions and reception and representation expenses, to carry out the international affairs functions of the Department of the Treasury.".

(3) Bretton Woods Agreements Act Amendments, 1978

Partial text of Public Law 95–435 [H.R. 9214], 92 Stat. 1051, approved October 10, 1978; as amended by Public Law 96–389 [S. 2271], 94 Stat. 1551, approved October 7, 1980; and Public Law 97–258 [H.R. 6128], 96 Stat. 877, approved September 13, 1982

AN ACT To amend the Bretton Woods Agreements Act to authorize the United States to participate in the Supplementary Financing Facility of the International Monetary Fund.

NOTE.—Except for the provisions included below, Public Law 95–435 contained amendments to the Bretton Woods Agreements Act and the Export Administration Act of 1969. These are incorporated in the text at the appropriate locations.

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SEC. 5. (a)[1] * * *

(b) It is the sense of the Congress that the Government of the United States should take steps to disassociate itself from any foreign government which engages in the international crime of genocide.

(c) * * *

(d) * * *

(e) * * *

SEC. 6.[2] The Secretary of the Treasury shall instruct the Executive Director of the United States to the International Monetary Fund to work in opposition to any extension of financial or technical assistance by the Supplemental Financing Facility or by any other agency or facility of such Fund to any country the government of which—

(1) permits entry into the territory of such country to any person who has committed an act of international terrorism,

[1] Sec. 2(a) of Public Law 96–67 (93 Stat. 415; September 21, 1979) repealed sec. 5(a), (c), (d), and (e), which provided for a prohibition on imports into the United States from Uganda. During 1979, prior to this repeal, several actions were taken pursuant to this Act. On February 6, 1979, the President issued Executive Order 12117 (44 F.R. 7937) "in order to provide for the consistent implementation of import restrictions imposed against Uganda by Section 5(c)". Both sec. 5(c) and the Executive Order provided for the lifting of this prohibition if the President determined that Uganda was no longer committing a consistent pattern of gross violations of human rights and so certified to the Congress. Pursuant to this authority, the President determined on May 15, 1979, that the Government of Uganda was no longer violating human rights. This determination also has the effect of revoking Executive Order 12117 and immediately allowed for the resumption of imports from and exports to Uganda. Public Law 96–67, then, legislatively repealed the appropriate subsections of Public Law 95–435.

[2] 22 U.S.C. 286e–11.

including any act of aircraft hijacking, or otherwise supports, encourages, or harbors such person; or

(2) fails to take appropriate measures to prevent any such person from committing any such act outside the territory of such country.

SEC. 7.[3] Congress reaffirms its commitment that the total budget outlays of the United States Government for a fiscal year may be not more than the receipts of the Government for that year.

[3] 31 U.S.C. 1103. Sec. 1 of Public Law 97–258 (96 Stat. 908) amended and recodified title 31, U.S.C. Under that Act, sec. 7 was amended and restated, and recodified from 31 U.S.C. 27 to 1103. As originally enacted, sec. 7 required a balanced budget for fiscal year 1981. Sec. 3 of Public Law 96–389 (94 Stat. 1553) amended the text to express congressional commitment to a balanced budget in fiscal year 1981.

(4) International Development Association Act, as amended

Public Law 86–565 [H.R. 11001], 74 Stat. 293, approved June 30, 1960; as amended by Public Law 88–310 [S. 2214], 78 Stat. 200, approved May 26, 1964; Public Law 91–14 [H.R. 33], 83 Stat. 10, approved May 23, 1969; Public Law 92–247 [S. 2010], 86 Stat. 60, approved March 10, 1972; Public Law 93–373 [S. 2665], 88 Stat. 445, approved August 14, 1974; Public Law 95–118 [H.R. 5262], 91 Stat. 1067 at 1068, approved October 3, 1977; Public Law 97–35 [H.R. 3982], 95 Stat. 357 at 740, approved August 13, 1981; Public Law 98–473 [Continuing Appropriations Act 1985; H.J. Res. 648], 98 Stat. 1837 at 1884, approved October 12, 1984; by Public Law 99–190 [Further Continuing Appropriations, 1986; H.J. Res. 465], 99 Stat. 1185, approved December 19, 1985; Public Law 100–202 [Continuing Appropriations, 1988; H.J. Res. 395], 101 Stat. 1329, approved December 22, 1987; Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989; by Public Law 101–513 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991; H.R. 5114], 104 Stat. 1979, approved November 5, 1990; by Public Law 108–199 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, Division D of Consolidated Appropriations, 2004; H.R. 2673], 118 Stat. 202, approved January 23, 2004; and Public Law 109–102 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006; H.R. 3057], 119 Stat. 2243, approved November 14, 2005

AN ACT To provide for the participation of the United States in the International Development Association.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "International Development Association Act".

ACCEPTANCE OF MEMBERSHIP

SEC. 2.[1] The President is hereby authorized to accept membership for the United States in the International Development Association (hereinafter referred to as the "Association"), provided for by the Articles of Agreement (hereinafter referred to as the "Articles") of the Association deposited in the archives of the International Bank for Reconstruction and Development.

GOVERNOR, EXECUTIVE DIRECTOR, AND ALTERNATES

SEC. 3.[2] The Governor and Executive Director of the International Bank for Reconstruction and Development, and the alternate for each of them, appointed under section 3 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286a), shall serve

[1] 22 U.S.C. 284.
[2] 22 U.S.C. 284a.

as Governor, Executive Director and alternates, respectively, of the Association.

NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS

SEC. 4.[3] The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286b), shall apply with respect to the Association to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund.[4]

CERTAIN ACTS NOT TO BE TAKEN WITHOUT AUTHORIZATION

SEC. 5.[5] Unless Congress by law authorizes such action, neither the President nor any person or agency shall, on behalf of the United States, (a) subscribe to additional funds under article III, section 1, of the articles; (b) accept any amendment under article IX of the articles; or (c) make a loan or provide other financing to the Association.

DEPOSITORIES

SEC. 6.[6] Any Federal Reserve bank which is requested to do so by the Association shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTIONS

SEC. 7.[7] (a) There is hereby authorized to be appropriated, without fiscal year limitation, for the subscription of the United States to the Association, $320,290,000.[8]

(b)[9] The United States Governor is hereby authorized (1) to vote for an increase in the resources of the Association and (2) to agree on behalf of the United States to contribute to the Association the sum of $312 million, both as recommended by the Executive Directors, in a report dated September 9, 1963, to the Board of Governors of the Association. There is hereby authorized to be appropriated out of funds supplied by the Nation's taxpayers or out of funds borrowed on their credit, without fiscal year limitation, $312 million to provide the United States share of the increase in the resources of the Association.

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[3] 22 U.S.C. 284b.

[4] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(e)(4) struck out the last sentence of this section, which read as follows: "Reports with respect to the Association under paragraphs (5) and (6) of subsection (b) of section 4 of said Act, as amended, shall be included in the first report made thereunder after the establishment of the Association and in each succeeding report.".

[5] 22 U.S.C. 284c.

[6] 22 U.S.C. 284d.

[7] 22 U.S.C. 284e.

[8] The U.S. subscription was payable in five annual installments, one of $73,666,700 and four of $61,656,000.

[9] Sec. 1 of Public Law 88–310 (78 Stat. 200) redesignated subsecs. (b) and (c) as subsecs. (c) and (d), respectively, and added a new subsec. (b).

(c)[9] For the purpose of keeping to a minimum the cost to the United States of participation in the Association, the Secretary of the Treasury[10] is authorized and directed to issue special notes of the United States from time to time, at par, and to deliver such notes to the Association in exchange for dollars to the extent permitted by the articles. The special notes provided for in this subsection shall be issued under the authority and subject to the provisions of the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include the purposes for which special notes are authorized and directed to be issued under this subsection, but such notes shall bear no interest, shall be nonnegotiable, and shall be payable on demand of the Association. The face amount of special notes issued to the Association under the authority of this subsection and outstanding at any one time shall not exceed in the aggregate, the amount[10] actually paid to the Association under the articles.

(d)[9] Any payment made to the United States by the Association as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION AND VENUE OF ACTIONS

SEC. 8.[11] For the purpose of any action which may be brought within the United States, its possessions, or the Commonwealth of Puerto Rico, by or against the Association in accordance with the articles, the Association shall be deemed to be an inhabitant of the Federal judicial district in which its principal office in the United States is located, and any such action at law or in equity to which the Association shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of any such action. When the Association is a defendant in any such action, it may, at any time before the trial thereof, remove such action from a State court into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES, AND PRIVILEGES

SEC. 9.[12] The provisions of article VII, section 5(d), and article VIII, sections 2 to 9, both inclusive, of the articles shall have full force and effect in the United States, its possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in, and the establishment of, the Association.

SEC. 10.[13] The United States Governor is hereby authorized (1) to vote in favor of the second replenishment resolutions providing for an increase in the resources of the Association, and (2) to agree on behalf of the United States to contribute to the Association the sum of $480,000,000, as recommended by the Executive Directors

[10] Sec. 2 of Public Law 88–310 (78 Stat. 200) struck out ", after paying the requisite part of the subscription of the United States in the Association required to be made under the articles," after "Treasury"; and struck out "of the subscription of the United States" which preceded "actually" in the last sentence.

[11] 22 U.S.C. 284f.

[12] 22 U.S.C. 284g.

[13] 22 U.S.C. 284h. Public Law 91–14 (83 Stat. 10) added sec. 10.

in a report dated March 8, 1968, to the Board of Governors of the Association. There is hereby authorized to be appropriated, without fiscal year limitation, $480,000,000 for payment by the Secretary of the Treasury of the United States share of the increase in the resources of the Association.

SEC. 11.[14] The United States Governor is hereby authorized to agree on behalf of the United States to contribute to the Association three annual installments of $320,000,000 each as recommended in the "Report of the Executive Directors to the Board of Governors on Additions to IDA Resources: Third Replenishment," dated July 21, 1970. There is hereby authorized to be appropriated, without fiscal year limitation, the amounts necessary for payment by the Secretary of the Treasury of three annual installments of $320,000,000 each for the United States share of the increase in the resources of the Association.

SEC. 12.[15] The President shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development and the International Development Association to vote against any loan or other utilization of the funds of the Bank and the Association for the benefit of any country which has—

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) taken steps to repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned;

unless the President determines that (A) an arrangement for prompt, adequate, and effective compensation has been made, (B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes, or (C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

SEC. 13.[16] The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development and the International Development Association to vote against any loan or other utilization of the funds of the Bank and the Association for the benefit of any country with respect to which the President has made a determination, and so notified the Secretary of the Treasury, that the government

[14] 22 U.S.C. 284i. Sec. 1 of Public Law 92–247 (86 Stat. 60) added sec. 11.

[15] 22 U.S.C. 284j. Popularly referred to as the Gonzalez amendment. Sec. 1 of Public Law 92–247 (86 Stat. 60) added sec. 12.

[16] 22 U.S.C. 284k. Sec. 2 of Public Law 92–247 (86 Stat. 61) added sec. 13.

of such country has failed to take adequate steps to prevent narcotic drugs and other controlled substances (as defined by the Comprehensive Drug Abuse Prevention and Control Act of 1970) 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 entering the United States unlawfully. Such instruction shall continue in effect until the President determines, and so notifies the Secretary of the Treasury, that the government of such country has taken adequate steps to prevent such sale or entry of narcotic drugs and other controlled substances.

SEC. 14.[17] (a) The United States Governor is hereby authorized to agree on behalf of the United States to pay to the Association four annual installments of $375,000,000 each as the United States contribution to the Fourth Replenishment of the Resources of the Association.

(b) In order to pay for the United States contribution, there is hereby authorized to be appropriated without fiscal year limitation four annual installments of $375,000,000 each for payment by the Secretary of the Treasury.

SEC. 15.[18] * * * [Repealed—1977]

SEC. 16.[19] (a) The United States Governor is hereby authorized to agree on behalf of the United States to pay to the Association $2,400,000,000 as the United States contribution to the fifth replenishment of the Resources of the Association: *Provided, however,* That any commitment to make such contributions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in this section, there are hereby authorized to be appropriated, without fiscal year limitation, $2,400,000,000 for payment by the Secretary of the Treasury.

SEC. 17.[20] (a) The United States Governor is authorized to agree on behalf of the United States to pay to the Association $3,240,000,000 as the United States contribution to the sixth replenishment of the resources of the Association: *Provided, however,* That any commitment to make such contributions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contributions provided for in this section, there is authorized to be appropriated, without fiscal year limitation, $3,240,000,000 for payment by the Secretary of the Treasury: *Provided, however,* That not more than $850,000,000 of such sum may be made available for the fiscal year 1982 and not more than $945,000,000 of such sum may be made available for the fiscal year 1983.[21]

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[17] 22 U.S.C. 284*l*. Sec. 1 of Public Law 93–373 (88 Stat. 445) added sec. 14.

[18] Formerly at 22 U.S.C. 284m. Sec. 702 of Public Law 95–118 (91 Stat. 1070) repealed sec. 15, which directed the U.S. Governor to vote against any loan or assistance to any country which develops a nuclear explosive device (unless such country was a party to the Treaty on the Non-Proliferation of Nuclear Weapons).

[19] 22 U.S.C. 284n. Sec. 401 of Public Law 95–118 (91 Stat. 1068) added sec. 16.

[20] 22 U.S.C. 284o. Sec. 1321 of Public Law 97–35 (95 Stat. 740) added sec. 17.

[21] Appropriations for U.S. payments authorized in sec. 17 have been provided in the following amounts and Public Laws: fiscal year 1981—$500 million (Public Law 97–12); fiscal year 1982—$700 million (Public Law 97–121); fiscal year 1983—$700,000,000 (Public Law 97–377); and

Continued

SEC. 18.[22] (a) The United States Governor is hereby authorized to agree on behalf of the United States to pay to the Association $2,250,000,000 as the United States contribution to the seventh replenishment of the resources of the Association, except that any commitment to make such contributions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $2,250,000,000 for payment by the Secretary of the Treasury.[23]

SPECIAL FACILITY FOR SUB-SAHARAN AFRICA

SEC. 19.[24] (a) The Secretary of the Treasury shall pay to the Special Facility for Sub-Saharan Africa, administered by the Association, amounts appropriated pursuant to subsection (b).

(b) For purposes of the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $225,000,000.[25]

SEC. 20.[26] (a) The United States Governor is hereby authorized to agree on behalf of the United States to pay to the Association $2,875,000,000 to the eighth replenishment of the resources of the Association, except that any commitment to make such contributions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $2,875,000,000 for payment by the Secretary of the Treasury.[27]

SEC. 21.[28] NINTH REPLENISHMENT.

(a) IN GENERAL.—The United States Governor is hereby authorized to agree on behalf of the United States to pay to the Association $3,180,000,000 to the ninth replenishment of the resources of the Association, subject to obtaining the necessary appropriations.

$245 million (Public Law 98–63); fiscal year 1984—$945 million (Public Law 98–151); fiscal year 1985—$150 million (Public Law 98–473).

[22] 22 U.S.C. 284p. Title I of the Foreign Assistance Appropriations Act, 1985 (sec. 101 of the Continuing Appropriations Act, 1985; Public Law 98–473; 98 Stat. 1885), added sec. 18 by enacting into law the amendment made by sec. 901 of S. 2582, as reported by the Senate Committee on Foreign Relations on April 18, 1984, except for subsec. (c) of such amendment.

[23] Appropriations for U.S. payments authorized in sec. 18 have been provided in the following amounts and Public Laws: fiscal year 1985—$750 million (Public Law 98–473); fiscal year 1986—$700 million (Public Law 99–190), reduced by $30.1 million as a result of sequestration (Public Law 99–177); fiscal year 1987—$622.6 million (Public Law 99–591); fiscal year 1987 supplemental—$207.5 million (Public Law 100–71).

[24] 22 U.S.C. 284q and 284q note. Sec. 101(i) of the Further Continuing Appropriations, 1986 (Public Law 99–190; 99 Stat. 1294) added sec. 19, which enacted sec. 102 of H.R. 2253.

[25] Appropriations for U.S. payments authorized in sec. 19 have been provided in the following amounts and Public Laws: fiscal year 1986—$75 million (actual contribution was $71.8 million resulting from budgetary reductions mandated by Gramm-Rudman) (Public Law 99–190); fiscal year 1987—$64.8 million (Public Law 99–591).

[26] Added by sec. 101 of H.R. 3750 (as introduced on Dec. 11, 1987), which was enacted into law by reference in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (Public Law 100–202; 101 Stat. 1329 at 1329–134).

[27] Appropriations for the U.S. contribution authorized in sec. 20 have been provided in the following amounts and Public Laws: fiscal year 1988—$915 million (Public Law 100–202); fiscal year 1989—$995 million (Public Law 100–461); fiscal year 1990—$960 million (Public Law 101–167); fiscal year 1991—$4.15 million (Public Law 101–513).

[28] 22 U.S.C. 284s. Sec. 562(a)(1) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513; 104 Stat. 2032), added sec. 21.

(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $3,180,000,000 for payment by the Secretary of the Treasury.

SEC. 22.[29] THIRTEENTH REPLENISHMENT.

(a) CONTRIBUTION AUTHORITY.—

(1) IN GENERAL. —The United States Governor of the Association may contribute on behalf of the United States an amount equal to the amount appropriated under subsection (b), pursuant to the resolution of the Association entitled "Additions to IDA Resources: Thirteenth Replenishment".

(2) SUBJECT TO APPROPRIATIONS. —Any commitment to make the contribution authorized by paragraph (1) shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS. —For the contribution authorized by subsection (a), there are authorized

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Appropriations for the U.S. contribution to the ninth replenishment were provided in the following amounts and Public Laws: fiscal year 1991—$1.1 billion (Public Law 101–513); fiscal year 1991 sequestration—$20.2 million (Public Laws 99–177, 100–119, 101–508); fiscal year 1991 sequestration restoration—$20.2 million (Public Law 102–27); fiscal year 1992 continuing resolutions—$1.0 billion (Public Laws 102–145, 102–266); fiscal year 1992 rescission—minus $32.5 million (Public Law 102–298); fiscal year 1993—$1.0 billion (Public Law 102–391); fiscal year 1996—$79.7 million (Public Law 104–107).

The Foreign Operations and Related Programs Appropriations Acts of 1994 (Public Law 103–87; 107 Stat. 931), and 1997 (Public Law 104–208; 110 Stat. 3009), provided for participation in the tenth replenishment in sec. 526 (107 Stat. 952), which authorized a contribution of $2.5 billion. Subsequent appropriations included: fiscal year 1994—$1,024.3 million (Public Law 103–87); fiscal year 1995—$1,235 million (Public Law 103–306); fiscal year 1996—$616.2 million (Public Law 104–107); fiscal year 1997—$700 million; fiscal year 1998—$234.5 million (Public Law 105–118).

The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118; 111 Stat. 2425), provided for participation in the eleventh replenishment, as follows:

"INTERNATIONAL FINANCIAL INSTITUTIONS

"SEC. 560. (a) AUTHORIZATIONS.—The Secretary of the Treasury may, to fulfill commitments of the United States: * * *(2) contribute on behalf of the United States to the eleventh replenishment of the resources of the International Development Association, * * * Each such subscription or contribution shall be subject to obtaining the necessary appropriations.".

Appropriations for the U.S. contribution to the eleventh replenishment have been provided in the following amounts and Public Laws: fiscal year 1998—$800 million (Public Law 105–118); fiscal year 1999—$800 million (Public Law 105–277).

Sec. 594 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1501), provided for participation in the twelfth replenishment, as follows:

"AUTHORIZATIONS

"SEC. 594. The Secretary of The Treasury may, to fulfill commitments of the United States: (1) effect the United States participation in the * * * twelfth replenishment of the International Development Association. The following amounts are authorized to be appropriated without fiscal year limitation for payment by the Secretary of the Treasury: * * * $2,410,000,000 for the International Development Association.".

Appropriations for the U.S. contribution have been provided in the following amounts and Public Laws: fiscal year 2000—$775 million (Public Law 106–113); fiscal year 1999 rescission—minus $3.7 million; fiscal year 2001—$775 million (Public Law 106–429); fiscal year 2000 rescission—minus $1.7 million (Public Law 106–429); fiscal year 2002—$92.4 million (Public Law 107–155).

[29] 22 U.S.C. 284t. Sec. 580 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (Public Law 108–119; 118 Stat. 202), added sec. 22.

to be appropriated such sums as may be necessary for payment by the Secretary of the Treasury, without fiscal year limitation.[30]

SEC. 23.[31] FOURTEENTH REPLENISHMENT.

(a) The United States Governor International Development Association is authorized to contribute on behalf of the United States $2,850,000,000 to the fourteenth replenishment of the resources of the Association, subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $2,850,000,000 for payment by the Secretary of the Treasury.[32]

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[30]Appropriations for the U.S. contribution to the thirteenth replenishment were provided in the following amounts and Public Laws: fiscal year 2003—$850 million (Public Law 108–7); fiscal year 2003 rescission—minus $5.5 million (Public Law 108–7); fiscal year 2004 —$913.2 million (Public Law 108–199); fiscal year 2004 rescission—minus $5.4 billion (Public Law 108–199); fiscal year 2005—$850 million (Public Law 108–447); fiscal year 2005 rescission—minus $6.8 billion (Public Law 108–447).

[31] 22 U.S.C. 2842. Sec. 599C(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (Public Law 109–102; 119 Stat. 2243), added sec. 23.

[32]Appropriations for the U.S. contribution to the fourteenth replenishment were provided in the following amounts and Public Laws: fiscal year 2006—$950 million (Public Law 109–102); fiscal year 2006 rescission—minus $9.5 million (Public Law 109–148).

Sec. 599D of the Foreign Operations, Export Financing, and Related Programs Appropriations, 2006 (Public Law 106–102; 119 Stat. 2243), provided the following:

"ANTICORRUPTION PROVISIONS

"SEC. 599D. Twenty percent of the funds appropriated by this Act under the heading 'International Development Association', shall be withheld from disbursement until the Secretary of the Treasury certifies to the appropriate congressional committees that—

"(1) World Bank procurement guidelines are applied to all procurement financed in whole or in part by a loan from the International Bank for Reconstruction and Development (IBRD) or a credit agreement or grant from the International Development Association (IDA);

"(2) the World Bank proposal 'Increasing the Use of Country Systems in Procurement' dated March 2005 has been withdrawn;

"(3) the World Bank is maintaining a strong central procurement office staffed with senior experts who are designated to address commercial concerns, questions, and complaints regarding procurement procedures and payments under IDA and IBRD projects;

"(4) thresholds for international competitive bidding are established to maximize international competitive bidding in accordance with sound procurement practices, including transparency, competition, and cost-effective results for the Borrowers;

"(5) all tenders under the World Bank's national competitive bidding provisions are subject to the same advertisement requirements as tenders under international competitive bidding; and

"(6) loan agreements are made public between the World Bank and the Borrowers.".

(5) Special Facility for Sub-Saharan Africa

Partial text of H.R. 2253 [Multilateral Development Bank Act of 1985] as enacted into law by sec. 101(i) of the Further Continuing Appropriations, 1986 (Public Law 99–190; 99 Stat. 1294), approved December 19, 1985

NOTE.—Except for the provisions included below, H.R. 2253 contained amendments to the International Development Association Act, the African Development Fund Act, and the Bretton Woods Agreement Act. These amendments are incorporated into the text at the appropriate places.

* * * * * * *

TITLE I—SPECIAL FACILITY FOR SUB-SAHARAN AFRICA

SEC. 101. FINDINGS.

The Congress hereby finds that—

(1) Sub-Saharan Africa faces a virtually unprecedented condition of human misery which threatens the lives of one hundred and fifty million people;

(2) only the combined effort of both the African nations themselves and international aid donors can overcome the obstacles to economic development which have given rise to conditions of famine, declining food production, infant mortality, desertification, and deteriorating infrastructure;

(3) international relief efforts have helped to address the immediate crisis of starvation in Africa and the United States has made important contributions to this effort both bilaterally and through contributions to the multilateral development institutions;

(4) there is a serious shortfall in the external capital resources necessary to support the policy reform efforts of the African governments and to achieve the long-term development necessary to avert a chronic state of crisis in Sub-Saharan Africa;

(5) the Special Facility for Sub-Saharan Africa will have as its primary goal the implementation of policy reforms to help the African countries to help themselves;

(6) to succeed, these efforts must be reinforced by development resources;

(7) the appalling conditions prevalent in the countries of Sub-Saharan Africa underscore the need for the United States

to participate in a coordinated framework with the other aid donor countries; and

(8) the Special Facility for Sub-Saharan Africa provides such a framework and it is in the humanitarian, economic, and strategic interests of the United States to participate.

* * * * * * *

(6) International Finance Corporation Act, as amended

Public Law 84–350 [S. 1894], 69 Stat. 669, approved August 11, 1955; as amended by Public Law 87–185 [H.R. 6765], 75 Stat. 413, approved August 30, 1961; Public Law 89–126 [S. 1742], 79 Stat. 519, approved August 14, 1965; Public Law 95–118 [H.R. 5262], 91 Stat. 1067 at 1068, approved October 3, 1977; Public Law 99–190 [Further Continuing Appropriations, 1986; H.J. Res. 465], 99 Stat. 1185, approved December 19, 1985; Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989; Public Law 101–513 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991; H.R. 5114], 104 Stat. 1979, approved November 5, 1990; Public Law 102–145 [Further Continuing Appropriations, Fiscal Year 1992; H.J.Res. 360], 105 Stat. 968, approved October 28, 1991; and Public Law 102–511 [FREEDOM Support Act, S. 2532], 106 Stat. 3320, approved October 24, 1992

AN ACT To provide for the participation of the United States in the International Finance Corporation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "International Finance Corporation Act".

ACCEPTANCE OF MEMBERSHIP

SEC. 2.[1] The President is hereby authorized to accept membership for the United States in the International Finance Corporation (hereinafter referred to as the Corporation), provided for by the Articles of Agreement of the Corporation deposited in the archives of the International Bank for Reconstruction and Development.

GOVERNOR, EXECUTIVE DIRECTOR, AND ALTERNATES

SEC. 3.[2] The governor and executive director of the International Bank for Reconstruction and Development, and the alternate for each of them, appointed under section 3 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286a), shall serve as governor, director and alternates, respectively, of the Corporation.

NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS

SEC. 4.[3] The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286b), shall apply with respect

[1] 22 U.S.C. 282.
[2] 22 U.S.C. 282a.
[3] 22 U.S.C. 282b.

to the Corporation to the same extent as with respect to the International Bank for Reconstruction and Development.[4]

CERTAIN ACTS NOT TO BE TAKEN WITHOUT AUTHORIZATION

SEC. 5.[5] Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States (a) subscribe to additional shares of stock under article II, section 3, of the Articles of Agreement of the Corporation; (b) accept any amendment under article VII of the Articles of Agreement of the Corporation; (c) make any loan to the Corporation. The United States Governor of the Corporation is authorized to agree to an amendment to article III of the Articles of Agreement of the Corporation to authorize the Corporation to make investments of its funds in capital stock and to limit the exercise of voting rights by the Corporation unless exercise of such rights is deemed necessary by the Corporation to protect its interests, as proposed in the resolution submitted by the Board of Directors on February 20, 1961.[6] Unless Congress by law authorizes such action, no governor or alternate representing the United States shall vote for an increase of capital stock of the Corporation under article II, section 2(c)(ii), of the Articles of Agreement of the Corporation.

DEPOSITORIES

SEC. 6.[7] Any Federal Reserve Bank which is requested to do so by the Corporation shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTIONS

SEC. 7.[8] (a) The Secretary of the Treasury is authorized to pay the subscription of the United States to the Corporation and for this purpose is authorized to use as a public-debt transaction not to exceed $35,168,000 of the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under the Act are extended to include such purpose. Payment under this subsection of the subscription of the United States to the Corporation and any repayment thereof shall be treated as public-debt transactions of the United States.

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[4] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(e)(1) struck out the last sentence of this section, which read: "Reports with respect to the Corporation under paragraphs 5 and 6 of subsection (b) of section 4 of said Act, as amended, shall be included in the first report made thereunder after the establishment of the Corporation and in each succeeding report.".

[5] 22 U.S.C. 282c.

[6] Public Law 87–185 (75 Stat. 413) inserted this sentence authorizing acceptance of an amendment to the articles of agreement of the International Finance Corporation permitting investment in capital stock.

[7] 22 U.S.C. 282d.

[8] 22 U.S.C. 282e.

(b) Any payment of dividends made to the United States by the Corporation shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION AND VENUE OF ACTIONS

SEC. 8.[9] For the purpose of any action which may be brought within the United States or its Territories or possessions by or against the Corporation in accordance with the Articles of Agreement of the Corporation, the Corporation shall be deemed to be an inhabitant of the Federal judicial district in which its principal office in the United States is located, and any such action at law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of any such action. When the Corporation is a defendant in any such action, it may, at any time before the trial thereof, remove such action from a State court into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES AND PRIVILEGES

SEC. 9.[10] The provisions of article V, section 5(d), and article VI, sections 2 to 9, both inclusive, of the Articles of Agreement of the Corporation shall have full force and effect in the United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of, the Corporation.

SEC. 10.[11] The United States Governor of the Corporation is authorized to agree to the amendments of the Articles of Agreement of the Corporation to remove the prohibition therein contained against the Corporation lending to or borrowing from the International Bank for Reconstruction and Development, and to place limitations on such borrowings.

SEC. 11.[12] (a) The United States Governor of the Corporation is authorized—

(1) to vote for an increase of five hundred and forty thousand shares in the authorized capital stock of the Corporation; and

(2) if such increase becomes effective, to subscribe on behalf of the United States to one hundred and eleven thousand four hundred and ninety-three additional shares of capital stock of the Corporation: *Provided, however,* That any commitment to make payment for such additional subscriptions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the increase in the United States subscription to the Corporation provided for in this section, there are hereby authorized to be appropriated, without fiscal year limitations, $111,493,000 for payment by the Secretary of the Treasury.[13]

[9] 22 U.S.C. 282f.
[10] 22 U.S.C. 282g.
[11] 22 U.S.C. 282h. Sec. 2 of Public Law 89–126 (79 Stat. 519) added sec. 10.
[12] 22 U.S.C. 282i. Sec. 301 of Public Law 95–118 (91 Stat. 1068) added sec. 11.
[13] Appropriation of funds for this increase in the U.S. subscription have been made in the following amounts and Public Laws: fiscal year 1978—$38 million (Public Law 95–148); fiscal year 1979—$40 million (Public Law 95–481); fiscal year 1980—$33.4 million (Public Law 96–123)

Continued

CAPITAL STOCK INCREASE

SEC. 12.[14] (a) The United States Governor of the Corporation is authorized—

(1) to vote for an increase of 650,000 shares in the authorized capital stock of the Corporation; and

(2) to subscribe on behalf of the United States to 175,162 additional shares of the capital stock of the Corporation, except that any subscription to additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) In order to pay for the increase in the United States subscription to the Corporation provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $175,162,000 for payment by the Secretary of the Treasury.[15]

SEC. 13.[16] SECURITIES ISSUED BY THE CORPORATION.

(a) EXEMPTION FROM SECURITIES LAWS; REPORTS TO SECURITIES AND EXCHANGE COMMISSION.—Any securities issued by the Corporation (including any guaranty by the Corporation, whether or not limited in scope) and any securities guaranteed by the Corporation as to both principal and interest shall be deemed to be exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 and section 3(a)(12) of the Securities Exchange Act of 1934. The Corporation shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Corporation and its operations and necessary in the public interest or for the protection of investors.

(b) AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION TO SUSPEND EXEMPTION: REPORTS TO THE CONGRESS.—The Securities and Exchange Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, is authorized to suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Corporation during the period of such suspension. The Commission shall include in its annual reports to the Congress such information as it shall deem advisable with regard to the operations and effect of this section.

SEC. 14.[17] CAPITAL STOCK INCREASE.

(a) SUBSCRIPTION AUTHORIZED.—

(only $19 million of the fiscal year 1980 appropriation spent); fiscal year 1981—$0; fiscal year 1982—$14.4 million (Public Law 97–121).

[14] 22 U.S.C. 282j. Added byy sec. 101(i) of the Further Continuing Appropriations, 1986 (Public Law 99–190; 99 Stat. 1294), which enacted sec. 3 of H.R. 1948 as introduced April 3, 1985.

[15] Appropriation of funds for this increase have been made in the following amounts and Public Laws: fiscal year 1986—$29 million (Public Law 99–190), reduced by $1.2 million as a result of sequestration (Public Law 99–177); fiscal year 1987 supplemental—$7.2 million (Public Law 100–71); fiscal year 1988—$20.3 million (Public Law 100–202); fiscal year 1989—$4.9 million (Public Law 100–461); fiscal year 1990—$75 million (Public Law 101–167); fiscal year 1991—$40.3 million (Public Law 101–513).

[16] Sec. 562(e)(1)(A) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513; 104 Stat. 2037) added sec. 13.

[17] 22 U.S.C. 282*l*. Sec. 125(a) of the Further Continuing Appropriations, Fiscal Year 1992 (Public Law 102–145, as amended by Public Law 102–266; 106 Stat. 97), added sec. 14.

(1) IN GENERAL.—The United States Governor of the Corporation may—

(A) vote for an increase of 1,000,000 shares in the authorized capital stock of the Corporation; and

(B) subscribe on behalf of the United States to 250,000 additional shares of the capital stock of the Corporation.

(2) PRIOR APPROPRIATION REQUIRED.—The subscription authority provided in paragraph (1) shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—In order to pay for the subscription authorized in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $50,000,000 for payment by the Secretary of the Treasury.[18]

SEC. 15.[19] AUTHORITY TO VOTE FOR CAPITAL INCREASES NECESSARY TO SUPPORT ECONOMIC RESTRUCTURING IN THE INDEPENDENT STATES OF THE FORMER SOVIET UNION.

The United States Governor of the Corporation may vote in favor of any increase in the capital stock of the Corporation that may be needed to accommodate the requirements of the independent states of the former Soviet Union (as defined in section 3 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992).

SEC. 16.[20] AUTHORITY TO AGREE TO AMENDMENTS TO THE ARTICLES OF AGREEMENT.

The United States Governor of the Corporation is authorized to agree to amendments to the Articles of Agreement of the Corporation that would—

(1) amend Article II, Section 2(c)(ii), to increase the vote by which the Board of Governors of the Corporation may increase the capital stock of the Corporation from a three-fourths majority to a four-fifths majority; and

(2) amend Article VII(a) to increase the vote by which the Board of Governors of the Corporation may amend the Articles of Agreement of the Corporation from a four-fifths majority to an eighty-five percent majority.

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[18] Appropriation of funds for this increase have been made in the following amounts and Public Laws: fiscal year 1992—$39.7 million (Public Law 102–145, as amended by Public Law 102–266); fiscal year 1993—$35.76 (Public Law 102–391); fiscal year 1994—$35.76 (Public Law 103–87); fiscal year 1995—$68.741 million (Public Law 103–306); fiscal year 1996—$60.9 million (of which not more than $5.27 million was could be expended in fiscal year 1996) (Public Law 104–107); fiscal year 1997—$6.65 million (Public Law 104–208).

[19] 22 U.S.C. 282m. Sec. 1005 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3361) added sec. 15.

[20] 22 U.S.C. 282n. Sec. 1006 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3361) added sec. 16.

(7) Multilateral Investment Guarantee Agency Act

Partial text of H.R. 3570 as enacted into law by sec. 101(e) of Public Law 100–202 [Continuing Appropriations, 1988; H.J. Res. 395], 101 Stat. 1329, approved December 22, 1987; as amended by Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2518, approved December 19, 1989

NOTE.—Sec. 101(e) of the Continuing Appropriations, 1988 (Public Law 100–202) enacted into law title IV of H.R. 3570, as introduced in the House of Representatives on December 11, 1987. The text of title IV is set out below.

TITLE IV—MULTILATERAL INVESTMENT GUARANTEE AGENCY

SEC. 401. This title may be cited as the "Multilateral Investment Guarantee Agency Act".

SEC. 402. This title shall be codified as subchapter XXVI of chapter 7 of title 22 of the United States Code.

ACCEPTANCE OF MEMBERSHIP

SEC. 403.[1] The President is hereby authorized to accept membership for the United States in the Multilateral Investment Guarantee Agency (hereinafter in this title referred to as the "Agency") provided for by the Convention Establishing the Multilateral Investment Guarantee Agency (hereinafter in this title referred to as the "Convention") deposited in the archives of the International Bank for Reconstruction and Development (hereinafter in this title referred to as the "Bank").

GOVERNOR AND ALTERNATE GOVERNOR

SEC. 404.[2] The Governor and Alternate Governor of the Bank, appointed under section 3 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286a), shall serve as Governor and Alternate Governor, respectively, of the Agency.

INSTRUCTIONS FOR UNITED STATES DIRECTOR

SEC. 405.[3] Immediately after taking office and prior to the issuance by the Agency of its first guarantee, the United States Director of the Agency shall propose and actively seek the adoption

[1] 22 U.S.C. 290k.
[2] 22 U.S.C. 290k–1.
[3] 22 U.S.C. 290k–2.

by the Board of Directors of policies and procedures under which the Agency will not issue guarantees in respect of any proposed investment that would—

(1) be in any country which has not taken or is not taking steps to afford internationally recognized workers' rights to workers in that country;

(2) be subject to trade-distorting performance requirements imposed by the host country that are likely to result in a significant net reduction in—

(A) employment in the United States or other member countries; or

(B) other trade benefits likely to accrue to the United States or other member countries from the investment; or

(3) increase a country's productive capacity in an industry already facing excess worldwide capacity for the same, similar or competing product, and cause substantial injury to producers of such product in another member country.

SEC. 406.[4] Consistent with the purposes of section 405, the Secretary of the Treasury shall—

(1) instruct the United States Directory to oppose, and to actively seek the concurrence of other members of the Board of Directors in opposing, any guarantee or other investment promotion under consideration by the Agency if the proposed investment would—

(A) be in any country which is not a beneficiary developing country for purposes of title V of the Trade Act of 1974 because it has not taken or is not taking steps to afford internationally-recognized workers' rights to workers in that country;

(B) be subject to trade-distorting performance requirements imposed by the host country that are likely to result in a significant net reduction in—

(i) employment in the United States; or

(ii) other trade benefits likely to accrue to the United States from the investment; or

(C) likely increase a country's productive capacity in an industry already facing excess worldwide capacity for the same, similar or competing product, and cause substantial injury to producers of such products in the United States; and

(2) within 12 months after the United States becomes a member of the Agency and each year thereafter for the 3 succeeding years, conduct an independent evaluation of the United States investments which have been guaranteed by the Agency to determine—

(A) the anticipated net impact of such investments on employment in and exports from the United States, and

(B) the extent to which such investments were made in countries which had not taken or are not taking steps to afford internationally-recognized workers' rights to workers in those countries.

[4] 22 U.S.C. 290k–3.

In the course of conducting each evaluation required under paragraph (2), the Secretary shall actively solicit and take into account the views of United States labor organization. The Secretary shall furnish a copy of each such evaluation on its completion to the Congress.

SEC. 407.[5] Recognizing that United States participation in the Agency represents an effort to enhance United States trade prospects and strengthen the role of the United States private sector in the development process, the Secretary of the Treasury shall ensure regular and continuing consultations with United States private sector representatives and representatives of United States labor organizations, through appropriate mechanisms, on policy directions and operations of the Agency, and shall take account of those consultations in determining the policies of the United States toward the Agency.

APPLICABILITY OF BRETTON WOODS AGREEMENTS ACT

SEC. 408.[6] The provisions of section 4 of the Bretton Woods Agreements Act shall apply with respect to the Agency to the same extent as with respect to the Bank and the International Monetary Fund.[7]

RESTRICTIONS

SEC. 409.[8] Unless authorized by law, neither the President nor any person or agency shall, on behalf of the United States—

(1) subscribe to additional shares of stock of the Agency;

(2) vote for or agree to any amendment of the Convention which increases the obligations of the United States, or which changes the purpose or functions of the Agency; or

(3) make a loan or provide other financing to the Agency.

FEDERAL RESERVE BANKS AS DEPOSITORIES

SEC. 410.[9] Any Federal Reserve bank that is requested to do so by the Agency shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

SUBSCRIPTION OF STOCK

SEC. 411.[10] (a) The Secretary of the Treasury is authorized to subscribe on behalf of the United States to 20,519 shares of the

[5] 22 U.S.C. 290k–4.

[6] 22 U.S.C. 290k–5.

[7] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(e)(5) struck out the last sentence of this section, which read: "Reports with respect to the Agency under paragraphs (5) and (6) of section 4(b) of such Act shall be included in the reports made thereunder after the United States accepts membership in the Agency.".

[8] 22 U.S.C 290k–6.

[9] 22 U.S.C. 290k–7.

[10] 22 U.S.C. 290 k–8. Sec. 594 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1501A–122), provided the following:

capital stock of the Agency, except that the subscription shall be effective only to such extent or in such amounts as are provided in advance in appropriations acts.

(b) In order to pay for United States subscription authorized in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $222,015,580, for payment by the Secretary of the Treasury.[11]

(c) Any payment of dividends made to the United States by the Agency shall be deposited into the Treasury as a miscellaneous receipt.

JURISDICTION OF UNITED STATES COURTS AND ENFORCEMENT OF ARBITRAL AWARDS

SEC. 412.[12] For the purposes of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Agency in accordance with the Convention, including an action brought to enforce an arbitral award against the Agency, the Agency shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States or its agency appointed for the purpose of accepting service or notice of service is located, and any such action to which the Agency shall be 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 Agency is a defendant in any action in a State court, it may at any time before the trial

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"AUTHORIZATIONS

"SEC. 594. The Secretary of The Treasury may, to fulfill commitments of the United States: (1) effect the United States participation in * * * the first general capital increase of the Multilateral Investment Guarantee Agency * * * The following amounts are authorized to be appropriated without fiscal year limitation for payment by the Secretary of the Treasury: * * * $29,870,087 for paid-in capital, and $139,365,533 for callable capital, of the Multilateral Investment Guarantee Agency * * *".

Appropriations for the U.S. contribution were made in the following amounts and Public Laws: fiscal year 2000—$4 million paid-in capital, $20 million callable capital (Public Law 106–113); fiscal year 2001—$10 million paid-in capital, $50 million callable capital, fiscal year 2000 rescission—minus $0.022 million (Public Law 106–429); fiscal year 2002—$5 million paid-in capital, $25 million callable capital (Public Law 107–155); fiscal year 2004—$1.124 million paid-in capital, $4.449 million callable capital, rescission—minus $0.007 million (Public Law 106–429).

[11] The appropriation for the U.S. payment authorized in sec. 411 for fiscal year 1988 was $222 million ($44.4 million paid-in capital; $177.6 million callable capital) (Public Law 100–202).

The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e) of the Continuing Appropriations Act, 1988; Public Law 100–202; 101 Stat. 1329–132), also contained the following provisions relating to the U.S. payment:

"CONTRIBUTION TO THE MULTILATERAL INVESTMENT GUARANTEE AGENCY

"For payment to the Multilateral Investment Guarantee Agency by the Secretary of the Treasury, for the paid-in share of the capital stock, $44,403,116, to remain available until expended: *Provided,* That no such payment may be made prior to April 30, 1988: *Provided further,* That no such payment may be made on or after April 30, 1988, unless the Secretary of the Treasury certifies and reports to the Congress that the United States Director of the Agency has proposed and actively sought the adoption by the Agency of the policies and procedures specified in section 405 of H.R. 3750, as enacted herein: *Provided further,* That no such payment may be made on or after April 30, 1988, unless the Secretary of the Treasury certifies and reports to the Congress that the Board has adopted those policies and procedures, or substantially similar policies and procedures, or that the United States Director of the Agency will continue to propose and actively seek the adoption by the Agency of those policies and procedures until those policies and procedures, or substantially similar policies and procedures, have been adopted by the Board and that the failure to make such payment is likely to make the adoption of those policies and procedures more difficult to achieve.".

[12] 22 U.S.C. 290k–10.

thereof 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.

SEC. 413.[13] Articles 43 through 48, inclusive, of the Convention shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon the entry into force of the Convention for the United States.

SEC. 414.[14] (a) An award of an arbitral tribunal resolving a dispute arising under Article 57 or Article 58 of the Convention shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States. The Federal Arbitration Act (9 U.S.C. 1, et seq.) shall not apply to enforcement of awards rendered pursuant to the Convention.

(b) The district courts of the United States (including the courts enumerated in section 460 of title 28, United States Code) shall have exclusive jurisdiction over actions and proceedings under subsection (a) of this section, regardless of the amount in controversy.

[13] 22 U.S.C. 290k–11.
[14] 22 U.S.C. 290k–11.

b. Inter-American Development Bank

(1) Inter-American Development Bank Act, as amended

Public Law 86–147 [S. 1928], 73 Stat. 299, approved August 7, 1959; as amended by Public Law 88–259 [H.R. 7406], 78 Stat. 3, approved January 22, 1964; Public Law 89–6 [H.R. 45], 79 Stat. 23, approved March 24, 1965; Public Law 90–88 [H.R. 9547], 81 Stat. 226, approved September 22, 1967; Public Law 90–325 [H.R. 15364], 82 Stat. 168, approved June 4, 1968; Public Law 91–599 [H.R. 18306], 84 Stat. 1657, approved December 30, 1970; Public Law 92–246 [S. 748], 86 Stat. 59, approved March 10, 1972; Public Law 94–302 [H.R. 9721], 90 Stat. 591, approved May 31, 1976; Public Law 95–118 [H.R. 5262], 91 Stat. 1067 at 1070, approved October 3, 1977; Public Law 96–259 [S. 662], 94 Stat. 429, approved June 3, 1980; Public Law 97–35 [H.R. 3982], 95 Stat. 357 at 744, approved August 13, 1981; Public Law 98–181 [Supplemental Appropriations Act, 1984; H.R. 3959], 97 Stat. 1153 at 1284, approved November 30, 1983; Public Law 100–202 [Continuing Appropriations, 1988; H.J. Res. 395], 101 Stat. 1329, approved December 22, 1987; Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989; Public Law 102–391 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993; H.R. 5368], 106 Stat. 1633, approved October 6, 1992; Public Law 103–306 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995; H.R. 4426], 108 Stat. 1608, approved August 23, 1994; and Public Law 104–316 [General Accounting Office Act of 1996; H.R. 3864], 110 Stat. 3826, approved October 19, 1996

AN ACT To provide for the participation of the United States in the Inter-American Development Bank.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Inter-American Development Bank Act".

ACCEPTANCE OF MEMBERSHIP

SEC. 2.[1] The President is hereby authorized to accept membership for the United States in the Inter-American Development Bank (hereinafter referred to as the Bank), provided for by the agreement establishing the bank (hereinafter referred to as the agreement) deposited in the archives of the Organization of American States.

GOVERNOR, ALTERNATE GOVERNOR, AND EXECUTIVE DIRECTOR

SEC. 3.[2] (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank and an alternate for the governor. The term of office for the governor and the

[1] 22 U.S.C. 283.
[2] 22 U.S.C. 283a.

alternate governor shall be five years, but each shall remain in office until a successor has been appointed.

(b) The President, by and with the advice and consent of the Senate, shall appoint an Executive Director of the Bank and an alternate Executive Director.[3] Except as provided for in article XV, section 3, of the agreement, the term of office for the Executive Director shall be three years, but he shall remain in office until a successor has been appointed.

(c) No person shall be entitled to receive any salary or other compensation from the United States for services as a governor, alternate governor, or Executive Director.

NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS

SEC. 4.[4] The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286b), shall apply with respect to the International Bank for Reconstruction and Development and the International Monetary Fund.[5]

CERTAIN ACTS NOT TO BE TAKEN WITHOUT AUTHORIZATION

SEC. 5.[6] Unless Congress by law authorizes such action, neither the President nor any person or agency shall, on behalf of the United States, (a) subscribe to additional shares of stock under article II, section 3, or article IIA, section 2,[7] of the agreement; (b) request or consent to any change in the quota of the United States under article IV, section 3, of the agreement; (c) accept any amendment under article XII of the agreement; or (d) make a loan or provide other financing to the Bank, except that loans or other financing may be provided to the Bank by a United States agency created pursuant to an Act of Congress which is authorized by law to make loans or provide other financing to international organizations. Unless Congress by law authorizes such action, no governor or alternate appointed to represent the United States shall vote for any increase of capital stock of the Bank under article II, section 2, or article IIA, section 1,[8] of the agreement of any increase in the resources of the Fund for Special Operations under article IV, section 3(g) thereof.

DEPOSITORIES

SEC. 6.[9] Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent and

[3] Sec. 21(b) of Public Law 91–599 (84 Stat. 1658) inserted "and an alternate Executive".
[4] 22 U.S.C. 283b.
[5] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(e)(2) struck out the last sentence of this section, which read: "Reports with respect to the Bank under paragraphs (5) and (6) of subsection (b) of section 4 of said Act, as amended, shall be included in the first report made thereunder after the establishment of the Bank and in each succeeding report.".
[6] 22 U.S.C. 283c.
[7] Sec. 103(a)(2) of Public Law 94–302 (90 Stat. 593) inserted ", or article IIA, section 2,".
[8] Sec. 103(a)(2) of Public Law 94–302 (90 Stat. 593) inserted "or article IIA, section 1,".
[9] 22 U.S.C. 283d.

the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENTS OF SUBSCRIPTION

SEC. 7.[10] (a) There is hereby authorized to be appropriated, without fiscal year limitation, for the purchase of thirty-five thousand shares of capital stock in the Bank, $350 million. In addition, there is hereby authorized to be appropriated, without fiscal year limitation, for payment of the subscription of the United States to the Fund for Special Operations, $100 million.[11]

(b) For the purpose of keeping to a minimum the cost to the United States of participation in the Bank, the Secretary of the Treasury, after paying the requisite part of the subscription and quota of the United States in the Bank required to be made under article II, section 4, and article IV, section 3, respectively, of the agreement, is authorized and directed to issue special notes of the United States from time to time, at par, and to deliver such notes to the Bank in exchange for dollars to the extent permitted by the agreement. The special notes provided for in this subsection shall be issued under the authority and subject to the provisions of the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include the purposes for which special notes are authorized and directed to be issued under this subsection, but such notes shall bear no interest, shall be nonnegotiable and shall be payable on demand of the Bank. The face amount of special notes issued to the Bank under the authority of this subsection and outstanding at any one time shall not exceed, in the aggregate, the amount of the subscription and quota of the United States actually paid to the Bank under article II, section 4, and article IV, section 3, respectively, of the agreement.

(c) Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION AND VENUE OF ACTION

SEC. 8.[12] For the purpose of any action which may be brought within the United States, its Territories or possessions, or the Commonwealth of Puerto Rico by or against the Bank in accordance with the agreement, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office in the United States is located, and any such action at law or in equity to which the Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United

[10] 22 U.S.C. 283e.

[11] As of October 23, 1962, Congress had appropriated the entire subscription. See the following appropriation Acts: 73 Stat. 445 (1959); 75 Stat. 721 (1961) and 76 Stat. 1168.

Title II of the Foreign Aid and Related Agencies Appropriation Act, 1964 (Public Law 88–258; 77 Stat. 862), contained the following provision: "For payment of subscriptions to the Inter-American Development Bank for expansion of the Fund for Special Operations, $50,000,000 to remain available until expended: *Provided,* That this paragraph shall be effective only upon enactment into law of authorizing legislation.". Sec. 2(b) of Public Law 88–259 (79 Stat. 3), enacted such authorizing legislation.

[12] 22 U.S.C. 283f.

States shall have original jurisdiction of any such action. When the Bank is a defendant in any such action, it may, at any time before the trial thereof, remove such action from a State court into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES AND PRIVILEGES

SEC. 9.[13] The provisions of article X, section 4(c), and article XI, sections 2 to 9, both inclusive, of the agreement shall have full force and effect in the United States, its Territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in, and the establishment of, the Bank.

SECURITIES ISSUED BY BANK AS INVESTMENT SECURITIES FOR NATIONAL BANKS

SEC. 10. The last sentence of paragraph seven of section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), is amended by inserting after the words "International Bank for Reconstruction and Development" the words "or the Inter-American Development Bank" and by striking the words "said Bank" and inserting in lieu thereof "either of said Banks".

SECURITIES ISSUED BY BANK AS EXEMPT SECURITIES; REPORT FILED WITH SECURITIES AND EXCHANGE COMMISSION

SEC. 11.[14] (a) Any securities issued by the Bank (including any guarantee by the Bank, whether or not limited in scope) in connection with raising of funds for including in the Bank's[15] capital resources as defined in article II, section 5, and article IIA, section 4,[15] of the agreement, and any securities guaranteed by the Bank as to both the principal and interest to which the commitment in article II, section 4(a)(ii), or article IIA, section 3(c),[15] of the agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of paragraph (a)(2) of section 3 of the Act of May 27, 1933, as amended (15 U.S.C. 77c), and paragraph (a)(12) of section 3 of the Act of June 6, 1934, as amended (15 U.S.C. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

(b) The Securities and Exchange Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, is authorized to suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations

[13] 22 U.S.C. 283g.
[14] 22 U.S.C. 283h.
[15] Sec. 103(a)(3) of Public Law 94–302 (90 Stat. 593) struck out "ordinary" following "Banks", and inserted "and article IIA, section 4," and "or article IIA, section 3(c),".

and effect of this section and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

SEC. 12.[16] * * * [Repealed—1989]

SEC. 13.[17] The United States Governor of the Bank is hereby authorized (1) to vote (A) for increases in the authorized capital stock of the Bank under article II, section 2, of the agreement, and (B) for an increase in the resources of the Fund for Special Operations under article IV, section 3, of the agreement, all as recommended by the Executive Directors in a report dated March 18, 1963, to the Board of Governors of the Bank; (2) to agree on behalf of the United States to subscribe to its proportionate share of the $1,000,000,000 increase in the authorized callable capital stock of the Bank; and (3) to vote for an amendment to article VIII, section 3, of the agreement to provide that the Board of Governors may, upon certain conditions, increase by one the number of Executive Directors.

AUDIT

SEC. 14.[18] (a) The Secretary of the Treasury shall instruct the United States Executive Director to propose the establishment by the Board of Executive Directors of a program of selective but continuing independent and comprehensive audit of the Inter-American Development Bank, in accordance with such terms of reference as the Board of Executive Directors itself (or through a subcommittee) may prescribe. Such proposal shall provide that the audit reports be submitted to the Board of Executive Directors and to the Board of Governors.

(b) The Secretary of the Treasury shall prepare[19] the scope of the audit and the auditing and reporting standards for the use of the United States Executive Directors in assisting in the formulation of the terms of reference.

(c)[20] The reports of the National Advisory Council on International Monetary and Financial Policies to the Congress shall include, among other things, an appraisal of the effectiveness of the implementation and administration of the loans made by the Bank based upon the audit reports. The Comptroller General may[21] review the reports of audit and findings and issued and report to the Secretary of the Treasury and the Congress any suggestions he

[16] Formerly at 22 U.S.C. 283i. Sec. 541(d)(3) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) repealed sec. 12.

[17] 22 U.S.C. 283j. Added by sec. 1 of Public Law 88–259 (78 Stat. 3). Sec. 2(a) of that Act authorized the appropriation of $411,760,000, without fiscal year limitation, for payment of the increased U.S. subscription under sec. 13.

[18] 22 U.S.C. 283j–1. Public Law 90–88 (81 Stat. 227) added sec. 14.

[19] Sec. 111(b)(1) of Public Law 104–316 (110 Stat. 3833) struck out "Comptroller General of the United States shall prepare for the Secretary of the Treasury" and inserted in lieu thereof "Secretary of the Treasury shall prepare".

[20] Sec. 583(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (sec. 101(d) of Division I of Public Law 105–277; 112 Stat. 2681–202), states that the requirements of subsec. (c) shall no longer apply to the contents of the annual report of the National Advisory Council on International Monetary and Financial Policies, as required by sec. 1701 of the International Financial Institutions Act, as amended (Public Law 95–118; 22 U.S.C. 262r).

[21] Sec. 111(b)(2) of Public Law 104–316 (110 Stat. 3833) struck out "shall periodically" and inserted in lieu thereof "may".

might have in improving the scope of the audit or auditing and reporting standards of the independent auditing firm, group, or staff.

FUND FOR SPECIAL OPERATIONS OF THE BANK

SEC. 15.[22] (a) The United States Governor of the Bank is hereby authorized to vote in favor of the resolution entitled "Increase of Resources of the Fund for Special Operations" proposed by the Governors at their annual meeting in April 1964, and now pending before the Board of Governors of the Bank. Upon the adoption of such resolution, the United States Governor is authorized to agree, on behalf of the United States, to pay to the Fund for Special Operations of the Bank, the sum of $750,000,000, in accordance with and subject to the terms and conditions of such resolution.

(b) There is hereby authorized to be appropriated without fiscal year limitation, for the United States share in the increase in the resources of the Fund for Special Operations of the Bank, the sum of $750,000,000.

(c) With respect to any dollars herein provided, the voting power of the United States shall be exercised for the purpose of disapproving any loan from the Fund for Special Operations of the Bank for any project, enterprise, or activity in any country, during any period for which the President has suspended assistance to the government of such country because of any action taken on or after January 1, 1962, by the government of such country or any government agency or subdivision within such country as specified in paragraph (A), (B), or (C) of subsection (e)(1) of section 620 of the Foreign Assistance Act of 1961, as amended, and the failure of such country within a reasonable time to take appropriate steps to discharge its obligations or provide relief in accordance with the provisions of such subsection.

SEC. 16.[23] (a) The United States Governor of the Bank is hereby authorized to vote in favor of the resolution entitled "Increase of $1,200,000,000 in Resources of Fund for Special Operations" proposed by the Governors at their annual meeting in April 1967 and now pending before the Board of Governors of the Bank. Upon the adoption of such resolution, the United States Governor is authorized to agree, on behalf of the United States, to pay to the Fund for Special Operations of the Bank, the sum of $900,000,000, in accordance with and subject to the terms and conditions of such resolution, and subject to the further condition that in consideration of the United States balance-of-payments deficit any local cost financing, by project or otherwise, with the funds authorized under this section be held to the minimum possible level. The United States Governor is also authorized to vote in favor of the amendment to Annex C of the agreement, now pending before the Board of Governors of the Bank, to modify the procedure employed in the election of Executive Directors.

(b) There is hereby authorized to be appropriated without fiscal year limitation, for the United States share in the increase in the

[22] 22 U.S.C. 283*l*. Added by Public Law 89–6 (70 Stat. 23) as sec. 14 and redesignated as sec. 15 by Public Law 90–88 (81 Stat. 226).

[23] 22 U.S.C. 283m. Public Law 90–88 (81 Stat. 226) added sec. 16.

resources of the fund for Special Operations of the Bank, the sum of $900,000,000.

(c) The voting power of the United States shall be exercised for the purpose of disapproving any loan which might assist the recipient country directly or indirectly to acquire sophisticated or heavy military equipment.

SEC. 17.[24] (a) The United States Governor of the Bank is hereby authorized (1) to vote for an increase in the authorized capital stock of the Bank under article II, section 2, of the agreement as recommended by the Board of Executive Directors in its report of April 1967, to the Board of Governors of the Bank; and (2) to agree on behalf of the United States to subscribe to its proportionate share of the $1,000,000,000 increase in the authorized callable capital stock of the Bank.

(b) There is hereby authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury of the increased United States subscription to the capital stock of the Inter-American Development Bank, $411,760,000.

SEC. 18.[25] (a) The United States Governor of the Bank is hereby authorized to vote in favor of the two resolutions proposed by the Governors at their annual meeting in April 1970 and now pending before the Board of Governors of the Bank, which provide for (1) an increase in the authorized capital stock to the Bank and additional subscriptions of members thereto and (2) an increase in the resources of the Fund for Special Operations and contributions thereto. Upon adoption of such resolutions the United States Governor is authorized to agree on behalf of the United States (1) to subscribe to eighty-two thousand three hundred and fifty-two shares of $10,000 par value of the increase in the authorized capital stock of the Bank of which sixty-seven thousand three hundred and fifty-two shall be callable shares and fifteen thousand shall be paid in and (2) to pay to the Fund for Special Operations an initial annual installment of $100,000,000 and, upon further authorization by the Congress, two subsequent annual installments of $450,000,000 each, in accordance with and subject to the terms and conditions of such resolutions.

(b) There are hereby authorized to be appropriated, without fiscal year limitation, the amounts necessary for payment by the Secretary of the Treasury of (1) three annual installments of $450,000,000 each for the United States subscription to paid-in capital stock of the Bank; (2) two installments of $336,760,000 each for the United States subscription to the callable capital stock of the Bank; and (3) one installment of $100,000,000 for the United States share of the increase in the resources of the Fund for Special Operations of the Bank.

SEC. 19.[26] (a) The United States Governor of the Bank is authorized to pay to the Fund for Special Operations two annual installments of $450,000,000 each in accordance with and subject to the

[24] 22 U.S.C. 283n. Public Law 90–325 (82 Stat. 168) added sec. 17.
[25] 22 U.S.C. 283o. Sec. 21 of Public Law 91–599 (84 Stat. 1658) added sec. 18.
[26] 22 U.S.C. 283p. Public Law 92–246 (86 Stat. 59) added sec. 19.

terms and conditions of the resolution adopted by the Board of Governors on December 31, 1970, concerning an increase in the resources of the Fund for Special Operations and contributions thereto.

(b) There are hereby authorized to be appropriated, without fiscal year limitation, the amounts necessary for payment by the Secretary of the Treasury of the two annual installments of $450,000,000 each for the United States share of the increase in the resources of the Fund for Special Operations of the Bank.

SEC. 20.[27] The United States Governor of the Bank is authorized to agree to amendments to the provisions of the articles of agreement as provided in proposed Board of Governors resolutions entitled (a) "Amendment of the Provisions of the Agreement Establishing the Bank with Respect to Membership and to Related Matters" and (b) "Amendment of the Provisions of the Agreement Establishing the Bank with Respect to the Election of Executive Directors."

SEC. 21.[28] The President shall instruct the United States Executive Director of the Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country which has—

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) take steps to repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned;

unless the President determines that (A) an arrangement for prompt, adequate, and effective compensation has been made, (B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes, or (C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

SEC. 22.[29] The Secretary of the Treasury shall instruct the United States Executive Director of the Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country with respect to which the President has made a determination, and so notified the Secretary of the Treasury, that the government of such country has failed to take adequate steps to prevent narcotic drugs and other controlled substances (as defined by the Comprehensive Drug Abuse Prevention and Control Act of 1970) produced or processed, in whole or in part, in such country,

[27] 22 U.S.C. 283q. Public Law 92–246 (86 Stat. 59) added sec. 20.
[28] 22 U.S.C. 283r. Public Law 92–246 (86 Stat. 59) added sec. 21.
[29] 22 U.S.C. 283s. Public Law 92–246 (86 Stat. 59) added sec. 22.

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 entering the United States unlawfully. Such instruction shall continue in effect until the President determines, and so notifies the Secretary of the Treasury, that the government of such country has taken adequate steps to prevent such sale or entry of narcotic drugs and other controlled substances.

SEC. 23.[30] The United States Governor of the Bank is authorized to vote for three proposed resolutions of the Board of Governors entitled (a) "Amendments to the Agreement Establishing the Bank with respect to the Creation of the Inter-Regional Capital Stock of the Bank and to Related Matters", (b) "General Rule Governing Admission of Nonregional Countries to Membership in the Bank", and (c) "Increase in the Authorized Callable Ordinary Capital Stock and Subscriptions Thereto in Connection with the Admission of Nonregional Member Countries", which were submitted to the Board of Governors pursuant to a resolution of the Board of Executive Directors approved on March 4, 1975.

SEC. 24.[31] The United States Governor of the Bank is authorized to agree to the amendments to article II, section 1(b) and article IV, section 3(b) of the Agreement Establishing the Bank, as proposed by the Board of Executive Directors, to provide for membership for the Bahamas and Guyana in the Bank at such times and in accordance with such terms as the Bank may determine.

SEC. 25.[32] The United States Governor of the Bank is authorized to agree to the amendments to article III, sections 1, 4, and 6(b) of the Agreement Establishing the Bank, as proposed by the Board of Executive Directors, to provide for lending to the Caribbean Development Bank.

SEC. 26.[33] (a) The United States Governor of the Bank is hereby authorized to vote in favor of two resolutions proposed by the Governors at a special meeting in July 1975, and now pending before the Board of Governors of the Bank, which provide for (1) an increase in the authorized capital stock of the Bank and additional subscriptions of members thereto and (2) an increase in the resources of the Fund for Special Operations and contributions thereto. Upon adoption of such resolutions, the United States Governor is authorized to agree on behalf of the United States (1) to subscribe to ninety-nine thousand four hundred and seventy-four shares of $10,000 par value of the increase in the authorized capital stock of the Bank of which eighty-nine thousand five hundred and twenty-six shall be callable shares and nine thousand nine hundred and forty-eight shall be paid in and (2) to contribute to the Fund for Special Operations $600,000,000, in accordance with and subject to the terms and conditions of such resolutions.

(b) There are hereby authorized to be appropriated, without fiscal year limitation, the amounts necessary for payment by the Secretary of the Treasury of (1) $1,199,997,873 for the United States subscription to the capital stock of the Bank and (2) $600,000,000

[30] 22 U.S.C. 283t. Sec. 103(a) of Public Law 94–302 added sec. 23.
[31] 22 U.S.C. 283u. Sec. 103(a) of Public Law 94–302 added sec. 24.
[32] 22 U.S.C. 283v. Sec. 103(a) of Public Law 94–302 added sec. 25.
[33] 22 U.S.C. 283w. Sec. 101 of Public Law 94–302 added sec. 26.

for the United States share of the increase in the resources of the Fund for Special Operations: *Provided, however,* That not more than $15,677,000 may be made available to the Fund for Special Operations for the fiscal year 1982.[34]

SEC. 27.[35] (a) The United States Governor of the Bank is hereby authorized to vote for an additional increase of one hundred and eight thousand shares of $10,000 par value in the authorized callable capital stock of the Bank as recommended in the resolution of the Board of Governors entitled "Increase of US $4 Billion in the Authorized Capital Stock and Subscriptions Thereto". Upon adoption of a Board of Governors resolution increasing the authorized capital stock of the Bank by such amount, the United States Governor is authorized to agree on behalf of the United States to subscribe to thirty-seven thousand three hundred and three shares of $10,000 par value of such additional increase in callable capital in accordance with and subject to the terms and conditions of such resolution.

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there is hereby authorized to be appropriated, without fiscal year limitation, $450,002,218 for payment by the Secretary of the Treasury.[33]

SEC. 28.[36] (a) The United States Executive Director of the Bank shall propose to the Board of Executive Directors of the Bank the adoption of a resolution providing (1) that the development and utilization of light-capital or intermediate technologies should be accepted as major facets of the Bank's development strategy, and (2) that such light-capital or intermediate technologies should be developed and utilized as soon as possible in all Bank activities. Such resolution shall further provide that, by the close of the calendar year 1977, some projects that employ primarily such light-capital or intermediate technologies shall be designed and approved.

(b) The United States Governor of the Bank shall report to the Congress no later than six months after the date of the enactment of this section on the proposal made under subsection (a), and no later than twelve months after such date on the progress that has been made with respect to such proposal.

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[34] Sec. 1351(c) of Public Law 97–35 (95 Stat. 744) added the proviso clause.

Appropriations for U.S. payments authorized in secs. 26 and 27 have been provided in the following amounts and Public Laws: fiscal year 1977—Bank capital stock, $376 million ($56 million paid-in capital; $320 million callable capital) (Public Laws 94–441 and 95–26); Fund for Special Operations, $160 million (Public Law 95–26); fiscal year 1978—Bank capital stock, $365.2 million ($36.7 million paid-in capital; $328.5 million callable capital); Fund for Special Operations, $114.7 million (Public Law 95–148); fiscal year 1979—Bank capital stock, $588.7 million ($27.3 million paid-in capital; $561.4 million callable capital); Fund for Special Operations, $175 million (Public Law 95–481); fiscal year 1980—$0; fiscal year 1981—Fund for Special Operations, $25 million (Public Law 96–536); fiscal year 1982—$0; fiscal year 1983—Fund for Special Operations, $46.7 million (Public Law 97–377); fiscal year 1984—Fund for Special Operations, $78.6 million (Public Law 98–151).

[35] 22 U.S.C. 283x. Sec. 101 of Public Law 94–302 added sec. 27.

[36] 22 U.S.C. 283z. Public Law 94–302 added this section. Originally added as sec. 29, it was redesignated as sec. 28 by sec. 101 of Public Law 96–259 (94 Stat. 429). The original sec. 28, added by sec. 103(a) of Public Law 94–302, directed the U.S. Executive Director of the Bank to vote against any loan or assistance to any country engaging in violations of human rights, was repealed by sec. 702 of Public Law 95–118 (91 Stat. 1070). For references concerning U.S. activity in the Bank and human rights, see title VII of the International Financial Institutions Act, Public Law 95–118.

SEC. 29.[37] (a) The United States Governor of the Bank is authorized to vote for two resolutions which were proposed by the Governors at a special meeting in December 1978 and are pending before the Board of Governors of the Bank. These resolutions provide for (1) an increase in the authorized capital stock of the Bank and additional subscriptions thereto, and (2) an increase in the resources of the Fund for Special Operations and contributions thereto. Upon adoption of these resolutions, the United States Governor is authorized on behalf of the United States (A) to subscribe to two hundred twenty-seven thousand eight hundred and ninety-six shares of the increase in the authorized capital stock of the Bank, of which two hundred ten thousand eight hundred and four shall be callable and seventeen thousand and ninety-two shall be paid-in, and (B) to contribute to the Fund for Special Operations $630,000,000; except that any commitment to make such subscriptions to paid-in and callable capital stock and to make such contributions to the fund for Special Operations shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(b) In order to pay for the increase in the United States subscription and contribution provided for in this section, there are authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury (1) $2,474,287,189 for the United States subscription to the capital stock of the Bank, and (2) $630,000,000 for the United States share of the increase in the resources of the Fund for Special Operations: *Provided, however,* That for contributions to the Fund for Special Operations, not more than $175,000,000 may be made available for the fiscal year 1982, and not more than $105,000,000 may be made available for the fiscal year 1983.[38]

(c) For the purpose of keeping to a minimum the cost to the United States, the Secretary of the Treasury—

(1) shall pay the United States contribution to the Fund for Special Operations authorized by this section by letter of credit in four annual installments; and

(2) shall take the steps necessary to obtain a certification from the Bank that any undisbursed balances resulting from drawdowns on such letter of credit will not exceed at any time in the United States share of expected disbursement requirements for the following three-month period.

(d) None of the funds authorized to be appropriated by this section may be used for any form of assistance to any country which is not a member of the Bank.

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[37] 22 U.S.C. 283z–1. Sec. 101(2) of Public Law 96–259 (94 Stat. 429) added sec. 29.

[38] Sec. 1351(b) of Public Law 97–35 (95 Stat. 744) added the proviso clause.

Appropriations for U.S. payments authorized in sec. 29 have been provided in the following amounts and Public Laws: fiscal year 1980—Bank capital stock, $588.7 million ($27.3 million paid-in capital; $561.4 million callable capital); Fund for Special Operations, $175 million (Public Law 96–123); fiscal year 1981—Bank capital stock, $612.2 million $51.5 million paid-in capital; $560.7 million callable capital); Fund for Special Operations, $175 million (Public Law 96–536); fiscal year 1982—Bank capital stock, $657.7 million ($48.1 million paid-in capital; $609.6 million callable capital); Fund for Special Operations, $173.2 million (Public Law 97–121); fiscal year 1983—Bank capital stock, $615.6 million ($41.8 million paid-in capital; $573.8 million callable capital); Fund for Special Operations, $105 million (Public Law 97–377); fiscal year 1984—Fund for Special Operations, $1.8 million (Public Law 98–151).

SEC. 30.[39] (a) The United States Governor of the Bank is authorized on behalf of the United States to contribute to the Fund for Special Operations $70,000,000: *Provided, however,* That any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for a portion of the increase in the United States subscription to the capital stock of the Bank provided for in section 29(a) and for the United States contribution to the Fund for Special Operations provided for in this section, there are authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury, (1) $274,920,799 for the United States subscription, and (2) $70,000,000 for the United States contribution to the Fund for Special Operations: *Provided, however,* That no funds may be made available for such contribution to the Fund for Special Operations for the fiscal year 1982.[40]

SEC. 31.[41] (a)(1) The United States Governor of the Bank is authorized to vote for resolutions—

(A) Which were proposed by the Governors at a special meeting in February 1983;

(B) Which are pending before the Board of Governors of the Bank; and

(C) Which provide for—

(i) an increase in the authorized capital stock of the Bank and subscriptions thereto; and

(ii) an increase in the resources of the Fund for Special Operations and contributions thereto.

(2)(A) Upon adoption of the resolutions specified in paragraph (1), the United States Governor of the Bank is authorized on behalf of the United States to—

(i) subscribe to 427,396 shares of the increase in the authorized capital stock of the bank; and

(ii) contribute $350,000,000 to the Fund for Special Operations.

(B) any commitment to make such subscriptions to paid-in and callable capital stock and to make such contributions to the Fund for Special Operations shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(b) In order to pay for the increase in the United States subscription and contribution provided for in this section, there are authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury—

(1) $5,155,862,744 for the United States subscriptions to the capital stock of the Bank; and

(2) $350,000,000 for the United States share of the increase in the resources of the Fund for Special Operations.[42]

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[39] 22 U.S.C. 283z–2. Sec. 1351(a) of Public Law 97–35 (95 Stat. 744) added sec. 30.

[40] The Further Continuing Appropriations Act, 1983 (Public Law 97–377), provided the following funding during fiscal year 1983 for this authorization: Bank capital stock, $274.9 million ($20.6 million paid-in capital; $254.3 million callable capital); Fund for Special Operations, $70 million.

[41] 22 U.S.C. 283z–3. Sec. 1001 of Public Law 98–181 (97 Stat. 1284) added sec. 31.

[42] Appropriations for U.S. payments authorized in sec. 31 have been provided in the following amounts and Public Laws: fiscal year 1984—Bank capital stock, $844.5 million ($38 million paid-in capital; $806.5 million callable capital); Fund for Special Operations, $0 (Public Law 98–151); fiscal year 1985—Bank capital stock, $844.5 ($38 million paid-in capital; $806.5 million callable capital); Fund for Special Operations, $72.5 million (Public Law 98–473); fiscal year

SEC. 32.[43] The United States Governor of the Inter-American Development Bank is hereby authorized to agree to and to accept the amendments to the Articles of Agreement in the proposed resolution entitled "Merger of Inter-regional and Ordinary Capital Resources".

SEC. 33.[44] CAPITAL INCREASE; INCREASE IN RESOURCES OF FUND FOR SPECIAL OPERATIONS.

(a) AUTHORITY TO VOTE FOR, AND TO SUBSCRIBE AND CONTRIBUTE TO, INCREASE IN AUTHORIZED CAPITAL STOCK OF BANK AND INCREASE IN RESOURCES OF FUND FOR SPECIAL OPERATIONS.—

(1) VOTE AUTHORIZED.—The United States Governor of the Bank is authorized to vote for resolutions which—

(A) were transmitted by the Board of Executive Directors to the Governors of the Bank by resolution of April 19, 1989;

(B) are pending before the Board of Governors of the Bank; and

(C) provide for—

(i) an increase in the authorized capital stock of the Bank and subscriptions to the Bank; and

(ii) an increase in the resources of the Fund for Special Operations and contributions to the Fund.

(2) SUBSCRIPTION AND CONTRIBUTION AUTHORITY.—To the extent and in the amounts provided in advance in appropriations Acts, on adoption of the resolutions described in paragraph (1), the United States Governor of the Bank may, on behalf of the United States—

(A) subscribe to 760,112 shares of the increase in the authorized capital stock of the Bank; and

(B) contribute $82,304,000 to the Fund for Special Operations.

(b) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—To pay for the subscription and contribution authorized under subsection (a), there are authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury—

(1) $9,169,559,712, for the United States subscription to the capital stock of the Bank; and

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1985 supplemental—Fund for Special Operations, $42.5 million; Bank capital stock $889 million ($40 million paid-in capital; $849 million callable capital) (Public Law 99–88); fiscal year 1986—Fund for Special Operations, $40 million; Bank capital stock, $1,269 million ($38 million paid-in capital; $1,231 million callable capital) (Public Law 99–190), reduced by $1.6 million as a result of sequestration (Public Law 99–177); fiscal year 1987—Fund for Special Operations, $17.3 million; Bank capital stock, $1,127.9 million ($16.4 million paid-in capital; $1,111.6 million callable capital) (Public Law 99–591); fiscal year 1988—Fund for Special Operations, $25.7 million; Bank capital stock, $151 million ($31.6 million paid-in capital; $119.4 million callable capital) (Public Law 100–202); fiscal year 1990—Fund for Special Operations, $63.7 million; Bank capital stock, $31.6 million (paid-in capital) (Public Law 101–167); fiscal year 1991—Bank capital stock, $.14 million (paid-in capital) (Public Law 101–513).

[43] 22 U.S.C 283z–4. Title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e) of the Continuing Appropriations, 1988; Public Law 100–202; 101 Stat. 1329–134), added sec. 32 by enacting into law the amendment made by sec. 501 of H.R. 3750, as introduced by the House Committee on Banking, Finance and Urban Affairs, on December 11, 1987.

[44] 22 U.S.C. 283z–5. Sec. 201 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2496) added sec. 33.

(2) $82,304,000, for the United States contribution to the Fund for Special Operations.[45]

(c) ORGANIZATIONAL CHANGES REQUIRED TO BE MADE BEFORE PAYMENT FOR SUBSCRIPTION TO CAPITAL STOCK AND CONTRIBUTION TO THE FUND FOR SPECIAL OPERATIONS.—The Secretary of the Treasury may not make any payment for the subscription and contribution authorized under subsection (a) unless the Bank—

(1) has established an environmental unit with responsibility for the development, evaluation, and integration of Bank policies, projects, and programs designed to promote environmentally sustainable development in borrower countries;

(2) has increased the number of the staff of the Bank with environmentally oriented responsibilities and training;

(3) provides for an increase in the number of environmentally beneficial projects and programs financed by the Bank; and

(4) has designed a process for ensuring the access of indigenous non-governmental organizations to the process for designing projects and programs.

(d) CERTIFICATION OF ACCESS TO BANK RECORDS REQUIRED BEFORE PAYMENT FOR SUBSCRIPTION TO CAPITAL STOCK AND CONTRIBUTION TO FUND FOR SPECIAL OPERATIONS.—The Secretary of the Treasury shall not make any payment for the subscription and contribution authorized under subsection (a) until the Secretary, after consultation with the United States Executive Director of the Bank, certifies to the Congress that—

(1) the Bank has given the Comptroller General of the United States access to the audit memorandum issued by the Auditor General of the Bank with respect to the November 1987 disbursement of funds to the Government of Nicaragua;

(2) the Bank has implemented and is continuing to implement revised procedures issued in 1988 for collecting loan services payments in arrears;

(3) the revised procedures referred to in paragraph (2) satisfy the recommendations of the Auditor General of the Bank; and

(4) the Comptroller General of the United States has access to all documents of the Bank on the same terms and under the same conditions as such documents are made available to the United States Executive Director of the Bank.

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[45] Appropriations for U.S. payments authorized in sec. 33 have been provided in the following amounts and Public Laws: fiscal year 1991—Bank capital stock, $2,292.5 million ($57.31 million paid-in capital; $2,235 million callable capital); Fund for Special Operations, $20.6 million (Public Law 101–513); fiscal year 1992—Bank capital stock, $2,258.7 million ($56.47 million paid-in capital; $2,202 million callable capital); Fund for Special Operations, $20.27 million (Public Law 102–145, as amended by Public Law 102–266); fiscal year 1993—Bank capital stock, $2,258.7 million ($56.47 million paid-in capital; $2,202 million callable capital); Fund for Special Operations, $20.27 million (Public Law 102–391); fiscal year 1994—Bank capital stock, $2,246.45 million ($56.17 million paid-in capital; $2,190.28 million callable capital); Fund for Special Operations, $20.16 million (Public Law 103–87); fiscal year 1995—$113.7 million ($2.8 million paid-in capital; $110.9 million callable capital) (Public Law 103–306).

NOTE.—Section 526(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (108 Stat. 1632), provided, in part, the following authorization requirement:

"(c) The Secretary of the Treasury may, to fulfill commitments of the United States, (1) subscribe to and make payments for shares of the Inter-American Development Bank, make contributions to the Fund for Special Operations of that Bank, and vote for resolutions (including amendments to that Bank's constitutive agreement), all in connection with the eighth general increase in resources of that Bank; and * * * The amount authorized to be appropriated for payment for paid-in shares of the Inter-American Development Bank is limited to $76,832,001, the amount authorized to be appropriated for payment for callable shares of the Inter-American Development Bank is limited to $4,511,156,729, * * * The amount to be paid in respect of each such contribution or subscription is authorized to be appropriated without fiscal year limitation. Each such subscription or contribution shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.".

Appropriations for U.S. payments for the eighth general increase have been provided in the following amounts and Public Laws: fiscal year 1995—$1,622.7 million ($28.1 million paid-in capital; $1,523.8 million callable capital); Fund for Special Operations, $21.34 million (Public Law 103–306); fiscal year 1996—$1,540.7 million ($26.0 million paid-in capital; $1,523.8 million callable capital), Fund for Special Operations, $10 million (Public Law 104–107); fiscal year 1997—$1,529.3 million ($25.6 million paid-in capital, $1,503.7 million callable capital), Fund for Special Operations, $10 million (Public Law 104–208).

Sec. 560(a) of Public Law 105–118 (111 Stat. 2425) provided authorization for continued participation in the eighth general increase. The amount authorized to be appropriated for payment was $76,832,001 paid-in capital, and $4,511,156,729 callable capital.

Appropriations for U.S. payments have been provided in the following amounts and Public Laws: fiscal year 1998—$1,529.3 million ($25.6 million paid-in capital, $1,503.7 million callable capital), Fund for Special Operations, $20.8 million (Public Law 105–118); fiscal year 1999—$1,529.3 million ($25.6 million paid-in capital, $1,503.7 million callable capital), Fund for Special Operations, $21.2 million (Public Law 105–277); fiscal year 2000—$1,529.3 million ($25.6 million paid-in capital, $1,503.7 million callable capital), Fund for Special Operations, $0 (Public Law 106–113).

SEC 34.[46] INVESTMENT IN HUMAN CAPITAL.

(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director of the Inter-American Development Bank to propose and use the voice and vote of such director, during the 4-year period beginning on January 1, 1990, to vigorously promote an increase in the proportion of Bank lending in support of projects and programs which support investments in human capital and to seek the rapid implementation by the Bank of systematic mechanisms of consultation with locally affected populations in borrower countries either directly or through appropriate representative non-governmental organizations.

(b) INVESTMENTS IN HUMAN CAPITAL DEFINED.—As used in subsection (a), the term 'investments in human capital' means investments in projects, policies, and programs designed to improve urban and rural health care and sanitation, basic nutrition, education, the small-producer private sector, the economic activities of women, and the development of indigenous non-governmental organizations.

SEC. 35.[47] LIMITATIONS ON POLICY BASED LENDING.

The Secretary of the Treasury shall—

(1) take all necessary steps to encourage the Bank to limit the aggregate value of the policy based loans made by the Bank (other than policy based loans made to any country which the Bank has determined is economically less developed or has a limited market economy, which are used to purchase sovereign debt of such country or to reduce the debt or debt service burden of such country) during the 4-year period beginning on January 1, 1990, to 25 percent of the aggregate value of all loans made by the Bank during such 4-year period;

(2) take all necessary steps to encourage the Bank to limit the aggregate value of the policy based loans made by the

[46] 22 U.S.C. 283a–6. Sec. 202(a) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2498) added sec. 34.

Sec. 202(b) of that Act (22 U.S.C. 283z–6 note) provided the following:

"(b) REPORT TO THE CONGRESS.—The Chairman of the National Advisory Council on International Monetary and Financial Policies shall include in the report required by section 1701 of the International Financial Institutions Act for fiscal year 1991 a report on the efforts undertaken by the United States Executive Director of the Inter-American Development Bank, and the progress to date, in achieving the objectives of section 34 of the Inter-American Development Bank Act.".

[47] 22 U.S.C. 283z–7. Sec. 203 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2498) added sec. 35.

Bank to the government of a particular country during such 4-year period, to 50 percent of the aggregate value of all loans made by the Bank to such government during such 4-year period;

(3) instruct the United States Executive Director of the Bank to explore with the other Executive Directors of the Bank ways to use a portion of the resources made available to the Bank by reason of the subscription and contribution described in section 33(a)(2) for debt reduction and debt service reduction for countries described in paragraph (1); and

(4) before the end of the 12-month period beginning on the date of the enactment of this section, report to the Congress on the matters described in paragraph (3).

SEC. 36.[48] INCREASE IN LENDING TO THE CARIBBEAN.

The Secretary of the Treasury shall instruct the United States Executive Director of the Bank to enter into discussions with the management of the Bank and with other member country governments to seek to increase Bank lending to the Caribbean region, directly or through appropriate financial intermediaries, for viable projects which will—

(1) result in expanded regional economic integration, diversification, and industrial and agricultural production, and improved infrastructure; and

(2) seek to ensure equitable and environmentally sustainable economic growth.

SEC. 37.[49] (a) The Secretary of the Treasury is authorized to contribute, and to make payment of, $500,000,000 to the Multilateral Investment Fund established pursuant to the agreements of February 11, 1992: *Provided,* That such funds shall only be disbursed from the Fund to countries that have governments that are democratically elected, that do not harbor or sponsor international terrorists; that do not fail to cooperate in narcotics matters; and that do not engage in a consistent pattern of gross violations of internationally recognized human rights.

(b) There is hereby authorized to be appropriated without fiscal year limitation $500,000,000 for the contribution authorized in subsection (a).[50]

(c) If an Enterprise for the Americas Multilateral Investment Fund is established pursuant to this section, the Secretary of the Treasury shall instruct the United States representative to the Fund not to vote in favor of any action proposed to be taken by the Fund which may have a significant adverse effect on the environ-

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[48] 22 U.S.C. 283z–8. Sec. 204 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2499) added sec. 36.

[49] 22 U.S.C. 283z–9. Sec. 594(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391; 106 Stat. 1693), added sec. 37.

[50] Appropriations for U.S. contributions authorized in sec. 36(b) have been provided in the following amounts and Public Laws: fiscal year 1993—$90 million (Public Law 102–391); fiscal year 1994—$75 million (Public Law 103–87); fiscal year 1995—$75 million (Public Law 103–306); fiscal year 1996—$53.8 million (Public Law 104–107); fiscal year 1997—$27.5 million (Public Law 104–208); fiscal year 1998—$30 million (Public Law 105–118); fiscal year 1999—$50 million (Public Law 105–227); fiscal year 2001—$10 million, fiscal year 2000 rescission—minus $0.022 million (Public Law 106–429); fiscal year 2003—$24.591 million, rescission—minus $0.160 million (Public Law 108–007); fiscal year 2004—$25 million, rescission—minus $0.148 million (Public Law 108–119); fiscal year 2005—$11 million, rescission—minus $0.090 million (Public Law 108–447).

ment unless an assessment of the impact of the action on the environment has been available for at least 120 days before the vote.

SEC. 38.[51] FOCUS ON LOW-INCOME AREAS OF LATIN AMERICA AND THE CARIBBEAN.

The Secretary of the Treasury shall direct the United States Executive Director of the Bank to use the voice and vote of the United States to support an increased focus on the poorest countries in Latin America and the Caribbean, and on poorer areas of better off countries, and to support programs conducted by the Multilateral Investment Fund, particularly in targeting low-income countries and populations, working with nongovernmental organizations and training and assisting former combatants from civil conflicts in Latin America.

[51] 22 U.S.C. 283z–10. Sec. 526(f) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306; 108 Stat. 1634), added sec. 38.

(2) Inter-American Investment Corporation Act

Partial text of Public Law 98–473 [Continuing Appropriations Act, 1985; H.J. Res. 648], 98 Stat. 1837 at 1885, approved October 12, 1984; as amended by Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989

NOTE.—Sec. 101 of the Continuing Appropriations Act, 1985 (Public Law 98–473) enacted into law title II of S. 2416, as introduced in the Senate on March 13, 1984. The text of title II of S. 2416 is set out below.

TITLE II—INTER-AMERICAN INVESTMENT CORPORATION ACT

SEC. 201. This title may be cited as the "Inter-American Investment Corporation Act".

ACCEPTANCE OF MEMBERSHIP

SEC. 202.[1] The President is hereby authorized to accept membership for the United States in the Inter-American Investment Corporation (hereinafter in this title referred to as the "Corporation") provided for by the agreement establishing the Corporation (hereinafter in this title referred to as the "agreement") deposited in the archives of the Inter-American Development Bank.

GOVERNOR AND ALTERNATE GOVERNOR

SEC. 203.[2] The Governor and Executive Director of the Inter-American Development Bank, and the alternate for each of them, appointed under section 3 of the Inter-American Development Bank Act, as amended (72 Stat. 299; 22 U.S.C. 283 et seq.), shall serve as Governor, Director, and alternates, respectively, of the Corporation.

APPLICABILITY OF BRETTON WOODS AGREEMENTS ACT

SEC. 204.[3] The provisions of section 4 of the Bretton Woods Agreements Act, as amended (59 Stat. 512, 22 U.S.C. 286b), shall apply with respect to the Corporation to the same extent as with

[1] 22 U.S.C. 283aa.
[2] 22 U.S.C. 283bb.
[3] 22 U.S.C. 283cc.

respect to the International Bank for Reconstruction and Development and the International Monetary Fund.[4]

RESTRICTIONS

SEC. 205.[5] (a) Unless authorized by law, neither the President nor any person or agency shall, on behalf of the United States—

(1) subscribe to additional shares of stock of the Corporation;

(2) vote for or agree to any amendment of the agreement which increases the obligations of the United States, or which changes the purpose or functions of the Corporation; or

(3) make a loan or provide other financing to the Corporation.

FEDERAL RESERVE BANKS AS DEPOSITORIES

SEC. 206.[6] Any Federal Reserve bank which is requested to do so by the Corporation shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

SUBSCRIPTION OF STOCK

SEC. 207.[7] (a) The Secretary of the Treasury is authorized to subscribe on behalf of the United States to five thousand one hundred shares of the capital stock of the Corporation: *Provided, however,* That the subscription shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) There is authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury of the subscription of the United States for those shares, $51,000,000.[8]

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[4] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(e)(3) struck out the last sentence of this section, which read: "Reports with respect to the Corporation under paragraphs (5) and (6) of subsection (b) of section 4 of that Act shall be included in the first and subsequent reports made thereunder after the United States accepts membership in the Corporation.".

[5] 22 U.S.C. 283dd. As enrolled; the section does not include a subsec. (b).

[6] 22 U.S.C. 283ee.

[7] 22 U.S.C. 283ff. Sec. 594 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, enacted by reference in sec. 1000(a)(7) of Public Law 106–113 (113 Stat. 1501A–122), provided the following:

"AUTHORIZATIONS

"SEC. 594. The Secretary of The Treasury may, to fulfill commitments of the United States: (1) effect the United States participation in * * * the first general capital increase of the Inter-American Investment Corporation. * * * The following amounts are authorized to be appropriated without fiscal year limitation for payment by the Secretary of the Treasury: * * * $125,180,000 for paid-in capital of the Inter-American Investment Corporation * * *".

Appropriations for the U.S. contribution have been provided in the following amounts and Public Laws: fiscal year 2000—$16 million (Public Law 106–113); fiscal year 2001—$25 million, fiscal year rescission—minus $0.055 million (Public Law 106–429); fiscal year 2002—$18 million (Public Law 107–155); fiscal year 2003—$18.352 million, rescission—minus $0.119 million (Public Law 108–7).

[8] Appropriations for U.S. payments authorized in sec. 207 have been provided in the following amounts and Public Laws: fiscal year 1985—$10 million (Public Law 98–473); fiscal year 1985 supplemental—$3 million (Public Law 99–88); fiscal year 1986—$11.7 million (Public Law 99–190), reduced by $0.5 million as a result of sequestration (Public Law 99–177); fiscal year 1988—$1.3 million (Public Law 100–202); fiscal year 1991—$13 million (Public Law 101–513); fiscal year 1992—$12.3 million (Public Law 102–145, as amended by Public Law 102–266), reduced by $4 million as a result of a rescission (Public Law 102–298) (However, only $5,000 in

(c) Any payment of dividends made to the United States by the corporation shall be deposited into the Treasury as a miscellaneous receipt.

JURISDICTION OF UNITED STATES COURTS

SEC. 208.[9] For the purposes of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Corporation in accordance with the agreement, the Corporation shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States or its agent appointed for the purpose of accepting service or notice of service is located, and any such action to which the Corporation shall be 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 Corporation is a defendant in any action in a State court, it may at any time before the trial thereof 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.

EFFECTIVENESS OF AGREEMENT

SEC. 209.[10] Article VI, section 4(c), and article VII, sections 2 to 9, both inclusive, of the agreement shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in the Corporation.

SECURITIES ISSUED BY THE CORPORATION

SEC. 210.[11] (a) Any securities issued by the Corporation (including any guarantee by the corporation, whether or not limited in scope) in connection with the raising of funds for inclusion in the Corporation's resources as defined in article II, section 2 of the agreement, and any securities guaranteed by the Corporation as to both principal and interest to which the commitment in article II, section 2(e) of the agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c) and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c). The Corporation shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the corporation and its operations as necessary in the public interest or for the protection of investors.

undisbursed funds were available to comply with the rescission at the time of enactment of Public Law 102–298).

[9] 22 U.S.C. 283gg.

[10] 22 U.S.C. 283hh.

[11] 22 U.S.C. 283ii.

(b) The Securities and Exchange Commission, acting in consultation with such agency or officer as the President[12] shall designate, is authorized to suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Corporation during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this section and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

TECHNICAL AMENDMENTS

SEC. 211. * * *

[12] Sec. 2 of Executive Order 12567 (October 2, 1986; 51 F.R. 35495) delegated the functions vested in the President to the Secretary of the Treasury.

c. Asian Development Bank Act, as amended

Public Law 89–369 [H.R. 12563], 80 Stat. 71, approved March 16, 1966; as amended by Public Law 92–245 [S. 749], 86 Stat. 57, approved March 10, 1972; Public Law 93–189 [S. 1443], 87 Stat. 714 at 732, approved December 17, 1973; Public Law 93–537 [S. 2193], 88 Stat. 1735, approved December 22, 1974; Public Law 95–118 [H.R. 5262], 91 Stat. 1067 at 1068, approved October 3, 1977; Public Law 96–259 [S. 662], 94 Stat. 429 at 430, approved June 3, 1980; Public Law 96–465 [Foreign Service Act of 1980; H.R. 6790], 94 Stat. 2071 at 2160, approved October 17, 1980; Public Law 97–35 [Omnibus Budget Reconciliation Act of 1981; H.R. 3982], 95 Stat. 357 at 744, approved August 13, 1981; Public Law 98–181 [Supplemental Appropriations Act, 1984; [H.R. 3959], 97 Stat. 1153 at 1285, approved November 30, 1983; Public Law 100–202 [Continuing Appropriations, 1988; H.J. Res. 395], 101 Stat. 1329, approved December 22, 1987; Public Law 102–145 [Further Continuing Appropriations, Fiscal Year 1992; H.J. Res. 360, as amended by Public Law 102–266], 105 Stat. 968 at 106 Stat. 97, approved October 28, 1991; Public Law 108–199 [Division D of the Consolidated Appropriations Act, 2004; H.R. 2673], 118 Stat. 3 at 118 Stat. 204, approved January 23, 2003; and Public Law 109–102 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006; H.R. 3057], 119 Stat. 2172, approved November 14, 2005

AN ACT To provide for the participation of the United States in the Asian Development Bank.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Asian Development Bank Act".

ACCEPTANCE OF MEMBERSHIP

SEC. 2.[1] The President is hereby authorized to accept membership for the United States in the Asian Development Bank (hereinafter referred to as the "Bank") provided for by the agreement establishing the Bank (hereinafter referred to as the "agreement") deposited in the archives of the United Nations.

SEC. 3.[2] (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank, an alternative for the Governor, and a Director of the Bank.

(b) No person shall be entitled to receive any salary or other compensation from the United States for services as a Governor or Alternate Governor. The Director may, in the discretion of the President, receive such compensation, allowances, and other benefits as, together with those received by him from the Bank, will equal those authorized for a chief of mission under the Foreign Service Act of 1980.[3]

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[1] 22 U.S.C. 285.

[2] 22 U.S.C. 285a.

[3] The references to the chief of mission and to the Foreign Service Act of 1980 were inserted by sec. 2206(a)(1) of Public Law 96–465 (94 Stat. 2160). The references formerly pertained to the Chief of Mission, class 2, and to the Foreign Service Act of 1946, respectively.

SEC. 4.[4, 5] The policies and operations of the representatives of the United States on the Bank shall be coordinated with other United States policies in such manner as the President shall direct.

(b)[5] * * *

SEC. 5.[6] Unless the Congress by law authorizes such action, neither the President nor any person or agency shall, on behalf of the United States, (a) subscribe to additional shares of stock of the Bank; (b) vote for or agree to any amendment of the agreement which increases the obligations of the United States, or which would change the purpose of functions of the Bank; or (c) make a loan or provide other financing to the Bank, except that funds for technical assistance not to exceed 1,000,000 in any one year may be provided to the Bank by a United States agency created pursuant to an Act of Congress which is authorized by law to provide funds to international organizations.

DEPOSITORIES

SEC. 6.[7] Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

PAYMENT OF SUBSCRIPTIONS

SEC. 7.[8] (a) There is hereby authorized to be appropriated, without fiscal year limitation, for the purchase of twenty thousand shares of capital stock of the Bank, $200,000,000.

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[4] 22 U.S.C. 285b.

[5] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(d)(2) repealed subsec. (b), which required an annual report to be submitted to the Congress by a designee of the President on U.S. participation in the Asian Development Bank.

Sec. 541(f)(3) of that Act also struck out subsec. designation "(a)" as a technical amendment.

[6] 22 U.S.C. 285c. The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118; 22 Stat. 2425), provided the following:

"INTERNATIONAL FINANCIAL INSTITUTIONS

"SEC. 560. (a) AUTHORIZATIONS.—The Secretary of the Treasury may, to fulfill commitments of the United States: (1) effect the United States participation in the first general capital increase of the European Bank for Reconstruction and Development, subscribe to and make payment for 100,000 additional shares of the capital stock of the Bank on behalf of the United States; and (2) contribute on behalf of the United States to the eleventh replenishment of the resources of the International Development Association, to the sixth replenishment of the Asian Development Fund, a special fund of the Asian Development Bank. The following amounts are authorized to be appropriated without fiscal year limitation for payment by the Secretary of the Treasury: (1) $285,772,500 for paid-in capital, and 984,327,500 for callable capital of the European Bank for Reconstruction and Development; (2) $1,600,000,000 for the International Development Association; (3) $400,000,000 for the Asian Development Fund; and (4) $76,832,001 for paid-in capital, and $4,511,156,729 for callable capital of the Inter-American Development Bank in connection with the eighth general increase in the resources of that Bank. Each such subscription or contribution shall be subject to obtaining the necessary appropriations.".

Public Law 105–118 authorized appropriations for the Asian Development Fund in the amount of $400 million which was paid in the following amounts and Public Laws: fiscal year 1998—$150 million ($50 million for contributions previously due) (Public Law 105–118); fiscal year 1999—$210 million ($187 million for contributions previously due) (Public Law 105–277). fiscal year 2000—$77 million (Public Law 106–113); and fiscal year 2001—$72 million (Public Law 106–429).

[7] 22 U.S.C. 285d.

[8] 22 U.S.C. 285e.

(b) Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.[9]

JURISDICTION AND VENUE OF ACTIONS

SEC. 8.[10] For purpose of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Bank in accordance with the agreement, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office or agency in the United States is located, and any such action to which the Bank shall be 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 title 28, section 460, United States Code, shall have original jurisdiction of any such action. When the Bank is defendant in any action in a State court, it may, at any time before the trial thereof, remove such action into the direct court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

STATUS, IMMUNITIES, AND PRIVILEGES

SEC. 9.[11] The agreement, and particularly articles 49 through 56, shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in, and the establishment of, the Bank. The President, at the time of deposit of the instrument of acceptance of membership by the United States in the Bank, shall also deposit a declaration that the United States retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to its citizens or nationals.

SECURITIES ISSUED BY BANK AS INVESTMENT SECURITIES FOR NATIONAL BANKS

SEC. 10. The last sentence of paragraph 7 of section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), is amended by striking the word "or" after the words "International Bank for Reconstruction and Development" and inserting a comma in lieu thereof, and by inserting after the words "the Inter-American Development Bank" the words "or the Asian Development Bank".

[9] Appropriations for U.S. payments authorized in sec. 7 have been provided in the following amounts and Public Laws: fiscal year 1966—$140 million ($100 million paid-in capital; $40 million callable capital) (Public Law 89–426); fiscal year 1969—$20 million callable capital (Public Law 90–581); fiscal year 1970—$20 million callable capital (Public Law 91–194); fiscal year 1971—$20 million callable capital (Public Law 92–18).

[10] 22 U.S.C. 285f.

[11] 22 U.S.C. 285g.

SECURITIES ISSUED BY BANK AS EXEMPT SECURITIES; REPORT FILED WITH SECURITIES AND EXCHANGE COMMISSION

SEC. 11.[12] (a) Any securities issued by the Bank (including any guarantee by the Bank, whether or not limited in scope) in connection with raising of funds for inclusion in the Bank's ordinary capital resources as defined in article 7 of the agreement and any securities guaranteed by the Bank as to both principal and interest to which the commitment in article 6, section 5, of the agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of paragraph (a)(2) of section 3 of the Act of May 27, 1933, as amended (15 U.S.C. 77c), and paragraph (a)(12) of section 3 of the Act of June 6, 1934, as amended (15 U.S.C. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

(b) The Securities and Exchange Commission, acting in consultation with such agency or officer as the President shall designate, is authorized to suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this section and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

SEC. 12.[13] (a) Subject to the provisions of this Act, the United States Governor of the Bank is authorized to enter into an agreement with the Bank providing for a United States contribution of $100,000,000 to the Bank in two annual installments of $60,000,000 and $40,000,000, beginning in fiscal year 1972. This contribution is referred to hereinafter in this Act as the "United States Special Resources".

(b) The United States Special Resources shall be made available to the Bank pursuant to the provisions of this Act and article 19 of the Articles of Agreement of the Bank, and in a manner consistent with the Bank's Special Funds Rules and Regulations.

SEC. 13.[14] (a) The United States Special Resources shall be used to finance specific high priority development projects and programs in developing member countries of the Bank with emphasis on such projects and programs in the Southeast Asia region.

(b) The United States Special Resources shall be used by the Bank only for—

(1) making development loans on terms which may be more flexible and bear less heavily on the balance of payments than those established by the Bank for its ordinary operations; and

(2) providing technical assistance credits on a reimbursable basis.

[12] 22 U.S.C. 285h.
[13] 22 U.S.C. 285i. Public Law 92–245 (86 Stat. 59) added sec. 12.
[14] 22 U.S.C. 285j. Public Law 92–245 (86 Stat. 59) added sec. 13.

(c)(1) The United States Special Resources may be expended by the Bank only for procurement in the United States of goods produced in, or services supplied from, the United States, except that the United States Governor, in consultation with the National Advisory Council on International Monetary and Financial Policies, may allow eligibility for procurement in other member countries from the United States Special Resources if he determines that such procurement eligibility would materially improve the ability of the Bank to carry out the objectives of its special funds resources and would be compatible with the international financial position of the United States.

(2) The United States Special Resources may be used to pay for administrative expenses arising from the use of the United States Special Resources, but only to the extent such expenses are not covered from the Bank's service fee or income from use of United States Special Resources.

(d) All financing of programs and projects by the Bank from the United States Special Resources shall be repayable to the Bank by the borrowers in United States dollars.

SEC. 14.[15] (a) The letters of credit provided for in section 15 shall be issued to the Bank only to the extent that at the time of issuance the cumulative amount of the United States Special Resources provided to the Bank (A) constitute a minority of all special funds contributions to the Bank, and (B) are no greater than the largest cumulative contribution of any other single country contributing to the special funds of the Bank.

(b) The United States Governor of the Bank shall give due regard to the principles of (A) utilizing all special funds resources on an equitable basis, and (B) significantly shared participation by other contributors in each special fund to which United States Special Resources are provided.

SEC. 15.[16] The United States Special Resources will be provided to the Bank in the form of a nonnegotiable, noninterest-bearing, letter of credit which shall be payable to the Bank at par value on demand to meet the cost of eligible goods and services, and administrative costs authorized pursuant to section 13(c) of this Act.

SEC. 16.[17] The United States shall have the right to withdraw all or part of the United States Special Resources and any accrued resources derived therefrom under the procedures provided for in section 8.03 of the Special Funds Rules and Regulations of the Bank.

SEC. 17.[18] For the purpose of providing United States Special Resources to the Bank there is hereby authorized to be appropriated $100,000,000[19] all of which shall remain available until expended.

SEC. 18.[20] The President shall instruct the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country which has—

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[15] 22 U.S.C. 285k. Public Law 92–245 (86 Stat. 59) added sec. 14.
[16] 22 U.S.C. 285*l*. Public Law 92–245 (86 Stat. 59) added sec. 15.
[17] 22 U.S.C. 285m. Public Law 92–245 (86 Stat. 59) added sec. 16.
[18] 22 U.S.C. 285n. Public Law 92–245 (86 Stat. 59) added sec. 17.
[19] Sec. 28 of Public Law 93–189 (87 Stat. 732) struck out "$60,000,000 for fiscal year 1972 and $40,000,000 for fiscal year 1973" and inserted in lieu thereof "$100,000,000".
[20] 22 U.S.C. 285o. Public Law 92–245 (86 Stat. 59) added sec. 18, popularly referred to as the Gonzalez amendment.

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) taken steps to repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing expropriating, or otherwise seizing ownership or control of property so owned;

unless the President determines that (A) an arrangement for prompt, adequate, and effective compensation has been made, (B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes, or (C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

SEC. 19.[21] The Secretary of the Treasury shall instruct the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country with respect to which the President has made a determination, and so notified the Secretary of the Treasury, that the government of such country has failed to take adequate steps to prevent narcotic drugs and other controlled substances (as defined by the Comprehensive Drug Abuse Prevention and Control Act of 1970) 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 entering the United States unlawfully. Such instruction shall continue in effect until the President determines, and so notified the Secretary of the Treasury, that the government of such country has taken adequate steps to prevent such sale or entry of narcotic drugs and other controlled substances.

SEC. 20.[22] (a) The United States Governor of the Bank is authorized to subscribe on behalf of the United States to thirty thousand additional shares of the capital stock of the Bank in accordance with and subject to the terms and conditions of Resolution Numbered 46 adopted by the Bank's Board of Governors on November 30, 1971.

(b) In order to pay for the increase in the United States subscription to the Bank provided for in this section, there is hereby authorized to be appropriated without fiscal year limitation $361,904,726 for payment by the Secretary of the Treasury.[23]

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[21] 22 U.S.C. 285p. Public Law 92–245 (86 Stat. 59) added sec. 19.

[22] 22 U.S.C. 285q. Public Law 93–537 (88 Stat. 1735) added sec. 20.

[23] Appropriations for U.S. payments authorized in sec. 20 have been provided in the following amounts and Public Laws: fiscal year 1975—$130.64 million ($24.13 paid in capital) (Public Law 94–11), $96.51 non-appropriated callable capital; fiscal year 1976—$120.64 million ($24.13 paid-in capital; $96.51 callable capital) (Public Law 94–330); fiscal year 1977—$120.64 million

SEC. 21.[24] (a) The United States Governor of the Bank is hereby authorized to agree to contribute on behalf of the United States $50,000,000 to the special funds of the Bank. This contribution shall be made available to the Bank pursuant to the provisions of article 19 of the articles of agreement of the Bank.

(b) In order to pay for the United States contribution to the special funds, there is hereby authorized to be appropriated without fiscal year limitation $50,000,000 for payment by the Secretary of the Treasury.

SEC. 22.[25] (a) The United States Governor of the Bank is authorized to subscribe on behalf of the United States to sixty-seven thousand and five hundred additional shares of the capital stock of the Bank: *Provided, however,* That any subscription to additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.[26]

(b) In order to pay for the increase in the United States subscription to the Bank provided in this section, there are hereby authorized to be appropriated without fiscal year limitation $814,286,250 for payment by the Secretary of the Treasury.[27]

SEC. 23.[28] (a) The United States Governor of the Bank is hereby authorized to contribute on behalf of the United States $180,000,000 to the Asian Development Fund, a special fund of the Bank: *Provided, however,* That any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there are hereby authorized to be appropriated without fiscal year limitation $180,000,000 for payment by the Secretary of the Treasury: *Provided, however,* That not more than $14,116,177 may be made available for such contribution for the fiscal year 1982.[29]

SEC. 24.[30] (a) The United States Governor of the Bank is authorized to contribute on behalf of the United States $378,250,000 to the Asian Development Fund, a special fund of the Bank, except

($24.13 million paid in capital; $66.35 callable capital) (Public Law 94–441), $30.16 non-appropriated callable capital.

[24] 22 U.S.C. 285r. Public Law 93–537 (88 Stat. 1735) added sec. 21.

[25] 22 U.S.C. 285s. Sec. 501 of Public Law 95–118 (91 Stat. 1068) added sec. 22.

[26] sec. 1353 of Public Law 97–35 (95 Stat. 745) amended and restated the proviso clause. It previously read as follows: "That any subscription to additional shares shall be made only after the amount required for such subscription has been appropriated.".

[27] Appropriations for U.S. payments authorized in sec. 22 have been provided in the following amounts and Public Laws: fiscal year 1978—$168 million ($16.8 million paid-in capital; $151.2 million callable capital) (Public Law 95–481); fiscal year 1979—$194.5 million ($19.5 million paid-in capital; $175 million callable capital) (Public Law 95–481); fiscal year 1980—$153.7 million ($15.4 million paid-in capital; $138.3 million callable capital) (Public Law 96–123); fiscal year 1981—$248.4 million ($24.8 million paid-in capital; $223.4 million callable capital) (Public Law 96–536); fiscal year 1982—$47.3 million ($4.7 million paid-in capital; $42.6 million callable capital) (Public Law 97–121); fiscal year 1983—$2.4 million ($0.2 million paid-in capital; $2.2 million callable capital) (Public Law 97–377).

[28] 22 U.S.C. 285t. Sec. 501 of Public Law 95–118 (91 Stat. 1068) added sec. 23.

[29] Sec. 1352(c) of Public Law 97–35 (95 Stat. 745) added the proviso clause.

Appropriations for U.S. payments authorized in sec. 23 have been provided in the following amounts and Public Laws: fiscal year 1978—$49.5 million (Public Law 95–148); fiscal year 1979—$70.5 million (Public Law 95–481); fiscal year 1980—$0; fiscal year 1981—$3.5 million (Public Law 96–536); fiscal year 1982—$7.8 million (Public Law 97–121); fiscal year 1983—$20.4 million (Public Law 97–377); fiscal year 1984—$0; fiscal year 1985—$28.2 million (Public Law 98–473).

[30] 22 U.S.C. 285u. Sec. 201 of Public Law 96–259 (94 Stat. 430) added sec. 24.

that any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $378,250,000 for payment by the Secretary of the Treasury: *Provided, however,* That not more than $111,250,000 of such sum may be made available for the fiscal year 1982, and not more than $44,500,000 of such sum may be made available for the fiscal year 1983.[31]

(c) For the purpose of keeping to a minimum the cost to the United States, the Secretary of the Treasury—

(1) shall pay the United States contribution to the Asian Development Fund authorized by this section by letter of credit in four annual installments; and

(2) shall take the steps necessary to obtain a certification from the Bank that any undisbursed balances resulting from draw-downs on such letter of credit will not exceed at any time the United States share of expected disbursement requirements for the following three-month period.

SEC. 25.[32] It is the sense of the Congress that it is the policy of the United States that Taiwan (before January 1, 1979, known as the Republic of China)[33] shall be permitted to retain membership in the Asian Development Bank and that the United States Executive Director of the Bank shall notify the Bank that a serious review of future United States participation, including any future payments to the Asian Development Fund, would ensure if Taiwan were expelled from the Bank.

SEC. 26.[34] (a) The United States Governor of the Bank is authorized to contribute on behalf of the United States $66,750,000 to the Asian Development Fund, a special fund of the Bank: *Provided, however,* That any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there is authorized to be appropriated, without fiscal year limitation,

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[31] Sec. 1352(b) of Public Law 97–35 (95 Stat. 744) added the proviso clause.

Appropriations for U.S. payments authorized in sec. 24 have been provided in the following amounts and Public Laws: fiscal year 1980—$111.3 million (Public Law 96–123); fiscal year 1981—$111.3 million (Public Law 96–536); fiscal year 1982—$108.3 million (Public Law 97–121); fiscal year 1983—$44.5 million (Public Law 97–377); fiscal year 1984—$3 million (Public Law 98–151).

[32] 22 U.S.C. 285v. Sec. 501 of Public Law 95–118 (91 Stat. 1068) added sec. 25.

[33] Sec. 550 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391; 106 Stat. 1673), provided the following regarding Taiwan's designation:

"MEMBERSHIP DESIGNATION IN ASIAN DEVELOPMENT BANK

"Sec. 550. It is the sense of the Congress that the United States Government should use its influence in the Asian Development Bank to secure reconsideration of that institution's decision to designate Taiwan (the Republic of China) as 'Taipei, China'. It is further the sense of the Congress that the Asian Development Bank should resolve this dispute in a fashion that is acceptable to Taiwan (the Republic of China).".

This language was first enacted as sec. 566 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988.

[34] 22 U.S.C. 285w. Sec. 1352(a) of Public Law 97–35 (95 Stat. 744) added sec. 26.

$66,750,000 for payment by the Secretary of the Treasury: *Provided, however,* That no funds may be made available for such contribution for the fiscal year 1982.[35]

SEC. 27.[36] (a)(1) The United States Governor of the Bank is authorized to subscribe on behalf of the United States to one hundred twenty-three thousand three hundred and seventy-five additional shares of the capital stock of the Bank.

(2) Any subscription to the capital stock of the Bank shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.[37]

(b) In order to pay for the increase in the United States subscription to the Bank provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $1,322,999,476 for payment by the Secretary of the Treasury.

(c)(1) The Congress hereby finds that—

(A) the Republic of China (Taiwan) is a charter member in good standing of the Asian Development Bank;

(B) the Republic of China has grown from a borrower to a lender in the Asian Development Bank; and

(C) the Republic of China provides, through its economic success, a model for other nations in Asia.

(2) It is the sense of the Congress that—

(A) Taiwan, Republic of China, should remain a full member of the Asian Development Bank, and that its status within that body should remain unaltered no matter how the issue of the People's Republic of China's application for membership is disposed of;

(B) the President and the Secretary of State should express support of Taiwan, Republic of China, making it clear that the United States will not countenance attempts to expel Taiwan, Republic of China, from the Asian Development Bank; and

(C) the Secretary of the Senate and Clerk of the House shall transmit a copy of this resolution to the President with the request that he transmit such copy to the Board of Governors of the Asian Development Bank.

SEC. 28.[38] (a)(1) The United States Governor of the Bank is authorized to contribute on behalf of the United States $520,000,000 to the Asian Development Fund, a special fund of the Bank.

(2) Any commitment to make the contribution authorized in paragraph (1) shall be made subject to obtaining the necessary appropriations.

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[35] Sec. 101(b)(1) of the Further Continuing Appropriations Act, 1983 (Public Law 97–377), provided $66.75 million during fiscal year 1983 for this authorization.

[36] 22 U.S.C. 285x. Sec. 1002 of Public Law 98–181 (97 Stat. 1285) added sec. 27.

[37] Appropriations for U.S. payments authorized in sec. 27 have been provided in the following amounts and Public Laws: fiscal year 1984—$264.6 million ($13.2 million paid-in capital; $251.4 million callable capital) (Public Law 98–151); fiscal year 1985—$264.6 million ($13.2 million paid-in capital; $251.4 million callable capital) (Public Law 98–473); fiscal year 1986—$238.1 million ($11.9 million paid-in capital; $226.2 million callable capital) (Public Law 99–190), reduced by $0.5 million as a result of sequestration (Public Law 99–177); fiscal year 1987—$264.6 million ($13.2 million paid-in capital; $251.4 million callable capital) (Public Law 99–591); fiscal year 1988—$291.6 million ($15.1 million paid-in capital; $276.5 million callable capital) (Public Law 100–202).

[38] 22 U.S.C. 285y. Sec. 1002 of Public Law 98–181 (97 Stat. 1286) added sec. 28.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $520,000,000 for payment by the Secretary of the Treasury.[39]

SEC. 29.[40] (a) The United States Governor of the Bank is authorized to contribute on behalf of the United States $584,280,000 to the Asian Development Fund, a special fund of the Bank, except that any commitment to make such contributions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $584,280,000 for payment by the Secretary of the Treasury.[41]

SEC. 30.[42] CAPITAL INCREASE.

(a) SUBSCRIPTION AUTHORIZED.—(1) The United States Governor of the Bank may subscribe on behalf of the United States to 35,230 additional shares of the capital stock of the Bank. (2) Any subscription by the United States to the capital stock of the Bank shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—In order to pay for the increase in the United States subscription to the Bank provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $213,000,000 for payment by the Secretary of the Treasury.[43]

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[39] Appropriations for U.S. payments authorized in sec. 28 for the Third Replenishment (ADF IV), have been provided in the following amounts and Public Laws: fiscal year 1984—$97 million (Public Law 98–151); fiscal year 1985—$100.0 million (Public Law 98–473); fiscal year 1985 supplemental—$63 million (Public Law 99–88); fiscal year 1986—$100 million (Public Law 99–190), reduced by $4.3 million in sequestration (Public Law 99–177) ; fiscal year 1987—$91.4 million (Public Law 99–591); fiscal year 1988—$28 million (Public Law 100–202); fiscal year 1989—$44.8 million (Public Law 100–461).

[40] 22 U.S.C. 285z. Sec. 29, authorizing a Fourth ADF Replenishment (ADF V), was added by sec. 201 of H.R. 3750, as reported by the House Committee on Banking, Finance and Urban Affairs, on December 11, 1987, and enacted into law by reference in Title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e) of the Continuing Appropriations, 1988, Public Law 100–202; 101 Stat. 1329 at 1329–134).

[41] Appropriations for U.S. payments authorized in sec. 29 have been provided in the following amounts and Public Laws: fiscal year 1989—$107.5 million (Public Law 100–461); fiscal year 1990—$177.2 million (Public Law 101–167), reduced by $2.2 million in sequestration (Public Law 101–239); fiscal year 1991—$126.9 million (Public Law 101–513), reduced by $2.4 million in sequestration (Public Law 101–508), $2.4 million restored (Public Law 102–27); fiscal year 1992—$124.9 million (Public Law 102–145, as amended by Public Law 102–266); fiscal year 1993—$49.98 million (Public Law 102–391).

The fiscal year 1993 appropriations further required: "That prior to obligating any of the funds appropriated under this heading for the Asian Development Fund, the Secretary of the Treasury shall submit a certification to the Committee on Appropriations that none of such funds will be made available for China.".

[42] 22 U.S.C. 285aa. Sec. 30 was added by sec. 125(b) of the Further Continuing Appropriations, Fiscal Year 1992 (Public Law 102–145, as amended by Public Law 102–266; 106 Stat. 97).

[43] Appropriations for U.S. payments authorized in sec. 30 have been provided in the following amounts and Public Laws: fiscal year 1992—$0; fiscal year 1993—$316.53 million ($38.01 million paid-in capital; 278.52 million callable capital) (Public Law 102–391); fiscal year 1994—$108.46 million ($13.03 million paid-in capital; $95.44 callable capital) (Public Law 103–87).

SEC. 31.[44] ADDITIONAL CONTRIBUTION TO SPECIAL FUNDS.

(a) CONTRIBUTION AUTHORITY.—

(1) IN GENERAL.—The United States Governor of the Bank may contribute on behalf of the United States an amount equal to the amount appropriated under subsection (b), pursuant to the resolution of the Bank entitled "Seventh Replenishment of the Asian Development Fund.

(2) SUBJECT TO APPROPRIATIONS.—Any commitment to make the contribution authorized by paragraph (1) shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For the contribution authorized by subsection (a), there are authorized to be appropriated such sums as may be necessary for payment by the Secretary of the Treasury, without fiscal year limitation.[45]

SEC. 32.[46] EIGHTH REPLENISHMENT.

(a) The United States Governor of the Bank is authorized to contribute on behalf of the United States $461,000,000 to the eighth replenishment of the resources of the Fund, subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $461,000,000 for payment by the Secretary of the Treasury.

NOTE.—The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (H.R. 2295; Public Law 103–87, provided the following:

"AUTHORIZATION REQUIREMENT

"SEC. 526. Funds appropriated by Title I through V of this Act may be obligated and expended notwithstanding section 10 of Public Law 91-672 and section 15 of the State Department Basic Authorities Act of 1956: Provided, That the Secretary of the Treasury is authorized to agree on behalf of the United States to participate in the tenth replenishment of the resources of the International Development Association, the fifth replenishment of the Asian Development Fund, and the replenishment of the permanent Global Environment Facility, subject to obtaining the necessary appropriations:".

[44] 22 U.S.C. 285bb. Sec. 582 of the Foreign Operations, Export Financing, and Related Programs Appropriations, Fiscal Year 2004 (division D of Public Law 108–199; 118 Stat. 204), added sec. 31.

[45] Appropriations for U.S. payments authorized in sec. 31 have been provided in the following amounts and Public Laws: fiscal year 2002—$98 million (Public Law 107–155; fiscal year 2003—$97.886 million, rescission—minus $0.636 million (Public Law 108–007); fiscal year 2004—$144.421 million, rescission—minus $0.852 million (Public Law 108–119; fiscal year 2005—$100 million, rescission—minus $0.800 million (Public Law 108–447; fiscal year 2006—$100 million, rescission—minus $1 million (Public Law 109–102).

[46] 22 U.S.C. 285cc. Sec. 599C(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations, Fiscal Year 2006 (Public Law 109–102; 119 Stat. 2243), added sec. 32.

Appropriations for U.S. payments to participate in the Asian Development Fund sixth replenishment have been provided in the following amounts and Public Laws: fiscal year 1993—$12.523 million (Public Law 102–391); fiscal year 1994—$62.5 million (Public Law 103–87); fiscal year 1995—$167.96 million (Public Law 103–306); fiscal year 1996—$100 million (Public Law 104–107); fiscal year 1997—$100 million (Public Law 104–208); fiscal year 1998—$50 million (Public Law 105–118); fiscal year 1999—$187 million (Public Law 105–227); fiscal year 2002—$17 million (Public Law 107–115).

NOTE.—The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (H.R. 1868, enacted by reference in sec. 301 of Public Law 104–99; enacted again as Public Law 104–107), provided the following:

"ASIAN DEVELOPMENT BANK

"SEC. 568. The Secretary of the Treasury may, to fulfill commitments of the United States, subscribe to and make payments for shares of the Asian Development Bank in connection with the fourth general capital increase of the Bank. The amount authorized to be appropriated for paid-in shares of the Bank is limited to $66,614,647; the amount authorized to be appropriated for payment for callable shares of the Bank is limited to $3,264,178,021. The amount to be paid in respect of each subscription is authorized to be appropriated without fiscal year limitation. Any subscription by the United States to the capital stock of the Bank shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.".

Appropriations for U.S. payments to participate in the fourth general capital increase have been provided in the following amounts and Public Laws: fiscal year 1996—$661.08 million ($13.22 paid-in capital; $647.86 callable capital) (Public Law 104–107); fiscal year 1997—$661.08 million ($13.22 paid-in capital; $647.86 callable capital) (Public Law 104–208); fiscal year 1998—$661.08 million ($13.22 million paid-in capital, $647.86 callable capital) (Public Law 105–118); fiscal year 1999—$661.08 million ($13.22 million paid-in capital, $647.86 callable capital) (Public Law 105–277); fiscal year 2000—$661.08 million ($13.73 million paid-in capital, $672.75 callable capital) (Public Law 106–113).

d. African Development Bank Act

Partial text of Public Law 97–35 [H.R. 3982], 95 Stat. 357 at 741, approved August 13, 1981; as amended by Public Law 100–202 [Continuing Appropriations, 1988; H.J. Res. 395], 101 Stat. 1329, approved December 22, 1987; Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989; and Public Law 101–513 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991; H.R. 5114], 104 Stat. 1979, approved November 5, 1990

AN ACT To provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982.

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TITLE XIII—INTERNATIONAL AFFAIRS

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SUBTITLE B—INTERNATIONAL DEVELOPMENT BANKS

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PART 3—AFRICAN DEVELOPMENT BANK

SHORT TITLE

SEC. 1331. This part may be cited as the "African Development Bank Act".

ACCEPTANCE OF MEMBERSHIP

SEC. 1332.[1] The President is hereby authorized to accept membership for the United States in the African Development Bank (hereinafter in this part referred to as the "Bank") provided for by the agreement establishing the Bank (hereinafter in this part referred to as the "agreement") deposited in the archives of the United Nations.

GOVERNOR AND ALTERNATE GOVERNOR

SEC. 1333.[2] (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor, an Alternate Governor, and a Director[3] of the Bank. The term of office for the Governor and the Alternate Governor shall be five years, subject at any time to termination of appointment or to reappointment. The Governor and Alternate Governor shall remain in office until a successor has been appointed.

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[1] 22 U.S.C. 290i.
[2] 22 U.S.C. 290i–1.
[3] Sec. 562(b)(3) of Public Law 101–513 (104 Stat. 2034) struck out "Governor and an Alternate Governor" and inserted in lieu thereof "Governor, an Alternate Governor, and a Director".

(b) No person shall be entitled to receive any salary or other compensation from the United States for services as a Governor or Alternate Governor, except for reasonable expenses to attend meetings of the Board of Governors.

(c) The Governor, or in the Governor's absence the Alternate Governor, on the instructions of the President,[4] shall cast the votes of the United States for the Director to represent the United States in the Bank.

DIRECTOR OR ALTERNATE DIRECTOR; ALLOWANCES

SEC. 1334.[5] The Director or Alternate Director representing the United States, if citizens of the United States, may, in the discretion of the President,[4] receive such compensation, allowances, and other benefits as, together with those received from the Bank and from the African Development fund, may not exceed those authorized for a chief of mission under the Foreign Service Act of 1980.

APPLICABILITY OF BRETTON WOODS AGREEMENTS ACT

SEC. 1335.[6] The provisions of section 4 of the Bretton Woods Agreements Act (22 U.S.C. 286b) shall apply with respect to the Bank to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund.[7]

RESTRICTIONS

SEC. 1336.[8] (a) Unless authorized by law, neither the President, nor any person or agency, shall, on behalf of the United States—

(1) subscribe to additional shares of stock of the Bank;

(2) vote for or agree to any amendment of the agreement which increases the obligations of the United States, or which changes the purpose or functions of the Bank; or

(3) make a loan or provide other financing to the Bank, except that funds for technical assistance may be provided to the Bank by a United States agency created pursuant to an Act of Congress which is authorized by law to provide funds to international organizations.

FEDERAL RESERVE BANKS AS DEPOSITORIES

SEC. 1337.[9] Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent, and

[4] Sec. 3 of Executive Order 12403 (Feb. 8, 1983; 48 F.R. 6087) delegated this authority vested in the President to the Secretary of the Treasury.

[5] 22 U.S.C. 290i–2.

[6] 22 U.S.C. 290i–3.

[7] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(e)(7) struck out the last sentence of this section which read: "Reports with respect to the Bank under paragraphs (5) and (6) of section 4 of that Act shall be included in the first and subsequent reports made thereunder after the United States accepts membership in the Bank.".

[8] 22 U.S.C. 290i–4. As enrolled; the section does not include a subsec. (b).

[9] 22 U.S.C. 290i–5.

the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

SUBSCRIPTION OF STOCK

SEC. 1338.[10] (a) The President[4] is authorized to agree to subscribe on behalf of the United States to twenty-nine thousand eight hundred and twenty shares of the capital stock of the Bank: *Provided, however,* That the subscription shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) There is authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury of the initial United States subscription to twenty-nine thousand eight hundred and twenty shares of the capital stock of the Bank, $359,733,570: *Provided, however,* That not more than $17,986,679 of such sum may be available for paid in subscriptions to the Bank for each of the fiscal years 1982, 1983, and 1984.[11]

(c) Any payment or distributions of moneys from the Bank to the United States shall be covered into the Treasury as a miscellaneous receipt.

JURISDICTION OF UNITED STATES COURTS

SEC. 1339.[12] For the purposes of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Bank in accordance with the agreement, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States or its agent appointed for the purpose of accepting service or notice of service is located, and any such action to which the Bank shall be 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 Bank is defendant in any action in a State court, it may at any time before the trial thereof 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.

[10] 22 U.S.C. 290i–6.

[11] Appropriations for U.S. payments authorized in sec. 1338 have been provided in the following amounts and Public Laws: fiscal year 1981—$72 million ($18 million paid-in capital; $54 million callable capital) (Public Law 97–12); fiscal year 1982—$0; fiscal year 1983—$0; fiscal year 1984—$72 million ($18 million paid-in capital; $54 million callable capital) (Public Law 98–151); fiscal year 1985—$72 million ($18 million paid-in capital; $54 million callable capital) (Public Law 98–473); fiscal year 1986—$64.8 million ($16.2 million paid-in capital; $48.6 million callable capital) (Public Law 99–190), reduced by $0.7 million as a result of sequestration (Public Law 99–177); fiscal year 1987—$55.9 million ($13.9 million paid-in capital; $41.9 million callable capital) (Public Law 99–591); fiscal year 1987 supplemental—$23.9 million ($6.5 million paid-in capital; $17.4 million callable capital) (Public Law 100–71).

[12] 22 U.S.C. 290i–7.

EFFECTIVENESS OF AGREEMENT

SEC. 1340.[13] Paragraph 5 of article 49, articles 50 through 59, and the other provisions of the agreement shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in the Bank. The President, at the time of deposit of the instrument of acceptance of membership by the United States in the Bank, shall also deposit a declaration as provided in article 64, paragraph 3, of the agreement that the United States retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to United States citizens or nationals.

SECURITIES ISSUED BY THE BANK

SEC. 1341.[14] (a) Any securities issued by the Bank (including any guarantee by the Bank, whether or not limited in scope) in connection with the raising of funds for inclusion in the Bank's ordinary capital resources as defined in article 9 of the agreement and any securities guaranteed by the Bank as to both principal and interest to which the commitment in article 7, paragraph 4(a), of the agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c) and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations as necessary in the public interest or for the protection of investors.

(b) The Securities and Exchange Commission, acting in consultation with such agency or officer as the President shall designate,[4] is authorized to suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this section and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

TECHNICAL AMENDMENTS

SEC. 1342. (a) The seventh sentence of paragraph 7 of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by striking out "or" after "the Inter-American Development Bank" and inserting in lieu thereof a comma, and by inserting "or the African Development Bank" after "the Asian Development Bank".

(b) * * *

(c) * * *

[13] 22 U.S.C. 290i–8.
[14] 22 U.S.C. 290i–9.

(d) Section 51 of Public Law 91–599 (22 U.S.C. 276c–2) is amended by striking out "and" after "the Asian Development Bank," and inserting "and the African Development Bank," after "the African Development Fund,".

SEC. 1343.[15] (a) The United States Governor of the Bank is authorized to agree to subscribe on behalf of the United States to fifty-nine thousand, six hundred and thirty-two shares of the capital stock of the Bank, except that the subscription shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) In order to pay for the United States subscription authorized in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $719,370,633, for payment by the Secretary of the Treasury.[16]

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[15] 22 U.S.C. 290i–10. Sec. 1343 was added by title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e) of the Continuing Appropriations, 1988; Public Law 100–202; 101 Stat. 1329–134), which enacted into law the amendment made by sec. 301 of H.R. 3750, as introduced by the House Committee on Banking, Finance and Urban Affairs, on December 11, 1987.

[16] Appropriations for the U.S. share of the fourth general capital increase as authorized in sec. 1343 have been made in the following amounts and Public Laws: fiscal year 1988—$143.9 million ($9 million paid-in capital; $134.9 million callable capital) (Public Law 100–202); fiscal year 1989—$142 million ($7.3 million paid-in capital; $135.1 million callable capital) (Public Law 100–461); fiscal year 1990—$144.4 million ($9.6 million paid-in capital; $134.2 million callable capital) (Public Law 101–167), reduced by $0.11 million as a result of sequestration (Public Law 101–239); fiscal year 1991—$145.5 million ($10.1 million paid-in capital; $135.4 million callable capital), reduced by $0.19 million as a result of sequestration (Public Law 101–508), $0.19 restored (Public Law 102–27); fiscal year 1992—$141.7 million ($8.85 million paid-in capital; $132.8 million callable capital) (Public Law 102–145, as amended by Public Law 102–266); fiscal year 1993—$0; fiscal year 1994—$0; fiscal year 1995—$2.1 million ($133,000 paid-in capital, $2.0 million callable capital) (Public Law 103–306).

Sec. 594 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (H.R. 3422, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1501A–122), provided the following:

"AUTHORIZATIONS

"SEC. 594. The Secretary of the Treasury may, to fulfill commitments of the United States (1) effect the United States participation in the fifth general capital increase of the African Development Bank * * * . The following amounts are authorized to be appropriated without fiscal year limitation for payment by the Secretary of the Treasury: $40,847,011 for paid-in capital, and $639,932,485 for callable capital, of the African Development Bank; * * * .".

Appropriations for the increase were made in the following amounts and Public Laws: fiscal year 2000—$68.1 million ($4.1 million paid-in capital, $64 million callable capital) (Public Law 106–113); fiscal year 2001—$103.6 million ($6.1 million paid-in capital, rescission—minus $0.013 million; $97.5 million callable capital) (Public Law 106–429); fiscal year 2002—$85 million ($5.1 million paid-in capital, $79.992 million callable capital) (Public Law 107–115); fiscal year 2003—$84.7 million ($5.104 million paid-in capital, rescission—minus $0.033 million, $79.603 million callable capital) (Public Law 108–7); fiscal year 2004—$84.2 million ($5.105 million paid-in capital, resicssion—minus $0.030 million, $79.14 million callable capital) (Public Law 108–199); fiscal year 2005—$83.6 million ($4.1 million paid-in capital, rescission—minus $0.030 million; $79.533 million callable capital) (Public Law 108–447); fiscal year 2006—$92 million ($3.638 million paid-in capital, $88.334 million callable capital) (Public Law 109–102).

e. African Development Fund Act, as amended

Partial text of Public Law 94–302 [H.R. 9721], 90 Stat. 591, approved May 31, 1976; as amended by Public Law 95–118 [H.R. 5262], 91 Stat. 1067 at 1069, approved October 3, 1977; Public Law 96–259 [S. 662], 94 Stat. 429 at 430, approved June 3, 1980; Public Law 96–465 [H.R. 6790], 94 Stat. 2071 at 2161, approved October 17, 1980; Public Law 98–181 [Supplemental Appropriations Act, 1984; H.R. 3959], 97 Stat. 1153 at 1286, approved November 30, 1983; Public Law 99–190 [Further Continuing Appropriations, 1986; H.J. Res. 465], 99 Stat. 1294, approved December 19, 1985; H.R. 4645 as enacted into law by Public Law 100–461 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989; H.R. 4637], 102 Stat. 2268, approved October 1, 1988; Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989; Public Law 102–145 [Further Continuing Appropriations, Fiscal Year 1992; H.J. Res. 360, as amended by Public Law 102–266], 105 Stat. 968 at 106 Stat. 98, approved October 28, 1991; Public Law 108–199 [Division D of the Consolidated Appropriations Act, 2004; H.R. 2673], 118 Stat. 3 at 118 Stat. 204, approved January 23, 2003; and Public Law 109–102 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006; H.R. 3057], 119 Stat. 2172, approved November 14, 2005

AN ACT To provide for increased participation by the United States in the Inter-American Development Bank, to provide for the entry of nonregional members and the Bahamas and Guyana in the Inter-American Development Bank, to provide for the participation of the United States in the African Development Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE II—AFRICAN DEVELOPMENT FUND

SEC. 201. This title may be cited as the "African Development Fund Act".

SEC. 202.[1] The President is hereby authorized to accept participation for the United States in the African Development Fund (hereinafter referred to as the "Fund") provided for by the agreement establishing the Fund (hereinafter referred to as the "agreement") deposited in the archives of the United Nations.

SEC. 203.[2] (a) The President by and with the advice and consent of the Senate, shall appoint a Governor, and an Alternate Governor, of the Fund.

(b) The Governor, or in his absence the Alternate Governor, on the instructions of the President, shall cast the votes of the United States for the Director to represent the United States in the Fund. The Director representing the United States and his Alternate, if they are citizens of the United States, may, in the discretion of the

[1] 22 U.S.C. 290g.
[2] 22 U.S.C. 290g–1.

President, receive such compensation, allowances, and other benefits not exceeding those authorized for a chief of mission, under the Foreign Service Act of 1980.[3]

SEC. 204.[4] The provisions of section 4 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286b), shall apply with respect to the Fund to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund.[5]

SEC. 205.[6] Unless Congress by law authorizes such action, neither the President nor any person or agency, shall, on behalf of the United States:

(a) agree to an increase in the subscription of the United States to the Fund;

(b) vote for or agree to any amendment of the agreement which increases the obligations of the United States, or which would change the purpose of functions of the Fund; or

(c) make a loan or provide other financing to the Fund, except that funds for technical assistance may be provided to the Fund by a United States agency created pursuant to an Act of Congress which is authorized by law to provide funds to international organizations.

SEC. 206.[7] (a) There is hereby authorized to be appropriated without fiscal year limitation, as the United States subscription, $25,000,000 to be paid by the Secretary of the Treasury to the Fund in three annual installments of $9,000,000, $8,000,000, and $8,000,000.

(b) Any repayment or distribution of moneys from the Fund to the United States shall be covered into the Treasury as a miscellaneous receipt.

SEC. 207.[8] Any Federal Reserve bank which is requested to do so by the President shall act as a depository for the Fund, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

SEC. 208.[9] For the purpose of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Fund in accordance with the agreement, the Fund shall be deemed to be an inhabitant of the Federal judicial district in which its principal office or agency appointed for the purpose of accepting service or notice of service is located, and any such action to which the Fund shall be party shall be deemed to arise under the laws of the

[3] The references to the chief of mission and to the Foreign Service Act of 1980 were inserted by Public Law 96–465 (94 Stat. 2161). These references formerly pertained to the Chief of Mission, class 2, and to the Foreign Service Act of 1946, respectively.

[4] 22 U.S.C. 290g–2.

[5] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(e)(6) struck out the last sentence of this section, which read: "Reports with respect to the Fund under paragraphs (5) and (6) of subsection 4 of said Act, as amended, shall be included in the first report made thereunder after the United States accepts participation in the Fund.".

[6] 22 U.S.C. 290g–3.

[7] 22 U.S.C. 290g–4.

[8] 22 U.S.C. 290g–5.

[9] 22 U.S.C. 290g–6.

United States, and the district courts of the United States (including the courts enumerated in title 28, section 460, United States Code) shall have original jurisdiction of any such action. When the Fund is defendant in any action in a State court, it may, at any time before the trial thereof, remove any such action into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

SEC. 209.[10] The agreement, including without limitation articles 41 through 50, shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon the acceptance of participation by the United States in, and the entry into force of, the Fund. The President, at the time of deposit of the instrument of acceptance of participation of the United States in the Fund, shall also deposit a declaration that the United States retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Fund to its citizens or nationals and may deposit a declaration providing for reservations on other matters set forth in article 58.

SEC. 210.[11] The President shall instruct the United States Governor of the Fund to cause the Executive Director representing the United States in the Fund to cast the votes of the United States against any loan or other utilization of the funds of the Fund for the benefit of any country which has—

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) taken steps repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned;

unless the President determines that (A) an arrangement for prompt, adequate, and effective compensation has been made, (B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes,[12] or (C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

SEC. 211.[13] (a) The United States Governor is hereby authorized to contribute on behalf of the United States $50,000,000 to the African Development Fund, which would represent an additional

[10] 22 U.S.C. 290g–7.
[11] 22 U.S.C. 290g–8.
[12] See *Legislation on Foreign Relations*, vol. V, for text.
[13] 22 U.S.C. 290g–10. This section, added as sec. 212 by sec. 601 of Public Law 95–118 (91 Stat. 1069), was redesignated as sec. 211 by sec. 301(1) of Public Law 96–259 (94 Stat. 430). The original sec. 211, which directed the U.S. Governor of the Fund to vote against any loans or assistance to any country engaging in violations of human rights, was repealed by sec. 702

Continued

United States contribution to the first replenishment. The Secretary of the Treasury is directed to begin discussions with other donor nations to the African Development Fund for the purpose of setting amounts and of reviewing and possibly changing the voting structure within the Fund. *Provided, however,* That any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the African Development Fund provided for in this section there are authorized to be appropriated without fiscal year limitation $50,000,000 for payment by the Secretary of the Treasury.[14]

SEC. 212.[15] (a) The United States Governor of the Fund is authorized to contribute on behalf of the United States $125,000,000 to the Fund as the United States contribution to the second replenishment of the resources of the Fund, except that any commitment to make such contribution shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in this section, there is authorized to be appropriated, without fiscal year limitation, $125,000,000 for payment by the Secretary of the Treasury.[16]

(c) For the purpose of keeping to a minimum the cost of the United States, the Secretary of the Treasury—

(1) shall pay the United States contribution to the African Development Fund authorized by this section by letter of credit in three annual installments; and

(2) shall take the steps necessary to obtain a certification from the Fund that any undisbursed balances resulting from drawdowns on such letter of credit will not exceed at any time the United States share of expected disbursement requirements for the following three-month period.

SEC. 213.[17] (a)(1) The United States Governor of the Fund is authorized to contribute on behalf of the United States $150,000,000 to the Fund as the United States contribution to the third replenishment of the resources of the Fund.

(2) Any commitment to make the contribution authorized in paragraph (1) shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $150,000,000 for payment by the Secretary of the Treasury.[18]

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of Public Law 95–118 (91 Stat. 1070). For references to the African Development Fund and human rights, see title VII of Public Law 95–118.

[14] Appropriations for U.S. payment authorized in sec. 211 (AFDF I) were provided in the following amount and Public Law: fiscal year 1979—$25 million (Public Law 95–481).

[15] 22 U.S.C. 290g–11. Sec. 301(2) of Public Law 96–259 (94 Stat. 430) added sec. 212.

[16] Appropriations for U.S. payments authorized in sec. 212 (AFDF II) were provided in the following amounts and Public Laws: fiscal year 1980—$25 million (Public Law 96–123); fiscal year 1981—$41.7 million (Public Law 96–536); fiscal year 1982—$58.3 million (Public Law 97–121).

[17] 22 U.S.C. 290g–12. Sec. 1003 of Public Law 98–181 (97 Stat. 1286) added sec. 213.

[18] Appropriations for U.S. payments authorized in sec. 213 (AFDF III) were provided in the following amounts and Public Laws: fiscal year 1983—$50 million (Public Law 97–377); fiscal year 1984—$50 million (Public Law 98–151); fiscal year 1985—$50 million (Public Law 98–473).

UNITED STATES CONTRIBUTION

SEC. 214.[19] (a)(1) The United States Governor of the Fund is authorized to contribute $225,000,000 to the fourth replenishment of the resources of the Fund.

(2) Any commitment to make the contribution authorized in paragraph (1) shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $225,000,000 for payment by the Secretary of the Treasury.[20]

SEC. 215.[21] FIFTH REPLENISHMENT.

(a) CONTRIBUTION AUTHORIZED.—The United States Governor of the Fund is authorized to contribute $315,000,000 to the fifth replenishment of the resources of the Fund, except that such authority shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) AUTHORIZATION OF APPROPRIATIONS.—In order to pay for the United States contribution provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $315,000,000 for payment by the Secretary of the Treasury.[22]

SEC. 216.[23] SIXTH REPLENISHMENT.

(a) CONTRIBUTION AUTHORIZED.—The United States Governor of the Fund is authorized to contribute $405,000,000 to the sixth replenishment of the resources of the Fund, except that such authority shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—In order to pay for the United States contribution provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $135,000,000 for payment by the Secretary of the Treasury.[24]

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[19] 22 U.S.C. 290g–13. sec. 201 of the Multilateral Development Bank Act of 1985 (H.R. 2253, enacted by reference in sec. 101(i) of the Further Continuing Appropriations, 1986; Public Law 99–190; 99 Stat. 1294) added sec. 214.

[20] Appropriations for U.S. payments authorized in sec. 214 (AFDF IV) were provided in the following amounts and Public Laws: fiscal year 1986—$62.2 million (Public Law 99–190), reduced by $2.7 million as a result of sequestration (Public Law 99–177); fiscal year 1987—$53.8 million (Public Law 99–591); fiscal year 1987 supplemental—$36.6 million (Public Law 100–71); fiscal year 1988—$75 million (Public Law 100–202).

[21] 22 U.S.C. 290g–14. Sec. 2 of H.R. 4645, as enacted into law by sec. 555 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461; 102 Stat. 2268), added sec. 215.

[22] Appropriations for U.S. payments authorized in sec. 215 (AFDF V) for the fifth replenishment of the African Development Fund was provided in the following amounts and Public Laws: fiscal year 1989—$105 million (Public Law 100–461); fiscal year 1990—$104.5 million (Public Law 101–167); fiscal year 1991—$105.5 million (Public Law 101–513), reduced by $2 million as a result of sequestration (Public Law 101–508), further reduced by $2 million as a result of sequestration (Public Law 102–27).

[23] 22 U.S.C. 290g–15. Sec. 125(c) of the Further Continuing Appropriations, Fiscal Year 1992 (Public Law 102–145, as amended by Public Law 102–266), added sec. 216.

[24] Appropriations for U.S. payments authorized in sec. 216 (AFDF VI) for the sixth replenishment of the African Development Fund was provided in the following amounts and Public Laws: fiscal year 1992—$103.9 million (Public Law 102–145, as amended by Public Law 102–266); fiscal year 1993—$103.9 million (Public Law 102–391); fiscal year 1994—$135 million (Public Law 103–87); fiscal year 1995—$124,229 million, rescission—minus $62.015 million (Public Law 103–306.

SEC. 217.[25] **NINTH REPLENISHMENT.**

(a) CONTRIBUTION AUTHORITY.—

(1) IN GENERAL.—The United States Governor of the Fund may contribute on behalf of the United States an amount equal to the amount appropriated under subsection (b), pursuant to the resolution of the Fund entitled "The Ninth General Replenishment of Resources of the African Development Fund.

(2) SUBJECT TO APPROPRIATIONS.—Any commitment to make the contribution authorized by paragraph (1) shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For the contribution authorized by subsection (a), there are authorized to be appropriated such sums as may be necessary for payment by the Secretary of the Treasury, without fiscal year limitation.[26]

SEC. 218.[27] **TENTH REPLENISHMENT.**

(a) The United States Governor of the Fund is authorized to contribute on behalf of the United States $407,000,000 to the tenth replenishment of the resources of the Fund, subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $407,000,000 for payment by the Secretary of the Treasury.

NOTE.—Sec. 526(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (108 Stat. 1632), provided, in part, the following authorization requirement:

"(c) The Secretary of the Treasury may, to fulfill commitments of the United States, * * * (2) contribute to * * * the African Development Fund in connection with the seventh general replenishment of its resources, * * *. The amount to be paid in respect of each such contribution or subscription is authorized to be appropriated without fiscal year limitation. Each such subscription or contribution shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.".

[25] 22 U.S.C. 290g–16. Sec. 583 of the Foreign Operations Appropriations, Export Financing, and Related Programs Appropriations, 2004 (Division D of Public Law 108–199; 118 Stat. 204), added sec. 217.

[26] Appropriations for U.S. payments authorized in sec. 217 (AFDF IX) for the ninth replenishment of the African Development Fund were provided in the following amounts and Public Laws: fiscal year 2003—$108.073 million, rescission—minus $0.702 million (Public Law 108–7; fiscal year 2004—$112,725 million, rescission—minus $0.665 million (Public Law 108–199); fiscal year 2005—$106 million, rescission—minus $0.85 million (Public Law 108–447); fiscal year 2006—$135.7 million (Public Law 109–102).

[27] 22 U.S.C. 290g–17. Sec. 599C(b) of the Foreign Operations Appropriations, Export Financing, and Related Programs Appropriations, 2006 (Public Law 109–102; 119 Stat. 2243), added sec. 218.

Appropriations for U.S. payments to participate in the seventh general replenishment have been provided in the following amounts and Public Laws: fiscal year 1998—$45 million (Public Law 105–118); fiscal year 1999—$128 million (Public Law 105–277); fiscal year 1999 rescission—$1 million (Public Law 106–113).

Sec. 594 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (H.R. 3422, enacted by reference in sec. 1000(a)(7) of Public Law 106–113; 113 Stat. 1501A–122), provided the following:

"AUTHORIZATIONS

"SEC. 594. The Secretary of The Treasury may, to fulfill commitments of the United States: (1) * * * ; and (2) contribute on behalf of the United States to the eighth replenishment of the resources of the African Development Fund * * * . The following amounts are authorized to be appropriated without fiscal year limitation for payment by the Secretary of the Treasury: * * * $300,000,000 for the African Development Fund * * * ".

Appropriations for U.S. participation in the eighth replenishment were made in the following amounts and Public Laws: fiscal year 2000—$127 million (Public Law 106–113); fiscal year 2001—$100 million, rescission—minus $0.22 million (Public Law 106–429); fiscal year 2002—$100 million (Public Law 107–155).

f. European Bank for Reconstruction and Development Act

Sec. 562(c) of Public Law 101–513 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991; H.R. 5114], 104 Stat. 1979 at 2034, approved November 5, 1990

AN ACT Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes, namely:

* * * * * * *

GENERAL AUTHORIZATIONS

SEC. 562. GENERAL AUTHORIZATIONS.—

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INTERNATIONAL BANKING PROVISIONS

* * * * * * *

(c) EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT.—

(1)[1] SHORT TITLE.—This subsection may be cited as the "European Bank for Reconstruction and Development Act".

(2)[2] ACCEPTANCE OF MEMBERSHIP.—The President is hereby authorized to accept membership for the United States in the European Bank for Reconstruction and Development (in this subsection referred to as the "Bank") provided for by the agreement establishing the Bank (in this subsection referred to as the "Agreement"), signed on May 29, 1990.

(3)[3] GOVERNOR AND ALTERNATE GOVERNOR.—

(A) APPOINTMENT.—The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank, an alternate for the Governor, and a Director of the Bank.

(B) COMPENSATION.—Any person who serves as a Governor of the Bank or as an alternate for the Governor may not receive any salary or other compensation from the United States by reason of such service.

(4)[4] APPLICABILITY OF CERTAIN PROVISIONS OF THE BRETTON WOODS AGREEMENTS ACT.—Section 4 of the Bretton Woods Agreements Act shall apply to the Bank in the same manner

[1] 22 U.S.C. 290*l* note.
[2] 22 U.S.C. 290*l*.
[3] 22 U.S.C. 290*l*–1.
[4] 22 U.S.C. 290*l*–2.

in which such section applies to the International Bank for Reconstruction and Development and the International Monetary Fund.

(5)[5] FEDERAL RESERVE BANKS AS DEPOSITORIES.—Any Federal Reserve Bank which is requested to do so by the Bank may act as its depository, or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall exercise general supervision over the carrying out of these functions.

(6)[6] SUBSCRIPTION OF STOCK.—

(A) SUBSCRIPTION AUTHORITY.—

(i) IN GENERAL.—The Secretary of the Treasury may subscribe on behalf of the United States to 100,000 shares of the capital stock of the Bank.

(ii) EFFECTIVENESS OF SUBSCRIPTION COMMITMENT.—Any commitment to make such subscription shall be effective only to such extent or in such amounts as are provided for in advance by appropriations Acts.

(B) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For payment by the Secretary of the Treasury of the subscription of the United States for shares described in subparagraph (A), there are authorized to be appropriated $1,167,010,000 without fiscal year limitation.[7]

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[5] 22 U.S.C. 290*l*–3.

[6] 22 U.S.C. 290*l*–4.

The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118, 22 Stat. 2425), provided for participation in the eleventh replenishment, as follows:

"INTERNATIONAL FINANCIAL INSTITUTIONS

"SEC. 560. (a) AUTHORIZATIONS.—The Secretary of the Treasury may, to fulfill commitments of the United States: (1) effect the United States participation in the first general capital increase of the European Bank for Reconstruction and Development, subscribe to and make payment for 100,000 additional shares of the capital stock of the Bank on behalf of the United States; * * * . The following amounts are authorized to be appropriated without fiscal year limitation for payment by the Secretary of the Treasury: (1) $285,772,500 for paid-in capital, and $984,327,500 for callable capital of the European Bank for Reconstruction and Development; * * *. Each such subscription or contribution shall be subject to obtaining the necessary appropriations.".

Appropriations for the U.S. contribution have been provided in the following amounts and Public Laws: fiscal year 1998—$159 million ($35.8 million paid-in capital, $123.2 million callable capital) (Public Law 105–118); fiscal year 1999—$159 million ($35.8 million paid-in capital, $123.2 million callable capital) (Public Law 105–277); fiscal year 2000—$159 million ($35.8 million paid-in capital, $123.2 million callable capital) (Public Law 106–113); fiscal year 2001—$158.9 million ($35.8 million paid-in capital, $123.2 million callable capital minus fiscal year 2000 recission—$0.79 million) (Public Law 106–429); fiscal year 2002—$159 million ($35.8 million paid-in capital, $123.2 million callable capital) (Public Law 107–115); fiscal year 2003—$159.1 million ($35.8 million paid-in capital, $123.3 million callable capital, rescission—minus $0.233 million) (Public Law 108–7); fiscal year 2004—$156.7 million ($35.4 million paid-in capital, rescission—minus $0.209 million, $121.4 million callable capital) (Public Law 108–199); fiscal year 2005—$157.4 million ($35.4 million paid-in capital, rescission—minus $0.283 million, $122 million callable capital) (Public Law 108–447); fiscal year 2006—$3.3 million ($1.016 million paid-in capital, $2.25 million callable capital) (Public Law 109–102).

[7] Appropriations for U.S. subscription authorized in para. (6) were provided in the following amounts and Public Laws: fiscal year 1991—$233.4 million ($70 million paid-in capital, $163.38 callable capital) (Public Law 101–513), reduced by $1.3 million as a result of sequestration (Public Law 101–508), $1.3 million restored (Public Law 102–27); fiscal year 1992—$230 million ($68.99 million paid-in capital, $160.97 callable capital) (Public Law 102–145, as amended by Public Law 102–266); fiscal year 1993—$200 million ($60 million paid in capital, $140 million callable capital) (Public Law 102–391); fiscal year 1994—$0; fiscal year 1995—$230.6 million ($69.18 million paid-in capital; $161.42 million callable capital) (Public Law 103–306); fiscal year 1996—$233.33 million ($70 million paid-in capital; $163.33 callable capital) (Public Law 104–107); fiscal year 1997—$39.73 million ($11.92 million paid-in capital; $27.81 million callable capital) (Public Law 104–208).

Sec. 579 of Public Law 101–513 (104 Stat. 2045), as continued by Public Law 102–145, as amended, further provided the following:

Continued

(C) DISPOSITION OF NET INCOME DISTRIBUTIONS BY THE BANK.—Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

(7)[8] JURISDICTION AND VENUE OF CIVIL ACTIONS BY OR AGAINST THE BANK.—

(A) JURISDICTION.—The United States district courts shall have original and exclusive jurisdiction of any civil action brought in the United States by or against the Bank.

(B) VENUE.—For purposes of section 1391(b) of title 28, United States Code, the Bank shall be deemed to be a resident of the judicial district in which the principal office of the Bank in the United States, or its agent appointed for the purpose of accepting service or notice of service, is located.

(8)[9] EFFECTIVENESS OF AGREEMENT.—The Agreement shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in the Bank and the entry into force of the Agreement.

(9)[10] EXEMPTION FROM SECURITIES LAWS FOR CERTAIN SECURITIES ISSUED BY THE BANK; REPORTS REQUIRED.—

(A) EXEMPTION FROM SECURITIES LAWS; REPORTS TO SECURITIES AND EXCHANGE COMMISSION.—Any securities issued by the Bank (including any guaranty by the Bank, whether or not limited in scope) in connection with the raising of funds for inclusion in the Bank's ordinary capital resources as defined in article 7 of the Agreement and any securities guaranteed by the Bank as to both principal and interest to which the commitment in article 6, paragraph 4, of the Agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 and section

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"WITHHOLDING OF OBLIGATIONS FOR THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

"SEC. 579. (a) None of the funds made available by this Act for the European Bank for Reconstruction and Development may be obligated until the President reaches an agreement or agreements, as necessary, with the Polish Government or with other creditors, the authority to enter into which he is hereby granted notwithstanding any other provision of law, which accurately reflect the real collectability of the debts of the Polish Government to the Government of the United States and which adjusts the amount of debt and debt service payable by the Polish Government to the Government of the United States accordingly, subject to the following conditions:

"(1) an International Monetary Fund agreement is in effect with respect to Poland, and it is clear that it is the intent of the Polish Government to continue full implementation of that program, and

"(2) the recent historic change of the Polish Government into a democracy has been maintained, and

"(3) the Polish Government is seeking comparable treatment of both public and private external debt.

"(b) If the President determines that, in order to substantially increase the probability of other creditor governments and commercial bankers taking actions adjusting or restructuring their Polish debt to reflect its real collectability, it is best for the United States to use the authority contained in subsection (a), then the President may exercise the authority of subsection (a) unilaterally.

"(c) Funds may be obligated notwithstanding subsection (a) subject to the regular notification procedures of the Committees on Appropriations.".

[8] 22 U.S.C. 290*l*–5.

[9] 22 U.S.C. 290*l*–6.

[10] 22 U.S.C. 290*l*–7.

3(a)(12) of the Securities Exchange Act of 1934. The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

(B) AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION TO SUSPEND EXEMPTION; REPORTS TO THE CONGRESS.—The Securities and Exchange Commission, acting in consultation with such agency or officer as the President shall designate, may suspend the provisions of subparagraph (A) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to the Congress such information as it shall deem advisable with regard to the operations and effect of this paragraph.

(10) TECHNICAL AMENDMENTS.—

(A) ANNUAL REPORT REQUIRED ON PARTICIPATION OF THE UNITED STATES IN THE BANK.—Section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2)) is amended by inserting "European Bank for Reconstruction and Development," before "International Development Association,".

(B) EXEMPTION FROM LIMITATIONS AND RESTRICTIONS ON POWER OF NATIONAL BANKING ASSOCIATIONS TO DEAL IN AND UNDERWRITE INVESTMENT SECURITIES OF THE BANK.—The 7th sentence of paragraph 7 of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by inserting "the European Bank for Reconstruction and Development," before "the Inter-American Development Bank,".

(C) BENEFITS FOR UNITED STATES CITIZEN-REPRESENTATIVES TO THE BANK.—Section 51 of the Act entitled "An Act to authorize United States participation in increases in the resources of certain international financial institutions, to provide for an annual audit of the Exchange Stabilization Fund by the General Accounting Office, and for other purposes." (Public Law 91–599; 22 U.S.C. 276c–2) is amended by inserting "the European Bank for Reconstruction and Development," before "the Inter-American Development Bank,".

(11)[11] CONGRESSIONAL CONSULTATIONS.—During negotiations on the establishment of operational guidelines for the Bank, the Secretary of the Treasury shall—

[11] 22 U.S.C. 290*l*–8. Sec. 584 of Public Law 101–513 (104 Stat. 2046; 22 U.S.C. 290*l*–8 note), as continued by Public Law 102–145, as amended, provided:

"EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

"SEC. 584. In all negotiations concerning the structure, bylaws, and operating procedures of the European Bank for Reconstruction and Development (EBRD), the Secretary of the Treasury shall vigorously seek—

Continued

(A) consult on a regular and timely basis with the Committee on Banking, Finance and Urban Affairs [12] and the Committee on Appropriations of the House of Representatives, and the Committee on Foreign Relations and the Committee on Appropriations of the Senate;

(B) seek to ensure that procedures and mechanisms are established, including the creation of specific departments or staffs within the Bank, which will allow the Bank to assess the impact of any loans, guarantees, or other activities on the environment and on internationally recognized human rights in borrower countries; and

(C) report, through consultation within 90 days after the date of the enactment of this Act, to the Committees specified in subparagraph (A) on the progress of efforts to create such procedures and mechanisms.

"(1) establishment of procedures for environmental assessment of all proposed operations with potentially significant environmental impacts;

"(2) establishment of an environmental unit with sufficient staff to review proposed operations, monitor compliance with environmental provisions, and provide overall policy guidance;

"(3) establishment of procedures for systematic consultation with and involvement of the public and interested nongovernmental organizations, including an opportunity for comment by local communities which may be affected by EBRD operations and establishment of a system of public notification and comment during the development of EBRD policies and operating procedures; and

"(4) agreement that a significant portion of the EBRD's funds shall be devoted to projects focused on environmental restoration and protection.".

[12] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

g. North American Development Bank

(1) North American Development Bank Act

Partial text of Public Law 103–182 [North American Free Trade Agreement Implementation Act; H.R. 3450], 107 Stat. 2057, approved December 8, 1993; as amended by Public Law 108–215 [H.R. 254], 118 Stat. 579, approved April 5, 2004

AN ACT To implement the North American Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled,

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TITLE V—NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE AND OTHER PROVISIONS

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SUBTITLE D—IMPLEMENTATION OF NAFTA SUPPLEMENTAL AGREEMENTS

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PART 2—NORTH AMERICAN DEVELOPMENT BANK AND RELATED PROVISIONS

SEC. 541.[1] NORTH AMERICAN DEVELOPMENT BANK.

(a) ACCEPTANCE OF MEMBERSHIP.—The President is hereby authorized to accept membership for the United States in the North American Development Bank (hereafter in this part referred to as the "Bank") provided for in Chapter II of the Border Environment Cooperation Agreement (hereafter in this part referred to as the "Cooperation Agreement").

(b) SUBSCRIPTION OF STOCK.—

(1) SUBSCRIPTION AUTHORITY.—

(A) IN GENERAL.—The Secretary of the Treasury may subscribe on behalf of the United States up to 150,000 shares of the capital stock of the Bank.

(B) EFFECTIVENESS OF SUBSCRIPTION.—Except as provided in paragraph (3), any such subscription shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(2) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For payment by the Secretary of the Treasury of the subscription of the United States for shares described in paragraph (1), there are authorized to be appropriated $1,500,000,000

[1] 22 U.S.C. 290m. See also Executive Order 12916 (May 13, 1994; 59 F.R. 25779), implementing the agreement between the United States and Mexico to establish the North American Development Bank.

($225,000,000 of which may be used for paid-in capital and $1,275,000,000 of which may be used for callable capital) without fiscal year limitation.[2]

(3) FUNDING; LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS.—

(A) FUNDING.—For fiscal year 1995, the Secretary of the Treasury shall pay to the Bank out of any sums in the Treasury not otherwise appropriated the sum of $56,250,000 for the paid-in portion of the United States share of the capital stock of the Bank, 10 percent of which may be transferred by the Bank to the President pursuant to section 543 to pay for the cost of direct and guaranteed Federal loans.

(B) LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS.—For fiscal year 1995, the Secretary of the Treasury shall subscribe to the callable capital portion of the United States share of the capital stock of the Bank in an amount not to exceed $318,750,000.

(4) DISPOSITION OF NET INCOME DISTRIBUTED BY THE FACILITY.—Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

(c) COMPENSATION OF BOARD MEMBERS.—No person shall be entitled to receive any salary or other compensation from the Bank or the United States for services as a Board member.

(d) APPLICABILITY OF BRETTON WOODS AGREEMENTS ACT.—The provisions of section 4 of the Bretton Woods Agreements Act shall apply with respect to the Bank to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund.

(e) RESTRICTIONS.—Unless authorized by law, neither the President nor any person or agency shall, on behalf of the United States—

(1) subscribe to additional shares of stock of the Bank;

(2) vote for or agree to any amendment of the Cooperation Agreement which increases the obligations of the United States, or which changes the purpose or functions of the Bank; or

(3) make a loan or provide other financing to the Bank.

(f) FEDERAL RESERVE BANKS AS DEPOSITORIES.—Any Federal Reserve bank that is requested to do so by the Bank shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

(g) JURISDICTION OF UNITED STATES COURTS AND ENFORCEMENT OF ARBITRAL AWARDS.—For the purpose of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Bank

[2] Appropriations for the U.S. subscription were provided in the following amounts and Public Laws: fiscal year 1995—$375 million ($56.25 million paid-in capital; $318.75 callable capital) (Public Law 103–182); fiscal year 1996—$375 million ($56.25 million paid-in capital; $318.75 million callable capital) (Public Law 104–107); fiscal year 1997—$375 million ($56.0 million paid-in capital; $318.75 million callable capital) (Public Law 104–208), fiscal year 1998—$375 million ($56.5 million paid-in capital; $318.75 callable capital) (Public Law 105–118).

in accordance with the Cooperation Agreement, including an action brought to enforce an arbitral award against the Bank, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States or its agency appointed for the purpose of accepting service or notice of service is located, and any such action to which the Bank shall be 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 Bank 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.

(h) EXEMPTION FROM SECURITIES LAWS FOR CERTAIN SECURITIES ISSUED BY THE BANK; REPORTS REQUIRED.—

(1) EXEMPTIONS FROM LIMITATIONS AND RESTRICTIONS ON THE POWER OF NATIONAL BANKING ASSOCIATIONS TO DEAL IN AND UNDERWRITE INVESTMENT SECURITIES OF THE BANK.—The seventh sentence of the seventh undesignated paragraph of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), is amended by inserting "the North American Development Bank," after "Inter-American Development Bank,".

(2) EXEMPTION FROM SECURITIES LAWS FOR CERTAIN SECURITIES ISSUED BY THE BANK; REPORTS REQUIRED.—Any securities issued by the Bank (including any guarantee by the Bank, whether or not limited in scope) in connection with the raising of funds for inclusion in the Bank's capital resources as defined in Section 4 of Article II of Chapter II of the Cooperation Agreement, and any securities guaranteed by the Bank as to both the principal and interest to which the commitment in Section 3(d) of Article II of Chapter II of the Cooperation Agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c), and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

(3) AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION TO SUSPEND EXEMPTION; REPORTS TO THE CONGRESS.—The Securities and Exchange Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, is authorized to suspend the provisions of paragraph (2) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this subsection and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

SEC. 542.[3] STATUS, IMMUNITIES, AND PRIVILEGES.

Article VIII of Chapter II of the Cooperation Agreement shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon entry into force of the Cooperation Agreement.

SEC. 543.[4] COMMUNITY ADJUSTMENT AND INVESTMENT PROGRAM.

(a) THE PRESIDENT.—(1) The President may enter into an agreement with the Bank that facilitates implementation by the President of a program for community adjustment and investment in support of the Agreement pursuant to chapter II of the Cooperation Agreement (hereafter in this section referred to as the "community adjustment and investment program").

(2) The President may receive from the Bank 10 percent of the paid-in capital actually paid to the Bank by the United States for the President to carry out, without further appropriations, through Federal agencies and their loan and loan guarantee programs, the community adjustment and investment program, pursuant to an agreement between the President and the Bank.

(3) The President may select one or more Federal agencies that make loans or guarantee the repayment of loans to assist in carrying out the community adjustment and investment program, and may transfer the funds received from the Bank to such agency or agencies for the purpose of assisting in carrying out the community adjustment and investment program.

(4)(A) Each Federal agency selected by the President to assist in carrying out the community adjustment and investment program shall use the funds transferred to it by the President from the Bank to pay for the costs of direct and guaranteed loans, as defined in section 502 of the Congressional Budget Act of 1974, and, as appropriate, other costs associated with such loans, all subject to the restrictions and limitations that apply to such agency's existing loan or loan guarantee program.

(B) Funds transferred to an agency under subparagraph (A) shall be in addition to the amount of funds authorized in any appropriations Act to be expended by that agency for its loan or loan guarantee program.

(5) The President shall—

(A) establish guidelines for the loans and loan guarantees to be made under the community adjustment and investment program;

(B) endorse the grants made by the Bank for the community adjustment and investment program, as provided in Article I, section 1(b), and Article III, section 11(a), of Chapter II of the Cooperation Agreement; and

(C) endorse any loans or guarantees made by the Bank for the community adjustment and investment program, as provided in Article I, section 1(b), and Article III, section 6 (a) and (c) of Chapter II of the Cooperation Agreement.

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The President shall establish an advisory committee to be known as the Community Adjustment

[3] 22 U.S.C. 290m–1.
[4] 22 U.S.C. 290m–2.

and Investment Program Advisory Committee (in this section referred to as the "Advisory Committee") in accordance with the provisions of the Federal Advisory Committee Act.

(2) MEMBERSHIP.—

(A) IN GENERAL.—The Advisory Committee shall consist of 9 members of the public, appointed by the President, who, collectively, represent—

(i) community groups whose constituencies include low-income families;

(ii) any scientific, professional, business, nonprofit, or public interest organization or association which is neither affiliated with, nor under the direction of, a government;

(iii) for-profit business interests; and

(iv) other appropriate entities with relevant expertise.

(B) REPRESENTATION.—Each of the categories described in clauses (i) through (iv) of subparagraph (A) shall be represented by no fewer than 1 and no more than 3 members of the Advisory Committee.

(3) FUNCTION.—It shall be the function of the Advisory Committee—

(A) to provide advice to the President regarding the implementation of the community adjustment and investment program, including advice on the guidelines to be established by the President for the loans and loan guarantees to be made pursuant to subsection (a)(4), advice on identifying the needs for adjustment assistance and investment in support of the goals and objectives of the Agreement, taking into account economic and geographic considerations, and advice on such other matters as may be requested by the President; and

(B) to review on a regular basis the operation of the community adjustment and investment program and provide the President with the conclusions of its review.

(4) TERMS OF MEMBERS.—

(A) IN GENERAL.—Each member of the Advisory Committee shall serve at the pleasure of the President.

(B) CHAIRPERSON.—The President shall appoint a chairperson from among the members of the Advisory Committee.

(C) MEETINGS.—The Advisory Committee shall meet at least annually and at such other times as requested by the President or the chairperson. A majority of the members of the Advisory Committee shall constitute a quorum.

(D) REIMBURSEMENT FOR EXPENSES.—The members of the Advisory Committee may receive reimbursement for travel, per diem, and other necessary expenses incurred in the performance of their duties, in accordance with the Federal Advisory Committee Act.

(E) STAFF AND FACILITIES.—The Advisory Committee may utilize the facilities and services of employees of any Federal agency without cost to the Advisory Committee,

and any such agency is authorized to provide services as requested by the Committee.

(c) OMBUDSMAN.—The President shall appoint an ombudsman to provide the public with an opportunity to participate in the carrying out of the community adjustment and investment program.

(1) FUNCTION.—It shall be the function of the ombudsman—

(A) to establish procedures for receiving comments from the general public on the operation of the community adjustment and investment program, to receive such comments, and to provide the President with summaries of the public comments; and

(B) to perform an independent inspection and programmatic audit of the operation of the community adjustment and investment program and to provide the President with the conclusions of its investigation and audit.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the President, or such agency as the President may designate, $25,000 for fiscal year 1995 and for each fiscal year thereafter, for the costs of the ombudsman.

(d) REPORTING REQUIREMENT.—The President shall submit to the appropriate congressional committees an annual report on the community adjustment and investment program (if any) that is carried out pursuant to this section. Each report shall state the amount of the loans made or guaranteed during the 12–month period ending on the day before the date of the report.

SEC. 544.[5] DEFINITION.

For purposes of this part, the term "Border Environment Cooperation Agreement" (referred to in this part as the "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.

SEC. 545.[6] AUTHORITY TO AGREE TO CERTAIN AMENDMENTS TO THE BORDER ENVIRONMENT COOPERATION AGREEMENT.

The President may agree to amendments to the Cooperation Agreement that—

(1) enable the Bank to make grants and nonmarket rate loans out of its paid-in capital resources with the approval of its Board; and

(2) amend the definition of "border region" to include the area in the United States that is within 100 kilometers of the international boundary between the United States and Mexico, and the area in Mexico that is within 300 kilometers of the international boundary between the United States and Mexico.

SEC. 546.[7] GRANTS OUT OF PAID-IN CAPITAL RESOURCES.

(a) IN GENERAL.—The President shall instruct the United States Federal Government representatives on the Board of Directors of the North American Development Bank to oppose any proposal where grants out of the Bank's paid-in capital resources, except for

[5] 22 U.S.C. 290m–3.
[6] 22 U.S.C. 290m–4. Sec. 1(a) of Public Law 108–215 (118 Stat. 579) added sec. 545.
[7] 22 U.S.C. 290m–5. Sec. 1(b) of Public Law 108–215 (118 Stat. 579) added sec. 546.

grants from paid-in capital authorized for the community adjustment and investment program under the Bank's charter of 1993, would—

(1) be made to a project that is not being financed, in part, by loans; or

(2) account for more than 50 percent of the financing of any individual project.

(b) EXCEPTION.—

(1) GENERAL RULE.—The requirements of subsection (a) shall not apply in cases where—

(A) the President determines there are exceptional economic circumstances for making the grant and consults with the Committee on Foreign Relations of the Senate and the Committee on Financial Services of the House of Representatives; or

(B)(i) the grant is being made for a project that is so small that obtaining a loan is impractical; and

(ii) the grant does not exceed $250,000.

(2) LIMITATION.—Not more than an aggregate of $5,000,000 in grants may be made under this subsection.

* * * * * * *

(2) North American Development Bank Amendments

Partial text of Public Law 108–215 [H.R. 254], 118 Stat. 579, approved April 5, 2004

AN ACT to authorize the President of the United States to agree to certain amendments to the 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, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY TO AGREE TO CERTAIN AMENDMENTS TO THE BORDER ENVIRONMENT COOPERATION AGREEMENT; GRANT AUTHORITY.

(a) AMENDMENT AUTHORITY.—Part 2 of subtitle D of title V of Public Law 103–182 (22 U.S.C. 290m–290m–3) is amended by adding at the end the following: * * *[1]

(b) GRANT AUTHORITY.—* * *

(c) CLERICAL AMENDMENT.—* * *

SEC. 2.[2] ANNUAL REPORT.

The Secretary of the Treasury shall submit annually to the Committee on Financial Services of the House of Representatives and the Committee on Foreign Relations of the Senate a written report on the North American Development Bank, which addresses the following issues:

(1) The number and description of the projects that the North American Development Bank has approved. The description shall include the level of market-rate loans, non-market-rate loans, and grants used in an approved project, and a description of whether an approved project is located within 100 kilometers of the international boundary between the United States and Mexico or within 300 kilometers of the international boundary between the United States and Mexico.

(2) The number and description of the approved projects in which money has been dispersed.

(3) The number and description of the projects which have been certified by the Border Environment Cooperation Commission, but yet not financed by the North American Development Bank, and the reasons that the projects have not yet been financed.

(4) The total of the paid-in capital, callable capital, and retained earnings of the North American Development Bank, and the uses of such amounts.

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[1] Subsec. (a) added sec. 545 to the North American Development Bank Act; subsec. (b) added sec. 546 to that Act; see page 118.

[2] 22 U.S.C. 290m–6.

(5) A description of any efforts and discussions between the United States and Mexican governments to expand the type of projects which the North American Development Bank finances beyond environmental projects.

(6) A description of any efforts and discussions between the United States and Mexican governments to improve the effectiveness of the North American Development Bank.

(7) The number and description of projects authorized under the Water Conservation Investment Fund of the North American Development Bank.

SEC. 3. SENSE OF THE CONGRESS RELATING TO UNITED STATES SUPPORT FOR NADBANK PROJECTS WHICH FINANCE WATER CONSERVATION FOR TEXAS IRRIGATORS AND AGRICULTURAL PRODUCERS IN THE LOWER RIO GRANDE RIVER VALLEY.

(a) FINDINGS.—The Congress finds that—

(1) Texas irrigators and agricultural producers are suffering enormous hardships in the lower Rio Grande River valley because of Mexico's failure to abide by the 1944 Water Treaty entered into by the United States and Mexico;

(2) over the last 10 years, Mexico has accumulated a 1,500,000-acre fee water debt to the United States which has resulted in a very minimal and inadequate irrigation water supply in Texas;

(3) recent studies by Texas A&M University show that water savings of 30 percent or more can be achieved by improvements in irrigation system infrastructure such as canal lining and metering;

(4) on August 20, 2002, the Board of the North American Development Bank agreed to the creation in the Bank of a Water Conservation Investment Fund, as required by Minute 308 to the 1944 Water Treaty, which was an agreement signed by the United States and Mexico on June 28, 2002; and

(5) the Water Conservation Investment Fund of the North American Development Bank stated that up to $80,000,000 would be available for grant financing of water conservation projects, which grant funds would be divided equally between the United States and Mexico.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) water conservation projects are eligible for funding from the North American Development Bank under the 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; and

(2) the Board of the North American Development Bank should support qualified water conservation projects which can assist Texas irrigators and agricultural producers in the lower Rio Grande River Valley.

SEC. 4. SENSE OF THE CONGRESS RELATING TO UNITED STATES SUPPORT FOR NADBANK PROJECTS WHICH FINANCE WATER CONSERVATION IN THE SOUTHERN CALIFORNIA AREA.

It is the sense of the Congress that the Board of the North American Development Bank should support—

(1) the development of qualified water conservation projects in southern California and other eligible areas in the 4 United States border States, including the conjunctive use and storage of surface and ground water, delivery system conservation, the re-regulation of reservoirs, improved irrigation practices, wastewater reclamation, regional water management modeling, operational and optimization studies to improve water conservation, and cross-border water exchanges consistent with treaties; and

(2) new water supply research and projects along the Mexico border in southern California and other eligible areas in the 4 United States border States to desalinate ocean seawater and brackish surface and groundwater, and dispose of or manage the brines resulting from desalination.

SEC. 5. SENSE OF THE CONGRESS RELATING TO UNITED STATES SUPPORT FOR NADBANK PROJECTS FOR WHICH FINANCE WATER CONSERVATION OR IRRIGATORS AND AGRICULTURAL PRODUCERS IN THE SOUTHWEST UNITED STATES.

(a) FINDINGS.—The Congress finds as follows:

(1) Irrigators and agricultural producers are suffering enormous hardships in the southwest United States. The border States of California, Arizona, New Mexico, and Texas are suffering from one of the worst droughts in history. In Arizona, this is the second driest period in recorded history and the worst since 1904.

(2) In spite of decades of water conservation in the southwest United States, irrigated agriculture uses more than 60 percent of surface and ground water.

(3) The most inadequate water supplies in the United States are in the Southwest, including the lower Colorado River basin and the Great Plains River basins south of the Platte River. In these areas, 70 percent of the water taken from the stream is not returned.

(4) The amount of water being pumped out of groundwater sources in many areas is greater than the amount being replenished, thus depleting the groundwater supply.

(5) On August 20, 2002, the Board of the North American Development Bank agreed to the creation in the bank of a Water Conservation Investment Fund.

(6) The Water Conservation Investment Fund of the North American Development Bank stated that up to $80,000,000 would be available for grant financing of water conservation projects, which grant funds would be divided equally between the United States and Mexico.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) water conservation projects are eligible for funding from the North American Development Bank under the 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 Board of the North American Development Bank should support qualified water conservation projects that can assist irrigators and agricultural producers; and

(3) the Board of the North American Development Bank should take into consideration the needs of all of the border states before approving funding for water projects, and strive to fund water conservation projects in each of the border states.

SEC. 6. SENSE OF THE CONGRESS REGARDING FINANCING OF PROJECTS.

(a) IN GENERAL.—It is the sense of the Congress that the Board of the North American Development Bank should support the financing of projects, on both sides of the international boundary between the United States and Mexico, that address coastal and the problem of pollution in both countries having an environmental impact along the Pacific Ocean and Gulf of Mexico shores of the United States and Mexico.

(b) AIR POLLUTION.—It is the sense of the Congress that the Board of the North American Development Bank should support the financing of projects, on both sides of the international boundary between the United States and Mexico, which address air pollution.

h. Bank for Economic Cooperation and Development in the Middle East and North Africa Act

Title VII of sec. 101(c) of Public Law 104–208 [Omnibus Consolidated Appropriations Act for Fiscal Year 1997; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

TITLE VII—MIDDLE EAST DEVELOPMENT BANK

SEC. 701.[1] SHORT TITLE.

This title may be cited as the "Bank for Economic Cooperation and Development in the Middle East and North Africa Act.".

SEC. 702.[2] ACCEPTANCE OF MEMBERSHIP.

The President is hereby authorized to accept membership for the United States in the Bank for Economic Cooperation and Development in the Middle East and North Africa (in this title referred to as the "Bank") provided for by the agreement establishing the Bank (in this title referred to as the "Agreement"), signed on May 31, 1996.

SEC. 703.[3] GOVERNOR AND ALTERNATE GOVERNOR.

(a) APPOINTMENT.—At the inaugural meeting of the Board of Governors of the Bank, the Governor and the alternate for the Governor of the International Bank for Reconstruction and Development, appointed pursuant to section 3 of the Bretton Woods Agreements Act, shall serve ex-officio as a Governor and the alternate for the Governor, respectively, of the Bank. The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank and an alternate for the Governor.

(b) COMPENSATION.—Any person who serves as a Governor of the Bank or as an alternate for the Governor may not receive any salary or other compensation from the United States by reason of such service.

SEC. 704.[4] APPLICABILITY OF CERTAIN PROVISIONS OF THE BRETTON WOODS AGREEMENTS ACT.

Section 4 of the Bretton Woods Agreements Act shall apply to the Bank in the same manner in which such section applies to the International Bank for Reconstruction and Development and the International Monetary Fund.

SEC. 705.[5] FEDERAL RESERVE BANKS AS DEPOSITORIES.

Any Federal Reserve Bank which is requested to do so by the Bank may act as its depository, or as its fiscal agent, and the

[1] 22 U.S.C. 290*o* note.
[2] 22 U.S.C. 290*o*.
[3] 22 U.S.C. 290*o*–1.
[4] 22 U.S.C. 290*o*–2.
[5] 22 U.S.C. 290*o*–3.

Board of Governors of the Federal Reserve System shall exercise general supervision over the carrying out of these functions.

SEC. 706.[6] SUBSCRIPTION OF STOCK.

(a) SUBSCRIPTION AUTHORITY.—

(1) IN GENERAL.—The Secretary of the Treasury may subscribe on behalf of the United States to not more than 7,011,270 shares of the capital stock of the Bank.

(2) EFFECTIVENESS OF SUBSCRIPTION COMMITMENT.—Any commitment to make such subscription shall be effective only to such extent or in such amounts as are provided for in advance by appropriations Acts.

(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For payment by the Secretary of the Treasury of the subscription of the United States for shares described in subsection (a), there are authorized to be appropriated $1,050,007,800 without fiscal year limitation.

(c) LIMITATIONS ON OBLIGATION OF APPROPRIATED AMOUNTS FOR SHARES OF CAPITAL STOCK.—

(1) PAID-IN CAPITAL STOCK.—

(A) IN GENERAL.—Not more than $105,000,000 of the amounts appropriated pursuant to subsection (b) may be obligated for subscription to shares of paid-in capital stock.

(B) FISCAL YEAR 1997.—Not more than $52,500,000 of the amounts appropriated pursuant to subsection (b) for fiscal year 1997 may be obligated for subscription to shares of paid-in capital stock.

(2) CALLABLE CAPITAL STOCK.—Not more than $787,505,852 of the amounts appropriated pursuant to subsection (b) may be obligated for subscription to shares of callable capital stock.

(d) DISPOSITION OF NET INCOME DISTRIBUTIONS BY THE BANK.—Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.

SEC. 707.[7] JURISDICTION AND VENUE OF CIVIL ACTIONS BY OR AGAINST THE BANK.

(a) JURISDICTION.—The United States district courts shall have original and exclusive jurisdiction of any civil action brought in the United States by or against the Bank.

(b) VENUE.—For purposes of section 1391(b) of title 28, United States Code, the Bank shall be deemed to be a resident of the judicial district in which the principal office of the Bank in the United States, or its agent appointed for the purpose of accepting service or notice of service, is located.

SEC. 708.[8] EFFECTIVENESS OF AGREEMENT.

The Agreement shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in the Bank and the entry into force of the Agreement.

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[6] 22 U.S.C. 290*o*–4.
[7] 22 U.S.C. 290*o*–5.
[8] 22 U.S.C. 290*o*–6.

SEC. 709.[9] EXEMPTION FROM SECURITIES LAWS FOR CERTAIN SECURITIES ISSUED BY THE BANK; REPORTS REQUIRED.

(a) EXEMPTION FROM SECURITIES LAWS; REPORTS TO SECURITIES AND EXCHANGE COMMISSION.—Any securities issued by the Bank (including any guaranty by the Bank, whether or not limited in scope) in connection with borrowing of funds, or the guarantee of securities as to both principal and interest, shall be deemed to be exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 and section 3(a)(12) of the Securities Exchange Act of 1934. The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

(b) AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION TO SUSPEND EXEMPTION; REPORTS TO THE CONGRESS.—The Securities and Exchange Commission, acting in consultation with such agency or officer as the President shall designate, may suspend the provisions of subsection (a) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to the Congress such information as it shall deem advisable with regard to the operations and effect of this section.

SEC. 710. TECHNICAL AMENDMENTS.

(a) ANNUAL REPORT REQUIRED ON PARTICIPATION OF THE UNITED STATES IN THE BANK.—Section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2)) is amended by inserting "Bank for Economic Cooperation and Development in the Middle East and North Africa," after "Inter-American Development Bank".

(b) EXEMPTION FROM LIMITATIONS AND RESTRICTIONS ON POWER OF NATIONAL, BANKING ASSOCIATIONS TO DEAL IN AND UNDERWRITE INVESTMENT SECURITIES OF THE BANK.—The seventh sentence of paragraph 7 of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by inserting "Bank for Economic Cooperation and Development in the Middle East and North Africa," after "the Inter-American Development Bank".

(c) BENEFITS FOR UNITED STATES CITIZEN-REPRESENTATIVES TO THE BANK.—Section 51 of Public Law 91–599 (22 U.S.C. 276c–2) is amended by inserting "the Bank for Economic Cooperation and Development in the Middle East and North Africa," after "the Inter-American Development Bank,".

[9] 22 U.S.C. 290*o*–7.

2. Authorization for Increased U.S. Participation

a. International Development and Finance Act of 1989

Partial text of Public Law 101–240 [H.R. 2494], 103 Stat. 2492, approved December 19, 1989

NOTE.—This Act consists largely of amendments to Public Laws governing international financial institutions. Such amendments have been incorporated into those Public Laws at the appropriate places.

AN ACT To reauthorize the Export-Import Bank tied aid credit fund and pilot interest subsidy program, to provide for the participation of the United States in a replenishment of the Inter-American Development Bank and in the Enhanced Structural Adjustment Facility of the International Monetary Fund, to improve the safety and soundness of the United States banking system and encourage the reduction of the debt burdens of the highly indebted countries, to encourage the multilateral development banks to engage in environmentally sustainable lending practices and give greater priority to poverty alleviation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "International Development and Finance Act of 1989".

(b) TABLE OF CONTENTS.—* * *

TITLE I—EXPORT-IMPORT BANK ACT AMENDMENTS

SEC. 101. EXPORT-IMPORT BANK ACT AMENDMENTS. * * *

(e) REPORT WITH RESPECT TO LOAN LOSS RESERVES.—Before the end of the 6-month period beginning on the date of the enactment of this section, the Export-Import Bank of the United States shall submit a report to the Congress explaining why the Bank has not established a loan loss reserve. In preparing such report, the Bank shall—

(1) determine if the establishment of a loan loss reserve would result in the unproductive characterization of the creditworthiness of certain types of borrowers;

(2) consult with the appropriate Executive branch entities to determine the budgeting and financial management implications of establishing a loan loss reserve;

[1] 22 U.S.C. 2151 note.

(3) review whether, and the extent to which similar bilateral and multilateral lending institutions make provision against loan losses; and

(4) report on the steps needed to return the Bank to profitability.

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SEC. 103.[2] EXPORT-IMPORT PROGRAMS TO THE PEOPLE'S REPUBLIC OF CHINA PROHIBITED UNLESS CERTAIN CONDITIONS ARE MET.

(a) Notwithstanding any other provision of law and subject to the provisions of subsections (b) and (c), the Export-Import Bank of the United States shall not finance any trade with, nor extend any loan, credit, credit guarantee, insurance or reinsurance to the People's Republic of China.

(b) The prohibitions described in subsection (a) of this section shall not apply to food or agricultural commodities.

(c) The President may waive the prohibitions in subsection (a) if he makes a report to Congress either—

(1) that the Government of the People's Republic of China has made progress on a program of political reform throughout the country, as well as in Tibet, which includes—

(A) lifting of martial law;

(B) halting of executions and other reprisals against individuals for the nonviolent expression of their political beliefs;

(C) release of political prisoners;

(D) increased respect for internationally recognized human rights, including freedom of expression, the press, assembly, and association; and

(E) permitting a freer flow of information, including an end to the jamming of Voice of America and greater access for foreign journalists; or

(2)[3] it is in the national interest of the United States to terminate a suspension under subsection (a).

TITLE II—INTER-AMERICAN DEVELOPMENT BANK[4]

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SEC. 205. SENSE OF THE CONGRESS THAT INTER-AMERICAN DEVELOPMENT BANK LOANS SHOULD REDUCE DEPENDENCE ON ILLICIT NARCOTICS.

It is the sense of the Congress that, whenever possible and appropriate, loans made by the Inter-American Development Bank during the 4-year period beginning on January 1, 1990, should pro-

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[2] 12 U.S.C. 635 note.

[3] On December 19, 1989 (same date as enactment of this Act), the President reported to the Speaker of the House of Representatives and President of the Senate the following:

"Pursuant to the authority vested in me by subsection 103(c)(2) of the International Development and Finance Act of 1989 (the 'Act'), and as President of the United States, I hereby report that it is in the national interest of the United States to terminate the suspensions under subsection 103(a) of the Act of programs of the Export-Import Bank of the United States for the People's Republic of China. I am thereby waiving the prohibitions on the Export-Import Bank's financing any trade with, and on extending any loan, credit, credit guarantee, insurance or reinsurance to the People's Republic of China as provided in subsection 103(a)." [*Weekly Compilation of Presidential Documents.* December 25, 1989, vol. 235, no. 51, p. 1973.]

[4] Secs. 201 through 204 amended the Inter-American Development Bank Act.

mote economic development which will reduce the growing economic dependence on the production and transit of illicit narcotics in certain borrower countries.

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TITLE IV—INTERNATIONAL DEBT PROVISIONS [5]

SEC. 401. SHORT TITLE.

This title may be cited as the "Foreign Debt Reserving Act of 1989".

SEC. 402.[6] ADDITIONAL RESERVE REQUIREMENTS.

(a) FINDINGS.—The Congress finds that—

(1) since the adoption of the International Lending Supervision Act of 1983, the credit quality of loans by United States banking institutions to highly indebted countries has deteriorated and the prospects for full repayment of such loans have diminished;

(2) in general during this period, the level of country exposure and transfer risk associated with loans by United States banking institutions to highly indebted countries has not been adequately reflected in the reserve levels established by many individual United States banking institutions or the reserve requirements imposed by Federal banking agencies pursuant to such Act;

(3) during the last 3 years and particularly in recent months, United States banking institutions have increased their reserves for possible losses from loans to highly indebted countries but such reserves remain, in some cases, significantly lower than reserves established by banking institutions in a number of foreign countries and may not be adequate to deal with potential risks; and

(4) in order to fulfill the purposes of such Act, the Federal banking agencies should take a more active role in reviewing reserve levels established by United States banking institutions for potential losses from loans to highly indebted countries and in requiring appropriate levels of both special and general reserves to reflect the increased risk of such loans.

(b)[7] IN GENERAL.—* * *

SEC. 403. REPORT ON MARK TO MARKET ACCOUNTING.

(a) REPORT REQUIRED.—Before the end of the 90-day period beginning on the date of the enactment of this section, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency shall jointly report to the Committee on Banking, Finance and Urban Affairs[8] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the merits of mark to market accounting treatment as an appropriate accounting

[5] 12 U.S.C. 3901 note.

[6] 12 U.S.C. 3904a note.

[7] Sec. 402(b) amended the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) by inserting a new sec. 905A.

[8] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

treatment for the sovereign debt of highly indebted countries which is held by United States commercial banks.

(b) CONTENTS OF REPORT.—The report required under subsection (a) shall include—

(1) a discussion of the merits of mark to market accounting treatment as the appropriate accounting treatment for the sovereign debt of highly indebted countries which is held by United States commercial banks; and

(2) a description of the factors which the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency will consider in future assessments of the applicability of mark to market accounting to such debt.

SEC. 404. STUDY ON ELIMINATION OF CAPITAL FLIGHT.

(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Monetary Fund to propose that the Fund conduct a study on multilateral means by which the banking industry might help reverse capital flight from countries which are engaged in debt restructuring, including—

(1) the feasibility of disclosing the names of account holders whose accounts may consist of flight capital, and the balances of such accounts;

(2) the usefulness of such disclosures in deterring the creation and maintenance of such accounts, and how such deterrence would operate or be defeated;

(3) the extent to which any such information is gathered and to whom such information is made available;

(4) the receptiveness of such countries to the disclosure of such information;

(5) the difficulties in, and the cost of, collecting such information and overcoming legal obstacles used to disguise the true ownership of such deposits, including the feasibility of using the threat of confiscatory penalties to prevent the disguising of the ownership of deposits;

(6) the usefulness of using taxes as a means to encourage the repatriation of flight capital; and

(7) the applicability (if any) of efforts to facilitate the identification, tracing, seizure, and forfeiture of drug crime proceeds, and to prevent the use of the banking system and of financial institutions for the purpose of money laundering.

(b) FLIGHT CAPITAL DEFINED.—As used in subsection (a), the term "flight capital" means any asset—

(1)(A) which is deposited in a banking institution for safekeeping or investment purposes; or

(B) for which a financial institution serves as a conduit, an agent, or a fiduciary in a transaction; and

(2) the owner of which may be a legal resident of a country other than the country in which the institution is located.

(c) REPORT TO THE CONGRESS.—Not later than the end of the 180-day period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Chairman of the Committee on Banking, Finance and Urban Affairs[8] of the House

of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the actions taken and studies completed as required by subsection (a).

SEC. 405. FACTORS TO BE TAKEN INTO ACCOUNT IN DEVELOPING UNITED STATES POLICY TOWARD DEBT REDUCTION FOR CERTAIN HIGHLY INDEBTED COUNTRIES; REPORT TO THE CONGRESS.

(a) FACTORS TO BE TAKEN INTO ACCOUNT.—In developing the policy of the United States Government with respect to debt reduction for each highly indebted country which has a substantial share of the export market for 1 or more agricultural commodities the export market for which the United States also has a substantial share, the Secretary of the Treasury shall consider among other factors the effects of such policy on:

(1) United States exports of such commodities.

(2) The world price of such commodities.

(3) Domestic agricultural production and land distribution patterns in such country.

(4) The volume of exports from such country of agricultural commodities the export market for which such country has a substantial share of.

(5) Basic nutrition levels in such country.

(b) REPORT TO THE CONGRESS.—Before the end of the 12-month period beginning on the date of the enactment of this section, the Secretary of the Treasury shall submit a report to the Congress on the potential impact of such policy on such factors in the highly indebted countries.

(c) HIGHLY INDEBTED COUNTRY DEFINED.—As used in this section, the term "highly indebted country" means any country designated as a "Highly Indebted Country" in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before the date of the enactment of this section.

SEC. 406. SENSE OF THE CONGRESS THAT AGREEMENTS TO REDUCE DEBT BURDEN SHOULD BE ACCOMPANIED BY TRADE LIBERALIZATION.

(a) FINDINGS.—The Congress finds that—

(1) Third World debtor nations have often been forced to raise trade barriers in order to accumulate foreign exchange surpluses to repay debt obligations;

(2) trade flows between such nations and the United States have lessened due to the debt crisis;

(3) the reduction of trade barriers would benefit the world economy and promote economic growth; and

(4) the Brady plan encourages debt reduction agreements on behalf of domestic financial institutions.

(b) SENSE OF THE CONGRESS.—It is the sense of Congress that the Secretary of the Treasury should continue to encourage trade liberalization as an element of economic reform programs.

SEC. 407.[9] LINKAGE OF DEBT REDUCTION LOANS TO REDUCTION IN DRUG TRAFFICKING; REPORT TO CONGRESS.

(a) FINDINGS.—The Congress finds that—

(1) the Brady Initiative is a positive step, recognizing as it does the need for reducing the debt and debt service burdens of the indebted developing countries;

(2) the multilateral development banks should, as part of this debt reduction process, encourage such countries to further reform their economies by reducing their dependence on production and trafficking of illicit narcotics; and

(3) reduction of debt should relieve some of the financial burden on these countries, and thereby enable them to rely on legal income-generating activities.

(b) INSTRUCTION OF UNITED STATES EXECUTIVE DIRECTORS.—The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank that, in voting with respect to loans from the multilateral development bank to reduce the debt and debt burden of borrowing countries which are major producers, processors, traffickers, or exporters of illegal drugs to the United States, the Executive Director shall give preference to those countries which show marked improvement in reducing the volume of cultivation, processing, trafficking, and export to the United States of illegal drugs. In making a determination under the preceding sentence with respect to a country's improvement, the Secretary of the Treasury shall consult with the heads of the relevant agencies.

(c) REPORT TO CONGRESS.—The Secretary of the Treasury shall include, in the detailed accounting required by section 2018(c) of the International Narcotics Control Act of 1986 (22 U.S.C. 2191 note), relating to multilateral development bank assistance for drug eradication and crop substitution programs, an additional discussion of the steps taken and the progress made in implementing the goals set forth in subsection (b) of this section, and further steps needed to secure the achievement of these goals.

(d) DEFINITIONS.—As used in this section—

(1) the term "multilateral development bank" includes the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Inter-American Investment Corporation, the Asian Development Bank, the African Development Bank, and the African Development Fund; and

(2) the term "illegal drugs" means "narcotic and psychotropic drugs and other controlled substances", as defined in section 481(e)(3)[10] of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)(3)).

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[9] 22 U.S.C. 2291 note.

[10] Formerly read "section 481(i)(3)". Sec. 6 of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4932) provided that: "Any reference in any provision of law enacted before the date of enactment of this Act to section 481(e) or 481(i) of that Act shall be deemed to be a reference to section 489 or section 481(e) * * * respectively".

TITLE V—ALLEVIATION OF POVERTY; ENVIRONMENTAL PROVISIONS; DEBT-FOR-DEVELOPMENT SWAPS; CONSOLIDATION OF REPORTING REQUIREMENTS

SUBTITLE A—ALLEVIATION OF POVERTY

SEC. 501.[11] INCREASING THE PRODUCTIVE ECONOMIC PARTICIPATION OF THE POOR. * * *

SUBTITLE B—INTERNATIONAL DEBT EXCHANGES AND THE ENVIRONMENT

SEC. 511. SENSE OF THE CONGRESS RESOLUTION REGARDING ENVIRONMENTAL POLICY AND INTERNATIONAL DEBT EXCHANGES.

It is the sense of the Congress that—

(1) the Secretary of the Treasury should include support for sustainable development and conservation projects when providing a framework for negotiating or facilitating exchanges or reductions of commercial debt of foreign countries; and

(2) that in assisting or facilitating the reduction of debt of heavily indebted foreign countries, through multilateral institutions such as the International Monetary Fund or the International Bank for Reconstruction and Development, the Secretary of State and the Secretary of the Treasury should—

(A) support efforts to provide adequate resources for sustainable development and conservation projects as a component of the restructured commercial bank debt of that country; and

(B) in providing such support, seek to assure that—

(i) the host government, or a local nongovernmental organization acting with the support of the host government, has identified conservation or sustainable development projects it will target for assistance;

(ii) there will be in place an organization, either governmental or nongovernmental, that will have the commitment to assure the long-term viability of the project; and

(iii) the allocation of the resources provided for conservation and sustainable development projects through the debt restructuring agreement is done in a manner that will not overwhelm or distort economic conditions in the host country.

[11] Sec. 501 amended the International Financial Institutions Act, redesignating sec. 1613 as sec. 1614 (as added by sec. 206 of this Act), and adding a new sec. 1613 (22 U.S.C. 262p–5). Sec. 1614 is further redesignated as sec. 1617 by sec. 512 of this Act, which also adds new secs. 1614 through 1616.

SEC. 512.[12] MULTILATERAL DEVELOPMENT BANKS AND DEBT-FOR-NATURE EXCHANGES. * * *

SUBTITLE C—ENVIRONMENTAL IMPACT ASSESSMENTS

SEC. 521.[13] ASSESSMENT OF ENVIRONMENTAL IMPACT OF PROPOSED MULTILATERAL DEVELOPMENT BANK ACTIONS. * * *

SUBTITLE D—DEBT-FOR-DEVELOPMENT SWAPS

SEC. 531.[14] ENCOURAGEMENT OF DEBT-FOR-DEVELOPMENT SWAPS THROUGH LOCAL CURRENCY REPAYMENT.

(a) STATEMENT OF POLICY.—It is the sense of the Congress that—

(1) debt-for-development swaps, where payment is made in local currency at the free market rate, serve a useful purpose by providing banking institutions with constructive opportunities for the reduction of the external debt of highly indebted developing countries in a process that involves the participation of private, nonprofit groups in providing a stimulus to the economic and social development of such developing countries;

(2) debt-for-development swaps provide highly indebted developing countries with a creative method of reducing external debt burdens, while promoting their economic growth and restructuring objectives;

(3) banking institutions should give careful consideration to engaging in such swaps as one means of strengthening overall loan portfolios through the reduction of high external debt burdens while expanding economic opportunities through private sector initiatives; and

(4) in order to avoid any bias against such swaps in the regulatory framework applicable to the financial reporting of banking institutions, where payment is made in local currency at the free market rate, appropriate recognition of the fair market exchange value of the currency so received should be made.

(b) NOTIFICATION RELATING TO LOCAL CURRENCY REPAYMENT THROUGH DEBT-FOR-DEVELOPMENT SWAPS.—Before the end of the 6-month period beginning on the date of the enactment of this section, each appropriate Federal banking agency shall adopt uniform guidelines that will effectuate the policy set forth in subsection (a) concerning the regulatory framework and accounting treatment of debt-for-development swaps involving repayment in local currency at the free market rate. For the purpose of such guidelines, the impact of such swaps on reported loan loss reserves shall be determined by valuing currency received in such swaps at fair market exchange value.

(c) DEFINITIONS.—As used in this section:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the meaning given such term in section 903(1) of the International Lending Supervision Act of 1983.

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[12] Sec. 512 redesignated sec. 1614 of the International Financial Institutions Act (as earlier redesignated by sec. 501 of this Act), as sec. 1617, and inserted new secs. 1614 through 1616.

[13] Sec. 521 amended title XIII of the International Financial Institutions Act by adding a new sec. 1308 (22 U.S.C. 262m–7), redesignated as sec. 1307.

[14] 12 U.S.C. 3901 note.

(2) BANKING INSTITUTION.—The term "banking institution" has the meaning given such term in section 903(2) of the International Lending Supervision Act of 1983.

(3) DEBT-FOR-DEVELOPMENT SWAP.—The term "debt-for-development swap" has the meaning given such term in section 1608(b)(2) of the International Financial Institutions Act.

(4) HIGHLY INDEBTED COUNTRY.—The term "highly indebted country" means any country designated as a "Highly Indebted Country" in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before the date of the enactment of this section.

SUBTITLE E—CONSOLIDATION OF CERTAIN REPORTING REQUIREMENTS

SEC. 541.[15] CONSOLIDATION OF CERTAIN REPORTING REQUIREMENTS. * * *

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. SENSE OF THE CONGRESS THAT THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT AND THE INTERNATIONAL MONETARY FUND SHOULD EXPEDITIOUSLY ACT UPON LOAN REQUESTS FROM POLAND.

It is the sense of the Congress that, based on the liberalization of Poland's economic system and the opening of its economic system to market forces, the Secretary of the Treasury should instruct the United States Executive Directors of the International Bank for Reconstruction and Development and of the International Monetary Fund to urge upon their colleagues that their respective institutions move as expeditiously as possible in considering and acting upon loan requests from, and in disbursing approved loans to, Poland.

SEC. 602. SENSE OF THE CONGRESS SUPPORTING ASSISTANCE BY MULTILATERAL LENDING INSTITUTIONS TO ESTABLISH FINANCIAL INSTITUTIONS IN POLAND.

It is the sense of the Congress that the Secretary of the Treasury should instruct the United States Executive Directors of the multilateral development banks (as defined in section 1617 of the International Financial Institutions Act), of the International Finance Corporation, and of the Multilateral Investment Guarantee Agency to enter into discussions with the other executive directors of such institutions and, in such discussions, urge such institutions to consider and act promptly upon (and, in the case of the Multilateral Investment Guarantee Agency, after Poland becomes a member country of such institution) requests by individuals and private businesses in, and the Government of, Poland for financial and technical assistance in the establishment of financial institutions (including institutions such as credit unions, thrift institutions, and commercial banks) and businesses involved in the provision of credit and financial services.

[15] Sec. 541 amended the International Financial Institutions Act by adding new titles XVII, XVIII, and XIX. As these new titles consolidate several reporting requirements, sec. 541 also repealed duplicative requirements in other legislation relating to international financial institutions.

SEC. 603. SENSE OF THE CONGRESS RELATING TO CONDITIONAL FINANCIAL ASSISTANCE BY MULTILATERAL LENDING INSTITUTIONS TO POLAND.

It is the sense of the Congress that the Secretary of the Treasury should instruct the United States Executive Directors of the multilateral development banks (as defined in section 1617 of the International Financial Institutions Act), of the International Monetary Fund, of the International Finance Corporation, and of the Multilateral Investment Guarantee Agency to enter into discussions with the other executive directors of such institutions and propose that such institutions not provide financial assistance or debt forgiveness to Poland until the government of Poland allows and facilitates privately owned entities established in foreign countries to invest in private commercial ventures in Poland.

SEC. 604. SENSE OF THE CONGRESS OPPOSING THE MAKING OF CERTAIN LOANS OR THE EXTENSION OF CERTAIN FINANCIAL AND TECHNICAL ASSISTANCE TO THE PEOPLE'S REPUBLIC OF CHINA.

(a) FINDINGS.—The Congress finds that—

(1) the Government of the People's Republic of China ordered the People's Liberation Army to brutally attack peaceful demonstrators who had assembled in Tiananmen Square;

(2) this attack violated the human rights of the demonstrators;

(3) several thousand innocent and defenseless protesters were killed in the initial assault;

(4) these violations of human rights have evolved into a pattern of continuing repression and reprisals against citizens throughout China as evidenced by the beating of alleged dissidents, the order to the army to shoot "rioters"—the Chinese Government's term for the peaceful demonstrators—on sight, the mass arrest of students and workers, the public declarations by government-controlled media that physicists Fang Lizhi and Li Shuxian (who are being given refuge in the United States Embassy in Beijing) are "guilty" before being afforded due process, and the banning of all independent, unofficial prodemocracy organizations;

(5) the Government of the People's Republic of China is trying to suppress truthful accounts of the actions taken in Beijing and throughout the country, by, among other things, expelling foreign journalists, including the local bureau chief of the Voice of America, from the country;

(6) the People's Republic of China has received almost $8,000,000,000 in development loans from the International Bank for Reconstruction and Development, and increasing amounts of assistance from the Asian Development Bank;

(7) it is morally repugnant that, through such multilateral development banks, United States taxpayer dollars are used to support the present policies of the People's Republic of China;

(8) such development loans cannot be justified on economic grounds because economic development and market reforms cannot be achieved in the environment of repression that now clearly exists there; and

(9) the People's Republic of China is engaging in "a pattern of gross violations of internationally recognized human rights

. . . such as flagrant denial to life, liberty, and the security of person".

(b) STATEMENT OF POLICY.—It is the sense of the Congress that the President should—

(1) instruct the United States Executive Directors of the International Bank for Reconstruction and Development and the Asian Development Bank to use their voices and votes to oppose the making of any loan or the extension of any financial or technical assistance to the People's Republic of China, in accordance with section 701(f) of the International Financial Institutions Act; and

(2) consider the People's Republic of China to be a country described in section 701(a)(1) of such Act until the President determines that the repression and reprisals against persons in connection with the prodemocracy demonstrations have ended.

TITLE VII—MISCELLANEOUS

SEC. 701.[16] SHORT TITLE.

This title may be cited as the "Global Environmental Protection Assistance Act of 1989".

PART A—COMMERCIAL DEBT-FOR-NATURE EXCHANGES

SEC. 711.[17] AMENDMENT TO THE FOREIGN ASSISTANCE ACT. * * *

PART B—MULTILATERAL FOREIGN ASSISTANCE COORDINATION

SEC. 721. GENERAL POLICY.

It is the sense of the Congress that the Secretary of State should seek to develop an increased consideration of global warming, tropical deforestation, sustainable development, and biological diversity among the highest goals of bilateral foreign assistance programs of all countries.

SEC. 722. POLICY ON NEGOTIATIONS.

(a) IN GENERAL.—The Secretary of State, acting through the United States representative to the Development Assistance Committee of the Organization for Economic Coordination and Development (OECD), should initiate, at the earliest practicable date, negotiations among member countries on a coordinated approach to global warming, tropical deforestation, sustainable development, and biological diversity through bilateral assistance programs that would include—

(1) increased consideration of the impact of developmental projects on global warming, tropical deforestation, and biological diversity;

(2) reduction or elimination of funding for those projects that exacerbate those problems;

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[16] 22 U.S.C. 2151 note.

[17] Sec. 711 added a new chapter 7 to part I of the Foreign Assistance Act of 1961, titled "Debt-for-Nature Exchanges". For text, see *Legislation on Foreign Relations Through 2005*, vol. I–A.

(3) coordinated research and development of projects that emphasize sustainable use or protection of tropical forests and support for local conservation efforts;

(4) expanded use of forgiveness of foreign assistance debt in exchange for policy changes or programs that address problems associated with global warming, tropical deforestation, sustainable development, and biological diversity;

(5) increased use of foreign assistance funds and technical assistance in support of local conservation, restoration, or sustainable development efforts and debt-for-nature exchanges;

(6) improved exchange of information on energy efficiency and solar and renewable energy sources, and a greater emphasis on the use of those sources of energy in developmental projects; and

(7) increased use of environmental experts in the field to assess development projects for their impact on global warming, tropical deforestation, and biological diversity.

(b) IMPLEMENTATION OF AGREEMENT.—Negotiations described in subsection (a) shall seek to ensure that the recommended changes are implemented as quickly as possible by member countries of the Development Assistance Committee.

PART C—TECHNOLOGY DEPLOYMENT IN DEVELOPING COUNTRIES [18]

SEC. 731.[19] DEFINITIONS.

In this part:

(1) CARBON SEQUESTRATION.—The term "carbon sequestration" means the capture of carbon dioxide through terrestrial, geological, biological, or other means, which prevents the release of carbon dioxide into the atmosphere.

(2) GREENHOUSE GAS.—The term "greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(3) GREENHOUSE GAS INTENSITY.—The term "greenhouse gas intensity" means the ratio of greenhouse gas emissions to economic output.

SEC. 732.[20] REDUCTION OF GREENHOUSE GAS INTENSITY.

(a) LEAD AGENCY.—

(1) IN GENERAL.—The Department of State shall act as the lead agency for integrating into United States foreign policy the goal of reducing greenhouse gas intensity in developing countries.

(2) REPORTS.—

(A) INITIAL REPORT.—Not later than 180 days after the date of enactment of this part, the Secretary of State shall submit to the appropriate authorizing and appropriating committees of Congress an initial report, based on the most recent information available to the Secretary from re-

[18] Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added part C, secs. 731 through 739.

[19] 22 U.S.C. 7901. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 731.

[20] 22 U.S.C. 7902. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 732.

liable public sources, that identifies the 25 developing countries that are the largest greenhouse gas emitters, including for each country—

(i) an estimate of the quantity and types of energy used;

(ii) an estimate of the greenhouse gas intensity of the energy, manufacturing, agricultural, and transportation sectors;

(iii) a description the progress of any significant projects undertaken to reduce greenhouse gas intensity;

(iv) a description of the potential for undertaking projects to reduce greenhouse gas intensity;

(v) a description of any obstacles to the reduction of greenhouse gas intensity; and

(vi) a description of the best practices learned by the Agency for International Development from conducting previous pilot and demonstration projects to reduce greenhouse gas intensity.

(B) UPDATE.—Not later than 18 months after the date on which the initial report is submitted under subparagraph (A), the Secretary shall submit to the appropriate authorizing and appropriating committees of Congress, based on the best information available to the Secretary, an update of the information provided in the initial report.

(C) USE.—

(i) INITIAL REPORT.—The Secretary of State shall use the initial report submitted under subparagraph (A) to establish baselines for the developing countries identified in the report with respect to the information provided under clauses (i) and (ii) of that subparagraph.

(ii) ANNUAL REPORTS.—The Secretary of State shall use the annual reports prepared under subparagraph (B) and any other information available to the Secretary to track the progress of the developing countries with respect to reducing greenhouse gas intensity.

(b) PROJECTS.—The Secretary of State, in coordination with Administrator of the United States Agency for International Development, shall (directly or through agreements with the World Bank, the International Monetary Fund, the Overseas Private Investment Corporation, and other development institutions) provide assistance to developing countries specifically for projects to reduce greenhouse gas intensity, including projects to—

(1) leverage, through bilateral agreements, funds for reduction of greenhouse gas intensity;

(2) increase private investment in projects and activities to reduce greenhouse gas intensity; and

(3) expedite the deployment of technology to reduce greenhouse gas intensity.

(c) FOCUS.—In providing assistance under subsection (b), the Secretary of State shall focus on—

(1) promoting the rule of law, property rights, contract protection, and economic freedom; and

(2) increasing capacity, infrastructure, and training.

(d) PRIORITY.—In providing assistance under subsection (b), the Secretary of State shall give priority to projects in the 25 developing countries identified in the report submitted under subsection (a)(2)(A).

SEC. 733.[21] TECHNOLOGY INVENTORY FOR DEVELOPING COUNTRIES.

(a) IN GENERAL.—The Secretary of Energy, in coordination with the Secretary of State and the Secretary of Commerce, shall conduct an inventory of greenhouse gas intensity reducing technologies that are developed, or under development in the United States, to identify technologies that are suitable for transfer to, deployment in, and commercialization in the developing countries identified in the report submitted under section 732(a)(2)(A).

(b) REPORT.—Not later than 180 days after the completion of the inventory under subsection (a), the Secretary of State and the Secretary of Energy shall jointly submit to Congress a report that—

(1) includes the results of the completed inventory;

(2) identifies obstacles to the transfer, deployment, and commercialization of the inventoried technologies;

(3) includes results from previous Federal reports related to the inventoried technologies; and

(4) includes an analysis of market forces related to the inventoried technologies.

SEC. 734.[22] TRADE-RELATED BARRIERS TO EXPORT OF GREENHOUSE GAS INTENSITY REDUCING TECHNOLOGIES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this part, the United States Trade Representative shall (as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements)—

(1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and

(2) negotiate with foreign countries for the removal of those barriers.

(b) ANNUAL REPORT.—Not later than 1 year after the date on which a report is submitted under subsection (a)(1) and annually thereafter, the United States Trade Representative shall submit to Congress a report that describes any progress made with respect to removing the barriers identified by the United States Trade Representative under subsection (a)(1).

SEC. 735.[23] GREENHOUSE GAS INTENSITY REDUCING TECHNOLOGY EXPORT INITIATIVE.

(a) IN GENERAL.—There is established an interagency working group to carry out a Greenhouse Gas Intensity Reducing Technology Export Initiative to—

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[21] 22 U.S.C. 7903. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 733.

[22] 22 U.S.C. 7904. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 734.

[23] 22 U.S.C. 7905. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 735.

(1) promote the export of greenhouse gas intensity reducing technologies and practices from the United States;

(2) identify developing countries that should be designated as priority countries for the purpose of exporting greenhouse gas intensity reducing technologies and practices, based on the report submitted under section 732(a)(2)(A);

(3) identify potential barriers to adoption of exported greenhouse gas intensity reducing technologies and practices based on the reports submitted under section 734; and

(4) identify previous efforts to export energy technologies to learn best practices.

(b) COMPOSITION.—The working group shall be composed of—

(1) the Secretary of State, who shall act as the head of the working group;

(2) the Administrator of the United States Agency for International Development;

(3) the United States Trade Representative;

(4) a designee of the Secretary of Energy;

(5) a designee of the Secretary of Commerce; and

(6) a designee of the Administrator of the Environmental Protection Agency.

(c) PERFORMANCE REVIEWS AND REPORTS.—Not later than 180 days after the date of enactment of this part and each year thereafter, the interagency working group shall—

(1) conduct a performance review of actions taken and results achieved by the Federal Government (including each of the agencies represented on the interagency working group) to promote the export of greenhouse gas intensity reducing technologies and practices from the United States; and

(2) submit to the appropriate authorizing and appropriating committees of Congress a report that describes the results of the performance reviews and evaluates progress in promoting the export of greenhouse gas intensity reducing technologies and practices from the United States, including any recommendations for increasing the export of the technologies and practices.

SEC. 736.[24] TECHNOLOGY DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary of State, in coordination with the Secretary of Energy and the Administrator of the United States Agency for International Development, shall promote the adoption of technologies and practices that reduce greenhouse gas intensity in developing countries in accordance with this section.

(b) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—The Secretaries and the Administrator shall plan, coordinate, and carry out, or provide assistance for the planning, coordination, or carrying out of, demonstration projects under this section in at least 10 eligible countries, as determined by the Secretaries and the Administrator.

(2) ELIGIBILITY.—A country shall be eligible for assistance under this subsection if the Secretaries and the Administrator

[24] 22 U.S.C. 7906. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 736.

determine that the country has demonstrated a commitment to—

(A) just governance, including—

(i) promoting the rule of law;

(ii) respecting human and civil rights;

(iii) protecting private property rights; and

(iv) combating corruption; and

(B) economic freedom, including economic policies that—

(i) encourage citizens and firms to participate in global trade and international capital markets;

(ii) promote private sector growth and the sustainable management of natural resources; and

(iii) strengthen market forces in the economy.

(3) SELECTION.—In determining which eligible countries to provide assistance to under paragraph (1), the Secretaries andthe Administrator shall consider—

(A) the opportunity to reduce greenhouse gas intensity in the eligible country; and

(B) the opportunity to generate economic growth in the eligible country.

(4) TYPES OF PROJECTS.—Demonstration projects under this section may include—

(A) coal gasification, coal liquefaction, and clean coal projects;

(B) carbon sequestration projects;

(C) cogeneration technology initiatives;

(D) renewable projects; and

(E) lower emission transportation.

SEC. 737.[25] FELLOWSHIP AND EXCHANGE PROGRAMS.

The Secretary of State, in coordination with the Secretary of Energy, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall carry out fellowship and exchange programs under which officials from developing countries visit the United States to acquire expertise and knowledge of best practices to reduce greenhouse gas intensity in their countries.

SEC. 738.[26] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this part.

SEC. 739.[27] EFFECTIVE DATE.

Except as otherwise provided in this part, this part takes effect on October 1, 2005.

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[25] 22 U.S.C. 7907. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 737.

[26] 22 U.S.C. 7908. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 738.

[27] 22 U.S.C. 7901 note. Sec. 1611 of the Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 1113) added sec. 739.

TITLE VIII—EFFECTIVE DATE

SEC. 801.[28] **EFFECTIVE DATE.**

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

[28] 22 U.S.C. 262d note.

b. Providing for U.S. Participation in a Capital Stock Increase for the International Bank for Reconstruction and Development and Replenishment of the African Development Fund

Partial text of H.R. 4645 as passed by the House on September 28, 1988, and enacted into law by sec. 555 of Public Law 100–461 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989; H.R. 4637], 102 Stat. 2268, approved October 1, 1988

A BILL To provide for participation by the United States in a capital stock increase of the International Bank for Reconstruction and Development and a replenishment of the African Development Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] * * *

SEC. 2.[2] * * *

SEC. 3.[3] **POLICY BASED LENDING FOR DEBT REDUCTION.**

(a) CRITERIA.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to initiate discussions with other directors of such bank and to advocate and support the facilitation of voluntary market-based programs for the reduction of sovereign debt and the promotion of sustainable economic development, which, if implemented, would—

(1) not require any organization or government to participate in such a program;

(2) result in debt reduction for each participating country tailored to the particular situation of each country;

(3) provide assistance to participating countries conditioned on the implementation of economic reforms, and the preservation of economic reforms previously implemented, by the country that are consistent with the principles of sustainable development;

(4) encourage participating countries to make economic adjustments steadily and over a period of time in order to achieve policy reform;

(5) use debt reduction techniques that would not compensate commercial banks for the reduction in the value of such debt, but would serve as a catalyst for new lending;

(6) involve such bank in lending for purposes of debt reduction and conversion only where such involvement would not lower the credit rating of such bank;

[1] Sec. 1 amended the Bretton Woods Agreements Act (22 U.S.C. 286 *et seq.*).
[2] Sec. 2 amended the African Development Fund Act (22 U.S.C. 290g *et seq.*).
[3] 22 U.S.C. 286hh.

(7) not require public sector funding beyond that provided through any capital increase for such bank, and any replenishment for the International Development Association, which is agreed to by the member countries of such institutions; and

(8) accomplish debt reduction, not as an end, but as a means to greater growth and investment in, and the restoration of voluntary private lending to, participating countries for environmentally and economically sustainable development.

(b) POLICY BASED LENDING FOR DEBT REDUCTION AND SUSTAINABLE GROWTH.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to initiate discussions with other directors of such bank and to propose that policy based loans be made by such bank for, among other reasons, facilitating a reduction in the debt service burden of any country which is participating in a voluntary market-based program for debt reduction described in subsection (c).

(c) VOLUNTARY MARKET-BASED PROGRAM FOR DEBT REDUCTION AND SUSTAINABLE GROWTH.—In connection with the discussions initiated pursuant to subsection (b), The Secretary shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to propose that a country be considered to be participating in a voluntary market-based program of debt reduction for purposes of subsection (b) if the creditors of such country agree to significantly reduce the debt service of such country through forgiveness of a percentage of the interest owed by such country on any sovereign debt or through any other means.

(d) REPORTS.—Not later than March 1, 1989, March 1, 1991, and March 1, 1993, respectively, the Secretary of the Treasury shall submit to the Committee on Banking, Finance and Urban Affairs[4] of the House of Representatives and the Committee on Foreign Relations of the Senate 3 reports each of which—

(1) describes the long term strategy and lending programs of the International Bank for Reconstruction and Development for reducing and managing the debt burden of the countries designated as "Highly Indebted Countries" in the 1987–1988 World Debt Tables published by such bank, and summarize the long term strategy and lending programs of such bank for other seriously indebted countries;

(2) contains an explanation of the measures taken by such bank to facilitate the reduction of the debt burden of the countries designated as "Highly Indebted Countries" in the 1987–1988 World Debt Tables published by such bank;

(3) describes the extent (if any) to which such bank has implemented the measures described in subsections (b) and (c); and

(4) describes the success each of such countries has had in managing and reducing their debt burdens and achieving sustainable and equitable economic growth as measured by criteria including the ratio of debt service to exports, the ratio of

[4] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

debt to gross national product, net resource flows, and per capita income.

(e) REVIEW BY HOUSE BANKING COMMITTEE.—On receipt of each report required to be submitted pursuant to subsection (d), and after consultation with the Secretary of the Treasury, the Committee on Banking, Finance and Urban Affairs[4] of the House of Representatives shall forward such report to the Committee on Appropriations of the House of Representatives with an assessment by the Committee on Banking, Finance and Urban Affairs[4] describing the effect on the international debt situation of funding the subscription of the United States to the shares of capital stock of the International Bank for Reconstruction and Development due for payment by the United States in the then next fiscal year.

SEC. 4.[5] LIMITATIONS ON WORLD BANK POLICY BASED LENDING; ACTIONS REQUIRED TO BE TAKEN TO OPPOSE EXCESSIVE POLICY BASED LENDING BY WORLD BANK.

The Secretary of the Treasury shall—

(1) take all necessary steps to encourage the International Bank for Reconstruction and Development to limit—

(A) the aggregate value of the policy based loans made by such bank (other than for the purpose described in section 3(b)) in any fiscal year of such bank beginning after June 30, 1989, to 25 percent of the aggregate value of all loans made by such bank in such fiscal year; and

(B) the aggregate value of the policy based loans made by such bank to the government of a particular country (other than for the purpose described in section 3(b)) in any fiscal year of such bank beginning after June 30, 1989, and occurring during any period of 3 consecutive fiscal years of such bank (determined after disregarding any such fiscal year in which such bank did not make a policy based loan to such government), to 50 percent of the aggregate value of all loans made by such bank to such government during such 3-year period;

(2) instruct the United States Executive Director of such bank to propose and actively seek the adoption by the board of Executive Directors of such bank of a resolution establishing as official bank operating policy for fiscal years 1990 through 1995 of such bank the limits specified in paragraph (1); and

(3) until the resolution described in paragraph (2) is adopted, undertake, in consultation with the Secretary of State, discussions with other member country governments to secure the consent and cooperation of such governments with respect to the adoption of the limits specified in paragraph (1).

SEC. 5.[6] PARTIAL GUARANTEES IN CONNECTION WITH DEBT REDUCTION FOR BORROWER COUNTRIES.

The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to initiate discussion with other directors of such bank and to propose that such bank establish criteria under which

[5] 22 U.S.C. 286ii.
[6] 22 U.S.C. 286jj.

such bank would provide partial guarantees on debt service payments by borrower countries to private creditors when such guarantees would serve a catalytic role in facilitating final agreement on financing packages which involve significant debt reduction.

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SEC. 12. SENSE OF CONGRESS REGARDING IMPROVING ACCESS OF SMALL BUSINESSES TO WORLD BANK PROCUREMENT.

It is the sense of the Congress that the Secretary of the Treasury should—

(1) attach a high priority to facilitating the efforts of small businesses to gain access to the process for bidding on contracts offered by the International Bank for Reconstruction and Development for—

(A) the procurement of goods and services associated with projects financed by such bank; and

(B) consulting services required in the operation of such bank;

(2) coordinate the efforts of the Department of the Treasury with the efforts of other appropriate agencies of the United States Government, particularly with regard to the dissemination of information on specific opportunities offered by such bank to assist small businesses located in the United States; and

(3) encourage the United States Executive Director of such bank to work with the management of such bank in developing programs within such bank designed to improve opportunities for small businesses located in member countries of such bank to bid successfully for contracts described in paragraph (1).

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c. Providing for Increased Participation by the United States in the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund

Partial text of Public Law 96–259 [S. 662], 94 Stat. 429, approved June 3, 1980; as amended by Public Law 97–375 [Congressional Reports Elimination Act of 1982; H.R. 6005], 99 Stat. 1821, approved December 21, 1982; and Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989

AN ACT To provide for increased participation by the United States in the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

NOTE.—Except for the provisions included below, this Act consisted of amendments to the Inter-American Development Bank Act, the Asian Development Bank Act, the African Development Fund Act, and the Act of October 3, 1977. These amendments have been incorporated at the appropriate places.

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TITLE VI—USE OF RENEWABLE RESOURCES FOR ENERGY PRODUCTION

SEC. 601.[1] The Congress finds that—

(1) without an adequate supply of energy at affordable prices the world's poor will continue to be deprived of jobs, food, water, shelter, and clothing, and poor countries will continue to be economically and politically unstable;

(2) dependence on increasingly expensive fossil fuel resources consumes too much of the capital available to poor countries with the result that funds are not available to meet the basic needs of poor people;

(3) in many developing countries the cost of large central generators and long distance electrical distribution makes it unlikely that rural energy by means of a national grid will contribute to meeting the needs of poor people;

[1] 22 U.S.C. 262j note.

(4) only one of eight rural inhabitants lives in an area which has access to electricity and even fewer rural inhabitants actually have or can afford electricity;

(5) wood, animal and agricultural waste, and other "noncommercial" fuels still supply about half the total energy in developing countries and all but a seventh in rural sectors;

(6) growing dependence of the world's poor on wood for heating and cooking has forced the overcutting of forests and as a consequence erosion and loss of available agricultural land; and

(7) recent initiatives by the international financial institution to develop and utilize decentralized solar, hydro, biomass, geothermal, and wind energy should be significantly expanded to make renewable energy resources increasingly available to the world's poor on a wide scale.

SEC. 602.[2] (a) The United States Government, in connection with its voice and vote in the Inter-American Development Bank, the African Development Fund, and the Asian Development Bank, shall encourage such institutions—

(1) to promote the decentralized production of renewable energy;

(2) to identify renewable resources to produce energy in rural development projects and determine the feasibility of substituting them for systems using fossil fuel;

(3) to train personnel in developing technologies for getting energy from renewable resources;

(4) to support research into the use of renewable resources, including hydropower, biomass, solar photovoltaic, and solar thermal;

(5) to support an information network to make available to policymakers the full range of energy choices;

(6) to broaden their energy planning, analyses, and assessments to include consideration of the supply of, demand for, and possible uses of renewable resources; and

(7) to coordinate with the Agency for International Development and other aid organizations in supporting effective rural energy programs.

(b) For purposes of this section, the term "renewable resource" means an energy resource which—

(1) meets the needs of rural communities;

(2) saves capital without wasting labor;

(3) is modest in scale and simple to install and maintain and which can be managed by local individuals;

(4) is acceptable and affordable; and

(5) does not damage the environment.

(c)[3] * * * [Repealed—1982]

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[2] 22 U.S.C. 262j.

[3] Public Law 97–375 (99 Stat. 1821) repealed sec. 602(c), which previously read as follows:

"(c) The Secretary of the Treasury, in consultation with the Director of the United States International Development Cooperation Agency, shall report to the Congress not later than six months after the date of enactment of this Act and annually thereafter on the progress toward achieving the goals set forth in this title.".

3. Other Legislation Relating to International Financial Institutions

a. International Financial Institutions Act

Partial text of Public Law 95–118 [H.R. 5262], 91 Stat. 1067, approved October 3, 1977; as amended by Public Law 96–259 [S. 662], 94 Stat. 429 at 431, approved June 3, 1980; Public Law 97–35 [H.R. 3982], 95 Stat. 357 at 743 and 745, approved August 13, 1981; Public Law 97–375 [Congressional Reports Elimination Act of 1982; H.R. 6005], 96 Stat. 1819 at 1826, approved December 21, 1982; Public Law 98–181 [Supplemental Appropriations Act, 1984; H.R. 3959], 97 Stat. 1153 at 1286, approved November 30, 1983; Public Law 100–202 [Continuing Appropriations, 1988; H.J. Res. 395], 101 Stat. 1329, approved December 22, 1987; H.R. 4645 as passed by the House on September 28, 1988, and enacted into law by Public Law 100–461 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989; H.R. 4637], 102 Stat. 2268, approved October 1, 1988; Public Law 101–240 [International Development and Finance Act; H.R. 2494], 103 Stat. 2492, approved December 19, 1989; Public Law 101–513 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991; H.R. 5114], 104 Stat. 1979, approved November 5, 1990; Public Law 102–511 [FREEDOM Support Act, S. 2532], 106 Stat. 3320, approved October 24, 1992; Public Law 103–236 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 107 Stat. 382, approved April 30, 1994; Public Law 103–306 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995; H.R. 4426], 108 Stat. 1608, approved August 23, 1994; Public Law 104–132 [Antiterrorism and Effective Death Penalty Act of 1996; S. 735], 110 Stat. 1214, approved April 24, 1996; Public Law 104–188 [Small Business Job Protection Act; H.R. 3448], 110 Stat. 1755, approved August 20, 1996; Public Law 104–208 [Omnibus Consolidated Appropriations Act for Fiscal Year 1997; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; Public Law 105–118 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998; H.R. 2159], 111 Stat. 2386, approved November 26, 1997; Public Law 105–277 [Omnibus Consolidated Appropriations Act for Fiscal Year 1999; H.R. 4328], 112 Stat. 2681, approved October 21, 1998; Public Law 105–292 [International Religious Freedom Act of 1998; H.R. 2431] 112 Stat. 2787, approved October 27, 1998; Public Law 106–31 [1999 Emergency Supplemental Appropriations Act; H.R. 1141] 113 Stat 57, approved May 21, 1999; Public Law 106–36 [Miscellaneous Trade and Technical Corrections Act of 1999, H.R. 435], 113 Stat. 127, approved June 15, 1999; Public Law 106–113 [Fiscal Year 2000 Consolidated Appropriations Act; H.R. 3194], 113 Stat. 1501, approved November 29, 1999; Public Law 106–200 [Trade and Development Act of 2000, H.R. 434], approved May 18, 2000; Public Law 106–429 [Foreign Operations, Export Financing and Related Programs Appropriations Act, 2001; H.R. 4811], 114 Stat. 1900, approved November 6, 2000; Public Law 108–25 [United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003; H.R. 1298], 117 Stat. 747, approved May 27, 2003; Public Law 108–447 [Foreign Operations, Export Financing and Related Programs Appropriations Act, 2005; division D of the Consolidated Appropriations Act, 2005; H.R. 4818], 118 Stat. 3037, approved December 8, 2004; Public Law 108–458 [9/11 Commission Implementation Act of 2004; S. 2845], 118 Stat. 3860, approved December 17, 2004; and Public Law 109–102 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006; H.R. 3057], 119 Stat. 2241, approved November 14, 2005

NOTE.—Except for the provisions noted below, this Act consists of amendments to the Bretton Woods Agreements Act, International Finance Corporation Act, International Development Association Act, Asian Development Bank Act, African Development Fund Act, and the Inter-American Development Bank Act.

AN ACT To provide for increased participation by the United States in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Asian Development Bank and the Asian Development Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1.[1] This Act may be cited as the International Financial Institutions Act.

TITLE I—PURPOSE AND POLICY; DECLARATION OF CONGRESSIONAL INTENT IN RESPECT TO CONTINUED PARTICIPATION OF THE UNITED STATES GOVERNMENT IN INTERNATIONAL FINANCIAL INSTITUTIONS FOSTERING ECONOMIC DEVELOPMENT IN LESS DEVELOPED COUNTRIES

SEC. 101.[2] (a) It is the sense of Congress that—

(1) for humanitarian, economic, and political reasons, it is in the national interest of the United States to assist in fostering economic development in the less developed countries of this world;

(2) the development-oriented international financial institutions have proved themselves capable of playing a significant role in assisting economic development by providing to less developed countries access to capital and technical assistance and soliciting from them maximum self-help and mutual cooperation;

(3) this has been achieved with minimal risk of financial loss to contributing countries;

(4) such institutions have proved to be an effective mechanism for sharing the burden among developed countries of stimulating economic development in the less developed world; and

(5) although continued United States participation in the international financial institutions is an important part of ef-

[1] Sec. 1361(a) of Public Law 97–35 (95 Stat. 745) added sec. 1.
[2] 22 U.S.C. 262c.

forts by the United States to assist less developed countries, more of this burden should be shared by other developed countries. As a step in that direction, in future negotiations, the United States should work toward aggregate contributions to future replenishments to international financial institutions covered by this Act not to exceed 25 per centum.

(b) The Congress recognizes that economic development is a long-term process needing funding commitments to international financial institutions. It also notes that the availability of funds for the United States contribution to international financial institutions is subject to the appropriations process.

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TITLE VII—HUMAN RIGHTS

SEC. 701.[3, 4] (a)[5] The United States Government, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, and the International Monetary Fund,[6] shall advance the cause of human rights, including by seeking to channel assistance toward countries other than those whose governments engage in—

(1) a[7] pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial to life, liberty, and the security of person; or

(2) provide refuge to individuals committing acts of international terrorism by hijacking aircraft.

(b) Further, the Secretary of the Treasury shall instruct each Executive Director of the above institutions to consider in carrying out his duties:

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[3] 22 U.S.C. 262d.

[4] Sec. 701 was invoked in sec. 586G(a)(5) of the Iraq Sanctions Act of 1990, as contained in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513; 104 Stat. 2052).

See also sec. 561, related to war criminals, and sec. 563, related to funding for Serbia, in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102; 119 Stat. 2172, *et. seq.*).

See also sec. 1621 of this Act.

[5] Sec. 823(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 512), provided the following:

"(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States executive director to each of the international financial institutions described in section 701(a) of the International Financial Institutions Act (22 U.S.C. 262d(a)) to use the voice and vote of the United States to oppose any use of the institution's funds to promote the acquisition of unsafeguarded special nuclear material or the development, stockpiling, or use of any nuclear explosive device by any non-nuclear-weapon state.".

See also amendment and note at subsec. (b)(3) of this section.

[6] Sec. 1342(b) of Public Law 97–35 (95 Stat. 743) added the reference to the African Development Bank. Sec. 1008(a) of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3361) added the reference to the European Bank for Reconstruction and Development and the International Monetary Fund.

[7] Sec. 1004(1) of Public Law 98–181 (97 Stat. 1286) struck out the word "consistent" which previously appeared at this point.

(1) specific actions by either the executive branch or the Congress as a whole on individual bilateral assistance programs because of human rights considerations;

(2) the extent to which the economic assistance provided by the above institutions directly benefit the needy people in the recipient country;

(3)[8] whether the recipient country—

(A) is seeking to acquire unsafeguarded special nuclear material (as defined in section 830(8) of the Nuclear Proliferation Prevention Act of 1994) or a nuclear explosive device (as defined in section 830(4) of that Act);

(B) is not a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons; or

(C) has detonated a nuclear explosive device; and

(4) in relation to assistance for the Socialist Republic of Vietnam, the People's Democratic Republic of Laos, Russia and the other independent states of the former Soviet Union (as defined in section 3 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992),[9] and Democratic Kampuchea (Cambodia), the responsiveness of the governments of such countries in providing a more substantial accounting of Americans missing in action.

(c)[10] (1) The Secretary of the Treasury shall report annually[11] on all loans considered by the Boards of Executive Directors of the institutions listed in subsection (a) to the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs[12] of the House of Representatives, or the designees of such Chairman and ranking minority member, and the Chairman and ranking minority member of the Committee on Foreign Relations of the Senate.

(2) Each report required by paragraph (1) shall—

(A) include a list of all loans considered by the Board of Executive Directors of the institutions listed in subsection (a) and shall specify with respect to each such loan—

(i) the institution involved;

(ii) the date of final action;

(iii) the borrower;

(iv) the amount;

(v) the project or program;

(vi) the vote of the United States Government;

(vii) the reason for United States Government opposition, if any;

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[8] Sec. 823(b) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 512), amended and restated subsec. (b)(3). It formerly read as follows: "(3) whether the recipient country has detonated a nuclear device or is not a State Party to the Treaty on Non-Proliferation of Nuclear Weapons or both; and".

[9] Sec. 1008(b) of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3362) inserted "Russia and the other independent states of the former Soviet Union (as defined in section 3 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992)," after "Laos,".

[10] Sec. 541(c) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2517) amended and restated subsec. (c).

[11] Sec. 1103(g) of Public Law 106–569 (114 Stat. 3031) struck out "Not later than 30 days after the end of each calendar quarter, the Secretary of the Treasury shall report quarterly" and inserted in lieu thereof "The Secretary of the Treasury shall report annually".

[12] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

(viii) the final disposition of the loan; and

(ix) if the United States Government opposed the loan, whether the loan meets basic human needs;

(B) indicate whether the United States has opposed any loan, financial assistance, or technical assistance to a country on human rights grounds;

(C) indicate whether the United States has voted in favor of a loan, financial assistance, or technical assistance to a country with respect to which the United States had, in the preceding 2 years, opposed a loan, financial assistance, or technical assistance on human rights grounds; and

(D) in cases where the United States changed its voting position from opposition to support or from support to opposition, on human rights grounds—

(i) indicate the policy considerations that were taken into account in the development of the United States voting position;

(ii) describe human rights conditions in the country involved;

(iii) indicate how the United States voted on all other loans, financial assistance, and technical assistance to such country during the preceding 2 years; and

(iv) contain information as to how the United States voting position relates to the overall United States Government policy on human rights in such country.

(d) The United States Government, in connection with its voice and vote in the institutions listed in subsection (a), shall seek to channel assistance to projects which address basic human needs of the people of the recipient country.[13]

(e) In determining whether a country is in gross violation of internationally recognized human rights standards, as defined by the provisions of subsection (a), the United States Government shall give consideration to the extent of cooperation of such country in permitting an unimpeded investigation of alleged violations of internationally recognized human rights by appropriate international organizations including, but not limited to, the International Committee of the Red Cross, Amnesty International, the International Commission of Jurists, and groups or persons acting under the authority of the United Nations or the Organization of American States.

(f) The United States Executive Directors of the institutions listed in subsection (a) are authorized and instructed to oppose any loan, any extension of financial assistance, or any technical assistance to any country described in subsection (a) (1) or (2), unless such assistance is directed specifically to programs which serve the basic human needs of the citizens of such country.

The[14] Secretary of the Treasury or his delegate shall consult frequently and in a timely manner with the chairmen and ranking

[13] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(e)(8) of that Act repealed the last sentence of this subsection.

[14] This sentence was enacted as para. (2) of subsec. (g) by sec. 501(b) of Public Law 96–259 (94 Stat. 432). Sec. 541 of the International Development and Finance Act of 1989 (Public Law

minority members of the Committee on Banking, Finance and Urban Affairs [12] of the House of Representatives and of the Committee on Foreign Relations of the Senate [15] to inform them regarding any prospective changes in policy direction toward counties which have or recently have had poor human rights records.

(g)[16] In determining whether the government of a country engages in a pattern of gross violations of internationally recognized human rights, as described in subsection (a), the President shall give particular consideration to whether a foreign government—

(1) has engaged in or tolerated particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998; or

(2) has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom when such efforts could have been reasonably undertaken.

SEC. 702. Section 28 of the Inter-American Development Bank Act, as amended (22 U.S.C. 283y), section 211 of the Act of May 31, 1976 (22 U.S.C. 290g–9), and section 15 of the International Development Association Act, as amended (22 U.S.C. 284m), are repealed.

SEC. 703.[17] (a) The Secretary of State and the Secretary of the Treasury shall initiate a wide consultation designed to develop a viable standard for the meeting of basic human needs and the protection of human rights and a mechanism for acting together to insure that the rewards of international economic cooperation are especially available to those who subscribe to such standards and are seen to be moving toward making them effective in their own system of governance.

(b) Not later than one year after the date of enactment of this Act, the Secretary of State and the Secretary of the Treasury shall report to the President of the Senate and the Speaker of the House of Representatives on the progress made in carrying out this section.

SEC. 704.[18] The President shall direct the United States Executive Directors of such international financial institutions to take all

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101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(d)(4) of that Act repealed subsec. (g)(1). Sec. 562(b)(2) of Public Law 101–513 (104 Stat. 2034) subsequently struck out paragraph designation "(2)" at the beginning of this paragraph.

[15] Sec. 562(b)(2) of Public Law 101–513 (104 Stat. 2034) struck out "specified in paragraph (1)" and inserted "of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and of the Committee on Foreign Relations of the Senate". See also note 12.

[16] Sec. 422 of the International Religious Freedom Act of 1998 (Public Law 105–292; 112 Stat. 2810) added subsec. (g).

[17] 22 U.S.C. 262c note.

[18] 22 U.S.C. 262e. Sec. 501 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102; 119 Stat. 2195), provided the following:

"COMPENSATION FOR UNITED STATES EXECUTIVE DIRECTORS TO INTERNATIONAL FINANCIAL INSTITUTIONS

"SEC. 501. (a) No funds appropriated by this Act may be made as payment to any international financial institution while the United States Executive Director to such institution is compensated by the institution at a rate which, together with whatever compensation such Director receives from the United States, is in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, or while any alternate United States Director to such institution is compensated by the institution at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

Continued

appropriate actions to keep the salaries and benefits of the employees of such institutions to levels comparable to salaries and benefits of employees of private business and the United States Government in comparable positions.

SEC. 705.[19] The President shall direct the United States Governor of the International Bank for Reconstruction and Development, the United States Governor of the International Finance Corporation, the United States Governor of the International Development Association, the United States Governor of the Inter-American Development Bank, the United States Governor of the Asian Development Bank, and the United States Governor of the African Development Fund, to consult with the other Governors of those institutions concerning adoption of an amendment to the Articles of Agreement of their respective institutions to establish human rights standards to be considered in connection with each application for assistance.

TITLE VIII—LIGHT CAPITAL TECHNOLOGY

SEC. 801.[20] The United States Government, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, the Asian Development Bank, and the African Development Bank,[21] shall promote the development and utilization of light capital technologies, otherwise known as intermediate, appropriate, or village technologies, by such international institutions as major facets of their development strategies, with major emphasis on the production and conservation of energy through light capital technologies.[22]

TITLE IX—HUMAN NUTRITION IN DEVELOPING COUNTRIES

SEC. 901.[23] The Congress declares it to be the policy of the United States, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, the Asian Development Fund, and the Asian Development Bank, to combat hunger and malnutrition and to encourage economic development in the developing countries, with emphasis on assistance to those countries that are determined to improve their own agricultural production, by seeking to channel assistance for agriculturally related development to projects that would aid in fulfilling domestic food and nutrition needs and in al-

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"(b) For purposes of this section 'international financial institutions' are: the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the Asian Development Fund, the African Development Bank, the African Development Fund, the International Monetary Fund, the North American Development Bank, and the European Bank for Reconstruction and Development.".

[19] 22 U.S.C. 262d note. Sec. 501(c) of Public Law 96–259 (94 Stat. 432) added sec. 705.

[20] 22 U.S.C. 262f.

[21] Sec. 1342(c) of Public Law 97–35 (95 Stat. 743) added the reference to the African Development Bank.

[22] Subsec. (b), which previously appeared at this point and had required an annual report on the goals expressed in this title, was struck out by sec. 1371(b) of Public Law 97–35 (95 Stat. 746).

[23] 22 U.S.C. 262g.

leviating hunger and malnutrition in the recipient country. The United States representatives to the institutions named in this section shall oppose any loan or other financial assistance for establishing or expanding production for export of palm oil, sugar, or citrus crops if such loan or assistance will cause injury to United States producers of the same, similar, or competing agricultural commodity.[22]

TITLE X—EFFECTIVE DATE

SEC. 1001.[24] This Act shall take effect on the date of its enactment, except that no funds authorized to be appropriated by any amendment contained in title II, III, IV, V, or VI may be available for use or obligation prior to October 1, 1977.

TITLE XI—TARGETING ASSISTANCE TO THE NEEDY[25]

SEC. 1101.[26] (a) The Congress finds that there is a need for concerted international efforts to deal with the problems of malnutrition, low life expectancy, childhood disease, underemployment, and low productivity in developing countries.

(b) The Congress notes with approval that the Inter-American Development Bank, under the terms of its Fifth Replenishment, has adopted the target that 50 percent of its lending benefit the poorest groups and has developed a usable methodology for determining the proportion of its lending which benefits such groups.

SEC. 1102.[27] (a) The Secretary of the Treasury shall consult with representatives of other member countries of the International Bank for Reconstruction and Development, the International Development Association, the Asian Development Bank, the African Development Fund, and the African Development Bank (if the United States becomes a member of that Bank), for the purpose of establishing guidelines within each of those institutions which specify that, in a manner consistent with the purposes and charters of those institutions, a specified proportion of the annual lending by each institution shall be designed to benefit needy people, primarily by financing sound, efficient, productive, self-sustaining projects designed to benefit needy people in developing countries, thus helping poor people improve their conditions of life.

(b) The Congress finds that projects to construct basic infrastructure, to expand productive capacity (including private enterprise), and to address social problems can all meet the objectives of this section if they are designed and implemented properly. For the purposes of this title, "needy people" means those people living in "absolute" or "relative" poverty as determined under the standards employed by the International Bank for Reconstruction and Development and the International Development Association.

SEC. 1103.[28] * * * [Repealed—1989]

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[24] 22 U.S.C. 282r note.
[25] Sec. 1361(b) of Public Law 97–35 (95 Stat. 745) added titles XI and XII.
[26] 22 U.S.C. 262g–1.
[27] 22 U.S.C. 262g–2.
[28] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703

Continued

TITLE XII—CONGRESSIONAL CONSULTATIONS [25]

SEC. 1201.[29] The Secretary of the Treasury or his designee shall consult with the Chairman and the Ranking Minority Member of—

(1) the Committee on Banking, Finance and Urban Affairs [12] of the House of Representatives, the Committee on Appropriations of the House of Representatives, and the appropriate subcommittee of each such committee, and

(2) the Committee on Foreign Relations of the Senate, the Committee on Appropriations of the Senate, and the appropriate subcommittee of each such committee,

for the purpose of discussing the position of the executive branch and the views of the Congress with respect to any international negotiations being held to consider future replenishments or capital expansions of any multilateral development bank which may involve an increased contribution or subscription by the United States. Such consultation shall be made (A) not later than 30 days before the initiation of such international negotiations, (B) during the period in which such negotiations are being held, in a frequent and timely manner, and (C) before a session of such negotiations is held at which the United States representatives may agree to such a replenishment or capital expansion.

TITLE XIII—THE ENVIRONMENT [30]

SEC. 1301.[31] The Congress finds that—

(1) United States assistance to the multilateral development banks should promote sustainable use of natural resources and the protection of the environment, public health, and the status of indigenous peoples in developing countries;

(2) multilateral development bank projects, policies, and loans have failed in some cases to provide adequate safeguards for the environment, public health, natural resources, and indigenous peoples;

(3) many development efforts of the multilateral development banks are more enduring and less costly if based on consultations with directly affected population groups and communities;

(4) developing country governments sometimes do not ensure that appropriate policies and procedures are in place to use natural resources sustainably or consult with affected population groups and communities, where costs could be reduced or benefits made more enduring; and

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and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(d)(4) repealed sec. 1103.

[29] 22 U.S.C. 262g–3.

[30] Titles XIII through XVI were added by sec. 701 of H.R. 3750, as introduced by the House Committee on Banking, Finance and Urban Affairs, on Dec. 11, 1987, and enacted into law by Title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, (sec. 101(e) of the Continuing Appropriations, 1988; Public Law 100–202; 101 Stat. 1329 at 1329–134).

See also sec. 533 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513; 104 Stat. 2013; 22 U.S.C. 262*l*), and sec. 532 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391; 106 Stat. 1666; 22 U.S.C. 262*l*), relating to environment and global warming, in *Legislation on Foreign Relations Through 2005*, vol. I–A.

[31] 22 U.S.C. 262m.

(5) in general, the multilateral development banks do not yet provide systematic and adequate assistance to their borrowers to encourage sustainable resource use and consultation with affected communities, where costs could be reduced or benefits made more enduring.

SEC. 1302.[32] The Secretary of the Treasury and the Secretary of State, in cooperation with the Administrator of the Agency for International Development, shall vigorously promote mechanisms to strengthen the environmental performance of these banks. These mechanisms shall include strengthening organizational, administrative, and procedural arrangements within the banks which will substantially improve management of assistance programs necessary to ensure the sustainable use of natural resources and the protection of indigenous peoples.

SEC. 1303.[33] (a)(1) In the course of reviewing assistance proposals of the multilateral development banks, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that other agencies and appropriate United States embassies and overseas missions of the Agency for International Development are instructed to analyze, where feasible, the environmental impacts of multilateral development loans well in advance of such loans' approval by the relevant institutions to determine whether the proposals will contribute to the sustainable development of the borrowing country.

(2) To the extent possible, such reviews shall address the economic viability of the project, adverse impacts on the environment, natural resources, public health, and indigenous peoples, and recommendations as to measures, including alternatives, that could eliminate or mitigate adverse impacts.

(3) If there is reason to believe that any such loan is particularly likely to have substantial adverse impacts, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall ensure that an affirmative investigation of such impacts is undertaken in consultation with relevant Federal agencies. If not classified under the national security system of classification, the information collected pursuant to this paragraph shall be made available to the public.

(b)(1)[34] The Secretary of the Treasury shall instruct the Executive Directors representing the United States at the multilateral development banks as defined by section 1307(g) to urge the management and other directors of each such bank, to provide sufficient time between the circulation of assistance proposals and bank action on those proposals, in order to permit their evaluation by major shareholder governments.

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[32] 22 U.S.C. 262m–1.

[33] 22 U.S.C. 262m–2.

[34] Sec. 593(b) of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2005 (division D of Public Law 108–391; 118 Stat. 3037), added the paragraph designation (1), struck out "International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank" and inserted in lieu thereof "multilateral development banks as defined by section 1307(g)", and added paras. (2) and (3).

(2)[34] The Secretary of the Treasury shall instruct such Executive Directors to work with other countries' Executive Directors and multilateral development bank management to—

(A) improve the procedures of each multilateral development bank for providing its board of directors with a complete and accurate record regarding public consultation before they vote on proposed projects with significant environmental implications; and

(B) revise bank procedures to consistently require public consultation on operational policy proposals or revisions that have significant environmental or social implications.

(3)[34] Progress under this subsection shall be incorporated into Treasury's required annual report to Congress on the environmental performance of the multilateral development banks.

(c) Based on the information obtained during the evaluation referred to in subsection (a) and other available information, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall identify those assistance proposals likely to have adverse impacts on the environment, natural resources, public health, or indigenous peoples. The proposals so identified shall be transmitted to the Committee on Appropriations and the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate, not later than June 30 and December 31 of each year following the date of enactment of this title.

(d) The Secretary of the Treasury shall forward reports concerning information received under subsection (a) to the Executive Director representing the United States in the appropriate bank with instructions to seek to eliminate or mitigate adverse impacts which may result from the proposal.

SEC. 1304.[35] The Secretary of the Treasury, in consultation with the Secretary of State and the Administrator of the Agency for International Development, shall create a system for cooperative exchange of information with other interested member countries on assistance proposals of the multilateral development banks.

SEC. 1305.[36] The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to support the strengthening of educational programs within each multilateral development bank to improve the capacity of mid-level managers to initiate and manage environmental aspects of development activities, and to train officials of borrowing countries in the conduct of environmental analyses.

SEC. 1306.[37] (a) The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to vigorously and continuously urge that each bank identify and develop methods and procedures to insure that in addition to economic and technical considerations, unquantified environmental values be given appropriate consideration in decisionmaking, and include in the documents circulated to the Board of Executive Directors concerning each assistance proposal a detailed statement, to

[35] 22 U.S.C. 262m–3.
[36] 22 U.S.C. 262m–4.
[37] 22 U.S.C. 262m–5.

include assessment of the benefits and costs of environmental impacts and possible mitigating measures, on the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided if the proposal is implemented, and alternatives to the proposed action.

(b) The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to vigorously and continuously promote—

(1) increases in the proportion of loans supporting environmentally beneficial policies, projects, and project components;

(2) the establishment of environmental programs in appropriate policy-based loans for the purpose of improving natural resource management, environmental quality, and protection of biological diversity;

(3) increases in the proportion of staff with professional training and experience in ecology and related areas and in the areas of anthropological and sociological impact analysis to ensure systematic appraisal and monitoring of environmental and sociocultural impacts of projects and policies;

(4) active and systematic encouragement of participation by borrowing countries nongovernmental environmental, community and indigenous peoples' organizations at all stages of preparations for country lending strategies, policy based loans, and loans that may have adverse environmental or sociocultural impacts; and

(5) full availability to concerned or affected non-governmental and community organization, early in the preparation phase and at all subsequent stages of planning of full documentary information concerning details of design and potential environmental and sociocultural impacts of proposed loans.

SEC. 1307.[38] ASSESSMENT OF ENVIRONMENTAL IMPACT OF PROPOSED MULTILATERAL DEVELOPMENT BANK ACTIONS.

(a)[39] ASSESSMENT REQUIRED BEFORE FAVORABLE VOTE ON PROPOSAL.—The Secretary of the Treasury shall instruct the United

[38] 22 U.S.C. 262m–7. Popularly referred to as the Pelosi amendment. Added by sec. 521 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2511), as sec. 1308. The same Act repealed the standing sec. 1307 and redesignated this sec. as sec. 1307. The repealed sec. 1307 (formerly at 22 U.S.C. 262m–6) had required an annual report be submitted by Secretary of the Treasury, with consultation from others in the Administration, to several committees on progress being made to implement the objectives of title XIII.

[39] Sec. 593(a) of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 3037) amended and restated subsec. (a). It previously read as follows:

"(a) ASSESSMENT REQUIRED BEFORE FAVORABLE VOTE ON ACTION.—

"(1) IN GENERAL.—Beginning 2 years after the date of the enactment of this section, the Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank not to vote in favor of any action proposed to be taken by the respective bank which would have a significant effect on the human environment, unless for at least 120 days before the date of the vote—

"(A) an assessment analyzing the environmental impacts of the proposed action and of alternatives to the proposed action has been completed by the borrower or the institution, and been made available to the board of directors of the institution; and

"(B) except as provided in paragraph (2), such assessment or a comprehensive summary of such assessment has been made available to the multilateral development bank, affected groups, and local nongovernmental organizations.

"(2) EXCEPTIONS AND REPORTS.—

"(A) EXCEPTIONS.—The requirement of paragraph (1)(B) shall not apply where the Secretary finds compelling reasons to believe that disclosure in any case described in

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States Executive Director of each multilateral development bank not to vote in favor of any proposal (including but not limited to any loan, credit, grant, guarantee) which would result or be likely to result in significant impact on the environment, unless the Secretary, after consultation with the Secretary of State and the Administrators of the United States Agency for International Development and the Environmental Protection Agency, determines that for at least 120 days before the date of the vote—

(1) an assessment analyzing the environmental impacts of the proposed action, including associated and cumulative impacts, and of alternatives to the proposed action, has been completed by the borrower or the bank and has been made available to the board of directors of the bank; and

(2) such assessment or a comprehensive summary of the assessment (with proprietary information redacted) has been made available to affected groups, and local nongovernmental organizations and notice of its availability in the country and at the bank has been posted on the bank's website.

(b) ACCESS TO ASSESSMENTS IN ALL MEMBER COUNTRIES.—The Secretary of the Treasury shall seek the adoption of policies and procedures, through discussions and negotiations with the other member countries of the multilateral development banks and with the management of such banks, which result in access by governmental agencies and interested members of the public of such member countries, to environmental assessments or documentary information containing comprehensive summaries of such assessments which discuss the environmental impact of prospective projects and programs being considered by such banks. Such assessments or summaries should be made available to such governmental agencies and interested members of the public at least 120 days before scheduled board action, and public participation in review of the relevant environmental information should be encouraged.

(c) CONSIDERATION OF ASSESSMENT.—The Secretary of the Treasury shall—

(1) ensure that an environmental impact assessment or comprehensive summary of such assessment described in subsection (a) accompanies loan proposals through the agency review process; and

(2) take into consideration recommendations from all other interested Federal agencies and interested members of the public.

(d) DEVELOPMENT OF PROCEDURES FOR SYSTEMATIC ENVIRONMENTAL ASSESSMENT.—The Secretary of the Treasury, in consultation with other Federal agencies, including the Environmental Protection Agency, the Department of State, and the Council on Environmental Quality, shall—

(1) instruct the United States Executive Director of each multilateral development bank to initiate discussions with the

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paragraph (1) would jeopardize the confidential relationship between the borrower and the respective bank.

"(B) REPORTS BY SECRETARY.—The Secretary shall submit a quarterly report in writing to the Committees specified in subsection (f)(1) of the findings described in subparagraph (A).".

other executive directors of the respective bank and to propose that the respective bank develop and make available to member governments of, and borrowers from, the respective bank, within 18 months after the date of the enactment of this section, a procedure for the systematic environmental assessment of development projects for which the respective bank provides financial assistance, taking into consideration the Guidelines and Principles for Environmental Impact Assessment promulgated by the United Nations Environmental Programme and other bilateral or multilateral assessment procedures; and

(2) in determining the position of the United States on any action proposed to be taken by a multilateral development bank, develop and prescribe procedures for the consideration of, among other things—

(A) the environmental impact assessment of the action described in subsection (a);

(B) interagency and public review of such assessment; and

(C) other environmental review and consultation of such action that is required by other law.

(e) USE OF UNITED STATES PERSONNEL.—The Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, the Administrator of the Agency for International Development, and the Administrator of the National Oceanic and Atmospheric Administration, shall—

(1) make available to the multilateral development banks, without charge, appropriate United States Government personnel to assist in—

(A) training bank staff in environmental impact assessment procedures;

(B) providing advice on environmental issues;

(C) preparing environmental studies for projects with potentially significant environmental impacts; and

(D) preparing documents for public release, and developing procedures to provide for the inclusion of interested nongovernmental organizations in the environmental review process; and

(2) encourage other member countries of such banks to provide similar assistance.

(f) REPORTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall submit to the Committees on Foreign Relations and Environment and Public Works of the Senate and the Committee on Banking, Finance and Urban Affairs[12] of the House of Representatives—

(A) not later than the end of the 1-year period beginning on the date of the enactment of this section, a progress report on the efficacy of efforts by the United States to encourage consistent and timely environmental impact assessment of actions proposed to be taken by the multilateral development banks and on the progress made by the multilateral development banks in developing and insti-

tuting environmental assessment policies and procedures; and

(B) not later than January 1, 1993, a detailed report on the matters described in subparagraph (A).

(2) AVAILABILITY OF REPORTS.—The reports required by paragraph (1) shall be made available to the member governments of, and the borrowers from, the multilateral development banks, and to the public.

(g)[40] MULTILATERAL DEVELOPMENT BANK DEFINED.—In this title, the term "multilateral development bank" means the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the African Development Bank, the African Development Fund, the Asian Development Bank, the Inter-American Development Bank, the Inter-American Investment Corporation, any other institution (other than the International Monetary Fund) specified in section 1701(c)(2), and any subsidiary of any such institution.

TITLE XIV—AGRICULTURAL AND COMMODITY PRODUCTION[30]

SEC. 1401.[41] The Congress hereby finds the following:

(1) The financing of certain programs and projects by multilateral development banks has been of great concern insofar as the programs and projects have been detrimental to the interests of American farmers and the agribusiness sector.

(2) an increase in rural income in developing countries will generally result in an increase in exports of United States agricultural and food products.

SEC. 1402.[42] The Secretary of the Treasury, after consultations with the Secretary of Agriculture and the Secretary of the Interior (to the extent appropriate) on markets and prices for commodities, shall periodically instruct the United States Executive Director of each multilateral development bank to work with other executive directors of the respective bank to continue to—

(1) support activities which result in broad increases in income and employment and enhance purchasing power in developing countries, particularly among the rural poor; and

(2) encourage diversification away from single crop or product economies in developing countries to help reduce wide fluctuations in commodity prices and the adverse impact of abrupt changes in the terms of trade.

SEC. 1403.[43] (a) The Secretary of the Treasury shall take all appropriate steps to discourage multilateral development banks from

[40] Subsec. (g), which was added by sec. 560(b)(3) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118; 111 Stat. 2426), was amended and restated by sec. 593(a)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 3037). It previously read as follows:

"(g) For purposes of this section, the term 'multilateral development bank' means any of the institutions named in section 1303(b) of this Act, and the International Finance Corporation.".

[41] 22 U.S.C. 262n.

[42] 22 U.S.C. 262n–1.

[43] 22 U.S.C. 262n–2.

financing projects which will result in the production of commodities, products, or minerals for export that will be in surplus in world markets at the time such production begins.

(b) The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to use the voice and vote of the United States in the respective banks—

(1) to oppose financing by the respective bank of projects which produce, or will produce, commodities, products, or minerals for export if—

(A) the commodity, product, or mineral is subsidized in a manner which is inconsistent with Article XVI.3 of the GATT 1994 as defined in section 2(1)(B) of the Uruguay Round Agreements Act, or article 3.1(a) of the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of that Act;[44]

(B) support from financial sources other than multilateral development banks does not accompany such financing; and

(2) to oppose financing by the respective bank for production of a commodity, product, or mineral for export which—

(A) is likely to be in surplus on world markets at the time such production begins; and

(B) when exported, is likely to cause injury to United States producers within the meaning of Article 15 of the Agreement on Subsidies and Countervailing Measures referred to in subparagraph (A).[45]

SEC. 1404.[46] REDUCTION OF BARRIERS TO INTERNATIONAL TRADE.

The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund to use aggressively the voice and vote of the United States to vigorously promote policies to encourage the opening of markets for agricultural commodities and products by requiring recipient countries to make efforts to reduce trade barriers.

TITLE XV—OTHER POLICIES[30]

SEC. 1501.[47] (a) In any negotiations concerning replenishment or an increase in capital for any multilateral development bank, the Secretary of the Treasury shall propose, as a principal point for negotiations, the following institutional reforms:

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[44] Sec. 1102(b)(1) of the Miscellaneous Trade and Technical Corrections Act of 1999 (Public Law 106–36; 113 Stat. 133) struck out "General Agreement on Tariffs and Trade or Article 10 of the Agreements on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade" and inserted in lieu thereof "GATT 1994 as defined in section 2(1)(B) of the Uruguay Round Agreements Act, or article 3.1(a) of the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of that Act".

[45] Sec. 1102(b)(1) of the Miscellaneous Trade and Technical Corrections Act of 1999 (Public Law 106–36; 113 Stat. 133) struck out "Article 6 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade" and inserted in lieu thereof "Article 15 of the Agreement on Subsidies and Countervailing Measures referred to in subparagraph (A)".

[46] 22 U.S.C. 262n–3. Added by sec. 611 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (sec. 101(d) of division A of Public Law 105–277; 112 Stat. 2681–228).

[47] 22 U.S.C. 262*o*.

(1) The establishment of a unified program within each multilateral development bank to assess the extent to which bank lending benefits the least advantaged members of society, particularly women and the poor, and to increase the extent to which such members benefit from future bank lending.

(2) The establishment of an office or other administrative procedures within each multilateral development bank to—

(A) provide in-country liaison services for nongovernmental organizations operating at the community level;

(B) monitor the impact of project and nonproject lending on local populations; and

(C) ensure compliance with loan conditionalities, especially loan conditionalities relating to the protection of the quality of life of the poor and the rights of aboriginal minorities.

(3) A major increase in the number of members of the professional staff of each regional multilateral development bank with training in environmental or social impact analysis or natural science, including—

(A) recruitment of additional permanent professional staff; and

(B) training programs for existing staff members in these subject areas.

(4) With respect to the International Bank for Reconstruction and Development, the establishment of a program for policy-based lending to promote the sustainable use of renewable resources and the protection of the environment in borrowing countries.

(5) An increase in the length of any review period established by any multilateral development bank for board review of staff recommendations by such time as would be sufficient to allow the governments of member countries to review and comment on the staff recommendations before any action is taken by the board of directors of such bank on the recommendations.

(b) The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to request the management of such bank to prepare an annual report which identifies and describes the most exemplary lending practices or loan components implemented during the preceding year with respect to each of the following lending policy goals for each major borrowing country or country group:

(1) Benefit to the poor.

(2) Involvement of nongovernmental organizations and local and indigenous populations in loan design, implementation, planning, and monitoring.

(3) Integration of, consideration of, and concern for environmental quality and the sustainable use of natural resources into loan design, implementation, planning, and monitoring.

(4) Recognition of and support for the economic and social development of women.

SEC. 1502.[48] MILITARY SPENDING BY RECIPIENT COUNTRIES; MILITARY INVOLVEMENT IN THE ECONOMIES OF RECIPIENT COUNTRIES.

(a) CONSIDERATION OF COMMITMENT TO ACHIEVING CERTAIN GOALS.—

(1)[49] IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Directors of the international financial institutions (as defined in section 1701(c)(2)) to promote growth in the international economy by taking into account, when considering whether to support or oppose loan proposals at these institutions, the extent to which the recipient government has demonstrated a commitment to achieving the following goals:

(A) to provide accurate and complete data on the annual expenditures and receipts of the armed forces;

(B) to establish good and publicly accountable governance, including an end to excessive military involvement in the economy; and

(C) to make substantial reductions in excessive military spending and forces.

(b) STEPS TO ACHIEVE GOALS REQUIRED.—The Secretary of the Treasury shall instruct the United States Executive Directors of the international financial institutions (as so defined) to promote a policy at each institution under which—

(1) the respective institution monitors closely and, through regular policy consultations with recipient governments, seeks to influence the composition of public expenditure in favor of funding growth and development priorities and away from unproductive expenditure, including excessive military expenditures;

(2) the respective institution supports lending operations which assist efforts of recipient governments to promote good governance, including public participation, and reduce military expenditures; and

(3) the allocation of resources and the extension of credit by the respective institution takes into account the performance of recipient governments in the areas of good governance, ending excessive military involvement in the economy and reducing excessive military expenditures.

SEC. 1503.[50] ADVOCACY OF POLICIES TO ENHANCE THE GENERAL EFFECTIVENESS OF THE INTERNATIONAL MONETARY FUND.

(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Monetary

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[48] 22 U.S.C. 262*o*–1. Sec. 526(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306; 108 Stat. 1633) added sec. 1502.

[49] As enrolled; no para. (2) was enacted.

[50] 22 U.S.C. 262o–2. Added by sec. 610(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (sec. 101(d) of division A of Public Law 105–277; 112 Stat. 2681–224).

Sec. 504 of the Emergency Supplemental Appropriations, 2000 (sec. 1000(a)(5) of Public Law 106–113; 113 Stat. 1501A–317), provided the following:

"SEC. 504. ADDITIONAL PROVISIONS

"(a) PUBLICATION OF IMF OPERATIONAL BUDGETS.—The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund to use the voice, vote, and influence of the United States to urge vigorously the International Monetary

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Fund to use aggressively the voice and vote of the Executive Director to do the following:

(1) Vigorously promote policies to increase the effectiveness of the International Monetary Fund in structuring programs and assistance so as to promote policies and actions that will contribute to exchange rate stability and avoid competitive devaluations that will further destabilize the international financial and trading systems.

(2) Vigorously promote policies to increase the effectiveness of the International Monetary Fund in promoting market-oriented reform, trade liberalization, economic growth, democratic governance, and social stability through—

(A) establishing an independent monetary authority, with full power to conduct monetary policy, that provides for a non-inflationary domestic currency that is fully convertible in foreign exchange markets;

(B) opening domestic markets to fair and open internal competition among domestic enterprises by eliminating inappropriate favoritism for small or large businesses, eliminating elite monopolies, creating and effectively implementing anti-trust and anti-monopoly laws to protect free competition, and establishing fair and accessible legal procedures for dispute settlement among domestic enterprises;

Fund to publish the operational budgets of the International Monetary Fund, on a quarterly basis, not later than one year after the end of the period covered by the budget.

"(b) REPORT TO THE CONGRESS SHOWING COSTS OF UNITED STATES PARTICIPATION IN THE INTERNATIONAL MONETARY FUND.—The Secretary of the Treasury shall prepare and transmit to the Committees on Banking and Financial Services, on Appropriations, and on International Relations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs, on Foreign Relations, and on Appropriations of the Senate a quarterly report, which shall be made readily available to the public, on the costs or benefits of United States participation in the International Monetary Fund and which shall detail the costs and benefits to the United States, as well as valuation gains or losses on the United States reserve position in the International Monetary Fund.

"(c) CONTINUATION OF FORGOING OF REIMBURSEMENT OF IMF FOR EXPENSES OF ADMINISTERING ESAF.—The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund to use the voice, vote, and influence of the United States to urge vigorously the International Monetary Fund to continue to forgo reimbursements of the expenses incurred by the International Monetary Fund in administering the Enhanced Structural Adjustment Facility, until the Heavily Indebted Poor Countries Initiative (as defined in section 1623 of the International Financial Institutions Act) is terminated.

"(d) NO GOLD SALES BY INTERNATIONAL MONETARY FUND WITHOUT PRIOR AUTHORIZATION BY THE CONGRESS.—(1) The first sentence of section 5 of the Bretton Woods Agreements Act (22 U.S.C. 286c) is amended in clause (g) by striking "approve either the disposition of more than 25 million ounces of Fund gold for the benefit of the Trust Fund established by the Fund on May 6, 1976, or the establishment of any additional trust fund whereby resources of the International Monetary Fund would be used for the special benefit of a single member, or of a particular segment of the membership, of the Fund." and inserting "approve any disposition of Fund gold, unless the Secretary certifies to the Congress that such disposition is necessary for the Fund to restitute gold to its members, or for the Fund to provide liquidity that will enable the Fund to meet member country claims on the Fund or to meet threats to the systemic stability of the international financial system.".

"(2) Not less than 30 days prior to the entrance by the United States into international negotiations for the purpose of reaching agreement on the disposition of Fund gold whereby resources of the Fund would be used for the special benefit of a single member, or of a particular segment of the membership of the Fund, the Secretary of the Treasury shall consult with the Committees on Banking and Financial Services, on Appropriations, and on International Relations of the House of Representatives and the Committees on Foreign Relations, on Appropriations, and on Banking, Housing and Urban Affairs of the Senate.

"(e) ANNUAL REPORT BY GAO ON CONSISTENCY OF IMF PRACTICES WITH STATUTORY POLICIES.—The Comptroller General of the United States shall annually prepare and submit to the Congress of the United States a written report on the extent to which the practices of the International Monetary Fund are consistent with the policies of the United States, as expressly contained in Federal law applicable to the International Monetary Fund.".

(C) privatizing industry in a fair and equitable manner that provides economic opportunities to a broad spectrum of the population, eliminating government and elite monopolies, closing loss-making enterprises, and reducing government control over the factors of production;

(D) economic deregulation by eliminating inefficient and overly burdensome regulations and strengthening the legal framework supporting private contract and intellectual property rights;

(E) establishing or strengthening key elements of a social safety net to cushion the effects on workers of unemployment and dislocation; and

(F) encouraging the opening of markets for agricultural commodities and products by requiring recipient countries to reduce trade barriers.

(3) Vigorously promote policies to increase the effectiveness of the International Monetary Fund, in concert with appropriate international authorities and other international financial institutions (as defined in section 1701(c)(2)), in strengthening financial systems in developing countries, and encouraging the adoption of sound banking principles and practices, including the development of laws and regulations that will help to ensure that domestic financial institutions meet strong standards regarding capital reserves, regulatory oversight, and transparency.

(4) Vigorously promote policies to increase the effectiveness of the International Monetary Fund, in concert with appropriate international authorities and other international financial institutions (as defined in section 1701(c)(2)), in facilitating the development and implementation of internationally acceptable domestic bankruptcy laws and regulations in developing countries, including the provision of technical assistance as appropriate.

(5) Vigorously promote policies that aim at appropriate burden-sharing by the private sector so that investors and creditors bear more fully the consequences of their decisions, and accordingly advocate policies which include—

(A) strengthening crisis prevention and early warning signals through improved and more effective surveillance of the national economic policies and financial market development of countries (including monitoring of the structure and volume of capital flows to identify problematic imbalances in the inflow of short and medium term investment capital, potentially destabilizing inflows of offshore lending and foreign investment, or problems with the maturity profiles of capital to provide warnings of imminent economic instability), and fuller disclosure of such information to market participants;

(B) accelerating work on strengthening financial systems in emerging market economies so as to reduce the risk of financial crises;

(C) consideration of provisions in debt contracts that would foster dialogue and consultation between a sov-

ereign debtor and its private creditors, and among those creditors;

(D) consideration of extending the scope of the International Monetary Fund's policy on lending to members in arrears and of other policies so as to foster the dialogue and consultation referred to in subparagraph (C);

(E) intensified consideration of mechanisms to facilitate orderly workout mechanisms for countries experiencing debt or liquidity crises;

(F) consideration of establishing ad hoc or formal linkages between the provision of official financing to countries experiencing a financial crisis and the willingness of market participants to meaningfully participate in any stabilization effort led by the International Monetary Fund;

(G) using the International Monetary Fund to facilitate discussions between debtors and private creditors to help ensure that financial difficulties are resolved without inappropriate resort to public resources; and

(H) the International Monetary Fund accompanying the provision of funding to countries experiencing a financial crisis resulting from imprudent borrowing with efforts to achieve a significant contribution by the private creditors, investors, and banks which had extended such credits.

(6) Vigorously promote policies that would make the International Monetary Fund a more effective mechanism, in concert with appropriate international authorities an other international financial institutions (as defined in section 1701(c)(2)), for promoting good governance principles within recipient countries by fostering structural reforms, including procurement reform, that reduce opportunities for corruption and bribery, and drug-related money laundering.

(7) Vigorously promote the design of International Monetary Fund programs and assistance so that governments that draw on the International Monetary Fund channel public funds away from unproductive purposes, including large "show case" projects and excessive military spending, and toward investment in human and physical capital as well as social programs to protect the neediest and promote social equity.

(8) Work with the International Monetary Fund to foster economic prescriptions that are appropriate to the individual economic circumstances of each recipient country, recognizing that inappropriate stabilization programs may only serve to further destabilize the economy and create unnecessary economic, social, and political dislocation.

(9) Structure the International Monetary Fund programs and assistance so that the maintenance and improvement of core labor standards are routinely incorporated as an integral goal in the policy dialogue with recipient countries, so that—

(A) recipient governments commit to affording workers the right to exercise internationally recognized core worker rights, including the right of free association and collective bargaining through unions of their own choosing;

(B) measures designed to facilitate labor market flexibility are consistent with such core worker rights; and

(C) the staff of the International Monetary Fund surveys the labor market policies and practices of recipient countries and recommends policy initiatives that will help to ensure the maintenance or improvement of core labor standards.

(10) Vigorously promote International Monetary Fund programs and assistance that are structured to the maximum extent feasible to discourage practices which may promote ethnic or social strife in a recipient country.

(11) Vigorously promote recognition by the International Monetary Fund that macroeconomic developments and policies can affect and be affected by environmental conditions and policies, and urge the International Monetary Fund to encourage member countries to pursue macroeconomic stability while promoting environmental protection.

(12) Facilitate greater International Monetary Fund transparency, including by enhancing accessibility of the International Monetary Fund and its staff, fostering a more open release policy toward working papers, past evaluations, and other International Monetary Fund documents, seeking to publish all Letters of Intent to the International Monetary Fund and Policy Framework Papers, and establishing a more open release policy regarding Article IV consultations.

(13) Facilitate greater International Monetary Fund accountability and enhance International Monetary Fund self-evaluation by vigorously promoting review of the effectiveness of the Office of Internal Audit and Inspection and the Executive Board's external evaluation pilot program and, if necessary, the establishment of an operations evaluation department modeled on the experience of the International Bank for Reconstruction and Development, guided by such key principles as usefulness, credibility, transparency, and independence.

(14) Vigorously promote coordination with the International Bank for Reconstruction and Development and other international financial institutions (as defined in section 1701(c)(2)) in promoting structural reforms which facilitate the provision of credit to small businesses, including microenterprise lending, especially in the world's poorest, heavily indebted countries.

(15)[51] Work with the International Monetary Fund to—

(A) foster strong global anti-money laundering (AML) and combat the financing of terrorism (CFT) regimes;

(B) ensure that country performance under the Financial Action Task Force anti-money laundering and counter-terrorist financing standards is effectively and comprehensively monitored;

(C) ensure note is taken of AML and CFT issues in Article IV reports, International Monetary Fund programs, and other regular reviews of country progress;

[51] Sec. 7703(a) of the 9/11 Commission Implementation Act of 2004 (title VII of Public Law 108–458; 118 Stat. 3860) added para. (15).

(D) ensure that effective AML and CFT regimes are considered to be indispensable elements of sound financial systems; and

(E) emphasize the importance of sound AML and CFT regimes to global growth and development..

(b) COORDINATION WITH OTHER EXECUTIVE DEPARTMENTS.—To the extent that it would assist in achieving the goals described in subsection (a), the Secretary of the Treasury shall pursue the goals in coordination with the Secretary of State, the Secretary of Labor, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, the Administrator of the Agency for International Development, and the United States Trade Representative.

SEC. 1504.[52] ADMINISTRATIVE PROVISIONS.

(a) ACHIEVEMENT OF CERTAIN POLICY GOALS.—The Secretary of the Treasury should instruct the United States Executive Director at each multilateral development institution to inform the institution of the following United States policy goals, and use the voice and vote of the United States to achieve the goals at the institution before June 30, 2005:

(1) No later than 60 calendar days after the Board of Directors of the institution approves the minutes of a Board meeting, the institution shall post on its website an electronic version of the minutes, with material deemed too sensitive for public distribution redacted.

(2) The institution shall keep a written transcript or electronic recording of each meeting of its Board of Directors and preserve the transcript or recording for at least 10 years after the meeting.

(3) All public sector loan, credit and grant documents, country assistance strategies, sector strategies, and sector policies prepared by the institution and presented for endorsement or approval by its Board of Directors, with materials deemed too sensitive for public distribution redacted or withheld, shall be made available to the public 15 calendar days before consideration by the Board or, if not then available, when the documents are distributed to the Board. Such documents shall include the resources and conditionality necessary to ensure that the borrower complies with applicable laws in carrying out the terms and conditions of such documents, strategies, or policies, including laws pertaining to the integrity and transparency of the process such as public consultation, and to public health and safety and environmental protection.

(4) The institution shall post on its website an annual report containing statistical summaries and case studies of the fraud and corruption cases pursued by its investigations unit.

(5) The institution shall require that any health, education, or poverty-focused loan, credit, grant, document, policy, or strategy prepared by the institution includes specific outcome and output indicators to measure results, and that the indica-

[52] 22 U.S.C. 262*o*–3. Sec. 581 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (division D of Public Law 108–199; 118 Stat. 202) added sec. 1504.

tors and results be published periodically during the execution, and at the completion, of the project or program.

(6) The institution shall establish a plan and schedule for conducting regular, independent audits of internal management controls and procedures for meeting operational objectives, complying with Bank policies, and preventing fraud, and making reports describing the scope and findings of such audits available to the public.

(7) The institution shall establish effective procedures for the receipt, retention, and treatment of: (A) complaints received by the Bank regarding fraud, accounting, mismanagement, internal accounting controls, or auditing matters; and (B) the confidential, anonymous submission by employees of the Bank of concerns regarding fraud, accounting, mismanagement, internal accounting controls, or auditing matters.

(b) Not later than September 1, 2004, and 6 months thereafter, the Secretary of the Treasury shall submit a report to the appropriate congressional committees describing the actions taken by each multilateral development institution to implement the policy goals described in subsection (a), and any further actions that need to be taken to fully implement such goals.

(c) PUBLICATION OF WRITTEN STATEMENTS REGARDING INSPECTION MECHANISM CASES.—No later than 60 calendar days after a meeting of the Board of Directors of a multilateral development institution, the Secretary of the Treasury should provide for publication on the website of the Department of the Treasury of any written statement presented at the meeting by the United States Executive Director at the institution concerning—

(1) a project on which a claim has been made to the inspection mechanism of the institution; or

(2) a pending inspection mechanism case.

(d) CONGRESSIONAL BRIEFINGS.—The Secretary of the Treasury or the designee of the Secretary should brief the appropriate congressional committees, when requested, on the steps that have been taken by the United States Executive Director at any multilateral development institution, and by any such institution, to implement the measures described in this section.

(e) PUBLICATION OF "NO" VOTES AND ABSTENTIONS BY THE UNITED STATES.—Each month, the Secretary of the Treasury should provide for posting on the website of the Department of the Treasury of a record of all "no" votes and abstentions made by the United States Executive Director at any multilateral development institution on any matter before the Board of Directors of the institution.

(f) MULTILATERAL DEVELOPMENT INSTITUTION DEFINED.—In this section, the term "multilateral development institution" shall have the meaning given in section 1701(c)(3).

SEC. 1505.[53] PROMOTION OF POLICY GOALS.

(a) The Secretary of the Treasury shall instruct the United States Executive Director at each multilateral development bank to

[53] 22 U.S.C. 262o–4. Sec. 599B of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102; 119 Stat. 2241), added sec. 1505.

inform each such bank and the executive directors of each such bank of the policy of the United States as set out in this section and to actively promote this policy and the goals set forth in section 1504 of this Act. It is the policy of the United States that each bank should—

(1) require the bank's employees, officers and consultants to make an annual disclosure of their financial interests and income and of any other potential source of conflict of interest;

(2) link project and program design and results to management and staff performance appraisals, salaries, and bonuses;

(3) implement voluntary disclosure programs for firms and individuals participating in projects financed by such bank;

(4) ensure that all loan, credit, guarantee, and grant documents and other agreements with borrowers include provisions for the financial resources and conditionality necessary to ensure that a person or country that obtains financial support from a bank complies with applicable bank policies and national and international laws in carrying out the terms and conditions of such documents and agreements, including bank policies and national and international laws pertaining to the comprehensive assessment and transparency of the activities related to access to information, public health, safety, and environmental protection;

(5) implement clear anti-corruption procedures setting forth the circumstances under which a person will be barred from receiving a loan, contract, grant, guarantee or credit from such bank, make such procedures available to the public, and make the identity of such person available to the public;

(6) coordinate policies across multilateral development banks on issues including debarment, cross-debarment, procurement guidelines, consultant guidelines, and fiduciary standards so that a person that is debarred by one such bank is subject to a rebuttable presumption of ineligibility to conduct business with any other such bank during the specific ineligibility period;

(7) require each bank borrower and grantee and each bidder, supplier and contractor for MDB projects to comply with the highest standard of ethics prohibiting coercive, collusive, corrupt and fraudulent practices, such as are defined in the World Bank's Procurement Guidelines of May, 2004;

(8) maintain a functionally independent Investigations Office, Auditor General Office and Evaluation Office that are free from interference in determining the scope of investigations (including forensic audits), internal auditing (including assessments of management controls for meeting operational objectives and complying with bank policies), performing work and communicating results, and that regularly report to such bank's board of directors and, as appropriate and in a manner consistent with such functional independence of the Investigations Office and the Auditor General Office, to the bank's President;

(9) require that each candidate for adjustment or budget support loans demonstrate transparent budgetary and procure-

ment processes including budget publication and public scrutiny prior to loan or grant approval;

(10) require that for each project where compensation is to be provided to persons adversely affected by the project, such persons have recourse to an impartial and responsive mechanism to receive and resolve complaints. The mechanism should be easily accessible to all segments of the affected community without impeding access to other judicial or administrative remedies and without retribution;

(11) implement best practices in domestic laws and international conventions against corruption for whistleblower and witness disclosures and protections against retaliation for internal and lawful public disclosures by the bank's employees and others affected by such bank's operations who challenge illegality or other misconduct that could threaten the bank's mission, including: (1) best practices for legal burdens of proof; (2) access to independent adjudicative bodies, including external arbitration based on consensus selection and shared costs; and (3) results that eliminate the effects of proven retaliation; and

(12) require, to the maximum extent possible, that all draft country strategies are issued for public consideration no less than 45 days before the country strategy is considered by the multilateral development bank board of directors.

(b) The Secretary of the Treasury shall, beginning thirty days after the enactment of this Act and within sixty calendar days of the meeting of the respective bank's Board of Directors at which such decisions are made, publish on the Department of the Treasury website a statement or explanation of the United States position on decisions related to: (1) operational policies; and (2) any proposal which would result or be likely to result in a significant effect on the environment.

(c) In this section the term "multilateral development bank" has the meaning given that term in section 1307 of the International Financial Institutions Act (22 U.S.C. 262m–7) and also includes the European Bank for Reconstruction and Development and the Global Environment Facility.

TITLE XVI—HUMAN WELFARE [30]

SEC. 1601.[54] (a) The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development and the International Development Association to initiate discussions with other directors of the respective institutions and to propose that—

(1) guidelines be established which reflect clear and tangible concern for the impact adjustment lending programs, and the activities in support of which such lending is made, have and will have on human welfare; and

(2) impact statements be required which assess the effect an adjustment lending program, and the activities in support of which such lending is made, will have on the poor of the country to which such lending is made.

[54] 22 U.S.C. 262p.

(b) In the discussions referred to in subsection (a) with respect to the impact statement described in paragraph (2) of such subsection, the United States Executive Director should propose that such impact statements—

(1) specify what the projected effects of the adjustment loan will be on the poor;

(2) explain what procedures have been or will be taken to strengthen the in-country capacity of the borrower to—

(A) monitor nutrition levels in a timely manner; and

(B) measure the impact an adjustment loan, and the policies and activities in support of which such loan is made, has on the living standards of the country's population, especially the poorest; and

(3) indicate specifically what steps the borrower will take to—

(A) mitigate any adverse effect the policies and activities in support of which an adjustment loan is made are expected to have on the living standards of the poor (including the use of the proceeds of any adjustment loan, project aid, or other compensatory measure to mitigate such effect); and

(B) maximize the extent of the participation of the poor in the economic benefits resulting from an adjustment loan.

(c) The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development and the International Development Association to request the management of the respective institutions to prepare a report for distribution to member governments no later than June 30, 1988, that—

(1) assesses the impact on the poor of structural adjustment in countries to which structural adjustment lending has been made; and

(2) specifies the steps that have been or will be taken by the respective institution to—

(A) mitigate any adverse effect of adjustment lending, and the activities in support of which such lending is made, on the living standards of the poor in the countries to which such loans are made; and

(B) ensure the participation of the poor in the economic benefits resulting from adjustment lending and the activities in support of which such lending is made.

(d) For purposes of this section and section 1302, the term "adjustment lending" means nonproject lending in support of structural macroeconomic reforms or sectoral economic reform.

SEC. 1602.[55] (a) The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development and the International Development Association to initiate discussions with other directors of such institutions and to propose the establishment of a Grassroots Collaboration Program to develop improved mechanisms for involving, directly or indirectly, nongovernmental organizations in the design,

[55] 22 U.S.C. 262p–1.

implementation, and monitoring of development projects financed by, or development policies established by, such bank or association in order to alleviate poverty and promote environmental protection, including—

(1) encouraging nongovernmental organizations in borrowing countries to participate in all stages of project planning and country strategy activities to—

(A) minimize any adverse impact of such projects or activities on the poor people of such country;

(B) minimize any adverse impact of such projects or activities on the environment of such country; and

(C) maximize the extent to which such projects or activities will benefit the poor people of such country;

(2) increasing the direct involvement of nongovernmental organizations in project design, implementation, or monitoring whenever such organizations have a distinct comparative advantage over other entities in providing such services by virtue of their grassroots involvement with poor people, especially women, in a borrowing country;

(3) providing microenterprise credit for small scale economic activities through nongovernmental organizations;

(4) supporting the enhancement of the institutional capacity of nongovernmental organizations in borrowing countries as development practitioners; and

(5) establishing or supporting jointly funded intermediary mechanisms with nongovernmental organizations to facilitate increased collaboration between such bank or association and nongovernmental organizations in borrowing countries.

(b) It is the sense of the Congress that the Grassroots Collaboration Program described in subsection (a) should be implemented and financed as part of the normal operations of the International Bank for Reconstruction and Development and the International Development Association.

(c) To the extent the activities under the Grassroots Collaboration Program described in subsection (a) need more flexible financing, it is the sense of the Congress that—

(1) such activities could be funded through a grant from the net income of the International Bank for Reconstruction and Development; and

(2) an initial grant of not less than $50,000,000 should be made for such activities with subsequent annual allocations of such additional amounts as may be necessary to allow the Grassroots Collaboration Program to maximize collaboration with nongovernmental organizations in the alleviation of poverty and the protection of the environment.

(d)[56] * * * [Repealed—1989]

(e)[57] Each annual report to the Congress by the National Advisory Council on International Monetary and Financial Policies

[56] Sec. 541 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2518) consolidated several reporting requirements into new secs. 1701 through 1703 and titles XVIII and XIX of the International Financial Institutions Act and repealed duplicative requirements in other legislation. Sec. 541(d)(4) repealed subsec. (d).

[57] Sec. 583(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (sec. 101(d) of division I of Public Law 105–277; 112 Stat. 2681–202) states that

Continued

shall describe the status of the establishment and operation of the Grassroots Collaboration Program described in subsection (a), the activities undertaken by the Program, and the sum of the amounts expended by the Program.

SEC. 1603.[58] (a) The Secretary of the Treasury shall instruct the United States Executive Directory of the International Bank for Reconstruction and Development and the International Development Association to initiate discussions with other directors of such Bank or Association to propose that—

(1) in carrying on the activities of the Bank or Association, the Bank or Association take such steps as may be necessary to increase access for the poor people of a borrowing country to formal sources of credit; and

(2) the Bank or Association include a requirement in all appropriate project and nonproject agreements, as a condition for assistance under such agreements, that the borrowing country identify and remove unreasonable legal and regulatory barriers to—

(A) the establishment or operation of organizations which extend credit; and

(B) the provision of credit to microenterprises for small scale economic activities.

(b) The Secretary of the Treasury shall instruct the United States Executive Directors of the African Development Bank and the Asian Development Bank to initiate discussions with other directors of the respective banks and to propose that each such bank—

(1) examine the Program for the Financing of Small Projects of the Inter-American Development Bank and the steps taken by such bank to link the Program to the mainstream operation of the bank; and

(2) explore ways and means to establish similar program within the respective banks to provide credit to microenterprises for small scale economic activities.

(c)[59] Each annual report to the Congress by the National Advisory Council on International Monetary and Financial Policies shall describe the status of the microenterprise credit promotion activities of each of the institutions referred to in subsection (a) or (b).

SEC. 1604.[60] (a) Congress hereby declares that it is the policy of the United States that multilateral development banks should—

(1) fully involve women in borrowing countries in the identification, planning, implementation, and evaluation of mainstream development activities financed by such banks;

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the requirements of subsec. (e) shall no longer apply to the contents of the annual report of the National Advisory Council on International Monetary and Financial Policies, as required by sec. 1701 of the International Financial Institutions Act, as amended (Public Law 95–118; 22 U.S.C. 262r).

[58] 22 U.S.C. 262p–2.

[59] Sec. 583(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (sec. 101(d) of division I of Public Law 105–277; 112 Stat. 2681–202) states that the requirements of subsec. (c) shall no longer apply to the contents of the annual report of the National Advisory Council on International Monetary and Financial Policies, as required by sec. 1701 of the International Financial Institutions Act, as amended (Public Law 95–118; 22 U.S.C. 262r).

[60] 22 U.S.C. 262p–3.

(2) recognize and support women's direct and indirect roles in the economic development of their countries and communities;

(3) recognize and support women's direct and indirect roles in the education and social development of, the maintenance of the health of, and in the provision of adequate nutrition for, family members and communities, especially children;

(4) work to remove legal and customary barriers which impede the full participation of women in economic and social development, such as lack of access to credit, property rights, education, health care, and government services; and

(5) involve women's groups in borrowing countries in project identification and preparation in order to factor their assessments of women's economic and social needs into project design.

(b) The Secretary of the Treasury shall instruct—

(1) the United States Executive Director of the International Bank for Reconstruction and Development and the International Development Association to support attempts to strengthen the role of the Women in Development division in policy development, project design and implementation, and evaluation; and

(2) the United States Executive Directors of the regional and multilateral development banks to support exploring the establishment of a mechanism, or the strengthening of any existing mechanism, within each of the respective banks, to advise, advocate, and promote the full integration of women in the planning, design, implementation, and evaluation of lending activities both in borrowing countries and within the banks.

(c)[61] Each annual report to the Congress by the National Advisory Council on International Monetary and Financial Policies shall describe the actions taken by the multilateral development banks to implement the policies established under this section.

SEC. 1605.[62] The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to initiate discussions with other executive directors of the respective bank and to propose that the bank take such steps as may be necessary—

(1) to determine, at the time an initial feasibility study is conducted with respect to a proposed project and to the fullest extent possible, the impact such project would have on indigenous people in the borrowing country;

(2) to ensure compliance with loan conditionalities relating to the protection of the rights of indigenous people to lands and resources; and

(3) to consult with indigenous people, and nongovernmental organizations representing indigenous people, at every phase of loan design, planning, implementation, and monitoring.

[61] Sec. 583(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (sec. 101(d) of division I of Public Law 105–277; 112 Stat. 2681–202) states that the requirements of subsec. (c) shall no longer apply to the contents of the annual report of the National Advisory Council on International Monetary and Financial Policies, as required by sec. 1701 of the International Financial Institutions Act, as amended (Public Law 95–118; 22 U.S.C. 262r).

[62] 22 U.S.C. 262p–4.

SEC. 1606.[63] LOAN PROGRAMS TO REDUCE ECONOMIC DEPENDENCE ON ILLICIT NARCOTICS.

(a) FINDINGS.—The Congress finds that—

(1) the illicit narcotics epidemic currently afflicting the United States represents a direct threat to the well-being of every United States citizen;

(2) every effective means must be pursued to reduce the foreign production and subsequent importation into the United States of illicit narcotics;

(3) the multilateral development banks can play an integral role in efforts to control the production of illicit narcotics;

(4) producer country narcotics eradication programs will not be effective unless such programs provide an economic alternative to the production of narcotics;

(5) efforts to address the illicit narcotics epidemic through production control are doomed to failure unless greater effort is applied to curb use of and demand for illicit narcotics; and

(6) the appropriate role for the multilateral development banks in the "War Against Drugs" is through coordinating and financing alternative economic opportunities in producer and trafficking countries.

(b) LOAN PROGRAMS TO REDUCE ECONOMIC DEPENDENCE ON ILLICIT NARCOTICS.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development and the United States Executive Director of the Inter-American Development Bank to initiate discussion with other executive directors of such institutions and to advocate and support the creation, within such institutions, of specific country lending programs and policies (including crop substitution, creation of roads conducive to the expansion of markets for licit goods, other infrastructure development measures such as development projects generating employment, agricultural extension assistance, and region-specific development plans) which are particularly oriented to reducing or eliminating the economic dependence of regions of borrowing countries known to be areas in which illicit narcotics are produced or trafficked, on such production and trafficking.

(c) COORDINATION AMONG ASSISTANCE PROGRAMS DESIGNED TO REDUCE ECONOMIC DEPENDENCY ON ILLICIT NARCOTICS.—In addition, the Secretary of the Treasury should instruct the United States Executive Director of the International Bank for Reconstruction and Development and the United States Executive Director of the Inter-American Development Bank to encourage such institutions to provide coordination among other multilateral and bilateral assistance programs designed to reduce the economic dependence of regions of borrowing countries known to be areas in which illicit narcotics are produced or trafficked, on such production and trafficking.

[63] 22 U.S.C. 262p–4a. Sec 1606 was added by sec. 6 of H.R. 4645 as enacted into law by sec. 555 of Public Law 100–461 (102 Stat. 2268). The sec. 1606 previously appearing at this point was redesignated as sec. 1612.

SEC. 1607.[64] DIRECTIVES REGARDING GOVERNMENT-OWNED ENTERPRISES IN COUNTRIES RECEIVING WORLD BANK LOANS.

(a) FINDING.—The Congress finds that a principal focus of United States Government policy in the multilateral development banks has been and should be to foster greater development of the private sector in member borrowing countries of such banks.

(b) TECHNICAL ASSISTANCE TO TRANSFORM GOVERNMENT-OWNED ENTERPRISES INTO PRIVATELY OWNED ENTERPRISES.—In order to assist and strengthen the advancement of ongoing efforts to have the International Bank for Reconstruction and Development play a key role in building a viable private sector in member borrowing countries of such bank, and to further assist such bank in its determination to facilitate the transfer of government-owned enterprises in such countries to private ownership, the Secretary of the Treasury shall instruct the United States Executive Director of such bank to vigorously encourage the provision of technical assistance to such countries (relying, where appropriate, on the expertise of the International Finance Corporation or the Multilateral Investment Guarantee Agency) to transform enterprises owned, in whole or part, by the governments of such countries into privately owned, self-sufficient enterprises. Such technical assistance may involve the valuation of the assets of such government-owned enterprises, the assessment of tender offers, and the creation or strengthening of market-based mechanisms to facilitate such a transfer of ownership.

(c) REPORTS.—

(1) IN GENERAL.—The United States Executive Director of the International Bank for Reconstruction and Development shall submit 3 reports to the Congress on—

(A) the progress made in transforming government owned enterprises into privately owned enterprises as described in subsection (b);

(B) the performance of the privately owned enterprises resulting from such transformation; and

(C) the contributions of development finance companies toward strengthening the private sector in member borrowing countries.

(2) TIMING.—The United States Executive Director of the International bank for Reconstruction and Development shall submit to the Congress the first report required by paragraph (2) within 1 year after the date of the enactment of this section, and shall submit additional reports 12 months, and 24 months, after the date the first report is submitted.

SEC. 1608.[65] INITIATION OF DISCUSSIONS TO FACILITATE DEBT-FOR-DEVELOPMENT SWAPS FOR HUMAN WELFARE AND ENVIRONMENTAL CONSERVATION.

(a) FINDINGS.—The Congress finds that—

(1) voluntary debt-for-development swaps in heavily indebted developing nations can simultaneously facilitate reduction of the burden of external indebtedness and increase the resources

[64] 22 U.S.C. 262p–4b. Sec. 1607 was added by sec. 7 of H.R. 4645 as enacted into law by sec. 555 of Public Law 100–461 (102 Stat. 2268).

[65] 22 U.S.C. 262p–4c. Sec. 1608 was added by sec. 8 of H.R. 4645 as enacted into law by sec. 555 of Public Law 100–461 (102 Stat. 2268).

available within the country for charitable, educational, and scientific purposes, including environmental conservation, educational, and scientific purposes, including environmental conservation, education, human welfare, health, agricultural research and development, microenterprise credit, and development of indigenous nonprofit organizations; and

(2) heavily indebted developing countries may desire to facilitate such swaps to the maximum extent consistent with sound domestic economic management and minimization of inflationary impact.

(b) INITIATION OF DISCUSSIONS TO FACILITATE DEBT-FOR-DEVELOPMENT SWAPS FOR HUMAN WELFARE AND ENVIRONMENTAL CONSERVATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to initiate discussions with the directors of such bank, the International Development Association, and the International Finance Corporation and propose that such institutions provide advice and assistance, as appropriate, to borrowing country governments desiring to facilitate debt-for-development swaps, on mechanisms (including trust funds) to accomplish this purpose, particularly in the context of debt rescheduling, which mechanisms result in sound management of the macroeconomic impact of such swaps on such countries, and preserve the value of the capital obtained through such swaps.

(2) DEFINITIONS.—As used in this section:

(A) DEBT-FOR-DEVELOPMENT SWAP.—The term "debt-for-development swap" means the purchase of qualified debt by, or the donation of such debt to, an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code, and the subsequent transfer of such debt to an organization located in such foreign country in exchange for an undertaking by such tax-exempt organization, such foreign government, or such foreign organization to engage in a charitable, educational, or scientific activity.

(B) QUALIFIED DEBT.—The term "qualified debt" means—

(i) sovereign debt issued by a foreign government;

(ii) debt owed by private institutions in the country governed by such foreign government; and

(iii) debt owed by institutions in the country governed by such foreign government, which are owned, in part, by private persons and, in part, by public institutions.

SEC. 1609.[66] INITIATION OF DISCUSSIONS TO FACILITATE FINANCING OF HUMAN WELFARE AND NATURAL RESOURCE PROGRAMS IN SUB-SAHARAN AFRICA IN CONNECTION WITH DEBT REDUCTION AND CONVERSION.

(a) FINDING.—The Congress finds that—

[66] 22 U.S.C. 262p–4d. Added by sec. 9 of H.R. 4645 as enacted into law by sec. 555 of Public Law 100–461 (102 Stat. 2268).

(1) the heavy burden of debt borne by sub-Saharan governments undermines efforts by such governments to finance projects and programs designed to promote charitable, educational, and scientific purposes, including education, human welfare, health, agricultural research and development, and conservation, restoration and enhancement of the natural resource base; and

(2) the financing of programs to promote such charitable, educational, and scientific purposes should be facilitated in the context of reducing and converting sovereign debt of sub-Saharan governments, as encouraged in the final communique of the June 1988 economic summit conference in Toronto, Canada, through such means as—

(A) concessional interest rates;

(B) extended repayment periods; or

(C) partial or complete write-offs of debt service obligations.

(b) INITIATION OF DISCUSSIONS TO FACILITATE FINANCING OF HUMAN WELFARE AND NATURAL RESOURCE PROGRAMS IN SUB-SAHARAN AFRICA IN CONNECTION WITH DEBT REDUCTION AND CONVERSION.—The Secretary of the Treasury shall instruct the United States Executive Director of the African Development Bank and the African Development Fund to initiate discussions with the directors of such institutions and propose that such institutions, jointly with the International Bank for Reconstruction and Development, International Development Association, and the International Finance Corporation, as appropriate, provide advice and assistance to government creditors holding sovereign debt of any sub-Saharan government, and to sub-Saharan governments which desire to finance programs with local currencies obtained through debt reduction and conversion to promote charitable, educational, and scientific (including conservation and restoration of natural resources) purposes, as a condition of reducing or converting such sovereign debt.

SEC. 1610.[67] EXTENT TO WHICH BORROWING COUNTRY GOVERNMENTS HAVE HONORED DEBT-FOR-DEVELOPMENT SWAP AGREEMENTS TO BE CONSIDERED AS FACTOR IN MAKING LOANS TO SUCH BORROWERS.

(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to initiate discussions with the directors of such bank and propose that such bank consider, as an important factor in making loans to borrowing country governments, the history of compliance by such governments with, and the extent to which such governments have honored, agreements entered into by such governments as part of any debt-for-development swap which requires such governments to set aside or otherwise limit the use of real property to conservation purposes.

(b) DEFINITIONS.—As used in this section:

(1) DEBT-FOR-DEVELOPMENT SWAP.—The term "debt-for-development swap" means the purchase of qualified debt by, or the

[67] 22 U.S.C. 262p–4e. Sec. 1610 was added by sec. 10 of H.R. 4645 as enacted into law by sec. 555 of Public Law 100–461 (102 Stat. 2268).

donation of such debt to, an organization described in section 501(c)(3) of the Internal Revenue code of 1986 which is exempt from taxation under section 501(a) of such Code, and the subsequent transfer of such debt to an organization located in such foreign country in exchange for an undertaking by such tax-exempt organization, such foreign government, or such foreign organization to engage in a charitable, educational, or scientific activity.

(2) QUALIFIED DEBT.—The term "qualified debt" means—

(A) sovereign debt issued by a foreign government;

(B) debt owed by private institutions in the country governed by such foreign government; and

(C) debt owed by institutions in the country governed by such foreign government which are owned, in part, by private persons and, in part, by public institutions.

SEC. 1611.[68] ASSISTANCE TO COUNTRIES TO DEVELOP STATISTICAL ASSESSMENT OF THE WELL-BEING OF THE POOR.

(a) FINDING.—The Congress finds that—

(1) improvements in the capacity of developing countries to measure and monitor regularly the nutritional and physical well-being of the poorest 40 percent of the population of each of such countries is essential to the development of policies to reduce absolute poverty;

(2) internationally accepted statistical indicators that measure reliably the extent of absolute poverty and identify the location and characteristics of the poor are being developed and refined to guide policy formulation and target assistance to the poor;

(3) such guidance by indicators is, however, not able to be used in some developing countries, especially the poorest countries, due to the woeful unavailability of statistical data;

(4) the International Bank for Reconstruction and Development and the International Development Association have the technical and financial capability to assist borrowing country governments to develop such statistical measurement capabilities for social indicators necessary for the design and monitoring of poverty-reduction policies for such governments;

(5) availability of social indicator data is also essential to the work of such institutions, particularly in monitoring the impact of structural adjustment lending on the poor; and

(6) availability of such indicators will also facilitate the measurement of progress in the alleviation of poverty by other donor agencies, public and private.

(b) ASSISTANCE TO COUNTRIES TO DEVELOP STATISTICAL ASSESSMENT OF THE WELL-BEING OF THE POOR.—The Secretary of the treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development and the International Development Association to advocate and support, as an immediate priority, assistance by such institutions to borrowing country governments to develop appropriate statistical measures for assessing the physical well-being of the poor, by sex and age,

[68] 22 U.S.C. 262p–4f. Added by sec. 11 of H.R. 4645 as enacted into law by sec. 555 of Public Law 100–461 (102 Stat. 2268).

by using such indicators as mortality, health, education, and nutrition, as well as wealth and income, and maintain and publish such indicators on an ongoing basis.

SEC. 1612.[69] DIRECTIVES REGARDING GOVERNMENT-OWNED ENTERPRISES IN COUNTRIES RECEIVING IADB LOANS.

(a) FINDING.—The Congress finds that a principal focus of United States Government policy in the multilateral development banks has been and should be to foster greater development of the private sector in member borrowing countries of such banks.

(b) TECHNICAL ASSISTANCE TO TRANSFORM GOVERNMENT-OWNED ENTERPRISES INTO PRIVATELY OWNED ENTERPRISES.—In order to assist and strengthen the advancement of ongoing efforts to have the Inter-American Development Bank play a key role in building a viable private sector in member borrowing countries of such bank, and to further assist such bank in its determination to facilitate the transfer of government-owned enterprises in such countries to private ownership, the Secretary of the Treasury shall instruct the United States Executive Director of such bank to vigorously encourage the provision of technical assistance to such countries to transform enterprises owned, in whole or in part, by the governments of such countries into privately owned, self-sufficient enterprises. Such technical assistance may involve the valuation of the assets of such government-owned enterprises, the assessment of tender offers, and the creation or strengthening of market-based mechanisms to facilitate such a transfer of ownership.

SEC. 1613.[70] DISCUSSIONS TO INCREASE THE PRODUCTIVE ECONOMIC PARTICIPATION OF THE POOR; REPORTS.

(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director for each multilateral development bank to vigorously and continually advocate, in all replenishment negotiations and in discussion with other directors of such bank and with such bank, the following:

(1) A major objective of such bank's operations and financing in each borrowing country, as a long term priority, should be to increase the productive role of the poor in the economy of such country.

(2) Such bank should encourage and assist each borrowing country to develop sustainable national plans and strategies to eliminate the causes and alleviate the manifestations of poverty which keep the poor from leading economically and socially productive lives. Such plans and strategies should give attention to—

(A) the enhancement of human resources, including programs for basic nutrition, primary health services, basic education, and safe water and basic sanitation;

(B) access to income-generating activities, employment, and productive assets such as land and credit; and

[69] 22 U.S.C. 262p–4g. Sec. 206 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2499), redesignated sec. 1612 as 1613 (originally enacted as sec. 1605, ultimately redesignated as sec. 1622), and added sec. 1612.

[70] 22 U.S.C. 262p–4h. Sec. 501 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2505) redesignated sec. 1613 (originally enacted as sec. 1605, ultimately redesignated as sec. 1622), and added sec. 1613.

(C) consultation with public sector social agencies and local non-governmental organizations.

(3) As an integral element of ongoing policy dialogue with each borrowing country to design structural adjustment plans and project lending programs, such bank should provide assistance consistent with achieving the objectives of the country's national plan for increasing the productive economic participation of the poor. Such dialogue should be conducted with government agencies working in social and economic sectors and with non-governmental groups in the borrowing country, especially those that have grassroots involvement with poor people.

(4) In an annual review document, such bank should describe the extent to which the goal of increasing the productive economic participation of the poor is being advanced or retarded and the steps that are being taken to overcome obstacles to its fulfillment. Such review should be based on information contained in the bank's country implementation review documents and in the country strategy documents for each borrowing country. Such country strategy documents should describe the national strategy for productive economic participation of the poor and the steps the bank plans to take to assist the borrowing country during the period covered by the country strategy document.

(5) Such bank should assist countries in assessing and monitoring progress in achieving poverty alleviation goals and targets through measurement by appropriate social indicators.

(6) Such bank should adopt procedures and budgetary allocations for administrative purposes, and establish appropriate staffing levels, to ensure that adequate resources are available to implement the bank's program for enhancing the productive economic participation of the poor, in consultation with non-governmental groups.

(7) Such bank should adopt, as a separate and major criterion in the allocation of concessional financing resources, a preferential allocation to each country which undertakes significant efforts to enhance the productive economic participation of the poor.

(8) Such bank should require each country which receives structural adjustment assistance to have in place, after a reasonable phase-in period, a strategy to enhance the productive economic participation of the poor.

(b) PROGRESS REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this section, the Secretary of the Treasury shall submit to the Committee on Banking, Finance and Urban Affairs [12] and the Committee on Appropriations of the House of Representatives, and the Committee on Foreign Relations and the Committee on Appropriations of the Senate, a report on the following:

(1) The status of advocacy and progress being made to implement the objectives of subsection (a), describing the success to date, the obstacles encountered, and future expectations of progress.

(2) A description of the progress to date in achieving the purposes of section 1611, including the institutional capacity and

effort devoted to assisting in the development of statistical measures to assess the well-being of the poor.

(3) A description and evaluation of the progress to date in developing effective mechanisms for involving non-governmental organizations, directly or indirectly, in the design, implementation, and monitoring of development projects, programs, and policies of the multilateral development banks.

SEC. 1614.[71] MULTILATERAL DEVELOPMENT BANKS AND DEBT-FOR-NATURE EXCHANGES.

(a) DIRECTIONS TO THE UNITED STATES EXECUTIVE DIRECTORS.—The Secretary of the Treasury shall direct the United States Executive Directors of the multilateral development banks to—

(1) negotiate for the creation in each respective multilateral development bank, except where the Secretary of the Treasury determines that the provisions of this subsection have previously been met, of a department that will—

(A) be responsible for environmental protection and resource conservation, including support for restoration, protection, and sustainable use policies;

(B) develop and monitor strict environmental guidelines and policies to govern lending activities; and

(C) actively promote, coordinate and facilitate debt-for-nature exchanges and the restoration, protection, and sustainable use of tropical forests, renewable natural resources, endangered ecosystems and species in debtor countries;

(2) support and encourage the approval of multilateral development bank loans which include provisions that foster and facilitate the implementation of a sound and effective environmental policy in the borrowing country;

(3) encourage the banks to assist such countries in reducing and restructuring private debt through the use of a portion of a project or policy based environmental loan in ways which will enable such countries to buy back private debt at a rate of discount available for such debt, at auction in the secondary market or through negotiations with creditors holding such debt;

(4) seek to ensure that staff of each bank facilitate debtor countries' collaboration with local and international non-governmental or private organizations in implementing debt-for-nature exchanges; and

(5) seek to ensure that each bank adopts policy guidelines which to the maximum extent possible provide for—

(A) the inclusion of sustainable use policies in loan agreements negotiated with borrower members;

(B) the adoption of economic programs to foster sound environmental policies; and

(C) the provision of debtor countries' policy changes or significant increases in financial resources for use in at least 1 of the following—

[71] 22 U.S.C. 262p–4i. Sec. 512 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2508) redesignated sec. 1614 (originally enacted as sec. 1605) as sec. 1617 (ultimately as sec. 1622), and added secs. 1614 through 1616.

(i) restoration, protection, or sustainable use of the world's oceans and atmosphere;

(ii) restoration, protection, or sustainable use of diverse animal and plant species;

(iii) establishment, restoration, protection, and maintenance of parks and reserves;

(iv) development and implementation of sound systems of natural resource management;

(v) development and support of local conservation programs;

(vi) training programs to strengthen conservation institutions and increase scientific, technical, and managerial capabilities of individuals and organizations involved in conservation efforts;

(vii) efforts to generate knowledge, increase understanding, and enhance public commitment to conservation;

(viii) design and implementation of sound programs of land and ecosystem management; and

(ix) promotion of regenerative approaches in farming, forestry, and watershed management.

(b) NEGOTIATION OF GUIDELINES FOR RESTORATION, PROTECTION, OR SUSTAINABLE USE POLICIES.—The United States Executive Directors of the multilateral development banks shall seek to negotiate with the other executive directors to provide guidelines for restoration, protection, or sustainable use policies. Pending the outcome of such negotiations, the United States Executive Directors shall consider restoration, protection, or sustainable use policies to be those which—

(1) support development that maintains and restores the renewable natural resource base so that present and future needs of debtor countries' populations can be met, while not impairing critical ecosystems and not exacerbating global environmental problems;

(2) are environmentally sustainable in that resources are conserved and managed in an effort to remove pressure on the natural resource base and to make judicious use of the land so as to sustain growth and the availability of all natural resources;

(3) support development that does not exceed the limits imposed by local hydrological cycles, soil, climate, vegetation, and human cultural practices;

(4) promote the maintenance and restoration of soils, vegetation, hydrological cycles, wildlife, critical ecosystems (tropical forests, wetlands, and coastal marine resources), biological diversity and other natural resources essential to economic growth and human well-being and shall, when using natural resources, be implemented to minimize the depletion of such natural resources; and

(5) take steps, wherever feasible, to prevent pollution that threatens human health and important biotic systems and to achieve patterns of energy consumption that meet human needs and relies on renewable resources.

(c) INCLUSION OF CERTAIN ITEMS IN GUIDELINES.—The United States Executive Directors shall endeavor to include the provisions of paragraphs (1) through (5) of subsection (b) in the guidelines developed through the negotiations specified in this section.

SEC. 1615.[72] PROMOTION OF LENDING FOR THE ENVIRONMENT.

The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to initiate discussions with the other executive directors of such bank and the management of such bank and propose that, in order to reduce the future need for bank lending for reforestation and restoration of environmentally degraded areas, the bank establish a project and policy based environmental lending program (including a loan a portion of which could be used to reduce and restructure private debt), to be made available to interested countries with a demonstrated commitment to natural resource conservation, which would be based on—

(1) the estimated long-term economic return which could be expected from the sustainable use and protection of tropical forests, including the value of tropical forests for indigenous people and for science;

(2) the value derived from such services as—

(A) watershed management;

(B) soil erosion control;

(C) the maintenance and improvement of—

(i) fisheries;

(ii) water supply regulation for industrial development;

(iii) food;

(iv) fuel;

(v) fodder; and

(vi) building materials for local communities;

(D) the extraction of naturally occurring products from locally controlled protected areas; and

(E) indigenous knowledge of the management and use of natural resources; and

(3) the long-term benefits expected to be derived from maintaining biological diversity and climate stabilization.

SEC. 1616.[73] PROMOTION OF INSTITUTION-BUILDING FOR NONGOVERNMENTAL ORGANIZATIONS CONCERNED WITH THE ENVIRONMENT.

The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks to vigorously promote the adoption of policies and procedures which seek to—

(1) increase collaboration with, and, where necessary, strengthen, nongovernmental organizations in such countries which are concerned with environmental protection by providing appropriate assistance and support for programs and activities on environmental protection; and

[72] 22 U.S.C. 262p–4j. Sec. 512 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2508) added sec. 1615.

[73] 22 U.S.C. 262p–4k. Sec. 512 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2510) added sec. 1616.

(2) encourage international collaboration for information exchange and project enhancement with nongovernmental organizations in developing countries which are concerned with environmental protection and government agencies and private voluntary organizations in developed countries which are concerned with environmental protection.

SEC. 1617.[74] IMPROVEMENT OF INTERACTION BETWEEN INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT AND NONGOVERNMENTAL ORGANIZATIONS.

(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to propose, and urge the Executive Board and the management of the bank to develop and implement specific mechanisms designed to—

(1) substantially improve the ability of the staff of the bank to interact with nongovernmental organizations and other local groups that are affected by loans made by the bank to borrower countries; and

(2) delegate to the field offices of the bank in borrowing countries greater responsibility for decisions with respect to proposals for projects in such countries that are to be financed by the bank.

(b) CERTAIN MECHANISMS URGED.—The mechanisms described in subsection (a) shall include, at a minimum, the following measures:

(1) An instruction to the management of the bank to undertake efforts to appropriately train and significantly increase the number of bank professional staff (based in Washington, District of Columbia, as of the date of the enactment of this section) assigned, on a rotating basis, to field offices of the bank in borrower countries.

(2) The assignment to at least 1 professional in each field office of the bank in a borrower country of responsibility for relations with local nongovernmental organizations, and for the preparation and submission to appropriate staff of the bank of a report on the impact of project loans to be made by the bank to the country, based on views solicited from local people who will be affected by such loans, which shall be included as part of the project appraisal report.

(3) The establishment of the Grassroots Collaboration Program described in section 1602(a).

(4) Before a project loan is made to a borrower country, the country is to be required to hold open hearings on the proposed project during project identification and project preparation.

(5) The establishment of assessment procedures which allow affected parties and nongovernmental organizations to review information describing a prospective project or policy loan design, in a timely manner, before the loan is submitted to the Executive Board for approval.

[74] 22 U.S.C. 262p–4*l*. Added by sec. 562(a)(2) of Public Law 101–513 (104 Stat. 2032). The former sec. 1617 was redesignated as sec. 1620, and subsequently redesignated as sec. 1622 by Public Law 103–306.

SEC. 1618.[75] POPULATION, HEALTH, AND NUTRITION PROGRAMS.

The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development to urge the bank to support an increase in the amount the bank lends annually to support population, health, and nutrition programs of the borrower countries.

SEC. 1619.[76] EQUAL EMPLOYMENT OPPORTUNITIES.

The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development banks and of the International Monetary Fund to use the voices and votes of the Executive Directors to urge their respective banks and the Fund to adopt a policy which provides, and implement procedures which ensure, that such banks and the Fund, and the affiliates of such banks and of the Fund, shall not discriminate against any person on the basis of race, ethnicity, gender, color, or religious affiliation in any determination related to employment.

SEC. 1620.[77] RESPECT FOR INDIGENOUS PEOPLES.

The Secretary of the Treasury shall direct the United States Executive Directors of the international financial institutions (as defined in section 1701(c)(2)) and the United States representative to the council of the Global Environment Facility administered by the International Bank for Reconstruction and Development to use the voice and vote of the United States to bring about the creation and full implementation of policies designed to promote respect for and full protection of the territorial rights, traditional economies, cultural integrity, traditional knowledge and human rights of indigenous peoples.

SEC. 1621.[78] ENCOURAGEMENT OF FAIR LABOR PRACTICES.

(a) The Secretary of the Treasury shall direct the United States Executive Directors of the international financial institutions (as defined in section 1701(c)(2)) to use the voice and vote of the United States to urge the respective institution—

(1) to adopt policies to encourage borrowing countries to guarantee internationally recognized worker rights (within the meaning of section 507(4)[79] of the Trade Act of 1974) and to include the status of such rights as an integral part of the institution's policy dialogue with each borrowing country;

(2) in developing the policies referred to in paragraph (1), to use the relevant conventions of the International Labor Organization, which have set forth, among other things, the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, and certain minimum labor standards that take into account differences in development levels among nations including a minimum age for the employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; and

[75] 22 U.S.C. 262p–4m. Sec. 562(a)(2) of Public Law 101–513 (104 Stat. 2032) added sec. 1618.
[76] 22 U.S.C. 262p–4n. Sec. 562(b)(1) of Public Law 101–513 (104 Stat. 2032) added sec. 1619.
[77] 22 U.S.C. 262p–4*o*. Sec. 526(e) of Public Law 103–306 (108 Stat. 1633) added sec. 1620.
[78] 22 U.S.C. 262p–4p. Added by sec. 526(e) of Public Law 103–306 (108 Stat. 1633).
[79] Sec. 1954(b)(4) of Public Law 104–188 (110 Stat. 1928) struck out "502(a)(4)" and inserted in lieu thereof "507(4)".

(3) to establish formal procedures to screen projects and programs funded by the institution for any negative impact in a borrowing country on the rights referred to in paragraph (1).

(b) The Secretary of the Treasury shall submit to the Committee on Banking, Finance and Urban Affairs[12] of the House of Representatives and the Committee on Foreign Relations of the Senate by the end of each fiscal year a report on the extent to which each borrowing country guarantees internationally recognized worker rights to its labor force and on progress toward achieving each of the goals described in subsection (a).

SEC. 1621.[80] OPPOSITION TO ASSISTANCE BY INTERNATIONAL FINANCIAL INSTITUTIONS TO TERRORIST STATES.

(a) IN GENERAL.—The then Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose any loan or other use of the funds of the respective institution to or for a country for which the Secretary of State has made a determination under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

(b) DEFINITION.—For purposes of this section, the term "international financial institution" includes—

(1) the International Bank for Reconstruction and Development, the International Development Association, and the International Monetary Fund;

(2) wherever applicable, the Inter-American Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund; and

(3) any similar institution established after the date of enactment of this section.

SEC. 1622.[81] For purposes of this title and titles XIV and XV—

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[80] 22 U.S.C. 262p–4q. Added by sec. 327 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat. 1257), resulting in two "Sec. 1621".

Similar language had previously been adopted in annual foreign assistance appropriations acts since fiscal year 1988.

See also sec. 360 of the USA PATRIOT Act of 2001 (Public Law 107–56; 115 Stat. 329), as amended, which states:

"SEC. 360. USE OF AUTHORITY OF UNITED STATES EXECUTIVE DIRECTORS.

"(a) ACTION BY THE PRESIDENT.—If the President determines that a particular foreign country has taken or has committed to take actions that contribute to efforts of the United States to respond to, deter, or prevent acts of international terrorism, the Secretary may, consistent with other applicable provisions of law, instruct the United States Executive Director of each international financial institution to use the voice and vote of the Executive Director to support any loan or other utilization of the funds of the respective institutions for such country, or any public or private entity within such country.

"(b) USE OF VOICE AND VOTE.—The Secretary may instruct the United States Executive Director of each international financial institution to aggressively use the voice and vote of the Executive Director to require an auditing of disbursements at such institution to ensure that no funds are paid to persons who commit, threaten to commit, or support terrorism.

"(c) DEFINITION.—For purposes of this section, the term 'international financial institution' means an institution described in section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2)).".

[81] 22 U.S.C. 262p–5. Sec. 1622, originally added as sec. 1605 by Public Law 100–202 (101 Stat. 1329 at 1329–134), was redesignated as sec. 1612 by sec. 6 of H.R. 4645 as enacted into law by Public Law 100–461 (102 Stat. 2268). This section was redesignated as sec. 1613 by sec. 206 of Public Law 101–240 (103 Stat. 2499), further redesignated as sec. 1614 by sec. 501 of that Act, and further redesignated as sec. 1617 by that Act. Sec. 562(a)(2) of Public Law 101–513 (104 Stat. 2032) redesignated as sec. 1619 and added new secs. 1617 and 1618. This section was further redesignated as sec. 1620 by sec. 562(b)(1) of Public Law 101–513 (104 Stat. 2033),

(1) the term "multilateral development bank" means the International Bank for Reconstruction and Development, the International Development Association, and the regional multilateral development banks; and

(2) the term "regional multilateral development bank" means the Inter-American Development Bank, the African Development Bank, the African Development Fund, and the Asian Development Bank.

SEC. 1623.[82] IMPROVEMENT OF THE HEAVILY INDEBTED POOR COUNTRIES INITIATIVE.

(a) IMPROVEMENT OF THE HIPC INITIATIVE.—In order to accelerate multilateral debt relief and promote human and economic development and poverty alleviation in heavily indebted poor countries, the Congress urges the President to commence immediately efforts, with the Paris Club of Official Creditors, as well as the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (World Bank), and other appropriate multilateral development institutions to accomplish the following modifications to the Heavily Indebted Poor Countries Initiative:

(1) FOCUS ON POVERTY REDUCTION, GOOD GOVERNANCE, TRANSPARENCY, AND PARTICIPATION OF CITIZENS.—A country which is otherwise eligible to receive cancellation of debt under the modified Heavily Indebted Poor Countries Initiative may receive such cancellation only if the country has committed, in connection with social and economic reform programs that are jointly developed, financed, and administered by the World Bank and the IMF—

(A) to enable, facilitate, or encourage the implementation of policy changes and institutional reforms under economic reform programs, in a manner that ensures that such policy changes and institutional reforms are designed and adopted through transparent and participatory processes;

(B) to adopt an integrated development strategy to support poverty reduction through economic growth, that includes monitorable poverty reduction goals;

(C) to take steps so that the financial benefits of debt relief are applied to programs to combat poverty (in particular through concrete measures to improve economic infrastructure, basic services in education, nutrition, and health, particularly treatment and prevention of the leading causes of mortality) and to redress environmental degradation;

(D) to take steps to strengthen and expand the private sector, encourage increased trade and investment, support the development of free markets, and promote broad-scale economic growth;

(E) to implement transparent policy making and budget procedures, good governance, and effective anticorruption measures;

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which added a new sec. 1619. The section was further redesignated as sec. 1622 by sec. 526(e) of Public Law 103–306 (108 Stat. 1633), which added new secs. 1620 and 1621.

[82] 22 U.S.C. 262p–6. Added by sec. 502 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (Public Law 106–113; 113 Stat. 1501A–313).

(F) to broaden public participation and popular understanding of the principles and goals of poverty reduction, particularly through economic growth, and good governance; and

(G) to promote the participation of citizens and nongovernmental organizations in the economic policy choices of the government.

(2) FASTER DEBT RELIEF.—The Secretary of the Treasury should urge the IMF and the World Bank to complete a debt sustainability analysis by December 31, 2000, and determine eligibility for debt relief, for as many of the countries under the modified Heavily Indebted Poor Countries Initiative as possible.

(b) HEAVILY INDEBTED POOR COUNTRIES REVIEW.—The Secretary of the Treasury, after consulting with the Committees on Banking and Financial Services and International Relations of the House of Representatives, and the Committees on Foreign Relations and Banking, Housing, and Urban Affairs of the Senate, shall make every effort (including instructing the United States Directors at the IMF and World Bank) to ensure that an external assessment of the modified Heavily Indebted Poor Countries Initiative, including the reformed Enhanced Structural Adjustment Facility program as it relates to that Initiative, takes place by December 31, 2001, incorporating the views of debtor governments and civil society, and that such assessment be made public.

(c) DEFINITION.—The term 'modified Heavily Indebted Poor Countries Initiative' means the multilateral debt initiative presented in the Report of G–7 Finance Ministers on the Koln Debt Initiative to the Koln Economic Summit, Cologne, Germany, held from June 18–20, 1999.

SEC. 1624.[83] REFORM OF THE ENHANCED STRUCTURAL ADJUSTMENT FACILITY.

The Secretary of the Treasury shall instruct the United States Executive Directors at the International Bank for Reconstruction and Development (World Bank) and the International Monetary Fund (IMF) to use the voice and vote of the United States to promote the establishment of poverty reduction strategy policies and procedures at the World Bank and the IMF that support countries' efforts under programs developed and jointly administered by the World Bank and the IMF that have the following components:

(1) The development of country-specific poverty reduction strategies (Poverty Reduction Strategies) under the leadership of such countries that—

(A) will be set out in poverty reduction strategy papers (PRSPs) that provide the basis for the lending operations of the International Development Association (IDA) and the reformed Enhanced Structural Adjustment Facility (ESAF);

(B) will reflect the World Bank's role in poverty reduction and the IMF's role in macroeconomic issues;

[83] 22 U.S.C. 262p–7. Added by sec. 502 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (Public Law 106–113; 113 Stat. 1501A–313).

(C) will make the IMF's and the World Bank's advice and operations fully consistent with the objectives of poverty reduction through broad-based economic growth; and

(D) should include—

(i) implementation of transparent budgetary procedures and mechanisms to help ensure that the financial benefits of debt relief under the modified Heavily Indebted Poor Countries Initiative (as defined in section 1623) are applied to programs that combat poverty; and

(ii) monitorable indicators of progress in poverty reduction.

(2) The adoption of procedures for periodic comprehensive reviews of reformed ESAF and IDA programs to help ensure progress toward longer-term poverty goals outlined in the Poverty Reduction Strategies and to allow adjustments in such programs.

(3) The publication of the PRSPs prior to Executive Board review of related programs under IDA and the reformed ESAF.

(4) The establishment of a standing evaluation unit at the IMF, similar to the Operations Evaluation Department of the World Bank, that would report directly to the Executive Board of the IMF and that would undertake periodic reviews of IMF operations, including the operations of the reformed ESAF, including—

(A) assessments of experience under the reformed ESAF programs in the areas of poverty reduction, economic growth, and access to basic social services;

(B) assessments of the extent and quality of participation in program design by citizens;

(C) verifications that reformed ESAF programs are designed in a manner consistent with the Poverty Reduction Strategies; and

(D) prompt release to the public of all reviews by the standing evaluation unit.

(5) The promotion of clearer conditionality in IDA and reformed ESAF programs that focuses on reforms most likely to support poverty reduction through broad-based economic growth.

(6) The adoption by the IMF of policies aimed at reforming ESAF so that reformed ESAF programs are consistent with the Poverty Reduction Strategies.

(7) The adoption by the World Bank of policies to help ensure that its lending operations in countries eligible for debt relief under the modified Heavily Indebted Poor Countries Initiative are consistent with the Poverty Reduction Strategies.

(8) Strengthening the linkage between borrower country performance and lending operations by IDA and the reformed ESAF on the basis of clear and monitorable indictors.

(9) Full public disclosure of the proposed objectives and financial organization of the successor to the ESAF at least 90 days before any decision by the Executive Board of the IMF to consider its adoption.

SEC. 1625.[84] **MODIFICATION OF THE ENHANCED HIPC INITIATIVE.**

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary of the Treasury should immediately commence efforts within the Paris Club of Official Creditors, the International Bank for Reconstruction and Development, the International Monetary Fund, and other appropriate multilateral development institutions to modify the Enhanced HIPC Initiative so that the amount of debt stock reduction approved for a country eligible for debt relief under the Enhanced HIPC Initiative shall be sufficient to reduce, for each of the first 3 years after the date of enactment of this section or the Decision Point, whichever is later—

(A) the net present value of the outstanding public and publicly guaranteed debt of the country—

(i) as of the decision point if the country has already reached its decision point; or

(ii) as of the date of enactment of this Act, if the country has not reached its decision point,

to not more than 150 percent of the annual value of exports of the country for the year preceding the Decision Point; and

(B) the annual payments due on such public and publicly guaranteed debt to not more than—

(i) 10 percent or, in the case of a country suffering a public health crisis (as defined in subsection (e)), not more than 5 percent, of the amount of the annual current revenues received by the country from internal resources; or

(ii) a percentage of the gross national product of the country, or another benchmark, that will yield a result substantially equivalent to that which would be achieved through application of subparagraph (A).

(2) LIMITATION.—In financing the objectives of the Enhanced HIPC Initiative, an international financial institution shall give priority to using its own resources.

(b) RELATION TO POVERTY AND THE ENVIRONMENT.—Debt cancellation under the modifications to the Enhanced HIPC Initiative described in subsection (a) should not be conditioned on any agreement by an impoverished country to implement or comply with policies that deepen poverty or degrade the environment, including any policy that—

(1) implements or extends user fees on primary education or primary health care, including prevention and treatment efforts for HIV/AIDS, tuberculosis, malaria, and infant, child, and maternal well-being;

(2) provides for increased cost recovery from poor people to finance basic public services such as education, health care, clean water, or sanitation;

(3) reduces the country's minimum wage to a level of less than $2 per day or undermines workers' ability to exercise effectively their internationally recognized worker rights, as defined under section 526(e) of the Foreign Operations, Export

[84] 22 U.S.C. 262p–8. Sec. 501 of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108–25; 117 Stat. 747) added sec. 1625.

Financing and Related Programs Appropriations Act, 1995 (22 U.S.C. 262p–4p);[85] or

(4) promotes unsustainable extraction of resources or results in reduced budget support for environmental programs.

(c) CONDITIONS.—A country shall not be eligible for cancellation of debt under modifications to the Enhanced HIPC Initiative described in subsection (a) if the government of the country—

(1) has an excessive level of military expenditures;

(2) has repeatedly provided support for acts of international terrorism, as determined by the Secretary of State under section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)) or section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a));

(3) is failing to cooperate on international narcotics control matters; or

(4) engages in a consistent pattern of gross violations of internationally recognized human rights (including its military or other security forces).

(d) PROGRAMS TO COMBAT HIV/AIDS AND POVERTY.—A country that is otherwise eligible to receive cancellation of debt under the modifications to the Enhanced HIPC Initiative described in subsection (a) may receive such cancellation only if the country has agreed—

(1) to ensure that the financial benefits of debt cancellation are applied to programs to combat HIV/AIDS and poverty, in particular through concrete measures to improve basic services in health, education, nutrition, and other development priorities, and to redress environmental degradation;

(2) to ensure that the financial benefits of debt cancellation are in addition to the government's total spending on poverty reduction for the previous year or the average total of such expenditures for the previous 3 years, whichever is greater;

(3) to implement transparent and participatory policy–making and budget procedures, good governance, and effective anticorruption measures; and

(4) to broaden public participation and popular understanding of the principles and goals of poverty reduction.

(e) DEFINITIONS.—In this section:

(1) COUNTRY SUFFERING A PUBLIC HEALTH CRISIS.—The term "country suffering a public health crisis" means a country in which the HIV/AIDS infection rate, as reported in the most recent epidemiological data for that country compiled by the Joint United Nations Program on HIV/AIDS, is at least 5 percent among women attending prenatal clinics or more than 20 percent among individuals in groups with high-risk behavior.

(2) DECISION POINT.—The term "Decision Point" means the date on which the executive boards of the International Bank for Reconstruction and Development and the International Monetary Fund review the debt sustainability analysis for a country and determine that the country is eligible for debt relief under the Enhanced HIPC Initiative.

[85] Sec. 526(e) of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1995 (Public Law 103–306; 108 Stat. 1634) added sec. 1621 to this Act.

(3) ENHANCED HIPC INITIATIVE.—The term "Enhanced HIPC Initiative" means the multilateral debt initiative for heavily indebted poor countries presented in the Report of G–7 Finance Ministers on the Cologne Debt Initiative to the Cologne Economic Summit, Cologne, June 18–20, 1999.

TITLE XVII—CONSOLIDATED REPORTING REQUIREMENTS[86]

SEC. 1701.[87] ANNUAL REPORT BY CHAIRMAN OF THE NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES.

(a) IN GENERAL.—The Chairman shall report annually to the Speaker of the House of Representatives, the President of the Senate, and to the President of the United States on the participation of the United States in the international financial institutions. The Chairman shall present such report to the Speaker of the House of Representatives and the President of the Senate not later than April 1 of each year following the close of the fiscal year covered by such report, except that the report for fiscal year 1989 shall be submitted not later than June 1, 1990.

(b)[88] CONTENTS OF REPORTS.—Each annual report required by subsection (a) shall contain—

(1) such data and explanations concerning the effectiveness, operations, and policies of the international financial institutions, such recommendations concerning the international fi-

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[86] Sec. 541(a) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2514) added titles XVII, XVIII, and XIX.

[87] 22 U.S.C. 262r. Sec. 583 of the Foreign Operations, Export Financing, and Related Appropriations Act, 1999 (sec. 101(d) of division A of Public Law 105–277; 112 Stat. 2681–202), provided the following:

"NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY POLICIES

"SEC. 583. (a) Notwithstanding any other provision of law, each annual report required by subsection 1701 (a) of the International Financial Institutions Act, as amended (Public Law 95–118, U.S.C. 262r), shall comprise—

"(1) an assessment of the effectiveness of the major policies and operations of the international financial institutions;

"(2) the major issues affecting United States participation;

"(3) the major developments in the past year;

"(4) the prospects for the coming year;

"(5) the progress made and steps taken to achieve United States policy goals (including major policy goals embodied in current law) with respect to the international financial institutions; and

"(6) such data and explanations concerning the effectiveness, operations, and policies of the international financial institutions, and other such data and material as the Chairman may deem appropriate.

"(b) The requirements of Sections 1602(e), 1603(c), 1604(c), and 1701(b) of the International Financial Institutions Act, as amended (Public Law 95–118, 22 U.S.C. 262p–1, 262p–2, 262p–3 and 262(r)), Section 2018(c) of the International Narcotics Control Act of 1986, as amended (Public Law 99–570, 22 U.S.C. 2291 note), Section 407(c) of the Foreign Debt Reserving Act of 1989 (Public Law 101–240, 22 U.S.C. 2291 note), Section 14(c) of the Inter-American Development Bank Act, as amended (Public Law 86–147, 22 U.S.C. 283j–1(c)), and Section 1102 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Public Law 102–511)(22 U.S.C. 286*ll*(b)) shall no longer apply to the contents of such annual reports.".

See also secs. 603, 606, and 607 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (sec. 101(d) of division A of Public Law 105–277; 112 Stat. 2681–220), in *Legislaton on Foreign Relations Through 2005*, vol. I–A, beginning at page 1097.

[88] Sec. 583(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (sec. 101(d) of division I of Public Law 105–277; 112 Stat. 2681–202) states that the requirements of subsec. (b) shall no longer apply to the contents of the annual report of the National Advisory Council on International Monetary and Financial Policies, as required by sec. 1701 of the International Financial Institutions Act, as amended (Public Law 95–118; 22 U.S.C. 262r).

nancial institutions, and such other data and material as the Chairman may deem appropriate;

(2) the reports on each specific issue and topic which is required by any other provision of law to be included in the report of the National Advisory Council on International Monetary and Financial Policies required by section 4(b)(5) of the Bretton Woods Agreements Act, as in effect immediately before the date of the enactment of this section;

(3) a description of each loan or other form of financial assistance approved by any international financial institution during the fiscal year covered by such report, and a discussion of how such loan or financial assistance will benefit the people, particularly the poor people, of the recipient country;

(4) a review of the success achieved through the multilateral development banks in reducing or eliminating import restrictions and unfair export subsidies which—

(A) have been determined to be consistent with international agreements; and

(B) have a serious adverse impact on the United States;

(5) a description of the actions taken and the progress made in carrying out subsections (a) and (b) of section 45 of the Bretton Woods Agreements Act;

(6) the report required by section 2018(c) of the International Narcotics Act of 1986 (title II of Public Law 99–570), discussing the actions taken and progress made in encouraging the multilateral development banks to finance drug eradication and crop substitution programs;

(7) a description of the progress made by the United States Executive Director of the International Monetary Fund with respect to the goals of section 55 of the Bretton Woods Agreements Act;

(8) a description of the status of procedures in the multilateral development banks specifically designed to increase the productive role of the poor in the economies of the nations which are borrowers from such banks;

(9) in consultation with the Secretary of State, a report on the progress toward achieving the goals of title VII (other than section 704), including the information required to be reported pursuant to section 701(c), and, for the fiscal year 1990, the report described in section 1613;

(10) in consultation with the Secretary of State and the Administrator of the Agency for International Development, an assessment of the progress being made to implement the objectives of title XIII; and

(11) a report on—

(A) the progress made in transforming government-owned enterprises into privately owned enterprises as described in section 1612(b);

(B) the performance of the privately owned enterprises resulting from such transformation; and

(C) the contributions of development finance companies toward strengthening the private sector in member borrowing countries.

(c) DEFINITIONS.—As used in this title, title XVIII, and title XIX:

(1) CHAIRMAN.—The term "Chairman" means the Chairman of the National Advisory Council on International Monetary and Financial Policies.

(2) INTERNATIONAL FINANCIAL INSTITUTIONS.—The term "international financial institutions" means the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development,[89] International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, Bank for Economic Cooperation and Development in the Middle East and North Africa,[90] and Inter-American Investment Corporation.

(3) MULTILATERAL DEVELOPMENT INSTITUTIONS.—The term "multilateral development institutions" means the international financial institutions other than the International Monetary Fund.

(4) MULTILATERAL DEVELOPMENT BANKS.—The term "multilateral development banks" means the multilateral development institutions other than the Multilateral Investment Guarantee Agency.

(d) TESTIMONY REQUIRED.—Upon request of the Committee on Banking, Finance and Urban Affairs[12] of the House of Representatives, the Chairman shall testify before the Committee to support and explain each annual report required by subsection (a). If the President has delegated to a person or persons other than the Chairman the authority to manage United States participation in the international financial institutions which was vested in the President by section 1(b) of the Reorganization Plan No. 4 of 1965, such person or persons shall, upon request of the Committee, accompany the Chairman and testify before the Committee with regard to such report. The Chairman and such other person or persons shall assess, in their testimony, the effectiveness of the international financial institutions, the major issues affecting United States participation, the major developments in the past year, the prospects for the coming year, United States policy goals with respect to the international financial institutions, and any specific issues addressed to them by any member of the Committee.

(e)[91] ADVISORY COMMITTEE ON IMF POLICY.—

(1) IN GENERAL.—The Secretary of the Treasury should establish an International Monetary Fund Advisory Committee (in this subsection referred to as "The Advisory Committee").

(2) MEMBERSHIP—The Advisory Committee should consist of members appointed by the Secretary of the Treasury, after appropriate consultations with the relevant organizations. Such members should include representatives from industry, representatives from agriculture, representatives from organized

[89] Sec. 562(c)(10)(A) of Public Law 101–513 (104 Stat. 2036) inserted "European Bank for Reconstruction and Development,".

[90] Sec. 710(a) of sec. 101(c) of title I of Public Law 104–208 (110 Stat. 3009) inserted "Bank for Economic Cooperation and Development in the Middle East and North Africa,".

[91] Added by sec. 610(b) of the Foreign Operations, Export Financing, and Related Appropriations Act, 1999 (sec. 101(d) of division A of Public Law 105–277; 112 Stat. 2681–228).

labor, representatives from banking and financial services, and representatives from nongovernmental environmental and human rights organizations.

SEC. 1702.[92] TRANSMISSION TO THE CONGRESS OF OPERATING SUMMARIES OF THE MULTILATERAL DEVELOPMENT BANKS.

The Secretary of the Treasury shall transmit to the Congress, on a monthly basis, current copies of the Monthly Operating Summary of the International Bank for Reconstruction and Development, showing the loan proposals or appraisal reports under consideration and the status of those loan proposals or appraisal reports within the Bank. The Secretary of the Treasury shall also transmit to the Congress, at such times as may be appropriate, comparable documents prepared by the other multilateral development banks which show the loans or credits under consideration in the other multilateral development banks.

SEC. 1703.[93] COMBINED REPORT ON EFFECT OF PENDING MULTILATERAL DEVELOPMENT BANK LOANS ON ENVIRONMENT, NATURAL RESOURCES, PUBLIC HEALTH, AND INDIGENOUS PEOPLES.

Not later than April 1 and October 1 of each year, the Administrator of the Agency for International Development, in consultation with the Secretary of the Treasury and the Secretary of State, shall submit to the Committee on Appropriations and the Committee on Banking, Finance and Urban Affairs [12] of the House of Representatives, and the Committee on Appropriations and the Committee on Foreign Relations of the Senate, as a combined report, the reports required by section 1303(c) of this Act and by section 537(h)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 1(e) of Public Law 100–202).

SEC. 1704.[94] REPORTS ON FINANCIAL STABILIZATION PROGRAMS LED BY THE INTERNATIONAL MONETARY FUND IN CONJUNCTION WITH FINANCING FROM THE EXCHANGE STABILIZATION FUND.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of Commerce and other appropriate Federal agencies, shall prepare reports on the implementation of financial stabilization programs (and any material terms and conditions thereof) led by the International Monetary Fund in countries in connection with which the United States has made a commitment to provide, or has provided financing from the stabilization fund established under section 5302 of title 31, United States Code. The reports should include the following:

(1) A description of the condition of the economies of countries requiring the financial stabilization programs, including the monetary, fiscal, and exchange rate policies of the countries.

(2) A description of the degree to which the countries requiring the financial stabilization programs have fully imple-

[92] 22 U.S.C. 262r–1.
[93] 22 U.S.C. 262r–2.
[94] 22 U.S.C. 262r–3. Added by sec. 612 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act (sec. 101(d) of division A of Public Law 105–277; 112 Stat. 2681–228).

mented financial sector restructuring and reform measures required by the International Monetary Fund, including—

(A) ensuring full respect for the commercial orientation of commercial bank lending;

(B) ensuring that governments will not intervene in bank management and lending decisions (except in regard to prudential supervision);

(C) the enactment and implementation of appropriate financial reform legislation;

(D) strengthening the domestic financial system and improving transparency and supervision; and

(E) the opening of domestic capital markets.

(3) A description of the degree to which the countries requiring the financial stabilization programs have fully implemented reforms required by the International Monetary Fund that are directed at corporate governance and corporate structure, including—

(A) making nontransparent conglomerate practices more transparent through the application of internationally accepted accounting practices, independent external audits, full disclosure, and provision of consolidated statements; and

(B) ensuring that no government subsidized support or tax privileges will be provided to bail out individual corporations, particularly in the semiconductor, steel, and paper industries.

(4) A description of the implementation of reform measures required by the International Monetary Fund to deregulate and privatize economic activity by ending domestic monopolies, undertaking trade liberalization, and opening up restricted areas of the economy to foreign investment and competition.

(5) A detailed description of the trade policies of the countries, including any unfair trade practices or adverse effects of the trade policies on the United States.

(6) A description of the extent to which the financial stabilization programs have resulted in appropriate burden-sharing among private sector creditors, including rescheduling of outstanding loans by lengthening maturities, agreements of debt reduction, and the extension of new credit.

(7) A description of the extent to which the economic adjustment policies of the International Monetary Fund and the policies of the government of the country adequately balance the need for financial stabilization, economic growth, environmental protection, social stability, and equity for all elements of the society.

(8) Whether International Monetary Fund involvement in labor market flexibility measures has had a negative effect on core worker rights, particularly the rights of free association and collective bargaining.

(9) A description of any pattern of abuses of core worker rights in recipient countries.

(10) The amount, rate of interest, and disbursement and repayment schedules of any funds disbursed from the stabilization fund established under section 5302 of title 31, United

States Code, in the form of loans, guarantees, or swaps, in support of the financial stabilization programs.

(11) The amount, rate of interest, and disbursement and repayment schedules of any funds disbursed by the International Monetary Fund to the countries in support of the financial stabilization programs.

(b)[95] TIMING.—Not later than March 15, 1999, and semiannually thereafter, the Secretary of the Treasury shall submit to the Committees on Banking and Financial Services and International Relations of the House of Representatives and the Committees on Foreign Relations, and Banking, Housing, and Urban Affairs of the Senate, a report on the matters described in subsection (a).

SEC. 1705.[96] ANNUAL REPORT AND TESTIMONY ON THE STATE OF THE INTERNATIONAL FINANCIAL SYSTEM, IMF REFORM, AND COMPLIANCE WITH IMF AGREEMENTS

(a) ACCESS TO MATERIALS.—Not later than October 1 of each year, the Secretary of the Treasury shall submit to the Committees on Banking and Financial Services[12] and on Ways and Means of the House of Representatives and the Committees on Finance and on Foreign Relations of the Senate[97] a written report on (1)[98] the progress (if any) made by the United States Executive Director at the International Monetary Fund to adopt the policies and reform its internal procedures in the manner described in section 1503, and (2) the progress made by the International Monetary Fund in adopting and implementing the policies described in section 801(c)(1)(B) of the Foreign Operations, Export Financing, and Related Appropriations Act, 2001.

(b) TESTIMONY.—After submitting the report required by subsection (a) but not later than March 1 of each year, the Secretary of the Treasury shall appear before the Committee on Banking and Financial Services of the House of Representatives and the Committee on Foreign Relations of the Senate and present testimony on—

(1) any progress made in reforming the International Monetary Fund;

(2) the status of efforts to reform the international financial system;

(3) the compliance of countries which have received assistance from the International Monetary Fund with agreements made as a condition of receiving the assistance; and

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[95] Added by sec. 404(b) of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 292).

[96] 22 U.S.C. 262r–4. Added by sec. 613 of The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (sec. 101(d) of division A of Public Law 105–277; 112 Stat. 2681–230).

[97] Sec. 404(c) of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 292) struck out "Committee on Banking and Financial Services of the House of Representatives and the Committee on Foreign Relations" and inserted in lieu thereof "Committees on Banking and Financial Services and on Ways and Means of the House of Representatives and the Committees on Finance and on Foreign Relations of the Senate."

[98] Sec. 803(c)(1) and (2) of the Foreign Operations, Export Financing, and Related Programs Appropriations, 2001 (Public Law 106–429; 114 Stat. 1900A–67) inserted "(1)" before "the progress" and added clause (2).

(4)[99] the status of implementation of international anti-money laundering and counterterrorist financing standards by the International Monetary Fund, the multilateral development banks, and other multilateral financial policymaking bodies.

SEC. 1706.[100] * * * [Repealed—2000]

TITLE XVIII—EXPORT ENHANCEMENT[86]

SEC. 1801.[101] **MULTILATERAL DEVELOPMENT BANK PROCUREMENT.**

(a) EXECUTIVE DIRECTORS.—The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to attach a high priority to promoting opportunities for exports for goods and services from the United States and, in carrying out this function, to investigate thoroughly any complaints from United States bidders about the awarding of procure-

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[99] Sec. 7703(b) of the Implementation of the 9/11 Commission Implementation Act of 2004 (title VII of Public Law 108–458; 118 Stat. 3860) added para. (4).

[100] 22 U.S.C. 262r–5. This section, added by sec. 614 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (sec. 101(d) of division A of Public Law 105–277; 112 Stat. 2681–230), was subsequently repealed by sec. 592 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (Public Law 106–429; 114 Stat. 1900A–59). The section, as amended, had read as follows:

"SEC. 1706. AUDITS OF THE INTERNATIONAL MONETARY FUND

"(a) ACCESS TO MATERIALS.—Not later than 30 days after the date of the enactment of this section, the Secretary of the Treasury shall certify to the Committees on Banking and Financial Services and Ways and Means of the House of Representatives and the Committees on Finance and on Foreign Relations of the Senate that the Secretary has instructed the United States Executive Director at the International Monetary Fund to facilitate timely access by the General Accounting Office to information and documents of the International Monetary Fund needed by the Office to perform financial reviews of the International Monetary Fund that will facilitate the conduct of United States Policy with respect to the Fund.

"(b) REPORTS.—Not later than September 30, 1999, and annually thereafter, the Comptroller General of the United States shall prepare and submit to the committees specified in subsection (a), the Committee on Appropriations of the House of Representatives, and the Committee on Appropriations of the Senate a report on the financial operations of the Fund during the preceding year, which shall include—

"(1) the current financial condition of the International Monetary Fund;

"(2) the amount, rate of interest, disbursement schedule, and repayment schedule for any loans that were initiated or outstanding during the preceding calendar year, and with respect to disbursement schedules, the report shall identify and discuss in detail any conditions required to be fulfilled by a borrower country before a disbursement is made;

"(3) a detailed description of whether the trade policies of borrower countries permit free and open trade by the United States and other foreign countries in the borrower countries;

"(4) a detailed description of the export policies of borrower countries and whether the policies may result in increased export of their products, goods, or services to the United States which may have significant adverse effects on, or result in unfair trade practices against or affecting United States companies, farmers, or communities;

"(5) a detailed description of any conditions of International Monetary Fund loans which have not been met by borrower countries, including a discussion of the reasons why such conditions were not met, and the actions taken by the International Monetary Fund due to the borrower country's noncompliance;

"(6) an identification of any borrower country and loan on which any loan terms or conditions were renegotiated in the preceding calendar year, including a discussion of the reasons for the renegotiation and any new loan terms and conditions; and

"(7) a specification of the total number of loans made by the International Monetary Fund from its inception through the end of the period covered by the report, the number and percentage (by number) of such loans that are in default or arrears, and the identity of the countries in default or arrears, and the number of such loans that are outstanding as of the end of period covered by the report and the aggregate amount of the outstanding loans and the average yield (weighted by loan principal) of the historical and outstanding loan portfolios of the International Monetary Fund.".

[101] 22 U.S.C. 262s. Originally enacted as sec. 3202 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1107), sec. 541(b)(1) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2517) transferred text to this Act and redesignated such as sec. 1801.

ment contracts by the multilateral development banks to ensure that all contract procedures and rules of the banks are observed and that United States firms are treated fairly.

(b) OFFICER OF PROCUREMENT.—

(1) ESTABLISHMENT.—The Secretary of the Treasury shall designate, within the Office of International Affairs in the Department of the Treasury, an officer of multilateral development bank procurement.

(2) FUNCTION.—The officer shall act as the liaison between the Department of the Treasury, the Department of Commerce, and the United States Executive Directors' offices in the multilateral development banks, in carrying out this section. The officer shall cooperate with the Department of Commerce in efforts to improve opportunities for multilateral development bank procurement by United States companies.

(b)[102] MULTILATERAL DEVELOPMENT BANK DEFINED.—As used in this section, the term "multilateral development bank" includes the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Inter-American Investment Corporation, the Asian Development Bank, the African Development Bank, and the African Development Fund.

SEC. 1802.[103] PROCUREMENT OPPORTUNITIES FOR UNITED STATES FIRMS.

The Secretary of the Treasury shall instruct the United States Executive Directors of the multilateral development institutions to take all possible steps to ensure that information relating to potential procurement opportunities for United States firms is expeditiously communicated to the Secretary of the Treasury, the Secretary of State, and the Secretary of Commerce, and is disseminated as widely as possible to large and small businesses.

SEC. 1803.[104] COMMERCIAL SERVICE OFFICERS AND MULTILATERAL DEVELOPMENT BANK PROCUREMENT.

(a) APPOINTMENT OF COMMERCIAL SERVICE OFFICERS TO SERVE WITH EXECUTIVE DIRECTORS.—The Secretary of Commerce, in con-

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[102] As enrolled; should read "(c)".

[103] 22 U.S.C. 262s–1.

[104] 22 U.S.C. 262s–2. Originally enacted as sec. 2302 of the Omnibus Trade and Competitiveness Act of 1988 and codified at 15 U.S.C. 4722. Sec. 541(b)(2) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2517) transferred sec. 2302 to this Act and redesignated it as sec. 1803. Sec. 541(b)(2) also struck out subsec. (c), which provided definitions for "multilateral development bank"; see sec. 1701(c) of this Act.

Sec. 501 of the Jobs Through Exports Act of 1992 (Public Law 102–549; 106 Stat. 3663; 22 U.S.C. 262s–2 note) provided the following:

"SEC. 501. ADDITIONAL PROCUREMENT OFFERS.

"(a) APPOINTMENT.—The Secretary of Commerce, in consultation with the Secretary of the Treasury, shall appoint one or more full-time additional procurement officers, for each multilateral development bank, to promote exports of goods and services from the United States by doing the following:

"(1) Acting as the liaison between the business community and one or more multilateral development banks, whether or not the banks have offices in the United States. The Secretary of Commerce shall ensure that the procurement officer has access to, and disseminates to United States businesses, information relating to projects which are being proposed by the multilateral development bank involved, and bid specifications and deadlines for projects about to be developed by the bank. The procurement officer shall make special efforts to disseminate such information to small- and medium-sized businesses interested in participating in such projects. The procurement officer shall explore opportunities for disseminating such information through private sector, nonprofit organizations.

Continued

sultation with the Secretary of the Treasury, shall appoint a procurement officer, who is a representative of the International Trade Administration or a Commercial Service Officer of the United States and Foreign Commercial Service, to serve, on a full-time or part-time basis, with each of the Executive Directors of the multilateral development banks in which the United States participates.

(b) FUNCTIONS OF OFFICERS.—Each procurement officer appointed under subsection (a) shall assist the United States Executive Director with respect to whom such officer is appointed in promoting opportunities for exports of goods and services from the United States by doing the following:

(1) Acting as the liaison between the business community and the multilateral development bank involved, whether or not the bank has offices in the United States. The Secretary of Commerce shall ensure that the procurement officer has access to, and disseminates to United States businesses, information relating to projects which are being proposed by the multilateral development bank, and bid specifications and deadlines for projects about to be developed by the bank. The procurement officer shall make special efforts to disseminate such information to small and medium-sized businesses interested in participating in such projects. The procurement officer shall explore opportunities for disseminating such information through private sector, nonprofit organizations.

(2) Taking actions to assure that United States businesses are fully informed of bidding opportunities for projects for which loans have been made by the multilateral development bank involved.

(3) Taking actions to assure that United States businesses can focus on projects in which they have a particular interest or competitive advantage, and to permit them to compete and have an equal opportunity in submitting timely and conforming bidding documents.

TITLE XIX—PERSONNEL PRACTICES [86]

SEC. 1901.[105] PERSONNEL PRACTICES.

(a) STATEMENT OF POLICY.—It shall be the policy of the United States that no initiatives, discussions, or recommendations concerning the placement or removal of any personnel employed by the international financial institutions shall be based on the political philosophy or activity of the individual under consideration.

"(2) Taking actions to assure that United States businesses are fully informed of bidding opportunities for projects for which loans have been made by the multilateral development bank involved.

"(3) Taking actions to assure that United States businesses can focus on projects in which they have a particular interest or competitive advantage, and to permit them to compete and have an equal opportunity in submitting timely and conforming bidding documents.

"(b) DEFINITION.—As used in this section, the term 'multilateral development bank' has the meaning given that term in section 1701(c) of the International Financial Institutions Act (22 U.S.C. 262r(c)).

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce $1,000,000 for each of the fiscal years 1993 and 1994 to carry out this section. Amounts appropriated pursuant to this subsection shall be available only for the purpose of making the appointment of additional procurement officers required by subsection (a).".

[105] 22 U.S.C. 262t.

(b) CONSULTATION.—The Secretary of the Treasury shall consult with the Chairman and the ranking minority member of the Committee on Banking, Finance and Urban Affairs[12] of the House of Representatives and the Committee on Foreign Relations of the Senate before any discussion or recommendations by any official of the United States Government concerning the placement or removal of any principal officer of any international financial institutions.

b. Mexican Debt Disclosure Act of 1995

Title IV of Public Law 104–6 [Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995; H.R. 889], 109 Stat. 73, approved April 10, 1995

AN ACT Making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE IV—MEXICAN DEBT DISCLOSURE ACT OF 1995

SEC. 401.[1] SHORT TITLE.

This title may be cited as the "Mexican Debt Disclosure Act of 1995".

SEC. 402. FINDINGS.

The Congress finds that—

(1) Mexico is an important neighbor and trading partner of the United States;

(2) on January 31, 1995, the President approved a program of assistance to Mexico, in the form of swap facilities and securities guarantees in the amount of $20,000,000,000, using the exchange stabilization fund;

(3) the program of assistance involves the participation of the Board of Governors of the Federal Reserve System, the International Monetary Fund, the Bank for International Settlements, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Bank of Canada, and several Latin American countries;

(4) the involvement of the exchange stabilization fund and the Board of Governors of the Federal Reserve System means that United States taxpayer funds will be used in the assistance effort to Mexico;

(5) assistance provided by the International Monetary Fund, the International Bank for Reconstruction and Development, and the Inter-American Development Bank may require additional United States contributions of taxpayer funds to those entities;

(6) the immediate use of taxpayer funds and the potential requirement for additional future United States contributions of taxpayer funds necessitates congressional oversight of the disbursement of funds; and

[1] 31 U.S.C. 5302 note.

(7) the efficacy of the assistance to Mexico is contingent on the pursuit of sound economic policy by the Government of Mexico.

SEC. 403.[2] PRESIDENTIAL REPORTS.

(a) REPORTING REQUIREMENT.—Not later than June 30, 1995, and every 6 months thereafter, the President shall transmit to the appropriate congressional committees a report concerning all guarantees issued to, and short-term and long-term currency swaps with, the Government of Mexico by the United States Government, including the Board of Governors of the Federal Reserve System.

(b) CONTENTS OF REPORTS.—Each report described in subsection (a) shall contain a description of the following actions taken, or economic situations existing, during the preceding 6-month period or, in the case of the initial report, during the period beginning on the date of enactment of this Act:

(1) Changes in wage, price, and credit controls in the Mexican economy.

(2) Changes in taxation policy of the Government of Mexico.

(3) Specific actions taken by the Government of Mexico to further privatize the economy of Mexico.

(4) Actions taken by the Government of Mexico in the development of regulatory policy that significantly affected the performance of the Mexican economy.

(5) Consultations concerning the program approved by the President, including advice on economic, monetary, and fiscal policy, held between the Government of Mexico and the Secretary of the Treasury (including any designee of the Secretary) and the conclusions resulting from any periodic reviews undertaken by the International Monetary Fund pursuant to the Fund's loan agreements with Mexico.

(6) All outstanding loans, credits, and guarantees provided to the Government of Mexico, by the United States Government, including the Board of Governors of the Federal Reserve System, set forth by category of financing.

(7) The progress the Government of Mexico has made in stabilizing the peso and establishing an independent central bank or currency board.

(c) SUMMARY OF TREASURY DEPARTMENT REPORTS.—In addition to the information required to be included under subsection (b), each report required under this section shall contain a summary of the information contained in all reports submitted under section 404 during the period covered by the report required under this section.

SEC. 404. REPORTS BY THE SECRETARY OF THE TREASURY.

(a) REPORTING REQUIREMENT.—Beginning on the last day of the first month which begins after the date of enactment of this Act, and on the last day of every month thereafter, the Secretary of the Treasury shall submit to the appropriate congressional committees a report concerning all guarantees issued to, and short-term and long-term currency swaps with, the Government of Mexico by the

[2] In memoranda of April 14, 1995 (60 F.R. 19485), May 17, 1995 (60 F.R. 27395), and June 29, 1995 (60 F.R. 35113), the President delegated to the Secretary of the Treasury reporting requirements in secs. 403 and 406 of this Act.

United States Government, including the Board of Governors of the Federal Reserve System.

(b) CONTENTS OF REPORTS.—Each report described in subsection (a) shall include a description of the following actions taken, or economic situations existing, during the month in which the report is required to be submitted:

(1) The current condition of the Mexican economy.

(2) The reserve positions of the central bank of Mexico and data relating to the functioning of Mexican monetary policy.

(3) The amount of any funds disbursed from the exchange stabilization fund pursuant to the program of assistance to the Government of Mexico approved by the President on January 31, 1995.

(4) The amount of any funds disbursed by the Board of Governors of the Federal Reserve System pursuant to the program of assistance referred to in paragraph (3).

(5) Financial transactions, both inside and outside of Mexico, made during the reporting period involving funds disbursed to Mexico from the exchange stabilization fund or proceeds of Mexican Government securities guaranteed by the exchange stabilization fund.

(6) All outstanding guarantees issued to, and short-term and medium-term currency swaps with, the Government of Mexico by the Secretary of the Treasury, set forth by category of financing.

(7) All outstanding currency swaps with the central bank of Mexico by the Board of Governors of the Federal Reserve System and the rationale for, and any expected costs of, such transactions.

(8) The amount of payments made by customers of Mexican petroleum companies that have been deposited in the account at the Federal Reserve Bank of New York established to ensure repayment of any payment by the United States Government, including the Board of Governors of the Federal Reserve System, in connection with any guarantee issued to, or any swap with, the Government of Mexico.

(9) Any setoff by the Federal Reserve Bank of New York against funds in the account described in paragraph (8).

(10) To the extent such information is available, once there has been a setoff by the Federal Reserve Bank of New York, any interruption in deliveries of petroleum products to existing customers whose payments were setoff.

(11) The interest rates and fees charged to compensate the Secretary of the Treasury for the risk of providing financing.

SEC. 405. TERMINATION OF REPORTING REQUIREMENTS.

The requirements of sections 403 and 404 shall terminate on the date that the Government of Mexico has paid all obligations with respect to swap facilities and guarantees of securities made available under the program approved by the President on January 31, 1995.

SEC. 406.[3] PRESIDENTIAL CERTIFICATION REGARDING SWAP OF CURRENCIES TO MEXICO THROUGH EXCHANGE STABILIZATION FUND OR FEDERAL RESERVE.

(a) IN GENERAL.—Notwithstanding any other provision of law, no loan, credit, guarantee, or arrangement for a swap of currencies to Mexico through the exchange stabilization fund or by the Board of Governors of the Federal Reserve System may be extended or (if already extended) further utilized, unless and until the President submits to the appropriate congressional committees a certification that—

(1) there is no projected cost (as defined in the Credit Reform Act of 1990) to the United States from the proposed loan, credit, guarantee, or currency swap;

(2) all loans, credits, guarantees, and currency swaps are adequately backed to ensure that all United States funds are repaid;

(3) the Government of Mexico is making progress in ensuring an independent central bank or an independent currency control mechanism;

(4) Mexico has in effect a significant economic reform effort; and

(5) the President has provided the documents described in paragraphs (1) through (28) of House Resolution 80, adopted March 1, 1995.[4]

(b) TREATMENT OF CLASSIFIED OR PRIVILEGED MATERIAL.—For purposes of the certification required by subsection (a)(5), the President shall specify, in the case of any document that is classified or subject to applicable privileges, that, while such document may not have been produced to the House of Representatives, in lieu thereof it has been produced to specified Members of Congress or their designees by mutual agreement among the President, the Speaker of the House, and the chairmen and ranking members of the Committee on Banking and Financial Services, the Committee on International Relations, and the Permanent Select Committee on Intelligence of the House.

SEC. 407. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committees on International Relations and Banking and Financial Services of the House of Representatives, the Committees on Foreign Relations and Banking, Housing, and Urban Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.

(2) EXCHANGE STABILIZATION FUND.—The term "exchange stabilization fund" means the stabilization fund referred to in section 5302(a)(1) of title 31, United States Code.

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[3] The President issued certifications as required by subsec. (a) in memoranda for the Secretary of the Treasury on April 14, 1995 (60 F.R. 19485), May 17, 1995 (60 F.R. 27395), and June 29, 1995 (60 F.R. 35113). The memoranda, furthermore, delegated to the Secretary of the Treasury, reporting requirements in secs. 403 and 406 of this Act.

[4] For text of H. Res. 80 as adopted by the House on March 1, 1995, see *Congressional Record*, pages H2444 through H2445.

c. FREEDOM Support Act of 1992

Partial text of Public Law 102–511 [S. 2532], 106 Stat. 3320, approved October 24, 1992

AN ACT To support freedom and open markets in the independent states of the former Soviet Union, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLES.

This Act may be cited as the "Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992" or the "FREEDOM Support Act".

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TITLE X—INTERNATIONAL FINANCIAL INSTITUTIONS

NOTE.—Title X amendments to the Bretton Woods Agreements Act, International Finance Corporation Act, and the International Financial Institutions Act have been incorporated into those Acts at the appropriate places.

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SEC. 1004.[1] SUPPORT FOR MACROECONOMIC STABILIZATION IN THE INDEPENDENT STATES OF THE FORMER SOVIET UNION.

(a) IN GENERAL.—In order to promote macroeconomic stabilization and the integration of the independent states of the former Soviet Union into the international financial system, enhance the opportunities for trade, improve the climate for foreign investment, and strengthen the process of transformation of the former socialist economies into free enterprise systems and thereby progressively enhance the well-being of the citizens of these states, the United States should in appropriate circumstances take a leading role in organizing and supporting multilateral efforts at macroeconomic stabilization and debt rescheduling, conditioned on the appropriate development and implementation of comprehensive economic reform programs.

(b) CURRENCY STABILIZATION.—In furtherance of the purposes and consistent with the conditions described in subsection (a), the Congress expresses its support for United States participation, in

[1] 22 U.S.C. 5812 note.

sums of up to $3,000,000,000, in a currency stabilization fund or funds for the independent states of the former Soviet Union.

(c) STUDY OF THE NEED FOR AND FEASIBILITY OF A CURRENCY STABILIZATION FUND FOR UKRAINE.—The Secretary of the Treasury shall instruct the United States Executive Director of the International Monetary Fund to use the voice and vote of the United States to urge the Fund to conduct a study of the need for and feasibility of a currency stabilization fund for Ukraine, and, if it is found that such a fund is needed and is feasible, which considers and makes recommendations with respect to the economic and policy conditions required for the success of such a fund.

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SEC. 1007.[1] REPORT ON DEBT OF THE FORMER SOVIET UNION HELD BY COMMERCIAL FINANCIAL INSTITUTIONS.

The Secretary of the Treasury, using information available from the International Monetary Fund, the International Bank for Reconstruction and Development, and other appropriate international financial institutions, shall report to the Congress, not later than one year after the date of enactment of this Act, on the debt incurred by the former Soviet Union that is held by commercial financial institutions outside the independent states of the former Soviet Union that are obligated on such debt.

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SEC. 1009. MULTILATERAL INVESTMENT GUARANTEES FOR THE INDEPENDENT STATES OF THE FORMER SOVIET UNION.

Not later than 60 days after the date of enactment of this Act, the United States Director of the Multilateral Investment Guarantee Agency shall transmit to the Congress a report analyzing—

(1) the investments in the independent states of the former Soviet Union which have been guaranteed by the Agency; and

(2) the demand for investment guarantees of the type provided by the Agency for investments in the independent states.

d. IFI Funding for Mines

Partial text of Public Law 99–88 [Supplemental Appropriations Act, 1985; H.R. 2577], 99 Stat. 293, approved August 15, 1985; as amended by Public Law 102–285 [National Geologic Mapping Act of 1992, H.R. 2763], 106 Stat. 166, approved May 18, 1992

AN ACT Making supplemental appropriations for the fiscal year ending September 30, 1985, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

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CHAPTER V

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DEPARTMENT OF STATE

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GENERAL PROVISIONS

SEC. 501.[1] The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by these institutions, using funds appropriated or made available pursuant to this Act or any other Act, for the production of any copper commodity for export or for the financing of the expansion, improvement, or modernization of copper mining, smelting, and refining capacity.

SEC. 502.[2] (a) United States active participation in international financial institution activity is based on our national objective of furthering the economic and social development of the nations of the world, in particular the developing nations. The attainment of this national objective is most effectively realized through a world economic and financial system which is both free and stable. Therefore, it is the intent of the United States Congress that United States financial assistance to the international financial institutions should be primarily directed to those projects that would not

[1] 22 U.S.C. 262k note.
[2] 22 U.S.C. 262k.

generate excess commodity supplies in world markets, displace private investment initiatives or foster departures from a market-oriented economy.

(b) The Secretary of the Treasury shall instruct the representatives of the United States to the international financial institutions described in subsection (d) to take into account in their review of loans, credits, or other utilization of the resources of their respective institutions, the effect that country adjustment programs would have upon individual industry sectors and international commodity markets in order to—

(1) minimize any projected adverse impacts on such sector or markets of making such loans, credits, or utilization of resources; and

(2) avoid whenever possible government subsidization of production and exports of international commodities without regard to economic conditions in the markets for such commodities.

(c) More specifically, the following criteria should be considered as a basis for a vote by the respective United States Executive Director to each of the international financial institutions described in subsection (d) against a project proposal involving the creation of new capacity or the expansion, improvement, or modification of mining, smelting, refining, and fabricating of minerals and metal products:

(1) analysis shows that the risks, returns, and incentives of a project are such that it could be financed at reasonable terms by commercial lending services.

(2) Analysis by the United States Bureau of Mines[3] indicates that surplus capacity in the industry for the primary product of the defined project would exist over half the period of the economic life of the project because of projected world demand and capacity conditions.

(3) United States imports of the commodity constitute less than 50 percent of the domestic production of the primary product in those cases where the United States is the substantial producer of such commodities.

(d) The international financial institutions referred to in subsections (a) and (b) are the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank.

* * * * * * *

[3] Sec. 10(b) of Public Law 102–285 (106 Stat. 172) changed the name of the Bureau of Mines to the United States Bureau of Mines, effective May 18, 1992.

e. International Debt Forgiveness and International Financial Institutions Reform

Partial text of Public Law 106–429 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001; H.R. 5526, enacted by reference in sec. 101(a) of Public Law 106–429], 114 Stat. 1900, approved November 6, 2000

AN ACT Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2001, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE VIII—INTERNATIONAL DEBT FORGIVENESS AND INTERNATIONAL FINANCIAL INSTITUTIONS REFORM

SEC. 801. DEBT RELIEF UNDER THE HEAVILY INDEBTED POOR COUNTRIES (HIPC) INITIATIVE

(a) REPEAL OF LIMITATION ON AVAILABILITY OF EARNINGS ON PROFITS OF NONPUBLIC GOLD SALES.—* * *

(b) CONTRIBUTIONS TO HIPC TRUST FUND.—

(1) AUTHORIZATION OF APPROPRIATIONS FOR CONTRIBUTIONS.—There is authorized to be appropriated for the period beginning October 1, 2000, and ending September 30, 2003, $435,000,000 for purposes of United States contributions to the Heavily Indebted Poor Countries (HIPC) Trust Fund administered by the Bank.

(2) AVAILABILITY OF AMOUNTS.—Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended.

(c) CERTIFICATION REQUIRED.—

(1) IN GENERAL.—Except as provided in paragraph (2), not later than 30 days after the date of enactment of this Act, the Secretary shall certify to the appropriate congressional committees that the following requirements are satisfied:

(A) IMPLEMENTATION BY THE BANK OF CERTAIN POLICIES.—The Bank is implementing—

(i) policies providing for the suspension of a loan if funds are being diverted for purposes other than the purpose for which the loan was intended;

(ii) policies seeking to prevent loans from displacing private sector financing;

(iii) policies requiring that loans other than project loans must be disbursed

(I) on the basis of specific prior reforms; or

(II) incrementally upon implementation of specific reforms after initial disbursement;

(iv) policies seeking to minimize the number of projects receiving financing that would displace a population involuntarily or be to the detriment of the people or culture of the area into which the displaced population is to be moved;

(v) policies vigorously promoting open markets and liberalization of trade in goods and services;

(vi) policies providing that financing by the Bank concentrates chiefly on projects and programs that promote economic and social progress rather than short-term liquidity financing; and

(vii) policies providing for the establishment of appropriate qualitative and quantitative indicators to measure progress toward graduation from receiving financing on concessionary terms, including an estimated timetable by which countries may graduate over the next 15 years.

(B) IMPLEMENTATION BY THE FUND OF CERTAIN POLICIES.—The Fund is implementing—

(i) policies providing for the suspension of a financing if funds are being diverted for purposes other than the purpose for which the financing was intended;

(ii) policies seeking to ensure that financing by the Fund normally serves as a catalyst for private sector financing and does not displace such financing;

(iii) policies requiring that financing must be disbursed—

(I) on the basis of specific prior reforms; or

(II) incrementally upon implementation of specific reforms after initial disbursement;

(iv) policies vigorously promoting open markets and liberalization of trade in goods and services;

(v) policies providing that financing by the Fund concentrates chiefly on short-term balance of payments financing; and

(vi) policies providing for the use, in conjunction with the Bank, of appropriate qualitative and quantitative indicators to measure progress toward graduation from receiving financing on concessionary terms, including an estimated timetable by which countries may graduate over the next 15 years.

(2) EXCEPTION.—In the event that the Secretary cannot certify that a policy described in paragraph (1)(A) or (1)(B) is being implemented, the Secretary shall, not later than 30 days after the date of enactment of this Act, submit a report to the appropriate congressional committees on the progress, if any, made by the Bank or the Fund in adopting and implementing such policy, as the case may be.

SEC. 802. STRENGTHENING PROCEDURES FOR MONITORING USE OF FUNDS BY MULTILATERAL DEVELOPMENT BANKS

(a) IN GENERAL.—The Secretary shall instruct the United States Executive Director of each multilateral development bank to exert

the influence of the United States to strengthen the bank's procedures and management controls intended to ensure that funds disbursed by the bank to borrowing countries are used as intended and in a manner that complies with the conditions of the bank's loan to that country.

(b) PROGRESS EVALUATION.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the appropriate congressional committees a report evaluating the progress made toward achieving the objectives of subsection (a), including a description of—

(1) any progress made in improving the supervision, monitoring, and auditing of programs and projects supported by each multilateral development bank, in order to identify and reduce bribery and corruption;

(2) any progress made in developing each multilateral development bank's priorities for allocating anticorruption assistance;

(3) country-specific anticorruption programs supported by each multilateral development bank;

(4) actions taken to identify and discipline multilateral development bank employees suspected of knowingly being involved in corrupt activities; and

(5) the outcome of efforts to harmonize procurement practices across all multilateral development banks.

SEC. 803. REPORTS ON POLICIES, OPERATIONS, AND MANAGEMENT OF INTERNATIONAL FINANCIAL INSTITUTIONS

(a) ANNUAL REPORT ON FINANCIAL OPERATIONS.—Beginning 180 days after the date of enactment of this Act, or October 31, 2000, whichever is later, and on October 31 of each year thereafter, the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the sufficiency of audits of the financial operations of each multilateral development bank conducted by persons or entities outside such bank.

(b) ANNUAL REPORT ON UNITED STATES SUPPORTED POLICIES.—Beginning 180 days after the date of enactment of this Act, or October 31, 2000, whichever is later, and on October 31 of each year thereafter, the Secretary shall submit a report to the appropriate congressional committees on—

(1) the actions taken by recipient countries, as a result of the assistance allocated to them by the multilateral development banks under programs referred to in section 802(b), to strengthen governance and reduce the opportunity for bribery and corruption; and

(2) how International Development Association-financed projects contribute to the eventual graduation of a representative sample of countries from reliance on financing on concessionary terms and international development assistance.

(c) * * *

(d) REPORT ON DEBT RELIEF.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit a report to the appropriate congressional committees on the history of debt relief programs led by, or coordinated with, international financial institutions, including but not limited to—

(1) the extent to which poor countries and the poorest-of-the-poor benefit from debt relief, including measurable evidence of any such benefits; and

(2) the extent to which debt relief contributes to the graduation of a country from reliance on financing on concessionary terms and international development assistance.

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SEC. 806. DEFINITIONS

In this title:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Foreign Relations and the Committee on Appropriations of the Senate, and the Committee on Banking and Financial Services and the Committee on Appropriations of the House of Representatives.

(2) BANK.—The term "Bank" means the International Bank for Reconstruction and Development.

(3) FUND.—The term "Fund" means the International Monetary Fund.

(4) INTERNATIONAL FINANCIAL INSTITUTIONS.—The term "international financial institutions" means the multilateral development banks and the International Monetary Fund.

(5) MULTILATERAL DEVELOPMENT BANKS.—The term "international financial institutions" means the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, the African Development Fund, the European Bank for Reconstruction and Development, and the Multilateral Investment Guarantee Agency.

(6) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

This Act may be cited as the "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001".

f. Foreign Operations Appropriations Instructions, Fiscal Year 2006

Partial text of Public Law 109–102 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006; H.R. 3057], 119 Stat. 2172, approved November 14, 2005

AN ACT Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2006, and for other purposes.

NOTE.—Sections from the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006, that follow provide instructions, restrictions, and other provisions pertaining to U.S. participation in international financial institutions. For the complete text of P.L. 109–102, see *Legislation on Foreign Relations Through 2005*, vol. I–A.

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TITLE V—GENERAL PROVISIONS

COMPENSATION FOR UNITED STATES EXECUTIVE DIRECTORS TO INTERNATIONAL FINANCIAL INSTITUTIONS

SEC. 501. (a) No funds appropriated by this Act may be made as payment to any international financial institution while the United States Executive Director to such institution is compensated by the institution at a rate which, together with whatever compensation such Director receives from the United States, is in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, or while any alternate United States Director to such institution is compensated by the institution at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) For purposes of this section, "international financial institutions" are: the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the Asian Development Fund, the African Development Bank, the African Development Fund, the International Mon-

etary Fund, the North American Development Bank, and the European Bank for Reconstruction and Development.

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SURPLUS COMMODITIES

SEC. 514. The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the North American Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by these institutions, using funds appropriated or made available pursuant to this Act, for the production or extraction of any commodity or mineral for export, if it is in surplus on world markets and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity.

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WAR CRIMINALS

SEC. 561. (a)(1) None of the funds appropriated or otherwise made available pursuant to this Act may be made available for assistance, and the Secretary of the Treasury shall instruct the United States executive directors to the international financial institutions to vote against any new project involving the extension by such institutions of any financial or technical assistance, to any country, entity, or municipality whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations to apprehend and transfer to the International Criminal Tribunal for the former Yugoslavia (the "Tribunal") all persons in their territory who have been indicted by the Tribunal and to otherwise cooperate with the Tribunal.

(2) The provisions of this subsection shall not apply to humanitarian assistance or assistance for democratization.

(b) The provisions of subsection (a) shall apply unless the Secretary of State determines and reports to the appropriate congressional committees that the competent authorities of such country, entity, or municipality are—

(1) cooperating with the Tribunal, including access for investigators to archives and witnesses, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension; and

(2) are acting consistently with the Dayton Accords.

(c) Not less than 10 days before any vote in an international financial institution regarding the extension of any new project involving financial or technical assistance or grants to any country or entity described in subsection (a), the Secretary of the Treasury, in consultation with the Secretary of State, shall provide to the

Committees on Appropriations a written justification for the proposed assistance, including an explanation of the United States position regarding any such vote, as well as a description of the location of the proposed assistance by municipality, its purpose, and its intended beneficiaries.

(d) In carrying out this section, the Secretary of State, the Administrator of the United States Agency for International Development, and the Secretary of the Treasury shall consult with representatives of human rights organizations and all government agencies with relevant information to help prevent indicted war criminals from benefiting from any financial or technical assistance or grants provided to any country or entity described in subsection (a).

(e) The Secretary of State may waive the application of subsection (a) with respect to projects within a country, entity, or municipality upon a written determination to the Committees on Appropriations that such assistance directly supports the implementation of the Dayton Accords.

(f) DEFINITIONS.—As used in this section:

(1) COUNTRY.—The term "country" means Bosnia and Herzegovina, Croatia and Serbia.

(2) ENTITY.—The term "entity" refers to the Federation of Bosnia and Herzegovina, Kosovo, Montenegro and the Republika Srpska.

(3) MUNICIPALITY.—The term "municipality" means a city, town or other subdivision within a country or entity as defined herein.

(4) DAYTON ACCORDS.—The term "Dayton Accords" means the General Framework Agreement for Peace in Bosnia and Herzegovina, together with annexes relating thereto, done at Dayton, November 10 through 16, 1995.

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SPECIAL DEBT RELIEF FOR THE POOREST

SEC. 565. (a) AUTHORITY TO REDUCE DEBT.—The President may reduce amounts owed to the United States (or any agency of the United States) by an eligible country as a result of—

(1) guarantees issued under sections 221 and 222 of the Foreign Assistance Act of 1961;

(2) credits extended or guarantees issued under the Arms Export Control Act; or

(3) any obligation or portion of such obligation, to pay for purchases of United States agricultural commodities guaranteed by the Commodity Credit Corporation under export credit guarantee programs authorized pursuant to section 5(f) of the Commodity Credit Corporation Charter Act of June 29, 1948, as amended, section 4(b) of the Food for Peace Act of 1966, as amended (Public Law 89–808), or section 202 of the Agricultural Trade Act of 1978, as amended (Public Law 95–501).

(b) LIMITATIONS.—

(1) The authority provided by subsection (a) may be exercised only to implement multilateral official debt relief and ref-

erendum agreements, commonly referred to as "Paris Club Agreed Minutes".

(2) The authority provided by subsection (a) may be exercised only in such amounts or to such extent as is provided in advance by appropriations Acts.

(3) The authority provided by subsection (a) may be exercised only with respect to countries with heavy debt burdens that are eligible to borrow from the International Development Association, but not from the International Bank for Reconstruction and Development, commonly referred to as "IDA-only" countries.

(c) CONDITIONS.—The authority provided by subsection (a) may be exercised only with respect to a country whose government—

(1) does not have an excessive level of military expenditures;

(2) has not repeatedly provided support for acts of international terrorism;

(3) is not failing to cooperate on international narcotics control matters;

(4) (including its military or other security forces) does not engage in a consistent pattern of gross violations of internationally recognized human rights; and

(5) is not ineligible for assistance because of the application of section 527 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

(d) AVAILABILITY OF FUNDS.—The authority provided by subsection (a) may be used only with regard to the funds appropriated by this Act under the heading "Debt Restructuring".

(e) CERTAIN PROHIBITIONS INAPPLICABLE.—A reduction of debt pursuant to subsection (a) shall not be considered assistance for the purposes of any provision of law limiting assistance to a country. The authority provided by subsection (a) may be exercised notwithstanding section 620(r) of the Foreign Assistance Act of 1961 or section 321 of the International Development and Food Assistance Act of 1975.

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ANTICORRUPTION PROVISIONS

SEC. 599D. Twenty percent of the funds appropriated by this Act under the heading "International Development Association", shall be withheld from disbursement until the Secretary of the Treasury certifies to the appropriate congressional committees that—

(1) World Bank procurement guidelines are applied to all procurement financed in whole or in part by a loan from the International Bank for Reconstruction and Development (IBRD) or a credit agreement or grant from the International Development Association (IDA);

(2) the World Bank proposal "Increasing the Use of Country Systems in Procurement" dated March 2005 has been withdrawn;

(3) the World Bank is maintaining a strong central procurement office staffed with senior experts who are designated to address commercial concerns, questions, and complaints re-

garding procurement procedures and payments under IDA and IBRD projects;

(4) thresholds for international competitive bidding are established to maximize international competitive bidding in accordance with sound procurement practices, including transparency, competition, and cost-effective results for the Borrowers;

(5) all tenders under the World Bank's national competitive bidding provisions are subject to the same advertisement requirements as tenders under international competitive bidding; and

(6) loan agreements are made public between the World Bank and the Borrowers.

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g. International Lending Supervision Act of 1983

Partial text of Public Law 98–181 [Supplemental Appropriations Act, 1984; H.R. 3959], 97 Stat. 1153 at 1278, approved November 30, 1983; as amended by Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989; and Public Law 104–208 [Economic Growth and Regulatory Paperwork Reduction Act of 1996, title II of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT Making supplemental appropriations for the fiscal year ending September 30, 1984, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE IX—INTERNATIONAL LENDING SUPERVISION

SHORT TITLE

SEC. 901. This title may be cited as the "International Lending Supervision Act of 1983".

DECLARATION OF POLICY

SEC. 902.[1] (a)(1) It is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent leading practices or inadequate supervision.

(2) This shall be achieved by strengthening the bank regulatory framework to encourage prudent private decisionmaking and by enhancing international coordination among bank regulatory authorities.

(b) The Federal banking agencies shall consult with the banking supervisory authorities of other countries to reach understandings aimed at achieving the adoption of effective and consistent supervisory policies and practices with respect to international lending.

DEFINITIONS

SEC. 903.[2] For purposes of this title—

(1) the term "appropriate Federal banking agency" has the same meaning given such term in section 3(q) of the Federal Deposit Insurance Act, except that for purposes of this title such term means the Board of Governors of the Federal Reserve System for—

[1] 12 U.S.C. 3901.
[2] 12 U.S.C. 3902.

(A) bank holding companies and any nonbank subsidiary thereof;

(B) Edge Act corporations organized under section 25(a) of the Federal Reserve Act; and

(C) Agreement Corporations operating under section 25 of the Federal Reserve Act; and

(2) the term "banking institution" means—

(A)(i) an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act or any subsidiary of an insured bank;

(ii) an Edge Act corporation organized under section 25(a) of the Federal Reserve Act; and

(iii) an Agreement Corporation operating under section 25 of the Federal Reserve Act; and

(B) to the extent determined by the appropriate Federal banking agency, any agency or branch of a foreign bank, and any commercial lending company owned or controlled by one or more foreign banks or companies that control a foreign bank as those terms are defined in the International Banking Act of 1978. The term "banking institution" shall not include a foreign bank.

STRENGTHENED SUPERVISION OF INTERNATIONAL LENDING

SEC. 904.[3] (a) Each appropriate Federal banking agency shall evaluate banking institution foreign country exposure and transfer risk for use in banking institution examination and supervision.

(b) Each such agency shall establish examination and supervisory procedures to assure that factors such as foreign country exposure and transfer risk are taken into account in evaluating the adequacy of the capital of banking institutions.

RESERVES

SEC. 905.[4] (a)(1) Each appropriate Federal banking agency shall require a banking institution to establish and maintain a special reserve whenever, in the judgment of such appropriate Federal banking agency—

(A) the quality of such banking institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as—

(i) a failure by such public or private borrowers to make full interest payments on external indebtedness.

(ii) a failure to comply with the terms of any restructured indebtedness; or

(iii) a failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program; or

(B) no definite prospects exist for the orderly restoration of debt service.

[3] 12 U.S.C. 3903.
[4] 12 U.S.C. 3904.

(2) Such reserves shall be charged against current income and shall not be considered as part of capital and surplus or allowances for possible loan losses for regulatory, supervisory, or disclosure purposes.

(b) The appropriate Federal banking agencies shall analyze the results of foreign loan rescheduling negotiations, assess the loan loss risk reflected in rescheduling agreements, and, using the powers set forth in section 908 (regarding capital adequacy), ensure that the capital and reserve positions of United States banks are adequate to accommodate potential losses on their foreign loans.

(c) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within 120 days after the date of the enactment of this title.

ADDITIONAL RESERVE REQUIREMENTS

SEC. 905A.[5] (a) IN GENERAL.—Each appropriate Federal banking agency shall review the exposure to risk of United States banking institutions arising from the medium- and long-term loans made by such institutions that are outstanding to any highly indebted country. Each agency shall provide direction to such institutions regarding additions to general reserves maintained by each banking institution for potential loan losses and special reserves required by such agency arising from such review.

(b) DETERMINATION OF INSTITUTIONAL EXPOSURE TO RISK.—In determining the exposure of an institution to risk for purposes of subsection (a), the appropriate Federal banking agency—

(1) shall determine whether any country exposure that is, and has been for at least 2 years, rated in the category "Other Transfer Risk Problems" or the category "Substandard" by the Interagency Country Exposure Review Committee should be reevaluated;

(2) may exempt, in full or in part, from reserve requirements established pursuant to subsection (a), any loan—

(A) to a country that enters into a debt reduction, debt service reduction, or financing program with its bank creditors that is supported by the International Bank for Reconstruction and Development or the International Monetary Fund; or

[5] 12 U.S.C. 3904a. Sec. 402(b) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2501) added sec. 905A. Sec. 402(a) of that Act also provided the following, titled "Additional Reserve Requirements":

"(a) FINDINGS.—The Congress finds that—

"(1) since the adoption of the International Lending Supervision Act of 1983, the credit quality of loans by United States banking institutions to highly indebted countries has deteriorated and the prospects for full repayment of such loans have diminished;

"(2) in general during this period, the level of country exposure and transfer risk associated with loans by United States banking institutions to highly indebted countries has not been adequately reflected in the reserve levels established by many individual United States banking institutions or the reserve requirements imposed by Federal banking agencies pursuant to such Act;

"(3) during the last 3 years and particularly in recent months, United States banking institutions have increased their reserves for possible losses from loans to highly indebted countries but such reserves remain, in some cases, significantly lower than reserves established by banking institutions in a number of foreign countries and may not be adequate to deal with potential risks; and

"(4) in order to fulfill the purposes of such Act, the Federal banking agencies should take a more active role in reviewing reserve levels established by United States banking institutions for potential losses from loans to highly indebted countries and in requiring appropriate levels of both special and general reserves to reflect the increased risk of such loans.".

(B) secured, in whole or in part, by appropriate collateral for payment of interest or principal;

(3) take into account any other factors which bear on such exposure and the particular circumstances of the institution; and

(4) shall consider as indicators of risk, where appropriate, the average reserve levels maintained by or required of banking institutions in foreign countries and secondary market prices for such loans.

(c) TIMING AND REPORT.—

(1) DETERMINED BY AGENCY.—Except as provided in paragraph (3), each appropriate Federal banking agency shall determine the timing of any addition to reserves required by subsection (a).

(2) REPORT.—Each appropriate Federal banking agency shall include in each report required to be made under section 913(d) after 1989 a report on the actions taken pursuant to this section.

(3) DEADLINE.—Each Federal agency required to undertake a review described in subsection (a) shall complete the review not later than December 31, 1990.

(d) HIGHLY INDEBTED COUNTRY DEFINED.—As used in this section, the term "highly indebted country" means any country designated as a "Highly Indebted Country" in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before the date of the enactment of this section.

ACCOUNTING FOR FEES ON INTERNATIONAL LOANS

SEC. 906.[6] (a)(1) In order to avoid excessive debt service burdens on debtor countries, no banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes such fee over the effective life of each such loan.

(2)(A) Each appropriate Federal banking agency shall promulgate such regulations as are necessary to further carry out the provisions of this subsection.

(B) The requirement of paragraph (1) shall take effect on the date of the enactment of this section.

(b)(1) Subject to subsection (a), the appropriate Federal banking agencies shall promulgate regulations for accounting for agency, commitment, management and other fees charged by a banking institution in connection with an international loan.

(2) Such regulations shall establish the accounting treatment of such fees for regulatory, supervisory, and disclosure purposes to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

(3) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this subsection within 120 days after the date of the enactment of this title.

[6] 12 U.S.C. 3905.

COLLECTION AND DISCLOSURE OF CERTAIN INTERNATIONAL LENDING DATA

SEC. 907.[7] (a) Each appropriate Federal banking agency shall require, by regulation, each banking institution with foreign country exposure to submit, no fewer than four times each calendar year, information regarding such exposure in a format prescribed by such regulations.

(b) Each appropriate Federal banking agency shall require, by regulation, banking institutions to disclose to the public information regarding material foreign country exposure in relation to assets and to capital.

(c) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within 120 days after the date of the enactment of this title.

CAPITAL ADEQUACY

SEC. 908.[8] (a)(1) Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.

(2) Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.

(b)(1) Failure of a banking institution to maintain capital at or above its minimum level as established pursuant to subsection (a) may be deemed by the appropriate Federal banking agency, in its discretion, to constitute an unsafe and unsound practice within the meaning of section 8 of the Federal Deposit Insurance Act.

(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the appropriate Federal banking agency may issue a directive to a banking institution that fails to maintain capital at or above its required level as established pursuant to subsection (a).

(B)(i) Such directive may require the banking institution to submit and adhere to a plan acceptable to the appropriate Federal banking agency describing the means and timing by which the banking institution shall achieve its required capital level.

(ii) Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 8(i) of the Federal Deposit Insurance Act to the same extent as an effective and outstanding order issued pursuant to section 8(b) of the Federal Deposit Insurance Act which has become final.

(3)(A) Each appropriate Federal banking agency may consider such banking institution's progress in adhering to any plan required under this subsection whenever such banking institution, or an affiliate thereof, or the holding company which controls such

[7] 12 U.S.C. 3906.
[8] 12 U.S.C. 3907.

banking institution, seeks the requisite approval of such appropriate Federal banking agency for any proposal which would divert earnings, diminish capital, or otherwise impede such banking institution's progress in achieving its minimum capital level.

(B) Such appropriate Federal banking agency may deny such approval where it determines that such proposal would adversely affect the ability of the banking institution to comply with such plan.

(C) The Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall encourage governments, central banks, and regulatory authorities of other major banking countries to work toward maintaining and, where appropriate, strengthening the capital bases of banking institutions involved in international lending.

FOREIGN LOAN EVALUATIONS

SEC. 909.[9] (a)(1) In any case in which one or more banking institutions extend credit, whether by loan, lease, guarantee, or otherwise, which individually or in the aggregate exceeds $20,000,000, to finance any project which has as a major objective the construction or operation of any mining operation, any metal or mineral primary processing operation, any fabricating facility or operation, or any metal-making operations (semi and finished) located outside the United States or its territories and possessions, a written economic feasibility evaluation of such foreign project shall be prepared and approved in writing by a senior official of the banking institution, or, if more than one banking institution is involved, the lead banking institution, prior to the extension of such credit.

(2) Such evaluation shall—

(A) take into account the profit potential of the project, the impact of the project on world markets, the inherent competitive advantages and disadvantages of the project over the entire life of the project, and the likely effect of the project upon the overall long-term economic development of the country in which the project is located; and

(B) consider whether the extension of credit can reasonably be expected to be repaid from revenues generated by such foreign project without regard to any subsidy, as defined in international agreements, provided by the government involved or any instrumentality of any country.

(b) Such economy feasibility evaluations shall be reviewed by representatives of the appropriate Federal banking agencies whenever an examination by such appropriate Federal banking agency is conducted.

(c)(1) The authorities of the Federal banking agencies contained in section 8 of the Federal Deposit Insurance Act and in section 910 of this Act, except those contained in section 910(d), shall be applicable to this section.

(2) No private right of action or claim for relief may be predicated upon this section.

[9] 12 U.S.C. 3908.

GENERAL AUTHORITIES

SEC. 910.[10] (a)(1) The appropriate Federal banking agencies are authorized to interpret and define the terms used in this title, and each appropriate Federal banking agency shall prescribe rules or regulations or issue orders as necessary to effectuate the purposes of this title and to prevent evasions thereof.

(2) The appropriate Federal banking agency is authorized to apply the provisions of this title to any affiliate of an insured bank, but only to affiliates for which it is the appropriate Federal banking agency, in order to promote uniform application of this title or to prevent evasions thereof.

(3) For purposes of this section, the term "affiliate" shall have the same meaning as in section 23A of the Federal Reserve Act, except that the term "member bank" in such section shall be deemed to refer to an "insured bank", as such term is used in section 3(h) of the Federal Deposit Insurance Act.

(b) The appropriate Federal banking agencies shall establish uniform systems to implement the authorities provided under this title.

(c)(1) The powers and authorities granted in this title shall be supplemental to and shall not be deemed in any manner to derogate from or restrict the authority of each appropriate Federal banking agency under section 8 of the Federal Deposit Insurance Act or any other law including the authority to require additional capital or reserves.

(2) Any such authority may be used by any appropriate Federal banking agency to ensure compliance by a banking institution with the provisions of this title and all rules, regulations, or orders issued pursuant thereto.

(d)(1) Any banking institution which violates, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such banking institution, who violates any provision of this title or any rule, regulation, or order, issued under this title, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues.

(2) Such violations shall be deemed to be a violation of a final order under section 8(i)(2) of the Federal Deposit Insurance Act and the penalty shall be assessed and collected by the appropriate Federal banking agency under the procedures established by, and subject to the rights afforded to parties in, such section.

GAO AUDIT AUTHORITY

SEC. 911.[11] (a)(1) Under regulations of the Comptroller General, the Comptroller General shall audit the appropriate Federal banking agencies (as defined in section 903 of this title), but may carry

[10] 12 U.S.C. 3909.

[11] 12 U.S.C. 3910. Sec. 8(b) of the GAO Human Capital Reform Act of 2004 (Public Law 108–271; 118 Stat. 814; 31 U.S.C. 702 note) provided: "Any reference to the General Accounting Office in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Government Accountability Office.".

out an on site examination of an open insured bank or bank holding company only if the appropriate Federal banking agency has consented in writing.

(2) An audit under this subsection may include a review or evaluation of the international regulation, supervision, and examination activities of the appropriate Federal banking agency, including the coordination of such activities with similar activities of regulatory authorities of a foreign government or international organization.

(3) Audits of the Federal Reserve Board and Federal Reserve banks may not include—

(A) transactions for, or with, a foreign central bank, government of a foreign country, or nonprivate international financing organization;

(B) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interests on deposits, or open market operations;

(C) transactions made under the direction of the Federal Open Market Committee; or

(D) a part of a discussion or communication among or between members of the Board of Governors of the Federal Reserve System and officers and employees of the Federal Reserve System related to subparagraphs (A) through (C) of this paragraph.

(b)(1)(A) Except as provided in this subsection, an officer or employee of the General Accounting Office may not disclose information identifying an open bank, an open bank holding company, or a customer of an open or closed bank or bank holding company.

(B) The Comptroller General may disclose information related to the affairs of a closed bank or closed bank holding company identifying a customer of the closed bank or closed bank holding company only if the Comptroller General believes the customer had a controlling influence in the management of the closed bank or closed bank holding company or was related to or affiliated with a person or group having a controlling influence.

(2) An officer or employee of the General Accounting Office may discuss a customer, bank, or bank holding company with an official of an appropriate Federal banking agency and may report an apparent criminal violation to an appropriate law enforcement authority of the United States Government or a State.

(3) This subsection does not authorize an officer or employee of an appropriate Federal banking agency to withhold information from a committee of the Congress authorized to have the information.

(c)(1)(A) To carry out this section, all records and property of or used by an appropriate Federal banking agency, including samples of reports of examinations of a bank or bank holding company the Comptroller General considers statistically meaningful and workpapers and correspondence related to the reports shall be made available to the Comptroller General, including such records and property pertaining to the coordination of international regulation, supervision and examination activities of an appropriate Federal banking agency.

(B) The Comptroller General shall give each appropriate Federal banking agency a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out an audit.

(C) Each appropriate Federal banking agency shall give the Comptroller General suitable and lockable offices and furniture, telephones, and access to copying facilities.

(2) Except for the temporary removal of workpapers of the Comptroller General that do not identify a customer of a open or closed bank or bank holding company, an open bank, or an open bank holding company, all workpapers of the Comptroller General and records and property of or used by an appropriate Federal banking agency that the Comptroller General possesses during an audit, shall remain in such agency. The Comptroller General shall prevent unauthorized access to records or property.

EQUAL REPRESENTATION FOR THE FEDERAL DEPOSIT INSURANCE CORPORATION

SEC. 912.[12] As one of the three Federal bank regulatory and supervisory agencies, and as the insurer of the United States banks involved in international lending, the Federal Deposit Insurance Corporation shall be given equal representation with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency on the Committee on Banking Regulations and Supervisory Practices of the Group of Ten Countries and Switzerland.

SEC. 913.[13] * * * [Repealed—1996]

[12] 12 U.S.C. 3911.

[13] Formerly at 12 U.S.C. 3912. Sec. 2224(c) of title II of Public Law 104–208 (110 Stat. 3009) repealed sec. 913, which had required the Treasury Department to issue reports to Congress on international lending operations of banking institutions.

h. Multilateral Development Banks—Sense of Congress

Partial text of Public Law 98–181 [Supplemental Appropriations Act, 1984; H.R. 3959], 97 Stat. 1153 at 1286, approved November 30, 1983

NOTE.—Except for the provisions included below, title X of this Act consists of amendments to the Inter-American Development Bank Act, the Asian Development Bank Act, and the African Development Fund Act. These amendments have been incorporated at the appropriate places in the text.

AN ACT Making supplemental appropriations for the fiscal year ending September 30, 1984, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE X—MULTILATERAL DEVELOPMENT BANKS

* * * * * * *

STUDY

SEC. 1005. (a) It is the sense of Congress that—

(1) the multilateral development institutions serve an invaluable role in promoting developing abroad;

(2) foreign direct investment, trade, and commercial lending make a contribution at least equal to that of development assistance in promoting development;

(3) United States economic interests are vitally affected by conditions in developing countries; and

(4) the multilateral development banks already play an important, although indirect, role in encouraging private investment flows.

(b)(1)(A) The Secretary of the Treasury shall conduct a study of how the multilateral development institutions could more actively encourage foreign direct investment and commercial capital flows and channel such investment and capital flows to developing countries for sound and productive development projects through the International Finance Corporation in cooperation with the multilateral development institutions or through a new investment banking facility at one or more of these institutions.

(B) In addition, such study shall evaluate whether the multilateral development institutions could help increase foreign direct investment and commercial capital flows by insuring that the interests of investors and host governments are adequately protected.

(2) The Secretary of the Treasury shall solicit comments on such study from the multilateral development institutions and shall incorporate such comments with the study in a report to be transmitted to both Houses of the Congress within one hundred and eighty days of the date of the enactment of this section.

PERSONNEL PRACTICES

SEC. 1006. (a)[1] It shall be the policy of the United States that no initiatives, discussions or recommendations concerning the placement or removal of any Inter-American Development Bank, Asian Development Bank, or African Development Bank personnel shall be based on the political philosophy or activity of the individual under consideration.

(b) The Secretary of the Treasury shall consult with the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs[2] of the House of Representatives and the Committee on Foreign Relations of the Senate and the relevant subcommittees prior to any discussions or recommendations by any official of the United States Government concerning the placement or removal of any principal officer of the Inter-American Development Bank, Asian Development Bank, or African Development Bank management.

[1] 22 U.S.C. 276e–3.

[2] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

i. Foreign Currency Reports

Added to 31 United States Code by Public Law 93–110 [An Act To Amend the Par Value Modification Act; H.R. 6912], 87 Stat. 352, approved September 21, 1973; as amended by Public Law 98–473 [Comprehensive Crime Control Act of 1984, H.J. Res. 648], 98 Stat. 1837, approved October 12, 1984; Public Law 99–570 [Anti-Drug Abuse Act of 1986, H.R. 5484], 100 Stat. 3207, approved October 27, 1986; Public Law 100–690 [Anti-Drug Abuse Act of 1988, H.R. 5210], 102 Stat. 4181, approved November 18, 1988; Public Law 102–550 [Housing and Community Development Act of 1992, H.R. 5334], 106 Stat. 3672, approved October 28, 1992; Public Law 103–322 [Violent Crime Control and Law Enforcement Act of 1994; H.R. 3355], 108 Stat. 1796, approved September 13, 1994; Public Law 103–325 [Riegle Community Development and Regulatory Improvement Act of 1994; H.R. 3474], 108 Stat. 2160, approved September 23, 1994; Public Law 104–208 [Omnibus Consolidated Appropriations Act for 1997; H.R. 3610], 110 Stat. 3009, approved September 30, 1996; and Public Law 107–56 [Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001; H.R. 3162], 115 Stat. 272, approved October 26, 2001

TITLE 31, U.S.C.[1]

§ 5315. Reports on foreign currency transactions

(a) Congress finds that—

(1) moving mobile capital can have a significant impact on the proper functioning of the international monetary system;

(2) it is important to have the most feasible current and complete information on the kind and source of capital flows, including transactions by large United States businesses and their foreign affiliates; and

(3) additional authority should be provided to collect information on capital flows under section 5(b) of the Trading With the Enemy Act (50 App. U.S.C. 5(b)) and section 8 of the Bretton Woods Agreement Act (22 U.S.C. 286f).

(b) In this section, "United States person" and "foreign person controlled by a United States person" have the same meanings given those terms in section 7(f) (A) and (C), respectively, of the Securities and Exchange Act of 1934 (15 U.S.C. 78g(f)(2)(A), (C)).

(c) The Secretary of the Treasury shall prescribe regulations consistent with subsection (a) of this section requiring reports on foreign currency transactions conducted by a United States person or

[1] These provisions were originally enacted as title II of Public Law 93–110 and codified at 31 U.S.C. 1151. That text provided a congressional statement of findings, granted the Secretary of the Treasury the authority to prescribe regulations, and established enforcement provisions. Public Law 97–258 amended and recodified title 31, U.S.C., and incorporated an amended text of title II into the revised title 31.

a foreign person controlled by a United States person. The regulations shall require that a report contain information and be submitted at the time and in the way, with reasonable exceptions and classifications, necessary to carry out this section.

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§ 5320. Injunctions

When the Secretary of the Treasury believes a person has violated, is violating, or will violate this subchapter, or a regulation prescribed or order issued under this subchapter, the Secretary may bring a civil action in the appropriate district court of the United States or appropriate United States court of a territory or possession of the United States to enjoin the violation or to enforce compliance with the subchapter, regulation, or order. An injunction or temporary restraining order shall be issued without bond.

§ 5321. Civil penalties

(a)(1) A domestic financial institution or nonfinancial trades or businesses,[2] and a partner, director, officer, or employee of a domestic financial institution or nonfinancial trades or businesses,[2] willfully violating this subchapter or a regulation prescribed order issued[3] under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315) or willfully violating a regulation prescribed under Section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,[3] is liable to the United States Government for a civil penalty of not more than the greater of the amount (not to exceed $100,000)[4] involved in the transaction (if any)[5] or $25,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(2) The Secretary of the Treasury may impose an additional civil penalty on a person not filing a report, or filing a report containing a material omission or misstatement, under section 5316 of this title or a regulation prescribed under section 5316. A civil penalty under this paragraph may not be more than the amount of the monetary instrument for which the report was required. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(b) of this title.

(3)[6] A person not filing a report under a regulation prescribed under section 5315 of this title or not complying with an injunction under section 5320 of this title enjoining a violation of, or enforcing

[2] Sec. 365(c)(2(B) of the USA PATRIOT ACT of 2001 (Public Law 107–56; 115 Stat. 335) inserted "or nonfinancial trades or businesses".

[3] Sec. 353(b) of the USA PATRIOT ACT of 2001 (Public Law 107–56; 115 Stat. 322) inserted "or order issued" and inserted "or willfully violating a regulation prescribed under Section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,".

[4] Originally enacted as "$1,000". Sec. 901(a) of Public Law 98–473 (98 Stat. 2135) struck out "$1,000" and inserted in lieu thereof "$10,000"; subsequently the penalty was raised to $100,000 by sec. 1357(b) of Public Law 99–570 (100 Stat. 3207–24).

[5] Sec. 6185(g)(2) of Public Law 100–690 (102 Stat. 4357) inserted "(if any)".

[6] Sec. 1357 of Public Law 99–570 (100 Stat. 3207–24) added paras. (4) through (6).

compliance with, section 5315 or a regulation prescribed under section 5315, is liable to the Government for a civil penalty of not more than $10,000.

(4) STRUCTURED TRANSACTION VIOLATION.—

(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who[7] violates any provision of section 5324.

(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States[8] in connection with the transaction with respect to which such penalty is imposed.

(5)[6] FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who willfully violates or any person willfully causing[9] any violation of[10] any provision of section 5314.

(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed—

(i) in the case of violation of such section involving a transaction, the greater of—

(I) the amount (not to exceed $100,000) of the transaction; or

(II) $25,000; and

(ii) in the case of violation of such section involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, the greater of—

(I) an amount (not to exceed $100,000) equal to the balance in the account at the time of the violation; or

(II) $25,000.

(6)[11] NEGLIGENCE.—

(A) IN GENERAL.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any financial institution or nonfinancial trades or businesses,[2] which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.

(B) PATTERNS OF NEGLIGENT ACTIVITY.—If any financial institution or nonfinancial trades or businesses,[2] engages in a pattern of negligent violations of any provision of this subchapter

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[7] Sec. 411(b) of Public Law 103–325 (108 Stat. 2253) struck out "willfully" following "who".

[8] Sec. 1525(b) of Public Law 102–550 (106 Stat. 4065) struck out "under section 5317(d)" from this point.

[9] Sec. 1535(a)(2) of Public Law 102–550 (106 Stat. 4066) inserted "or any person willfully causing" after "willfully violates".

[10] Sec. 330017(a)(1) of Public Law 103–322 (108 Stat. 2149) inserted "any violation of" after "causing". Sec. 413(a)(1) of Public Law 103–325 (108 Stat. 2254) made an identical amendment.

[11] Sec. 1357 of Public Law 99–570 (100 Stat. 3207–24) added para. (6). Para. (6) was amended and restated by sec. 1561(a) of Public Law 102–550 (106 Stat. 4071), effective with respect to violations committed after October 28, 1992.

or any regulation prescribed under this subchapter, the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than $50,000 on the financial institution or nonfinancial trades or businesses.[2]

(7)[12] PENALTIES FOR INTERNATIONAL COUNTER MONEY LAUNDERING VIOLATIONS.—The Secretary may impose a civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than $1,000,000, on any financial institution or agency that violates any provision of subsection (i) or (j) of section 5318 or any special measures imposed under section 5318A.

(b)[13] TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—

(1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

(2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

(A) the date the penalty was assessed; or

(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.

(c) The Secretary may remit any part of a forfeiture under subsection (c) or (d) of section 5317[14] of this title or civil penalty under subsection (a)(2) of this section.

(d)[15] CRIMINAL PENALTY NOT EXCLUSIVE OF CIVIL PENALTY.—A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.

(e)[16] DELEGATION OF ASSESSMENT AUTHORITY TO BANKING AGENCIES.—

(1) IN GENERAL.—The Secretary of the Treasury shall delegate, in accordance with section 5318(a)(1) and subject to such terms and conditions as the Secretary may impose in accordance with paragraph (3), any authority of the Secretary to assess a civil money penalty under this section on depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) to the appropriate Federal banking agencies (as defined in such section 3).

(2) AUTHORITY OF AGENCIES.—Subject to any term or condition imposed by the Secretary of the Treasury under paragraph

[12] Sec. 563(a) of the USA PATRIOT ACT of 2001 (Public Law 107–56; 115 Stat. 332) inserted para. (7). Previously, sec. 2223(3) of Public Law 104–208 (110 Stat. 3009) struck out the original para. (7), which had authorized the Secretary of the Treasury to impose civil money penalties on those found to be in violation of reporting requirements in 31 U.S.C. 5327. Public Law 104–208 also repealed 31 U.S.C. 5327. Para. (7) was originally added to this section by sec. 1511(b) of Public Law 102–550 (106 Stat. 4056).

[13] Sec. 1357(e) of Public Law 99–570 (100 Stat. 3207–24) amended and restated subsec. (b).

[14] Sec. 1357(h) of Public Law 99–570 struck out "section 5317(d)" and inserted in lieu thereof "subsection (c) or (d) of section 5317".

[15] Sec. 1357(f) of Public Law 99–570 added subsec. (d).

[16] Sec. 406 of Public Law 103–325 (108 Stat. 2247) added subsec. (e).

(3), the provisions of this section shall apply to an appropriate Federal banking agency to which is delegated any authority of the Secretary under this section in the same manner such provisions apply to the Secretary.

(3) TERMS AND CONDITIONS.—

(A) IN GENERAL.—The Secretary of the Treasury shall prescribe by regulation the terms and conditions which shall apply to any delegation under paragraph (1).

(B) MAXIMUM DOLLAR AMOUNT.—The terms and conditions authorized under subparagraph (A) may include, in the Secretary's sole discretion, a limitation on the amount of any civil penalty which may be assessed by an appropriate Federal banking agency pursuant to a delegation under paragraph (1).

* * * * * * *

§ 5331. Reports relating to coins and currency received in nonfinancial trade or business [17]

(a) COIN AND CURRENCY RECEIPTS OF MORE THAN $10,000.—Any person—

(1) who is engaged in a trade or business; and

(2) who, in the course of such trade or business, receives more than $10,000 in coins or currency in 1 transaction (or 2 or more related transactions),

shall file a report described in subsection (b) with respect to such transaction (or related transactions) with the Financial Crimes Enforcement Network at such time and in such manner as the Secretary may, by regulation, prescribe.

(b) FORM AND MANNER OF REPORTS.—A report is described in this subsection if such report—

(1) is in such form as the Secretary may prescribe;

(2) contains—

(A) the name and address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received;

(B) the amount of coins or currency received;

(C) the date and nature of the transaction; and

(D) such other information, including the identification of the person filing the report, as the Secretary may prescribe.

(c) EXCEPTIONS.—

(1) AMOUNTS RECEIVED BY FINANCIAL INSTITUTIONS.—Subsection (a) shall not apply to amounts received in a transaction reported under section 5313 and regulations prescribed under such section.

(2) TRANSACTIONS OCCURRING OUTSIDE THE UNITED STATES.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) CURRENCY INCLUDES FOREIGN CURRENCY AND CERTAIN MONETARY INSTRUMENTS.—

[17] Sec. 565(a) of the USA PATRIOT ACT of 2001 (Public Law 107–56; 115 Stat. 333) added sec. 5331.

(1) IN GENERAL.—For purposes of this section, the term "currency" includes—

(A) foreign currency; and

(B) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.

(2) SCOPE OF APPLICATION.—Paragraph (1)(B) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of section 5312(a)(2).

j. Par Value Modification Act, as amended

Public Law 92–268 [S. 3160], 86 Stat. 116, approved March 31, 1972; as amended by Public Law 93–110 [H.R. 6912], 87 Stat. 532, approved September 21, 1973; Public Law 94–564 [H.R. 13955], 90 Stat. 2660, approved October 19, 1976; and Public Law 97–258 [H.R. 6128], 97 Stat. 877 at 992, approved September 13, 1982

AN ACT To provide for a modification in the par value of the dollar, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Par Value Modification Act".

SEC. 2.[1] * * * [Repealed—1978]

SEC. 3.[2] The Secretary of the Treasury shall maintain the value in terms of gold of the holdings of United States money of the International Bank for Reconstruction and Development, the Inter-American Development Bank, the International Development Association, and the Asian Development Bank to the extent provided in the articles of agreement of those institutions. Amounts necessary to maintain the value may be appropriated. Amounts appropriated under this section remain available until expended.

SEC. 4.[3] * * * [Repealed—1982]

SEC. 5.[4] * * * [Repealed—1982]

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[1] Upon entry into force on April 1, 1978, of the amendments to the Articles of Agreement of the IMF, sec. 2 was repealed, as provided for by sec. 6 of Public Law 94–564. Sec. 2 previously read as follows:

"SEC. 2. The Secretary of the Treasury is hereby authorized and directed to take the steps necessary to establish a new par value of the dollar of $1 equals 0.828948 Special Drawing Right or, the equivalent in terms of gold, of forty-two and two-ninths dollars per fine troy ounce of gold. When established such par value shall be the legal standard for defining the relationship of the dollar to gold for the purpose of issuing gold certificates pursuant to section 14(c) of the Gold Reserve Act of 1934 (31 U.S.C. 405b).".

[2] 31 U.S.C. 5152. Public Law 97–258 recodified title 31, United States Code. Pursuant to that Act, sec. 3, which had originally been codified as 31 U.S.C. 449a, was amended and restated, and recodified as 31 U.S.C. 5152.

[3] Public Law 97–258 amended and recodified title 31, U.S.C. and omitted sec. 4 as an obsolete provision from the revised text of title 31. Sec. 4, which had been codified as 31 U.S.C. 449b, previously read as follows:

"SEC. 4. The increase in the value of the gold held by the United States (including the gold held as security for gold certificates) resulting from the change in the par value of the dollar authorized by section 2 of this Act shall be covered into the Treasury as a miscellaneous receipt.".

[4] Public Law 97–258 amended and recodified title 31, U.S.C., and omitted sec. 5 as an executed provision from the revised text of title 31. Sec. 5, which had been added by sec. 2 of Public Law 93–110 (87 Stat. 352) and codified as 31 U.S.C. 449c, previously read as follows:

"SEC. 5. It is the sense of the Congress that the President shall take all appropriate action to expedite realization of the international monetary reform noted at the Smithsonian on December 18, 1971.".

k. Special Drawing Rights Act, as amended

Public Law 90–349 [H.R. 16911], 82 Stat. 188, approved June 19, 1968; as amended by Public Law 91–599 [H.R. 18306], 84 Stat, 1657, approved December 30, 1970; Public Law 94–564 [H.R. 13955], 90 Stat. 2660, approved October 18, 1976; and Public Law 98–181 [Supplemental Appropriations Act, 1984; H.R. 3959], 97 Stat. 1153 at 1270, approved November 30, 1983

AN ACT To provide for United States participation in the facility based on Special Drawing Rights in the International Monetary Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Special Drawing Rights Act".

SEC. 2.[1] The President is hereby authorized (a) to accept the amendment to the articles of agreement of the International Monetary Fund (hereinafter referred to as the "Fund"), attached to the April 1968 report by the Executive Directors to the Board of Governors of the Fund, for the purpose of (i) establishing a facility based on Special Drawing Rights in the Fund and (ii) giving effect to certain modifications in the present rules and practices of the Fund, and (b) to participate in the special drawing account established by the amendment.

SEC. 3.[2] (a) Special Drawing Rights allocated to the United States pursuant to article XVIII[3] of the Articles of Agreement of the Fund, and Special Drawing Rights otherwise acquired by the United States, shall be credited to the account of, and administered as part of, the Exchange Stabilization Fund established by section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a).

(b) The proceeds resulting from the use of Special Drawing Rights by the United States, and payments of interest to the United States Articles of Agreement of the Fund, shall be deposited in the Exchange Stabilization Fund. Currency payments by the United States in return for Special Drawing Rights, and payments of charges or assessments pursuant to article XX, article XXIV, and article XXV[3] of the Articles of Agreement of the Fund, shall be made from the resources of the Exchange Stabilization Fund.

SEC. 4.[4] (a) The Secretary of the Treasury is authorized to issue to the Federal Reserve banks, and such banks shall purchase, Special Drawing Right certificates in such form and in such denominations as he may determine, against any Special Drawing Rights held to the credit of the Exchange Stabilization Fund. Such certificates shall be issued and remain outstanding only for the purpose

[1] 22 U.S.C. 286n.
[2] 22 U.S.C. 286o.
[3] Upon entry into force on April 1, 1978, of the amendments to the Articles of Agreement of the IMF, certain technical changes regarding references to articles in secs. 3, 6, and 7 became effective, as provided for by sec. 5 of Public Law 94–564.
[4] 22 U.S.C. 286p.

of financing the acquisition of Special Drawing Rights or for financing exchange stabilization operations. The amount of special Drawing Right certificates issued and outstanding shall at no time exceed the value of the Special Drawing Rights held against the Special Drawing Right certificates. The proceeds resulting from the issuance of Special Drawing Right certificates shall be covered into the Exchange Stabilization Fund.

(b) Special Drawing Right certificates owned by the Federal Reserve banks shall be redeemed from the resources of the Exchange Stabilization Fund at such times and in such amounts as the Secretary of the Treasury may determine.

SEC. 5.[5] * * *

SEC. 6.[6] (a)[7] Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States vote to allocate in each basic period Special Drawing Rights under article XVIII,[3] sections 2 and 3, of the Articles of Agreement of the Fund so that allocations to the United States in that period exceed an amount equal to the United States quota in the Fund as authorized under the Bretton Woods Agreements Act.

(b)(1) Neither the President nor any person or agency shall on behalf of the United States vote to allocate Special Drawing Rights under article XVIII, sections 2 and 3, of the Articles of Agreement of the Fund without consultations by the Secretary of the Treasury at least 90 days prior to any such vote, with the Chairman and ranking minority members of the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs[8] of the House of Representatives, and the appropriate subcommittees thereof.

(2) Such consultations shall include an explanation of the consistency of such proposal to allocate with the requirements of the Articles of Agreement of the Fund, in particular the requirement that in all its decisions with respect to allocation of Special Drawing Rights, the Fund shall "seek to meet the long-term global need, as and when it arises, to supplement existing reserve assets in such manner as will promote the attainment of its purposes and will avoid economic stagnation and deflation as well as excess demand and inflation in the world".

SEC. 7.[9] The provisions of article XXI(b)[3] of the Articles of Agreement of the Fund shall have full force and effect in the United States and its territories and possessions when the United States becomes a participant in the special drawing account.

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[5] Sec. 5 made conforming amendments at 12 U.S.C. 412, 12 U.S.C. 415, 12 U.S.C. 417, and 12 U.S.C. 467.

[6] 22 U.S.C. 286q. Amended and restated by sec. 2 of Public Law 91–599 (84 Stat. 1657).

[7] Sec. 803 of Public Law 98–181 (97 Stat. 1270) added the subsec. designation "(a)" and a new subsec. (b).

[8] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

[9] 22 U.S.C. 286r.

l. Convention on the Settlement of Investment Disputes Act of 1966

Public Law 89–532 [S. 3498], 80 Stat. 344, approved August 11, 1966

AN ACT To facilitate the carrying out of the obligations of the United States under the Convention of the Settlement of Investment Disputes Between States and Nationals of Other States, signed on August 27, 1965, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Convention on the Settlement of Investment Disputes Act of 1966".

SEC. 2.[1] The President may make such appointments of representatives and panel members as may be provided for under the convention.

SEC. 3.[2] (a) An award of an arbitral tribunal rendered pursuant to chapter IV of the convention shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States. The Federal Arbitration Act (9 U.S.C. 1 et seq.) shall not apply to enforcement of awards rendered pursuant to the convention.

(b) The district courts of the United States (including the courts enumerated in title 28, United States Code, section 460) shall have exclusive jurisdiction over actions and proceedings under paragraph (a) of this section, regardless of the amount in controversy.

[1] 22 U.S.C. 1650.
[2] 22 U.S.C. 1650a.

m. National Advisory Council on International Monetary and Financial Policies

Executive Order 11269,[1] February 14, 1966, 31 F.R. 2813, 3 CFR, 1966–70 Comp., p. 534; as amended by Executive Order 11334, March 7, 1967, 32 F.R. 3933, 3 CFR, 1966–70 Comp., p. 627; Executive Order 11808, September 30, 1974, 39 F.R. 35563; Executive Order 11977, March 14, 1977, 42 F.R. 14671; Executive Order 12164, September 29, 1979, 44 F.R. 56681; Executive Order 12188, January 2, 1980, 45 F.R. 989; Executive Order 12403, February 8, 1983, 48 F.R. 6087; Executive Order 12567, October 2, 1986, 51 F.R. 35495; Executive Order 12647, August 2, 1988, 53 F.R. 29323; Executive Order 12766, June 18, 1991, 56 F.R. 28463; and Executive Order 13188, March 31, 1999, 64 F.R. 16595

By virtue of the authority vested in me by Reorganization Plan No. 4 of 1965 (30 F.R. 9353), and as President of the United States, it is ordered as follows:

Section 1. Establishment of Council. (a) There is hereby established the National Advisory Council on International Monetary and Financial Policies, hereinafter referred to as the council.

(b) The Council shall be composed of the following members: the Secretary of the Treasury, who shall be the Chairman of the Council, the Assistant to the President for Economic Affairs, who shall be Deputy Chairman of the Council,[2] the Secretary of State, the United States Trade Representative,[3] the Secretary of Commerce, the Chairman of the Board of Governors of the Federal Reserve System, the Administrator of the United States Agency for International Development,[4] and the President of the Export-Import Bank of the United States.[5]

(c) Whenever matters within the jurisdiction of the Council may be of interest to Federal agencies not represented on the Council under Section 1(b) of this order, the Chairman of the Council may consult with such agencies and may invite them to designate representatives to participate in meetings and deliberations of the Council.

Sec. 2. Functions of the Council. (a) Exclusive of the functions delegated by the provisions of Section 3, below, and subject to the limitations contained in subsection (b) of this Section, all of the functions which are now vested in the President in consequence of their transfer to him effected by the provisions of Section 1(b) of Reorganization Plan No. 4 of 1965 are hereby delegated to the Council.

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[1] 22 U.S.C. 286b note.

[2] Sec. 6(c) of Executive Order 11808 (Sept. 30, 1974; 39 F.R. 35563) added the Assistant to the President for Economic Affairs.

[3] Sec. 1–105(a) of Executive Order 12188 added The United States Trade Representative.

[4] Executive Order 13118 (Mar. 31, 1999; 64 F.R. 16595) struck out "Director of the International Development Cooperation Agency" (previously added by Executive Order 12164) and inserted "Administrator of the United States Agency for International Development".

[5] Public Law 90–276 (82 Stat. 47) renamed "Export-Import Bank of Washington" to "Export-Import Bank of the United States".

(b) The functions under Sections 4(a) and 4(b)(3) of the Bretton Woods Agreements Act, including those made applicable to the International Finance Corporation, the Inter-American Development Bank, and the International Development Association (22 U.S.C. 286b (a) and (b)(3); 282b; 283b; 284b), to the extent that such functions consist of coordination of policies, are hereby delegated to the Council. The functions so delegated shall be deemed to include the authority to review proposed individual loan, financial, exchange, or monetary transactions to the extent necessary or desirable to effectuate the coordination of policies.

(c)[6] The Council shall perform with respect to the Asian Development Bank, African Development Fund, African Development Bank, Inter-American Investment Corporation, Multilateral Investment Guarantee Agency, and European Bank for Reconstruction and Development[7] the same functions as those delegated to it by subsections (a) and (b) of this section with respect to other international financial institutions.

Sec. 3. Functions of the Secretary of the Treasury. (a) Functions which are now vested in the President in consequence of their transfer to him effected by the provisions of Section 1(b) of Reorganization Plan No. 4 of 1965 are hereby delegated to the Secretary of the Treasury to the extent of the following:

(1) Authority, subject to the provisions of Section 7 of this Order,[8] to instruct representatives of the United States to international financial organizations.

(2) Authority provided for in Section 4(b)(4) of the Bretton Woods Agreements Act (22 U.S.C. 286b(b)(4)). Such authority, insofar as it relates to the development aspects of the policies, programs, or projects of the International Bank for Reconstruction and Development shall be exercised subject to the provisions of Section 7 of this Order.[9]

(b) In carrying out the functions delegated to him by subsection (a) of this Section the Secretary shall consult with the Council.

(c) Nothing in this order shall be deemed to derogate from the responsibilities of the Secretary of State with respect to the foreign policy of the United States.

(d)[6] The Secretary of the Treasury shall perform, with respect to the Asian Development Bank, African Development Fund, African Development Bank, Inter-American Investment Corporation, Multilateral Investment Guarantee Agency, and European Bank for Reconstruction and Development[7] the same functions as those delegated to him by subsections (a) and (b) of this section with respect to other international financial institutions.

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[6] Executive Order 11334 (March 7, 1967; 32 F.R. 3933) added secs. 2(c) and 3(d).

[7] Executive Order 11977 (March 14, 1977; 42 F.R. 14671) added the African Development Fund. Sec. 2 of Executive Order 12403 (February 8, 1983; 48 F.R. 6087) added the African Development Bank. Sec. 5 of Executive Order 12567 (October 2, 1986; 51 F.R. 35495) added the Inter-American Investment Corporation. Sec. 2 of Executive Order 12647 (August 2, 1988; 53 F.R. 29323) added the Multilateral Investment Guarantee Agency. Sec. 2 of Executive Order 12766 (June 18, 1991; 56 F.R. 28463) added the European Bank for Reconstruction and Development.

[8] Executive Order 12164 inserted the reference to sec. 7.

[9] Executive Order 12164 inserted this sentence.

(e)[10] The Secretary of the Treasury is hereby delegated the functions conferred upon the President by Section 203(b) and Section 207 of the Act of May 31, 1976 (90 Stat. 593 and 594, 22 U.S.C. 290g–1 and 290g–5), subject to the provisions of Section 7 of this Order.[8]

Sec. 4. Information. (a) All agencies and officers of the Government, including representatives of the United States to the international financial organizations, (1) shall keep the Council or the Secretary of the Treasury, as the case may be, fully informed concerning the foreign loan, financial, exchange, and monetary transactions in which they engage or may engage or with respect to which they have other responsibility, and (2) shall provide the Council, the Secretary of State,[11] and the Secretary with such further information or data in their possession as the Council or the Secretary, as the case may be, may deem necessary to the appropriate discharge of the responsibilities of the Council, the Secretary of State,[11] and Secretary under Sections 2 and 3 of this order, respectively.

(b) The Council shall from time to time transmit to all appropriate agencies and officers of the Government statements of the policies of the Council under this order and such other information relating to the above-mentioned transactions or to the functions of the Council hereunder as the Council shall deem desirable.

Sec. 5. Executive Order No. 10033. Section 2(a) of Executive Order No. 10033 of February 8, 1949, is hereby amended by substituting for the name "National Advisory Council on International Monetary and Financial Problems" the following: "National Advisory Council on International Monetary and Financial Policies."

Sec. 6. Effective date. The provisions of this order shall be effective as of January 1, 1966.

Sec. 7.[12] Functions of the Secretary of State. The Secretary of State[13] shall advise both the Secretary of the Treasury and the appropriate United States representatives to the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, African Development Fund, the African Development Bank, Inter-American Investment Corporation, Multilateral Investment Guarantee Agency, and European Bank for Reconstruction and Development[14] on the development aspects of matters relating to those institutions and their activities.

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[10] Sec. 4 of Executive Order 11977 (March 14, 1977; 42 F.R. 14671) added subsec. (e).

[11] Executive Order 13118 (March 31, 1999; 64 F.R. 16595) struck out "Director of the International Development Cooperation Agency" (added by Executive Order 12164) in both places it appeared in sec. 4(a), and inserted in lieu thereof "Secretary of State".

[12] Executive Order 12164, (September 29, 1979; 44 F.R. 56681) added sec. 7.

[13] Executive Order 13118 (March 31, 1999; 64 F.R. 16595) struck out "**Functions of the Director of the International Development Cooperation Agency.** As the principal international development advisor to the President,The Director of the International Development Cooperation Agency" (previously added by Executive Order 12164) and inserted in lieu thereof "**Functions of the Secretary of State.** The Secretary of State".

[14] Sec. 2 of Executive Order 12403 (February 8, 1983; 48 F.R. 6087), added the African Development Bank. Sec. 5 of Executive Order 12567 (October 2, 1986; 51 F.R. 35495) added the Inter-American Investment Corporation. Sec. 2 of Executive Order 12647 (August 2, 1988; 53 F.R. 29323) added the Multilateral Investment Guarantee Agency. Sec. 2 of Executive Order 12766 (June 18, 1991; 56 F.R. 28463) added the European Bank for Reconstruction and Development.

J. FOREIGN ECONOMIC POLICY: TARIFF AND TRADE LAWS

CONTENTS

Page

1. Trade Legislation and Related Documents 256
   a. General Trade Laws 256
      (1) Trade Act of 1974, as amended (Public Law 93–618) (partial text) 256
      (2) Tariff Act of 1930, as amended (Public Law 71–361) (partial text) 418
      (3) Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429) (partial text) 611
      (4) Trade Act of 2002 (Public Law 107–210) (partial text) 616
      (5) Trade and Development Act of 2000 (Public Law 106–200) (partial text) 650
      (6) Trade Deficit Review Commission Act (Public Law 105–277) (partial text) 659
      (7) Steel Imports Into the United States (Public Law 105–277) (partial text) 665
      (8) Tariffs, Trade Barriers, and the Internet (Public Law 105–277) (partial text) 667
      (9) Clarification of Normal Trade Relations (Public Law 105–206) (partial text) 668
      (10) World Trade Organization Transparency (Public Law 105–174) (partial text) 670
      (11) Uruguay Round Agreements Act (Public Law 103–465) (partial text) 671
      (12) Jobs Through Exports Act of 1992 (Public Law 102–549) (partial text) 677
      (13) Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418) (partial text) 685
      (14) Federal Triangle Development Act (Public Law 100–113 (partial text) 779
      (15) Customs and Miscellaneous Amendments (Title II of Public Law 98–573) (partial text) 786
      (16) International Trade and Investment Act (Title III of Public Law 98–573) (partial text) 791
      (17) Trade Law Reform (Title VI of Public Law 98–573) (partial text) 796
      (18) Steel Import Stabilization Act (Title VIII of Public Law 98–573) 798
      (19) Wine Equity and Export Expansion Act of 1984 (Title IX of Public Law 98–573) 805
      (20) Export Trading Company Act of 1982 (Public Law 97–290) 809
      (21) Trade Agreements Act of 1979 (Public Law 96–39) (partial text) 820
      (22) Trade Expansion Act of 1962, as amended (Public Law 87–794) 866
      (23) Designated Beneficiary Developing Countries for Purposes of the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, and the Andean Trade Preference Act (Harmonized Tariff Schedule) (partial text) 879
      (24) International Trade Functions in Reorganization Plan No. 3 of 1979 893

(25) Administration of the Trade Agreements Program (Executive Order 11846) 898
(26) International Trade Functions (Executive Order 12188) 903
(27) Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters (Executive Order 12661) 908
(28) Identification of Trade Expansion Priorities (Executive Order 12901) 912
(29) Trade and Environment Policy Advisory Committee (Executive Order 12905) 914
(30) Identification of Trade Expansion Priorities and Discriminatory Procurement Practices (Executive Order 13116) 916
(31) Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor (Executive Order 13126) 920
(32) Environmental Review of Trade Agreements (Executive Order 13141) 923
(33) Access to HIV/AIDS Pharmaceuticals and Medical Technologies (Executive Order 13155) 925
(34) Federal Leadership on Global Tobacco Control and Prvention (Executive Order 13193) 928
b. U.S. Trade With Canada, Latin America, and the Caribbean 930
(1) Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53) (partial text) 930
(2) United States-Chile Free Trade Agreement Implementation Act (Public Law 108–77) (partial text) 937
(3) Andean Trade Promotion and Drug Eradication Act (Public Law 107–210) (partial text) 941
(4) U.S.-Caribbean Basin Trade Partnership Act (Public Law 106–200) (partial text) 944
(5) North American Free Trade Agreement Implementation Act (Public Law 103–182) (partial text) 947
(6) Andean Trade Preference Act (Title II of Public Law 102–182) ... 960
(7) Caribbean Basin Economic Recovery Expansion Act of 1990 (Title II of Public Law 101–382) 981
(8) United States-Canada Free Trade Agreement Implementation Act of 1988 (Public Law 100–449) (partial text) 987
(9) Caribbean Basin Economic Recovery Act (Public Law 98–67) (partial text) 1023
(10) Tariff Treatment of Cuban Products (Public Law 87–456) (partial text) 1055
(11) Implementing the United States-Canada Free-Trade Agreement Implementation Act (Executive Order 12662) 1056
(12) Implementation of the North American Free Trade Agreement (Executive Order 12889) 1057
(13) Federal Implementation of the North American Agreement on Environmental Cooperation (Executive Order 12915) 1061
(14) Implementation of the Border Environment Cooperation Commission and the North American Development Bank (Executive Order 12916) 1065
(15) Interagency Task Force on the Economic Development of the Southwest Border (Executive Order 13122) 1068
(16) Implementation of Article VIII of the Agreement Establishing the World Trade Organization (Executive Order 13042) 1070
(17) Implementation of the African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act (Executive Order 13191) 1072
c. Implementation of Agreement With the European Community on Government Procurement (Executive Order 12849) 1075
d. U.S. Trade With Africa 1078
(1) African Growth and Opportunity Act (Public Law 106–200) (partial text) 1078
(2) AGOA Acceleration Act of 2004 (Public Law 108–274) (partial text) 1097
(3) Implementation of the African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act (Executive Order 13191) 1105

e. U.S. Trade With the Middle East and North Africa 1107
(1) United States-Bahrain Free Trade Agreement Implementation Act (Public Law 109–169 (partial text) 1107
(2) United States-Morocco Free Trade Agreement Implementation Act (Public Law 108–302) (partial text) 1111
(3) United States-Jordan Free Trade Area Implementation Act (Public Law 107–43) (partial text) 1115
(4) United States-Israel Free Trade Area Implementation Act of 1985 (Public Law 99–47) (partial text) 1121
(5) Report on Free Trade Agreement with Israel (Public Law 107–210) (partial text) 1127
(6) Trade with Israel (Public Law 98–573) (partial text) 1128
(7) Exemption of Israeli Products From Certain User Fees (Public Law 101–382) (partial text) 1132
f. U.S. Trade With Asia and Pacific 1133
(1) United States-Australia Free Trade Agreement Implementation Act (Public Law 108–286) (partial text) 1133
(2) United States-Singapore Free Trade Agreement Implementation Act (Public Law 108–78) (partial text) 1137
(3) United States-China Relations Act of 2000 (Public Law 106–286) (partial text) 1142
(4) United States-Hong Kong Policy Act of 1992 (Public Law 102–383) 1160
(5) Commission on United States-Pacific Trade and Investment Policy (Executive Order 12964) 1169
g. Normal Trade Relations (Most-Favored-Nation) Extensions, Suspensions, Terminations 1170
(1) Armenia (Public Law 108–429) (partial text) 1170
(2) Laos (Public Law 108–429) (partial text) 1171
(3) Vietnam (Public Law 107–52) 1173
(4) Georgia (Public Law 106–476) (partial text) 1174
(5) China (Public Law 106–286) (partial text) 1176
(6) Albania, Kyrgyzstan (Public Law 106–200) (partial text) 1178
(7) Mongolia (Public Law 106–36) (partial text) 1181
(8) Cambodia (Public Law 104–203) 1183
(9) Romania (Public Law 104–171) 1185
(10) Bulgaria—Extension of MFN and Pending Termination of Title IV Application (Public Law 104–162) 1187
(11) Conditions for Renewal of Most-Favored-Nation Status for the People's Republic of China in 1994 (Executive Order 12850) 1188
(12) Withdrawal of Most Favored Nation Status From Serbia and Montenegro (Public Law 102–420) 1191
(13) Albania (Public Law 102–363) 1192
(14) Union of Soviet Socialist Republics (Public Law 102–197) 1193
(15) Czech and Slovakia, Hungary, Estonia, Latvia, and Lithuania (Public Law 102–182) (partial text) 1194
(16) Mongolia (Public Law 102–157) 1198
(17) East Germany (Public Law 101–382) (partial text) 1199
h. Trade Act of 1974—Waivers 1201
(1) Waiver Under the Trade Act of 1974 With Respect to Belarus (Executive Order 13220) 1201
(2) Waiver Under the Trade Act of 1974 With Respect to Tajikistan and Turkmenistan (Executive Order 12811) 1202
(3) Waiver Under the Trade Act of 1974 With Respect to Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan (Executive Order 12809) 1203
(4) Waiver Under the Trade Act of 1974 With Respect to the Republic of Byelarus, the Republic of Kyrgyzstan, and the Russian Federation (Executive Order 12802) 1204
(5) Waiver Under the Trade Act of 1974 With Respect to Armenia (Executive Order 12798) 1205
(6) Waiver Under the Trade Act of 1974 With Respect to Romania (Executive Order 12772) 1206
(7) Waiver Under the Trade Act of 1974 With Respect to Mongolia (Executive Order 12746) 1207
(8) Waiver Under the Trade Act of 1974 With Respect to Bulgaria (Executive Order 12745) 1208

(9) Waiver Under the Trade Act of 1974 With Respect to the Soviet Union (Executive Order 12740) 1209
(10) Waiver Under the Trade Act of 1974 With Respect to the German Democratic Republic (Executive Order 12726) 1210
(11) Waiver Under the Trade Act of 1974 With Respect to Czechoslovakia (Executive Order 12702) 1211
(12) Waiver Under the Trade Act of 1974 With Respect to the People's Republic of China (Executive Order 12167) 1212
(13) Waiver Under the Trade Act of 1974 With Respect to the Hungarian People's Republic (Executive Order 12051) 1213
(14) Waiver Under the Trade Act of 1974 With Respect to the Socialist Republic of Romania (Executive Order 11854) 1214
2. Export-Import Bank 1215
a. Export-Import Bank Act of 1945, as amended (Public Law 79–173) 1215
b. Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189) (partial text) 1265
c. Export Expansion/Export Enhancement 1269
(1) Export Enhancement Act of 1999 (Public Law 106–158) (partial text) 1269
(2) Fair Trade in Automotive Parts Act of 1998 (Title XXXVIII of Public Law 105–261) 1271
(3) Export Enhancement Act of 1992 (Public Law 102–429) (partial text) 1274
(4) Export Enhancement Act of 1988 (Title II of Public Law 100–418) 1280
d. Expansion of Business Capital Assistance Programs (Public Law 101–510) (partial text) 1312
e. Export-Import Bank and Tied Aid Credit Amendments (Title III of Public Law 100–418) (partial text) 1315
f. Export-Import Bank Act Amendments of 1986 (Public Law 99–472) (partial text) 1317
g. Trade and Development Enhancement Act of 1983 (Title VI of Public Law 98–181) (partial text) 1319
h. Export-Import Bank Act Amendments of 1978 (Public Law 95–630) (partial text) 1325
i. Export-Import Bank (Executive Order 12166) 1328
j. Trade Promotion Coordinating Committee (Executive Order 12870) 1329
3. Export Expansion 1332
a. Improving the U.S. Balance of Payments (Public Law 90–390) 1332
b. Establishing the Export Expansion Advisory Committee (Executive Order 11420) 1334
4. Export Administration 1336
a. Export Administration Act of 1979 (Public Law 96–72) 1336
b. China Satellite Provision (Public Law 109–108) (partial text) 1425
c. Export Controls on High Performance Computers (Public Law 105–85) (partial text) 1426
d. Export Administration Amendments Act of 1985 (Public Law 99–64) (partial text) 1431
e. Offsets in Military-Related Exports: Annual Report (50 U.S.C. 2099) .. 1435
f. Declaration and Report on Offset Policy (Public Law 102–558) (partial text) 1437
g. Export Administration Amendments Act of 1981 (Public Law 97–145) (partial text) 1439
h. Continuation of Export Control Regulations (Executive Order 13222) . 1440
i. Administration of Export Controls on Encryption Products (Executive Order 13026) 1442
j. Administration of Export Controls (Executive Order 12981) 1444
k. Administration of the Export Administration Act of 1979 (Executive Order 12214) 1451
l. The President's Export Council (Executive Order 12131) 1452
m. Administration of the Export Administration Act of 1969, as amended (Executive Order 12002) 1455
5. International Economic Sanctions 1458
a. Trading With the Enemy Act, as amended (Public Law 65–91) (partial text) 1458
b. International Emergency Economic Powers Act, as amended (Public Law 95–223) (partial text) 1466

c. National Emergencies Act, as amended (Public Law 94–412) 1473
d. Denial of Foreign Tax Credit, etc., with Respect to Certain Foreign Countries (Public Law 83–736) (partial text) 1478
e. Trade Sanctions Reform and Export Enhancement Act of 2000 (Public Law 106–387) (partial text) 1481
f. Prohibitions on Economic Relations with Narcotics Traffickers 1489
(1) Foreign Narcotics Kingpin Designation Act (Public Law 106–120) (partial text) 1489
(2) Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers (Executive Order 12978) 1500
g. Prohibitions on Economic Relations With Terrorists 1503
(1) Clarification of Certain Executive Orders Blocking Property and Prohibiting Certain Transactions (Executive Order 13372) 1503
(2) Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism (Executive Order 13224) 1504
(3) Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process (Executive Order 12947) 1509
h. Blocking Property of Weapons of Mass Destruction Proliferators and Their Supports (Executive Order 13382) 1512
i. Economic Relations With Cuba 1515
(1) Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104–114) 1515
(2) Declaration of a National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels (Presidential Proclamation 6867) 1554
(3) Cuban Democracy Act of 1992 (Public Law 102–484) (partial text) 1556
(4) Implementation of the Cuban Democracy Act (Executive Order 12854) 1565
j. Economic Relations With Iraq 1566
(1) Iraq Sanctions Act of 1990 (Public Law 101–513) (partial text) ... 1566
(2) Prohibition on Supercomputer Licensing With End-User Designated as Iraq (Public Law 101–515) (partial text) 1576
(3) Economic Sanctions Against the Republic of Iraq (Public Law 101–510) (partial text) 1577
(4) Confiscating and Vesting Certain Iraqi Property (Executive Order 13290) 1578
(5) Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest (Executive Order 13303) 1580
(6) Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions (Executive Order 13315) 1583
(7) Termination of Emergency Declared in Executive Order 12722 With Respect to Iraq and Modification of Executive Order 13290, Executive Order 13303, and Executive Order 13315 (Executive Order 13350) 1586
(8) Modifying the Protection Granted to the Development Fund for Iraq and Certain Property in Which Iraq Has an Interest and Protecting the Central Bank of Iraq (Executive Order 13364) 1589
k. Economic Relations With Iran 1591
(1) Iran and Libya Sanctions Act of 1996 (Public Law 104–172) 1591
(2) Blocking Iranian Government Property (Executive Order 12170) 1603
(3) Prohibiting Imports From Iran (Executive Order 12613) 1605
(4) Prohibiting Certain Transactions With Respect to the Development of Iranian Petroleum Resources (Executive Order 12957) 1606
(5) Prohibiting Certain Transactions With Respect to Iran (Executive Order 12959) 1608
(6) Prohibiting Certain Transactions With Respect to Iran—Consolidation (Executive Order 13059) 1611
l. Economic Relations With Syria 1615
(1) Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Public Law 108–175) 1615
(2) Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria (Executive Order 13338) 1623
m. South African Democratic Transition Support Act of 1993 (Public Law 103–149) 1628

n. Prohibiting Trade and Certain Other Transactions Involving Libya 1635
o. Policy Toward United States Business Transactions in Angola (Public Law 99–472) (partial text) 1636
p. Authority to Deny Most-Favored-Nation Treatment to the Products of Afghanistan (Public Law 99–190) (partial text) 1638
q. Prohibiting Certain Transactions With and Investment In Burma 1640
(1) Burmese Freedom and Democracy Act of 2003 (Public Law 108–61) 1640
(2) Policy Toward Burma—Sanctions (Public Law 104–208) (partial text) 1647
(3) Economic Sanctions Against Products of Burma (Public Law 101–382) (partial text) 1650
(4) Blocking Property of the Government of Burma and Prohibiting Certain Transactions (Executive Order 13310) 1652
r. Prohibiting Certain Transactions With [Former] Yugoslavia 1656
(1) Compliance With United Nations Sanctions Against Iraq, Serbia, and Montenegro (Public Law 104–208) (partial text) 1656
(2) Sanctions Against Serbia (Public Law 106–113) (partial text) 1657
(3) Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans (Executive Order 13219) 1660
s. Prohibiting Certain Transactions With Respect to Rwanda and Delegating Authority With Respect to Other United Nations Arms Embargoes (Executive Order 12918) 1664
t. Prohibiting Certain Transactions With Sudan 1666
(1) Importation of Gum Arabic from Sudan (Public Law 106–476) (partial text) 1666
(2) Blocking Sudanese Government Property and Prohibiting Transactions with Sudan (Executive Order 13067) 1668
u. Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons (Executive Order 13159) 1671
v. Prohibiting the Importation of Rough Diamonds from Sierra Leone (Executive Order 13194) 1674
(1) Clean Diamond Trade Act (Public Law 108–19) 1674
(2) Implementing the Clean Diamond Trade Act (Executive Order 13312) 1681
w. Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia (Executive Order 13348) 1684
x. Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe (Executive Order 13288) 1687
6. Johnson Act—Financial Transactions With Foreign Governments (Public Law 80–772) (partial text) 1690
7. Foreign Investment in the United States 1691
a. Foreign Investment Study Act of 1974 (Public Law 93–479) 1691
b. International Investment and Trade in Services Survey Act (Public Law 94–472) 1696
c. Foreign Direct Investment and International Financial Data Improvements Act of 1990 (Public Law 101–533) 1706
d. International Investment and Trade in Services (Executive Order 11961) 1713
e. Committee on Foreign Investment in the United States (Executive Order 11858) 1714
8. Collection and Publication of Foreign Commerce and Trade Statistics (Public Law 87–826) (partial text) 1717
9. Materials and Commodities 1724
a. Opposition of Use of Multilateral Assistance To Produce or Extract Foreign Surplus Commodities and Minerals for Export (Public Law 99–472) (partial text) 1724
b. National Critical Materials Act of 1984 (Title II of Public Law 98–373) 1726
c. International Coffee Agreement Act of 1980 (Public Law 96–599) 1734
d. International Natural Rubber Agreement Appropriation Authorization (Public Law 96–271) 1737
e. International Sugar Agreement, 1977, Implementation (Public Law 96–236) 1738

f. Strategic and Critical Materials Transaction Authorization Act of 1979 (Public Law 96–175) 1740
10. Foreign Corrupt Practices 1741
a. Foreign Corrupt Practices Act of 1977 (Public Law 95–213) (partial text) 1741
b. Foreign Corrupt Practices Act Amendments of 1988 (Title V of Public Law 100–418) (partial text) 1752
c. International Anti-Bribery and Fair Competition Act of 1998 (Public Law 105–366) (partial text) 1754

1. Trade Legislation and Related Documents

a. General Trade Laws

(1) Trade Act of 1974, as amended

Partial text of Public Law 93–618 [H.R. 10710], 88 Stat. 1978, approved January 3, 1975; as amended by Public Law 94–455 [Tax Reform Act of 1976; H.R. 10612], 90 Stat. 1520 at 1763, approved October 4, 1976; Public Law 96–39 [Trade Agreements Act of 1979; H.R. 4537], 93 Stat. 144, approved July 26, 1979; Public Law 96–417 [Customs Courts Act of 1980; S. 1654], 94 Stat. 1727 at 1746, approved October 10, 1980; Public Law 97–35 [Omnibus Budget Reconciliation Act of 1981; H.R. 3982], 95 Stat. 357 at 881–893, approved August 13, 1981; Public Law 97–164 [Federal Courts Improvement Act of 1982; H.R. 4482], 96 Stat. 49, approved April 2, 1982; Public Law 97–456 [H.R. 6094], 96 Stat. 2503, approved January 12, 1983; Public Law 98–120 [H.R. 3813], 97 Stat. 809, approved October 12, 1983; Public Law 98–369 [Deficit Reduction Act of 1984; H.R. 4170], 98 Stat. 494 at 1172, approved July 18, 1984; Public Law 98–573 [Trade and Tariff Act of 1984; H.R. 3398], 98 Stat. 2948, approved October 30, 1984; Public Law 99–47 [United States-Israel Free Trade Area Implementation Act of 1985; H.R. 2268], 99 Stat. 85, approved June 11, 1985; Public Law 99–107 [Emergency Extension Act of 1985; H.R. 3452], 99 Stat. 479, approved September 30, 1985; Public Law 99–155 [H.R. 3721], 99 Stat. 814, approved November 14, 1985; Public Law 99–189 [H.R. 3981], 99 Stat. 1184, approved December 18, 1985; Public Law 99–272 [Comprehensive Omnibus Budget Reconciliation Act of 1986; H.R. 3128], 100 Stat. 82, approved April 7, 1986; Public Law 99–514 [Tax Reform Act of 1986; H.R. 3838], 100 Stat. 2085 at 2923, approved October 26, 1986; Public Law 99–570 [Anti-Drug Abuse Act of 1986; H.R. 5484], 100 Stat. 3207, approved October 27, 1986; Public Law 100–203 [Omnibus Budget Reconciliation Act of 1987; H.R. 3545], 101 Stat. 1330–382, approved December 22, 1987; Public Law 100–204 [Foreign Relations Authorization Act, Fiscal Year 1988 and 1989; H.R. 1777], 101 Stat. 1331, approved December 22, 1987; Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 100–647 [Technical and Miscellaneous Revenue Act of 1988; H.R. 4333], 102 Stat. 3342, approved November 10, 1988; Public Law 100–690 [Anti-Drug Abuse Act of 1988; H.R. 5210], 102 Stat. 4181, approved November 18, 1988; Public Law 101–179 [Support for East European Democracy (SEED) Act of 1989; H.R. 3402], 103 Stat. 1298, approved November 28, 1989; Public Law 101–207 [S. 1164], 103 Stat. 1833, approved December 7, 1989; Public Law 101–231 [International Narcotics Control Act of 1989; H.R. 3611], 103 Stat. 1954, approved December 13, 1989; Public Law 101–382 [Customs and Trade Act of 1990; H.R. 1594], 104 Stat. 629, approved August 20, 1990; Public Law 102–145 [Further Continuing Appropriations, Fiscal Year 1992; H.J.Res. 360, as amended by Public Law 102–266], 105 Stat. 968 at 106 Stat. 95, approved October 28, 1991; Public Law 102–583 [International Narcotics Control Act of 1992; H.R. 6187], 106 Stat. 4914, approved November 2, 1992; Public Law 103–66 [Omnibus Budget Reconciliation Act of 1993; H.R. 2264], 107 Stat. 312, approved August 10, 1993; Public Law 103–149 [South African Democratic Transition Support Act of 1993; H.R. 3225], 107 Stat. 1503, approved November 23, 1993; Public Law 103–182 [North American Free Trade Agreement Implementation Act; H.R. 3450], 107 Stat. 2057, approved December 8, 1993; Public Law 103–465 [Uruguay Round Agreements Act; H.R. 5110], 108 Stat. 4809, approved December 8, 1994; Public Law 104–65 [Lobbying Disclosure Act of 1995; S. 1060], 109 Stat. 691, approved December 19, 1995; Public Law 104–188 [Small Business Job Protection Act of 1996; H.R. 3448], 110 Stat. 1755, approved August 20, 1996; by Public Law 104–295 [Miscellaneous Trade

and Technical Corrections Act of 1996; H.R. 3815], 110 Stat. 3514, approved October 11, 1996; Public Law 105–206 [Internal Revenue Service Restructuring and Reform Act of 1998; H.R. 2676] 112 Stat. 685, approved July 22, 1998; Public Law 105–220 [Workforce Investment Act of 1998; H.R. 1385] 112 Stat. 936, approved August 7, 1998; Public Law 105–277 [Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; H.R. 4328] 112 Stat. 2681, approved October 21, 1998; Public Law 106–36 [Miscellaneous Trade and Technical Corrections Act of 1999; H.R. 435] 113 Stat 127, approved June 25, 1999; Public Law 106–113 [Consolidated Appropriations Act, 2000; H.R. 3194] 113 Stat. 1501, approved November 29, 1999; Public Law 106–200 [Trade and Development Act of 2000; H.R. 434] 114 Stat. 251, approved May 18, 2000; Public Law 106–286 [H.R. 4444], 114 Stat. 880, approved October 10, 2000; Public Law 107–43 [United States–Jordan Free Trade Area Implementation Act; H.R. 2603], 115 Stat. 243, approved September 28, 2001; Public Law 107–210 [Trade Act of 2002; H.R. 3009], 116 Stat. 933, approved August 6, 2002; Public Law 108–77 [United States-Chile Free Trade Agreement Implementation Act; H.R. 2738], 117 Stat. 909, approved September 3, 2003; Public Law 108–78 [United States-Singapore Free Trade Agreement Implementation Act; H.R. 2739], 117 Stat. 948, approved September 3, 2003; Public Law 108–274 [AGOA Acceleration Act of 2004; H.R. 4103], 118 Stat. 820, approved July 13, 2004; Public Law 108–286 [United States–Australia Free Trade Agreement Implementation Act; H.R. 4759], 118 Stat. 919, approved August 3, 2004; Public Law 108–302 [United States–Morocco Free Trade Agreement Implementation Act; H.R. 4842], 118 Stat. 1103, approved August 17, 2004; Public Law 108–429 [Miscellaneous Trade and Technical Corrections Act of 2004; H.R. 1047], 118 Stat. 2434, approved December 3, 2004; Public Law 109–53 [Dominican Republic-Central America-United States Free Trade Agreement Implementation Act; H.R. 3045], 119 Stat. 462, approved August 2, 2005; and Public Law 109–169 [United States-Bahrain Free Trade Agreement Implementation Act; H.R. 4340], 119 Stat. 3581, approved January 11, 2006

AN ACT To promote the development of an open, nondiscriminatory, and fair world economic system, to stimulate fair and free competition between the United States and foreign nations, to foster the economic growth of, and full employment in, the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Trade Act of 1974".[1]

SEC. 2.[2] STATEMENT OF PURPOSES.

The purposes of this Act are, through trade agreements affording mutual benefits—

(1) to foster the economic growth of and full employment in the United States and to strengthen economic relations between the United States and foreign countries through open and nondiscriminatory world trade;

(2) to harmonize, reduce, and eliminate barriers to trade on a basis which assures substantially equivalent competitive opportunities for the commerce of the United States;

(3) to establish fairness and equity in international trading relations, including reform of the General Agreement on Tariffs and Trade;

(4) to provide adequate procedures to safeguard American industry and labor against unfair or injurious import competition, and to assist industries, firms, workers, and communities to adjust to changes in international trade flows;

[1] 19 U.S.C. 2101.
[2] 19 U.S.C. 2102.

(5) to open up market opportunities for United States commerce in nonmarket economies; and

(6) to provide fair and reasonable access to products of less developed countries in the United States market.

TITLE I—NEGOTIATING AND OTHER AUTHORITY

CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

SEC. 101.[3] BASIC AUTHORITY FOR TRADE AGREEMENTS.

(a) Whenever the President determines that any 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 of this Act will be promoted thereby, the President—

(1) during the 5-year period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities thereof; and

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

(b)(1)[4] Except as provided in paragraph (2), no proclamation pursuant to subsection (a)(2) shall be made decreasing a rate of duty to a rate below 40 percent of the rate existing on January 1, 1975.

(2) Paragraph (1) shall not apply in the case of any article for which the rate of duty existing on January 1, 1975, is not more than 5 percent ad valorem.

(c) No proclamation shall be made pursuant to subsection (a)(2) increasing any rate of duty to, or imposing a rate above, the higher of the following:

(1) the rate which is 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

(2) the rate which is 20 percent ad valorem above the rate existing on January 1, 1975.

SEC. 102.[5] BARRIERS TO AND OTHER DISTORTIONS OF TRADE.[6]

(a) The Congress finds that barriers to (and other distortions of) international trade are reducing the growth of foreign markets for

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[3] 19 U.S.C. 2111. Sec. 224 of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 235) provided that for purposes of this section, "the rates of duty appearing in rate column numbered 1 of the amendments, if any, made under this subtitle shall be considered to be the rates of duty existing or in effect on January 1, 1975.". Sec. 502(c) of the same Act (93 Stat. 251) further provided that for purposes of this section, "the rates of duty in the rate column numbered 1 or 2 as the result of the amendments, if any, made under sections 505, 506, 509, 510, 511, and 514 shall be considered to be the rates of duty existing or in effect on January 1, 1975.".

[4] However, sec. 507 of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 258) stated that notwithstanding this provision, the President may proclaim under sec. 101 "a reduction to 5 cents per bushel of 56 pounds in the rate of duty applicable to yellow dent corn under the rate column numbered 1 of the Tariff Schedules of the United States, currently classified under item 130.35.".

[5] 19 U.S.C. 2112. Sec. 1105(a) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1132) stated that any proclamation or Executive order issued pursuant to a trade agreement entered into under sec. 1102 [of Public Law 100–418] shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under sec. 102 of this Act.

[6] Sec. 401(c)(1) of Public Law 98–573 (98 Stat. 3015) struck out "**NONTARIFF**" which had been the first word of the section title.

the products of United States agriculture, industry, mining, and commerce, diminishing the intended mutual benefits of reciprocal trade concessions, adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations. The President is urged to take all appropriate and feasible steps within his power (including the full exercise of the rights of the United States under international agreements) to harmonize, reduce, or eliminate such barriers to (and other distortions of) international trade. The President is further urged to utilize the authority granted by subsection (b) to negotiate trade agreements with other countries and instrumentalities providing on a basis of mutuality for the harmonization, reduction, or elimination of such barriers to (and other distortions of) international trade. Nothing in this subsection shall be construed as prior approval of any legislation which may be necessary to implement an agreement concerning barriers to (or other distortions of) international trade.

(b)(1)[7] Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this Act will be promoted thereby, the President, during the 13-year period[8] beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

(2)[7] (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 had 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)[7] 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

[7] Sec. 401(a) of Public Law 98–573 (98 Stat. 3013) inserted the para. designation "(1)" and added new paras. (2) through (4). See also the freestanding sections of title IV of Public Law 98–573 regarding trade agreements entered into with Israel under para. (1).

[8] This time period was extended from a duration of 5 years to 13 years by sec. 1101 of Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 307), until January 3, 1988.

into under paragraph (1) with such other country[9] that provides for the elimination or reduction of any duty imposed by the United States.

(4)[7] (A) Notwithstanding paragraph (2), a trade agreement that provides for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) with any country other than Israel if—

(i) such country requested the negotiation of such an agreement, and

(ii) the President, at least 60 days prior to the date notice is provided under subsection (e)(1)—

(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.

(B) The provisions of section 151 shall not apply to an implementing bill (within the meaning of section 151(b) if—

(i) such implementing bill contains a provision approving of any trade agreement which—

(I) is entered into under this section with any country other than Israel, and

(II) provides for the elimination of reduction of any duty imposed by the United States, and

(ii) either—

(I) the requirements of subparagraph (A) were not met with respect to the negotiation of such agreement, or

(II) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproved of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under subparagraph[10] (A)(ii)(I) with respect to the negotiation of such agreement.

(C) The 60-day period described in subparagraphs (A)(ii) and (B)(ii)(II) shall be computed without regard to—

(i) 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

(ii) any Saturday and Sunday, not excluded under clause (i), which either House of Congress is not in session.

(c) Before the President enters into any trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and with each 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 such trade agreement. Such consultation shall include all matters relating to

[9] Sec. 8(b)(1) of the United States-Israel Free Trade Area Implementation Act of 1985 (Public Law 99–47; 99 Stat. 85) added the text beginning at this point to the end of the sentence.

[10] Sec. 1887(a) of Public Law 99–514 (100 Stat. 2923) struck out "subsection" and inserted in lieu thereof "subparagraph".

the implementation of such trade agreement as provided in subsections (d) and (e). If it is proposed to implement such trade agreement, together with one or more other trade agreements entered into under this section, in a single implementing bill, such consultation shall include the desirability and feasibility of such proposed implementation.

(d) Whenever the President enters into a trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall submit such agreement, together with a draft of an implementing bill (described in section 151(b)) and a statement of any administrative action proposed to implement such agreement, to the Congress as provided in subsection (e), and such agreement shall enter into force with respect to the United States only if the provisions of subsection (e) are complied with and the implementing bill submitted by the President is enacted into law.

(e) Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) The President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register:

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement [11] together with—

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interest of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

(f) To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may 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.

[11] Sec. 1106(c)(1) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 311) struck out "copy of such agreement" and inserted in lieu thereof "copy of the final legal text of such agreement".

(g) For purposes of this section—

(1)[12] the term "barrier" includes—

(A) the American selling price basis of customs evaluation as defined in section 402 or 402a of the Tariff Act of 1930, as appropriate, and

(B) any duty or other import restriction;

(2) the term "distortion" includes a subsidy; and

(3)[13] the term "international trade" includes—

(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.

SEC. 103.[14] OVERALL NEGOTIATING OBJECTIVE.

The overall United States negotiating objective under sections 101 and 102 shall be to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices which distort trade or commerce. To the maximum extent feasible, the harmonization, reduction, or elimination of agricultural trade barriers and distortions shall be undertaken in conjunction with the harmonization, reduction, or elimination of industrial trade barriers and distortions.

SEC. 104.[15] SECTOR NEGOTIATING OBJECTIVE.

(a) A principal United States negotiating objective under sections 101 and 102 shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) As a means of achieving the negotiating objective set forth in subsection (a), to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, through the development of fair and equitable market opportunities, and through open and discriminatory world trade), negotiations shall, to the extent feasible, be conducted on the basis of appropriate product sectors of manufacturing.

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[12] Sec. 401(b) of Public Law 98–573 (98 Stat. 3015) amended and restated para. (1). Previously, the definition of barrier included only the text found in subpara. (A).

[13] Sec. 307(a) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3012) amended and restated para. (3). Previously, the term "international trade" had been defined as including only goods and services.

[14] 19 U.S.C. 2113.

[15] 19 U.S.C. 2114.

(c) For the purposes of this section and section 135, the United States Trade Representative[16] together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established under section 135 and after consultation with interested private or non-Federal governmental[17] organizations, identify appropriate product sectors of manufacturing.

(d) If the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under sections 101 or 102, he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in subsection (a) is achieved by such agreement in each product sector or product sectors.

SEC. 104A.[18] NEGOTIATING OBJECTIVES WITH RESPECT TO TRADE IN SERVICES, FOREIGN DIRECT INVESTMENT, AND HIGH TECHNOLOGY PRODUCTS.

(a) TRADE IN SERVICES.—

(1) IN GENERAL—Principal United States negotiating objectives under section 102 shall be—

(A) to reduce or to eliminate barriers to, or other distortions of, international trade in services (particularly United States service sector trade in foreign markets), including barriers that deny national treatment and restrictions on the establishment and operation in such markets; and

(B) 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 open international trade in services.

(2) DOMESTIC OBJECTIVES.—In pursuing the objectives described in paragraph (1), United States negotiations 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 laws and regulations related thereto.

(b) FOREIGN DIRECT INVESTMENT.—

(1) IN GENERAL—Principal United States negotiating objectives under section 102 shall be—

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[16] Sec. 1(b)(1) of Reorganization Plan No. 3 of 1979 redesignated this position, formerly entitled the Special Representative for Trade Negotiations, as the United States Trade Representative.

[17] Sec. 306(c)(2)(C)(i) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3012) added the words "or non-Federal governmental".

[18] 19 U.S.C. 2114a. Sec. 305(a) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3006) added sec. 104A. Sec. 308(a) of such Act further states that the President may enter into bilateral or multilateral agreements as may be necessary to achieve the objectives of sec. 104A(c).

(A) 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

(B) 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 investment related measures.

(2) DOMESTIC OBJECTIVES.—In pursuing the objectives described in paragraph (1), 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 laws and regulations related thereto.

(c) HIGH TECHNOLOGY PRODUCTS.—Principal United States negotiating objectives shall be—

(1) to obtain and preserve the maximum openness with respect to international trade and investment in high technology products and related services;

(2) to obtain the elimination or reduction of, or compensation for, the significantly distorting effects of foreign government acts, policies, or practices identified in section 181, with particular consideration given to the nature and extent of foreign government intervention affecting United States exports of high technology products or investments in high technology industries, including—

(A) foreign industrial policies which distort international trade or investment;

(B) measures which deny national treatment or otherwise discriminate in favor of domestic high technology industries;

(C) measures which fail to provide adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property (including trademarks, patents, and copyrights);

(D) measures which impair access to domestic markets for key commodity products; and

(E) measures which facilitate or encourage anticompetitive market practices or structures;

(3) to obtain commitments that official policy of foreign countries or instrumentalities will not discourage government or private procurement of foreign high technology products and related services;

(4) to obtain the reduction or elimination of all tariffs on, and other barriers to, United States exports of high technology products and related services;

(5) to obtain commitments to foster national treatment;

(6) to obtain commitments to—

(A) foster the pursuit of joint scientific cooperation between companies, institutions or governmental entities of the United States and those of the trading partners of the

United States in areas of mutual interest through such measures as financial participation and technical and personnel exchanges, and

(B) ensure that access by all participants to the results of any such cooperative efforts should not be impaired; and

(7) to provide effective minimum safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data.

(d) DEFINITION OF BARRIERS AND OTHER DISTORTIONS.—For purposes of subsection (a), the term barriers to, or other distortions of, international trade in services' includes, but is not limited to—

(1) barriers to establishment in foreign markets, and

(2) restrictions on the operation of enterprises in foreign markets, including—

(A) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

(B) restrictions on the use of data processing facilities within or outside of such country or instrumentality.

SEC. 105.[19] BILATERAL TRADE AGREEMENTS.

If the President determines that bilateral trade agreements will more effectively promote the economic growth of, and full employment in, the United States, then, in such cases, a negotiating objective under sections 101 and 102 shall be to enter into bilateral trade agreements. Each such trade agreement shall provide for mutually advantageous economic benefits.

SEC. 106.[20] AGREEMENTS WITH DEVELOPING COUNTRIES.

A United States negotiating objective under sections 101 and 102 shall be to enter into trade agreements which promote the economic growth of both developing countries and the United States and the mutual expansion of market opportunities.

SEC. 107.[21] INTERNATIONAL SAFEGUARD PROCEDURES.

(a) A principal United States negotiating objective under section 102 shall be to obtain internationally agreed upon rules and procedures, in the context of the harmonization, reduction, or elimination of barriers to, and other distortions of, international trade, which permit the use of temporary measures to ease adjustment to changes occurring in competitive conditions in the domestic markets of the parties to an agreement resulting from such negotiations due to the expansion of international trade.

(b) Any agreement entered into under section 102 may include provisions establishing procedures for—

(1) notification of affected exporting countries,

(2) international consultations,

(3) international review of changes in trade flows,

(4) making adjustments in trade flows as the result of such changes, and

(5) international mediation.

Such agreements may also include provisions which—

[19] 19 U.S.C. 2115.
[20] 19 U.S.C. 2116.
[21] 19 U.S.C. 2117.

(A) exclude, under specified conditions, the parties thereto from compensation obligations and retaliation, and

(B) permit domestic public procedures through which interested parties have the right to participate.

SEC. 108.[22] ACCESS SUPPLIES.

(a) A principal United States negotiating objective under section 102 shall be to enter into trade agreements with foreign countries and instrumentalities to assure the United States of fair and equitable access at reasonable prices to supplies of articles of commerce which are important to the economic requirements of the United States and for which the United States does not have, or cannot easily develop, the necessary domestic productive capacity to supply its own requirements.

(b) Any agreement entered into under section 102 may include provisions which—

(1) assure to the United States the continued availability of important articles at reasonable prices, and

(2) provide reciprocal concessions or comparable trade obligations, or both, by the United States.

SEC. 109.[23] STAGING REQUIREMENTS AND ROUNDING AUTHORITY.

(a) Except as otherwise provided in this section, the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement under section 101 shall not exceed the aggregate reduction which would have been in effect on such day if—

(1) 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 pursuant to section 101(a)(2) to carry out such agreement with respect to such article, and

(2) a reduction equal to the amount applicable under paragraph (1) had taken effect at 1-year intervals after the effective date of such first reduction.[24]

This subsection shall not apply in any case where the total reduction in the rate of duty does not exceed 10 percent of the rate before the reduction.

(b) 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 limitation provided by section 101(b) or subsection (a) of this section by not more than whichever of the following is lesser:

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

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

(c)(1) No reduction in the rate of duty on any article pursuant to a trade agreement under section 101 shall take effect more than 10 years after the effective date of the first reduction proclaimed to carry out such trade agreement with respect to such article.

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[22] 19 U.S.C. 2118.

[23] 19 U.S.C. 2119.

[24] Sec. 503 of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 251) listed items for which the aggregate reduction in the rate of duty may exceed the limitation contained in sec. 109(a).

(2) If any part of a reduction takes effect, then any time thereafter during which any[25] part of the reduction is not in effect by reason of legislation of the United States or action thereunder, the effect of which is to maintain or increase the rate of duty on an article, shall be excluded in determining—

(A) the 1-year intervals referred to in subsection (a)(2), and

(B) the expiration of the 10-year period referred to in paragraph (1) of this subsection.

CHAPTER 2—OTHER AUTHORITY

SEC. 121.[26] STEPS TO BE TAKEN TOWARD GATT REVISION; AUTHORIZATION OF APPROPRIATIONS FOR GATT.

There are[27] authorized to be appropriated annually such sums as may be necessary for the payments 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.

SEC. 122.[28] 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 as 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) or (C). Any temporary

[25] Sec. 1106(c)(3) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 312) inserted "any" in lieu thereof "such".

[26] 19 U.S.C. 2131. Sec. 1107(b)(2) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1135) struck out subsecs. (a), (b), and (c) of sec. 121 listing actions the President shall take to bring trade agreements into conformity with principles promoting the development of open, nondiscriminatory, and fair world economic systems.

[27] Sec. 9001(a) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3342) struck out "(d) There are" and inserted in lieu thereof "There are".

[28] 19 U.S.C. 2132.

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 of 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 adjustments procedures, the exemption authority contained in paragraph (2) shall be applied consistently with such new international rules.

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

(e) Import restricting actions proclaimed pursuant to subsection (a) shall be of broad and uniform application with respect to product coverage except where the President determines, consistently with the purposes of this section, that certain articles should not be subject to import restricting actions because of the needs of the United States economy. Such exceptions shall be limited to the 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 action, 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.

SEC. 123.[29] COMPENSATION AUTHORITY.

(a) Whenever—

[29] 19 U.S.C. 2133.

(1) any action taken under chapter 1 of title II or chapter 1 of title III, or under chapter 2 of title IV of the Trade Act of 1974;[30] 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.[31]

(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,[32] the proclamation made pursuant to subsection (a) may provide for the reduction of each rate of duty at each such stage proclaimed under such section 1102(a)[32] 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 such section 1102(a).[32]

(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.[33]

(c) Before entering into any trade agreement under this section with any foreign country or instrumentality, the President shall

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[30] Sec. 104 of Public Law 106–286 (114 Stat. 891) inserted ", or under chapter 2 of title IV of the Trade Act of 1974".

[31] Sec. 1104 of Public Law 100–418 (102 Stat. 1132) amended and restated subsec. (a), which previously read as follows:

"(a) Whenever any action has been taken under section 203 to increase or impose any duty or other import restriction, the President—

"(1) 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

"(2) 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.".

[32] Sec. 1104(2) of Public Law 100–418 (102 Stat. 1132) struck out "section 109" and inserted in lieu thereof "section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988", and struck out "section 101" and inserted in lieu thereof "such section 1102(a)".

[33] Sec. 1401(b)(1)(A) of Public Law 100–418 (102 Stat. 1239), inserted "action under sections 203(e) and 204" in lieu thereof "import relief under section 203(h)".

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(a) of the Omnibus Trade and Competitiveness Act of 1988,[31] shall be used for the purpose of granting new concessions as compensation within the meaning of this section until such authority terminates.

(e)[34] 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.

SEC. 124.[35] TWO-YEAR RESIDUAL AUTHORITY TO NEGOTIATE DUTIES.

(a) Whenever the President determines that any 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 of this Act will be promoted thereby, the President—

(1) may enter into trade agreements with foreign countries or instrumentalities thereof, and

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

(b) Agreements entered into under this section in any 1-year period shall not provide for the reduction of duties, or the continuance of duty-free or excise treatment, for articles which account for more than 2 percent of the value of the United States imports for the most recent 12-month period for which import statistics are available.

(c)(1) No proclamation shall be made pursuant to subsection (a) decreasing any rate of duty to a rate which is less than 80 percent of the existing rate of duty.

(2) No proclamation shall be made pursuant to subsection (a) decreasing or increasing any rate of duty to a rate which is lower or higher than the corresponding rate which would have resulted if the maximum authority granted by section such section 1102(a) with respect to such article had been exercised.

(3) Where the rate of duty in effect at any time is an intermediate stage under section 109, the proclamation made pursuant to subsection (a) may provide for the reduction of each rate of duty at each such stage proclaimed under section such section 1102(a) by not more than 20 percent of such rate of duty, and, subject to the limitation in paragraph (2), may provide for a final rate of duty which is not less than 80 percent of the rate of duty proclaimed as the final stage under section such section 1102(a).

(4) 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—

[34] Sec. 1104 of Public Law 100–418 (102 Stat. 1132) added subsec. (e).
[35] 19 U.S.C. 2134.

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

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

(d) Agreements may be entered into under this section only during the 2-year period which immediately follows the close of the period during which agreements may be entered into under section such section 1102(a).

SEC. 125.[36] 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)[37] Whenever the United States, acting in pursuance of any of its right or obligations under any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962[38] or section 350 of the Tariff Act of 1930,[39] 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.

(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—

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[36] 19 U.S.C. 2135. Secs. 502(b), 601(b), and 855(b) of the Trade Agreements Act of 1979 (Public Law 96–39) stated that for purposes of sec. 125 of this Act, amendments made by specified sections of Public Law 96–39 shall be considered to be trade agreement obligations entered into under the Trade Act of 1974, of benefit to foreign countries or instrumentalities. Sec. 1105(a) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1132) stated that for purposes of applying secs. 125, 126(a), and 127 of this Act, any trade agreement entered into under sec. 1102 (of Public Law 100–418) shall be treated as an agreement entered into under secs. 101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C. 2111 or 2112).

[37] Sec. 421 of Public Law 103–465 (109 Stat. 4964) provided the following:

"SEC. 421. AUTHORITY FOR CERTAIN ACTIONS UNDER ARTICLE XXVIII.

"(a) IN GENERAL.—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.".

[38] 19 U.S.C. 1821.

[39] 19 U.S.C. 1351.

(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,[37] or section 350 of the Tariff Act of 1930[38] shall not be affected by any termination, in whole or in part, of such agreement or by the withdrawal of the United States for 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.

SEC. 126.[40] 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.

(b) The President shall determine, after the conclusion of all negotiations entered into under this Act or at the end of the 5-year period beginning on the date of enactment of this Act, whichever is earlier, whether any major industrial country has failed to make concessions under trade agreements entered into under this Act which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities, provided by concessions made by the United States under trade agreements entered into under this Act, for the commerce of such country in the United States.

(c)[41] For purposes of this section, "major industrial country" means Canada, the European Economic Community, the individual

[40] 19 U.S.C. 2136.

[41] Public Law 105–362 (112 Stat. 3294) repealed subsec. (c) and redesignated subsec. (d) as subsec. (c). Subsec. (c) previously read as follows:

"(c) If the President determines under subsection (b) that a major industrial country has not made concessions under trade agreements entered into under this Act which provide substantially equivalent competitive opportunities for the commerce of the United States, he 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—

Continued

member countries of such Community, Japan, and any other foreign country designated by the President for purposes of this subsection.

SEC. 127.[42] 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 restriction on any article if the President determines that such reduction or elimination would threaten or impair the national security.

(b) While 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.

(c)[43] * * * [Repealed—1988]

(d)[44] * * *

SEC. 128.[45] MODIFICATION AND CONTINUANCE OF TREATMENT WITH RESPECT TO DUTIES ON HIGH TECHNOLOGY PRODUCTS.

(a) In order to carry out any agreement concluded as a result of the negotiating objectives under section 104A(c), the President may proclaim, subject to the provisions of chapter 3—

(1) such modification, elimination, or continuance of any existing duty, duty-free, or excise treatment, or

(2) such additional duties,

as he deems appropriate.

(b)[46] The President shall exercise his authority under subsection (a) of this section only with respect to the following subheadings listed in the Harmonized Tariff Schedule of the United States—

(1) transistors (provided for in subheadings 8541.21.00, 8541.29.00, and 8541.40.70);

"(1) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under this Act made with respect to rates of duty or other import restrictions by the United States; and

"(2) that any legislation necessary to carry out any trade agreement under section 102 shall not apply to such country.".

[42] 19 U.S.C. 2137.

[43] Sec. 1501(b)(2) of Public Law 100–418 (102 Stat. 1259) repealed sec. 127(c), which had required the President to submit to Congress "an annual report on section 232 of the Trade Expansion Act of 1962. Within 60 days after he takes any action under such section 232, the President shall report to the Congress the action taken and the reasons therefor.".

[44] Subsec. (d) amended sec. 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1863).

[45] 19 U.S.C. 2138. Sec. 308(b)(1) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3013) added sec. 128.

[46] Sec. 1214(j)(1) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1157) restated and amended subsec. (b).

(2) diodes and rectifiers (provided for in subheadings 8541.10.00, 8541.30.00, and 8541.40.60);

(3) monolithic integrated circuits (provided for in subheadings 8542.11.00 and 8542.19.00);

(4) other integrated circuits (provided for in subheading 8542.20.00);

(5) other components (provided for in subheading 8541.50.00);

(6) parts of semiconductors (provided for in subheadings 8541.90.00 and 8542.90.00);[47]

(7) units of automatic data processing machines (provided for in subheadings 8471.92.20, 8471.92.30, 8471.92.70, 8471.92.80, 8471.93.10, 8471.93.15, 8471.93.30, 8471.93.50, 8471.99.15, and 8471.99.60) and parts (provided for in subheading 8473.30.40), all the foregoing not incorporating a cathode ray tube; and[47]

(8)[47] Digital processing units for automatic data processing machines, unhoused, consisting of a printed circuit (single or multiple) with one or more electronic integrated circuits or other semiconductor devices mounted directly thereon, certified as units designed for use other than in an automatic data processing machine of subheading 8471.20 (provided for in subheading 8471.91).

(c) TERMINATION.—The President may exercise his authority under this section only during the 5-year period beginning on the date of the enactment of the International Trade and Investment Act.[48]

* * * * * * *

CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

SEC. 131.[49] ADVICE FROM INTERNATIONAL TRADE COMMISSION.

(a) LISTS OF ARTICLES WHICH MAY BE CONSIDERED FOR ACTION.—

(1) In connection with any proposed trade agreement under section 123 of this Act or section 2103(a) or (b) of the Bipartisan Trade Promotion Authority Act of 2002,[50] 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.

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[47] Sec. 128(b), as amended by sec. 1214(j)(1) of Public Law 100–418 (102 Stat. 1158), was further amended by sec. 1215 of such Act, which struck out "and" at the end of para. (6); struck out "tube." and inserted in lieu thereof "tube; and" in para. (7); and added a new para. (8).

[48] This Act became effective on October 30, 1984.

[49] 19 U.S.C. 2151. Sec. 1111 of Public Law 100–418 (102 Stat. 1135) amended and restated sec. 131.

[50] Sec. 2110(a)(2) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1019) struck out "section 123 of this Act or section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988" and inserted in lieu thereof "section 123 of this Act or section 2103(a) or (b) of the Bipartisan Trade Promotion Authority Act of 2002".

(2) In connection with any proposed trade agreement under section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002,[51] the President may from time to time publish and furnish the Commission with lists of nontariff matters which may be considered for modification.

(b) ADVICE TO PRESIDENT BY COMMISSION.—Within 6 months after receipt of a list under subsection (a) or, in the case of a list submitted in connection with a trade agreement, within 90 days after receipt of such list, the Commission shall advise the President, with respect to each article or nontariff matter, of its judgment as to the probable economic effect of modification of the tariff or nontariff measure on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period of time than the minimum period provided for in section 2103(a)(3)(A) of the Bipartisan Trade Promotion Authority Act of 2002.[52]

(c) ADDITIONAL INVESTIGATIONS AND REPORTS REQUESTED BY THE PRESIDENT OR THE TRADE REPRESENTATIVE.—In addition, in order to assist the President in his determination whether to enter into any agreement under section 123 of this Act or section 2103 of the Bipartisan Trade Promotion Authority Act of 2002,[53] 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;

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[51] Sec. 2110(a)(2) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1019) struck out "section 1102 (b) or (c) of the Omnibus Trade and Competitiveness Act of 1988" and inserted in lieu therof "section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002".

[52] Sec. 2110(a)(2) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1020) struck out "section 1102(a)(3)(A)" and inserted in lieu thereof "section 2103(a)(3)(A) of the Bipartisan Trade Promotion Authority Act of 2002",

[53] Sec. 2110(a)(2) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1020) struck out "section 1102 of the Omnibus Trade and Competitiveness Act of 1988," and inserted in lieu thereof "section 2103 of the Bipartisan Trade Promotion Authority Act of 2002,".

(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.[54] ADVICE FROM EXECUTIVE DEPARTMENTS AND OTHER SOURCES.

Before any trade agreement is entered into under section 123 of this Act or section 2103 of the Bipartisan Trade Promotion Authority Act of 2002,[55] 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.[56] PUBLIC HEARINGS.

(a) OPPORTUNITY FOR PRESENTATION OF VIEWS.—In connection with any proposed trade agreement under section 123 of this Act or section 2103 of the Bipartisan Trade Promotion Authority Act of 2002, [55] 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.

[54] 19 U.S.C. 2152. Sec. 1111 of Public Law 100–418 (102 Stat. 1135) amended and restated sec 132.

[55] Sec. 2110(a)(3) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1020) struck out "section 1102 of the Omnibus Trade and Competitiveness Act of 1988," and inserted in lieu thereof "section 2103 of the Bipartisan Trade Promotion Authority Act of 2002,".

[56] 19 U.S.C. 2153. Sec. 1111 of Public Law 100–418 (102 Stat. 1135) amended and restated sec. 133.

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.[57] PREREQUISITES FOR OFFERS.

(a) In any negotiation seeking an agreement under section 123 of this Act or section 2103 of the Bipartisan Trade Promotion Authority Act of 2002,[55] the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this title, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

(b) In determining whether to make offers described in subsection (a) in the course of negotiating any trade agreement under section 2103 of the Bipartisan Trade Promotion Authority Act of 2002,[58] 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.

SEC. 135.[59] INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.

(a) IN GENERAL.—

[57] 19 U.S.C. 2154. Sec. 1111 of Public Law 100–418 (102 Stat. 1135) amended and restated sec. 134.

[58] Sec. 2110(a)(4) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1020) struck out "section 1102 of the Omnibus Trade and Competitiveness Act of 1988," and inserted in lieu thereof "section 2103 of the Bipartisan Trade Promotion Authority Act of 2002,".

[59] 19 U.S.C. 2155. Sec. 1631 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1264) comprehensively amended and restated sec. 135.

(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 2103 of the Bipartisan Trade Promotion Authority Act of 2002;[60]

(B)[61] 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,

[60] Sec. 2110(a)(5) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1020) struck out "section 1102 of the Omnibus Trade and Competitiveness Act of 1988" and inserted in lieu thereof "section 2103 of the Bipartisan Trade Promotion Authority Act of 2002".

[61] Sec. 127(f) of Public Law 103–465 (108 Stat. 4836) amended and restated subpara. (B), which previously read as follows: "(B) the operation of any trade agreement once entered into; and".

agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations,[62] 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 4 years or until the committee is scheduled to expire.[63] 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—

[62] Sec. 128 of Public Law 103–465 (108 Stat. 4836) inserted "nongovernmental environmental and conservation organizations," after "retailers,".

[63] Sec. 2004(i)1)(2) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2595) struck out "2 years"and inserted in lieu thereof "4 years or until the committee is scheduled to expire". Sec. 2204(i)(2) of that Act provided that this amendment would take effect on February 1, 2004.

(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 2103 of the Bipartisan Trade Promotion Authority Act of 2002,[58] 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 2103 of the Bipartisan Trade Promotion Authority Act of 2002[58] shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under section 2105(a)(1)(A) of the

Bipartisan Trade Promotion Authority Act of 2002[64] 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 2102 of the Bipartisan Trade Promotion Authority Act of 2002,[65] 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)[66] to all other advisory committees which may be established under subsection (c) of this section, except that—

(A) the meetings of advisory committees established under subsections (b) and (c) of this section 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 the President's 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) of this section, 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) of this section; and

(B) notwithstanding subsection (a)(2) of section 14 of the Federal Advisory Committee Act, any committee established under subsection (b) or (c) may, in the discretion of the President or the President's designee, terminate not later than the expiration of the 4-year period beginning on the date of their establishment.

(g) TRADE SECRETS AND CONFIDENTIAL INFORMATION.—

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[64] Sec. 2110(a)(5)(B)(ii) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1020) struck out "section 1103(a)(1)(A) of such Act of 1988" and inserted in lieu thereof "section 2105(a)(1)A) of the Bipartisan Trade Promotion Authority Act of 2002".

[65] Sec. 2110(a)(5)(C) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1020) struck out "section 1101 of the Omnibus Trade and Competitiveness Act of 1988" and inserted in lieu thereof "section 2102 of the Bipartisan Trade Promotion Authority Act of 2002".

[66] Sec. 2204(i)(1) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2594) amended and restated para. (2). Sec. 2204(i)(2) of that Act provided that this amendment would take effect on February 1, 2004.

(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).

CHAPTER 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE [67]

SEC. 141.[68] 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 [67] (hereinafter in this section referred to as the "Office").

(b)(1) The Office shall be headed by the United States Trade Representative [67] 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 [67] submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative [67] 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 [69] and one Chief Agricultural Negotiator [70] 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 or the Chief Agricultural Negotiator [70] 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 and the Chief Agricultural Negotiator [70] shall hold the office at the pleasure of the President and shall have the rank of Ambassador.

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[67] Sec. 3(d)(3) of Public Law 97–456 (96 Stat. 2503) inserted this chapter designation in lieu thereof "OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS". In addition, sec. 3(d)(2)(D) struck out "Special Representative for Trade Negotiations" and inserted in lieu thereof "United States Trade Representative".

[68] 19 U.S.C. 2171. The Department of Commerce Appropriations Act, 1993 (Title II of Public Law 102–395; 106 Stat. 1852), provided that: "Notwithstanding any other provision of law, upon the request of the Secretary of Commerce, the Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Officer assigned to any United States mission abroad: *Provided further*, That the number of Commercial Service officers accorded such diplomatic title at any time shall not exceed twelve".

Sec. 2004(a)(15) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2591) made a technical correction to sec. 141(b)(2).

[69] Sec. 3 of Public Law 97–456 (96 Stat. 2503) inserted the reference to the Deputy United States Trade Representative in lieu of a reference to the Deputy Special Representatives for Trade Negotiations and increased the number of deputies in the office of the United States Trade Representative from two to three.

[70] Sec. 406 of Public Law 106–200 (114 Stat. 293) added the position of Chief Agricultural Negotiator and amended para. (2) by inserting references to the position.

(3)[71,72] 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.

(c)[73] (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,[74] 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,[74] 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);

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[71] Sec. 21(b) of Public Law 104–65 (109 Stat. 704) added para. (3). Subsec. (c) of that section made the amendment effective for appointments made on or after the date of enactment (December 19, 1995).

An earlier para. (3) was repealed by sec. 3(d)(1) of Public Law 97–456 (96 Stat. 2503).

Para. (3) was waived with respect to the appointment of Charlene Barshefsky as United States Trade Representative. Public Law 105–5 (111 Stat. 11, enacted March 17, 1997) stated as follows:

"Notwithstanding the provisions of paragraph (3) of section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)(3)) or any other provision of law, the President, acting by and with the advice and consent of the Senate, is authorized to appoint Charlene Barshefsy as the United States Trade Representative.".

[72] Sec. 1001(a)(2) of Public Law 106–36 (113 Stat. 130) struck out "LIMITATION ON APPOINTMENTS.—" and aligned the text of para. (3) with the text of para. (2).

[73] Sec. 1601(a) of Public Law 100–418 (102 Stat. 1260) amended and restated sec. 141(c).

[74] Sec. 621(a)(8) of Public Law 103–465 (108 Stat. 4993) inserted "all negotiations on any matter considered under the auspices of the World Trade Organization," after "including" in subpara. (C), and inserted ", including any matter considered under the auspices of the World Trade Organization," after "functions" in subpara. (D) (resulting in a double comma). Sec. 20(f)(1) of Public Law 104–295 (110 Stat. 3529) subsequently struck out the second comma.

(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)[75] 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)[75] 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)[75] Each Deputy United States Trade Representative[76] shall have as his principal function the conduct of trade negotiations under this Act and shall have such other functions as the United States Trade Representative[69] may direct.

(5)[77] The principal function of the Chief Agricultural Negotiator shall be to conduct trade negotiations and to enforce trade agreements relating to United States agricultural products and services. The Chief Agricultural Negotiator shall be a vigorous advocate on behalf of United States agricultural interests. The Chief Agricultural Negotiator shall perform such other functions as the United States Trade Representative may direct.

(d)[78] (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—

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[75] Sec. 3(b)(1) of Public Law 97–456 (96 Stat. 2503) redesignated existing para. (2) as para. (3) and added a new para. (2). Sec. 1601(a)(2) of Public Law 100–418 (102 Stat. 1261) subsequently redesignated paras. (2) and (3) as paras. (3) and (4) and inserted a new para. (2).

[76] Sec. 3(d)(2)(C) of Public Law 97–456 (96 Stat. 2503) substituted the reference to the Deputy United States Trade Representative in lieu of a reference to the Deputy Special Representative for Trade Negotiations.

[77] Sec. 406 of Public Law 106–200 (114 Stat. 293) inserted para. (5).

[78] Sec. 1601(b)(1) of Public Law 100–418 (102 Stat. 1261) redesignated subsecs. (d), (e), and (f) as subsecs. (e), (f), and (g), respectively, and inserted a new subsec. (d).

(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)[78] The United States Trade Representative[56] 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;[79]

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including travel time) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of title 5, United States Code, 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, United States Code, 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[80] 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[67] 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 section 1342 of Title 31, United States Code;[81]

(7) adopt an official seal, which shall be judicially noticed;

(8)[82] 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, United States Code (relating to rates of per diem allowances in lieu of subsistence expenses);

(9)[82] 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; and

(10)[82] 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.

(11)[83] 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)[78] The United States Trade Representative[67] shall, to the extent he deems it necessary for the proper administration and execution of the trade agreements programs of the United States,

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[79] The words to this point beginning with "except that not more than 20" were added by sec. 13023(1) of Public Law 99–272 (100 Stat. 307).

[80] Sec. 3(b)(2) of Public Law 97–456 (96 Stat. 2503) inserted "powers and duties".

[81] Sec. 1887(a)(3) of Public Law 99–514 (100 Stat. 2923) inserted the reference to 31 U.S.C. 1342 in lieu of "3679(b) of the Revised Statutes (31 U.S.C. 665(b))".

[82] Sec. 3(b)(5) of Public Law 97–456 (96.Stat. 2503) added paras. (8) through (10).

[83] Sec. 304(d)(2)(A)(iii) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3004) inserted this paragraph as para. (8). It was later redesignated as para. (11) by sec. 1887(a)(4) of Public Law 99–514 (100 Stat. 2923).

draw upon the resources of, and consult with, Federal agencies in connection with the performance of his functions.

(g)[78] (1)[84] (A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions the following:

(i) $32,300,000 for fiscal year 2003.

(ii) $33,108,000 for fiscal year 2004.

(B) Of the amounts authorized to be appropriated under subparagraph (A) for any fiscal year—

(i)[85] not to exceed $98,000 may be used for entertainment and representation expenses of the Office; and

(ii) not to exceed $1,000,000 shall remain available until expended.

(2)[86] 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.

(3)[87] By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the United States Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its functions.

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[84] Sec. 361(a)(1) of the Customs Border Security Act of 2002 (title III of Public Law 107–210; 116 Stat. 991) struck out "not to exceed" following "functions" and added the authorizations for fiscal year 2003 and fiscal year 2004.

Previous authorization levels have been as follows: fiscal year 1992—$21,077,000 (Public Law 101–382; 104 Stat. 634); fiscal year 1991—$23,250,000 (Public Law 101–382; 104 Stat. 634); fiscal year 1990—$19,651,000 (Public Law 101–207; 103 Stat. 1833); fiscal year 1988—$15,172,000 (Public Law 100–203; 101 Stat. 1330–382); fiscal year 1986—$13,582,000 (Public Law 99–272; 100 Stat. 308); fiscal year 1985—$14,179,000 (Public Law 98–573; 98 Stat. 3043); fiscal year 1983—$11,100,000 (Public Law 97–456; 96 Stat. 2503).

[85] Sec. 361(a)(2) of the Customs Border Security Act of 2002 (title III of Public Law 107–210; 116 Stat. 991) added "and" at the end of clause (i), deleted clause (ii), and redesignated clause (iii) as clause (ii). Previously, clause (ii) had stipulated that 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.

[86] Sec. 3(a) of Public Law 97–456 (96 Stat. 2503) amended and restated subsec. (g) (then subsec. (f)) by adding language in para. (2) concerning salaries. Prior to that amendment, subsec. (g) had authorized funds for the Office in "such amounts as may be necessary" for fiscal years 1976 through 1980.

[87] Sec. 361(b) of the Customs Border Security Act of 2002 (title III of Public Law 107–210; 116 Stat. 991) added para. (3). Sec. 361(c) of Public Law 107–210 further provided the following:

"(c) ADDITIONAL STAFF FOR OFFICE OF ASSISTANT U.S. TRADE REPRESENTATIVE FOR CONGRESSIONAL AFFAIRS.—

"(1) IN GENERAL.—There is authorized to be appropriated such sums as may be necessary for fiscal year 2003 for the salaries and expenses of two additional legislative specialist employee positions within the Office of the Assistant United States Trade Representative for Congressional Affairs.

"(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.".

NOTE.—Sec. 132 of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 647; 19 U.S.C. 2432 note) amended several sections of the Trade Act of 1974, and provided the following for such amendments:

"(d) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section take effect on the date of the enactment of this Act. [August 20, 1990]

"(2) EXTENSION OF WAIVER AUTHORITY.—

"(A) The amendments made by subsections (a) and (c) (4) and (5) apply with respect to recommendations made under section 402(d) of the Trade Act of 1974 by the President after May 23, 1990.

"(B) Solely for purposes of applying the applicable provisions of the Trade Act of 1974 with respect to the recommendations made by the President to the House of Representatives and the Senate under subsection (d) of section 402 of the Trade Act of 1974 after May 23, 1990, and on or before the date of the enactment of this Act—

"(i) in paragraph (2)(A)(i) of subsection (d) of such section 402 (as amended by subsection (a)), the date on which the waiver authority granted under subsection (c) of such section 402 would expire but for an extension under paragraph (1) of such subsection (d) is the date of the enactment of this Act;

"(ii) paragraph (2)(A)(ii) of subsection (d) of such section 402 (as amended by subsection (a)) shall be treated as reading as follows:

"'(ii) if the President vetoes the joint resolution, each House of Congress votes to override such veto on or before the last day of the 60-day period referred to in clause (i).';

"(iii) if the waiver authority granted under such subsection (c) is extended after application of clauses (i) and (ii), the expiration date for such authority is July 3, 1991; and

"(iv) only joint resolutions described in section 153(a) of the Trade Act of 1974 (as amended by subsection (a)) that are introduced in the House of Representatives or the Senate on or after the date of the enactment of this Act may be considered by either body.".

CHAPTER 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

SEC. 151.[88] BILLS IMPLEMENTING TRADE AGREEMENTS OF NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNITY 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 revenue 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,[89] submitted to the House of Representatives and the Senate under section 102 of this Act, section 282 of the Uruguay Round Agreements Act, or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002[90] and which contains—

(A) a provision approving such trade agreement or agreements or such extension,[91]

(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,[91] provisions necessary or appropriate to implement such trade agreement or agree-

[88] 19 U.S.C. 2191.

[89] Sec. 282(c)(4)(A)(i) of Public Law 103–465 (108 Stat. 4929) inserted ", or with respect to an extension described in section 282(c)(3) of the Uruguay Round Agreements Act," after "trade agreements".

[90] Sec. 1107(b)(1) of Public Law 100–418 (102 Stat. 1135) inserted "section 102 of this Act or section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988". Sec. 282(c)(4)(A)(ii) of Public Law 103–465 (108 Stat. 4929) subsequently struck out "or section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988" and inserted in lieu thereof ", section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988, or section 282 of the Uruguay Round Agreements Act". Sec. 2110(a)(1)(A) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1019) subsequently struck out "section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988, or section 282 of the Uruguay Round Agreements Act" and inserted in lieu thereof "section 282 of the Uruguay Round Agreements Act, or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002".

[91] Sec. 282(c)(4)(A)(iii) of Public Law 103–465 (108 Stat. 4929) inserted "or such extension" after "agreements" in subparas. (A) and (C).

ments or such extension,[91] either repealing or amending existing laws or providing new statutory authority.

(2) The term "implementing revenue bill or resolution"[92] means an implementing bill, or approval resolution[93] 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[94] resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the extension of nondiscriminatory treatment with respect to the products of ..... transmitted by the President to the Congress on .....", the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) INTRODUCTION AND REFERRAL.—

(1) On the day on which a trade agreement or extension[95] is submitted to the House of Representatives and the Senate under section 102, section 282 of the Uruguay Round Agreements Act, or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002,[96] the implementing bill submitted by the President with respect to such trade agreement or extension[95] shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement or extension[95] is submitted, the implementing bill shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(2) On the day on which a bilateral commercial agreement, entered into under title IV of this Act after the date of the enactment of this Act, is transmitted to the House of Representatives and the Senate, an approval resolution with respect to such agreement shall be introduced (by request) in the House

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[92] Sec. 132(b)(2)(A) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) inserted "or resolution". See box note, page 291, relating to effective date of amendment.

[93] Sec. 132(b)(2)(B) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) inserted ", or approval resolution". See box note, page 291, relating to effective date of amendment.

[94] Sec. 132(b)(2)(C) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) struck out "concurrent" and inserted in lieu thereof "joint". See box note, page 291, relating to effective date of amendment.

[95] Sec. 282(c)(4)(B)(ii) of Public Law 103–465 (108 Stat. 4929) inserted "or extension" after "agreement" throughout subsec. (c)(1).

[96] Sec. 282(c)(4)(B)(i) of Public Law 103–465 (108 Stat. 4929) inserted "or section 282 of the Uruguay Round Agreements Act" after "section 102". Sec. 2110(a)(1)(B) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1019) subsequently inserted ", or section 2105(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002".

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 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 the House, as provided in the preceding sentence, on the first day thereafter on which the 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 appropriation 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 committees or committee 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.[97] An implementing revenue bill or resolution[97] received from the House shall be referred to the appropriate committee or committees of the Senate. If such committees have not reported

[97] Sec. 132(b)(2)(D) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) struck out "revenue bill" and inserted in lieu thereof "revenue bill or resolution". See box note, page 291, relating to effective date of amendment.

such bill or resolution[98] at the close of the 15th day after its receipt by the Senate (or, later, before the close of the 45th day after the corresponding implementing revenue bill or resolution[97] was introduced in the Senate), such committee or committees shall be automatically discharged from further consideration of such bill or resolution[98] and it shall be placed on the calendar. A vote on final passage of such bill or resolution[98] shall be taken in the Senate on or before the close of the 15th day after such bill or resolution[98] 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.[98]

(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 the House is not in session.

(f) FLOOR CONSIDERATION IN THE HOUSE.—

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

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

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

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

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

(g) FLOOR CONSIDERATION IN THE SENATE.—

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

(2) Debate in the Senate on an implementing bill or approval resolution, and all debatable motions and appeals in connection

[98] Sec. 132(b)(2)(E) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) struck out "such bill" and inserted in lieu thereof "such bill or resolution". See box note, page 291, relating to effective date of amendment.

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.[99] RESOLUTIONS DISAPPROVING CERTAIN ACTIONS.

(a) CONTENTS OF RESOLUTIONS.—

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

(A)[100] a joint resolution[101] 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 spaces being filled with the appropriate date; and

(B)[102] 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 ..... 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)[103] The first[104] blank space referred to in paragraph (1)(B) shall be filled,[105] in the case of a resolution referred to

[99] 19 U.S.C. 2192.

[100] Sec. 902(a) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 299) amended and restated para. (1)(A).

[101] Sec. 248(b) of Public Law 98–573 (98 Stat. 2998) struck out "concurrent resolution" and inserted in lieu thereof "joint resolution".

[102] Sec. 132(c)(2) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 646) amended and restated subpara. (B). Subpara. (B) formerly referred to simple resolutions from either House of the Congress. See box note, page 291, relating to effective date of amendment.

[103] Sec. 902(a) of the Trade Agreements Act of 1979 (Public Law 96–39, 93 Stat. 300) struck out para. (2) and redesignated para. (3) as para. (2).

[104] Sec. 132(c)(3)(A) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 646) struck out "second" and inserted in lieu thereof "first". See box note, page 291, relating to the effective date of the amendment.

[105] Sec. 261(d)(1)(A)(ii) of Public Law 103–465 (108 Stat. 4909), as amended by sec. 20(b)(1) of Public Law 104–295 (110 Stat. 3527), struck out subpara. designations (A) and (B), and struck out the reference to sec. 303(c) of the Tariff Act of 1930, which was repealed by the Trade Agreements Act of 1979.

in section 407(c)(2),[106] 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) REFERENCES 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),[107] 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,[108] 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.

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[106] Sec. 132(c)(3)(C) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 646) struck out "407(c)(3)" and inserted in lieu thereof "407(c)(2)". See box note, page 291, relating to effective date of amendment.

[107] Sec. 1106(c)(5) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 312) struck out the reference to sec. 153(b) and inserted in lieu thereof the reference to sec. 154(b).

[108] Sec. 132(c)(4) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 646) struck out "except no motion to discharge shall be in order after the committee has reported a resolution with respect to the same matter." and inserted text in this paragraph, including the subparagraph following "matter". See box note, page 291, relating to effective date of amendment.

(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 recommend a resolution is in order in the Senate.

(f)[109] 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 ap-

[109] Sec. 132(c)(5) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 647) amended and restated subsec. (f). See box note, page 291, relating to effective date of amendment.

plies, the procedures in the Senate with respect to a resolution introduced in the Senate that contains the identical matter as the resolution that passed the House of Representatives shall be the same as if no resolution had been received from the House of Representatives, except that the vote on passage in the Senate shall be on the resolution that passed the House of Representatives.

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

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

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

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

(3) Consideration in the Senate of any veto message with respect to a joint resolution described in subsection (a)(2)(B) or section 153(a), including consideration 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.[110] RESOLUTIONS RELATING TO EXTENSION OF WAIVER AUTHORITY UNDER SECTION 402.

(a)[111] 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 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).

[110] 19 U.S.C. 2193.

[111] Sec. 132(a)(3) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 644) amended and restated subsec. (a). See box note, page 291, relating to effective date of amendment.

(2) In applying section 152(c)(1), all calendar days shall be counted.[112]

(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[113] a with-respect-to clause.[114] Debate in the House of Representatives on any amendment to a resolution shall be limited to not more than 1 hour which shall be equally divided between those favoring and those opposing the amendment. A motion in the House to further limit debate on an amendment to a resolution is not debatable.

(4) That part of section 152(e)(4) which provides that no amendment 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[115] a with-respect-to clause.[116] 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 their 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)[117] received from the other House), if that House had adopted a resolution with respect to the same recommendation.

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[112] Sec. 132(a)(4)(A) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 644) struck out ", and, in the case of a resolution related to section 402(d)(4), 20 calendar days shall be substituted for 30 days". See box note, page 291, relating to effective date of amendment.

[113] Sec. 132(a)(4)(B) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) struck out "an except clause, in the cause of a resolution described in subsection (a)(1), or". See box note, page 291, relating to effective date of amendment.

[114] Sec. 132(a)(4)(C) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) struck out ", in the case of a resolution described in subsection (a)(2)". See box note, page 291, relating to effective date of amendment.

[115] Sec. 132(a)(4)(D) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) struck out "an except clause, in the case of a resolution described in subsection (a)(1), or". See box note, page 291, relating to effective date of amendment.

[116] Sec. 132(a)(4)(E) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) struck out ", in the case of a resolution described in subsection (a)(2)". See box note, page 291, relating to effective date of amendment.

[117] Sec. 132(a)(5) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) struck out "in subsection (a)(1)" and inserted in lieu thereof "in subsection (a)". See box note, page 291, relating to effective date of amendment.

(d)[118] 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.[119] SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES.

(a) Whenever, pursuant to section 102(e), 203(b),[120] 402(d), or 407(a) or (b),[121] a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) For purposes of sections 203(c) and 407(c)(2), the 90-day period,[122] and 2437(c)(2),[123] 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.

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[118] Sec. 132(a)(6) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) added subsec. (d). See box note, page 291, relating to effective date of amendment.

[119] 19 U.S.C. 2194.

[120] Sec. 902(a) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 300) struck out a reference to sec. 302(d) which previously appeared at this point.

[121] Sec. 261(d)(1)(A)(iii) of Public Law 103–465 (108 Stat. 4909) struck out "or section 303(e) of the Tariff Act of 1930,".

[122] Sec. 902(a) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 300) struck out a reference to sec. 302(b) which previously appeared at this point. Sec. 1001(a)(5) of Public Law 106–36 (113 Stat. 130) struck out "For purposes of" and all that followed, and inserted in lieu thereof "For purposes of 203(c) and 407(c)(2), the 90-day period".

[123] Sec. 132(c)(6) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 647) struck out "407(c)(2) and 407(c)(3)" and inserted in lieu thereof "and 407(c)(2)". See box note, page 291, relating to effective date of amendment. Sec. 1001(a)(5) of Public Law 106–36 (113 Stat. 130), struck out a reference to sec. 407(c)(2) and inserted in lieu thereof "2437(c)(2)".

CHAPTER 6—CONGRESSIONAL LIAISON AND REPORTS

SEC. 161.[124] 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.—

[124] 19 U.S.C. 2211. Sec. 1632 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1269) amended and restated sec. 161.

(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.

SEC. 162.[125] **TRANSMISSION OF AGREEMENTS TO CONGRESS.**

(a) As soon as practicable after agreement entered into under[126] section 123 or 124 or under section 2103 of the Bipartisan Trade Promotion Authority Act of 2002[126] 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 the other relevant 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.[127] **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

[125] 19 U.S.C. 2212.

[126] Sec. 9001(a)(10) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3342) amended subsec. (a) by striking "chapter 1 or" which previously appeared before "sec 123"; and by inserting the text "or under section 1102 of the Omnibus Trade and Competitiveness Act of 1988". Sec. 2110(a)(6) of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1020) subsequently struck "section 1102 of the Omnibus Trade and Competitiveness Act of 1988" and inserted in lieu thereof "section 2103 of the Bipartisan Trade Promotion Authority Act of 2002".

[127] 19 U.S.C. 2213. Sec. 1641 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1271) amended and restated sec. 163.

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 balance 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 Representa-

tives (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.

CHAPTER 7—UNITED STATES INTERNATIONAL TRADE COMMISSION [128]

SEC. 171.[129] CHANGE OF NAME OF TARIFF COMMISSION.

(a) The United States Tariff Commission (established by section 330 of the Tariff Act of 1930) is renamed as the United States International Trade Commission.

(b) Any reference in any law of the United States, or in any order, rule, regulation, or other document, to the United States Tariff Commission (or the Tariff Commission) shall be considered to refer to the United States International Trade Commission.

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SEC. 175.[130] 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) * * *

(b) * * *

(c)(1) Paragraph (2) is enacted as an exercise of the rulemaking power of the Senate and with full recognition of the constitutional right of the Senate to change its rules at any time.

(2) Paragraph 6(a) of rule XVI of the Standing Rules of the Senate is amended by adding at the end of the table contained therein the following:

"Committee on Finance ..... For the International Trade Commission.".

CHAPTER 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS [131]

SEC. 181.[132,133] ESTIMATES OF [134] BARRIERS TO MARKET ACCESS.

(a) NATIONAL TRADE ESTIMATES.—

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[128] For the most part, ch. 7 contained amendments to secs. 330 through 333 of the Tariff Act of 1930. For the text of these amendments and other material relating to the U.S. International Trade Commission, see page 423.

[129] 19 U.S.C. 2231.

[130] 19 U.S.C. 2232.

[131] Sec. 1303(c)(1) of Public Law 100–418 (102 Stat. 1181) amended the heading for ch. 8 which formerly read "BARRIERS TO MARKET ACCESS".

[132] 19 U.S.C. 2241. Sec. 303(a) of Public Law 98–573 (98 Stat. 3001) added sec. 181.

Sec. 302 of the United States-Hong Kong Policy Act of 1992 (Public Law 102–383; 106 Stat. 1454) required the report mandated by this section to meet the following condition: "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.".

[133] See secs. 1203 through 1206 of Public Law 105–277 (19 U.S.C. 2241 note) relating to trade barriers and the Internet on page 667.

[134] Sec. 1304(a)(10) of Public Law 100–418 (102 Stat. 1182) struck out "**ACTIONS CONCERNING**" in the section heading and inserted in lieu thereof "**ESTIMATES OF**".

(1) IN GENERAL.—For calendar year 1988, and for each succeeding calendar year,[135] 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),[135] shall—

(A) identify and analyze acts, polices, or practices of each foreign country[136] 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),[137]

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services; and[138]

(iii) United States electronic commerce,[139]

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A); and[124]

(C)[124] make an estimate, if feasible, of—

(i) the value of additional goods and services of the United States,

(ii) the value of additional foreign direct investment by United States persons, and

(iii) the value of additional United States electronic commerce,

that would have been exported to, or invested in, or transacted with,[140] 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;

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[135] Sec. 1304(a)(1) of Public Law 100–418 (102 Stat. 1181) struck out "Not later than the date on which the initial report is required under subsection (b)(1)," and inserted in lieu thereof "For each calendar year 1988, and for each succeeding calendar year,". Sec. 1304(a)(9) of that Act added the phrase "and with the assistance of the interagency advisory committee established under section 141(d)(2),".

[136] Sec. 1304(a)(2) of Public Law 100–418 (102 Stat. 1181) inserted "of each foreign country". Sec. 1304(a) also amended sec. 181(a) by striking out "and" at the end of subsec. (a)(1)(A)(ii); by striking out the period at the end of subsec. (a)(1)(B) and inserting in lieu thereof "; and"; and by adding at the end of subsec. (a)(1) a new subpara. (C).

[137] Sec. 1202(1)(A)(i) of Public Law 105–277 (112 Stat 2681–726) struck out "and" at the end of clause (i).

[138] Sec. 1202(1)(A)(ii) of Public Law 105–277 (112 Stat 2681–726) inserted "and" at the end of clause (ii).

[139] Sec. 1202(1)(A)(iii) of Public Law 105–277 (112 Stat 2681–727) inserted clause (iii).

[140] Sec. 1202 of Public Law 105–277 (112 Stat. 2681–726) inserted "or transacted with" after "or invested in".

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party;[141]

(D) any advice given through appropriate committees established pursuant to section 135; and[129]

(E)[129] the actual increase in—

(i) the value of goods and services of the United States exported to,

(ii) the value of foreign direct investment made in, the foreign country during the calendar year for which the estimate under paragraph (1)(C) is made, and

(iii) the value of electronic commerce transacted with,[142]

(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)[143] 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,[144]

(B) negotiations or consultations with foreign governments, or

(C)[144] a section on foreign anticompetitive practices, the toleration of which by foreign governments is adversely affecting exports of United States goods and 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 pe-

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[141] Sec. 1304(a) of Public Law 100–418 (102 Stat. 1181) struck out "and" at the end of subsec. (a)(2)(C); struck out the period at the end of subsec. (a)(2)(D) and inserted in lieu thereof "; and"; and added a new subpara. (E) at the end of subsec. (a)(2).

[142] Sec. 1202 of Public Law 105–277 (112 Stat. 2681–726) struck out "and" at the end of clause (i), inserted "and" at the end of clause (ii), and inserted clause (iii).

[143] Sec. 1304(b) of Public Law 100–418 (102 Stat. 1182) amended para. (1), which previously read as follows:

"(1) IN GENERAL.—On or before the date which is one year after the date of the enactment of the International Trade and Investment Act, and each year thereafter, the Trade Representative shall submit the analysis and estimate under subsection (a) to the Committee on Ways and Means of the House of Representatives.".

[144] Sec. 311(a)(1) of Public Law 103–465 (108 Stat. 4938) struck out "or" at the end of subpara. (A), inserted ", or" in lieu of a period at the end of subpara. (B), and added a new subpara. (C).

riodically with, and take into account the views of, the committees described in that paragraph regarding mans to address the foreign trade barriers identified in the report, including the possible initiation of investigations under section 302 or other trade actions.[145]

(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.[146]

(2) RESTRICTIONS ON RELEASE OR USE OF INFORMATION.—Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

(3) PERSONNEL AND SERVICES.—The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

(d)[147] ELECTRONIC COMMERCE.—For purposes of this section, the term "electronic commerce" has the meaning given that term in section 1104(3) of the Internet Tax Freedom Act.

SEC. 182.[148] 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

[145] Sec. 312 of Public Law 103–465 (108 Stat. 4938) added this sentence.
[146] Sec. 311(a)(2) of Public Law 103–465 (108 Stat. 4938) added this sentence.
[147] Sec. 1202 of Public Law 105–277 (112 Stat. 2681–727) inserted subsec. (d).
[148] 19 U.S.C. 2242. Sec. 1303(b) of Public Law 100–418 (102 Stat. 1179) added sec. 182.
Sec. 852 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1517), as amended by Public Law 101–510 (104 Stat. 1668), provided the following:

"PROCUREMENT FROM COUNTRIES THAT DENY ADEQUATE AND EFFECTIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

"(a) SENSE OF CONGRESS.—It is the sense of Congress that it should be a very important consideration in the procurement of property, services, or technology by the Department of Defense whether such procurement is from any person or any country which has been identified by the United States Trade Representative, on the advice of the Commissioner of Patents and Trademarks in the Department of Commerce and the Register of Copyrights, pursuant to section 182(a)(2) of the Trade Act of 1974 (19 U.S.C. 2242) as denying adequate and effective market access to United States persons that rely upon intellectual property protection.".

(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.[149]

(b) SPECIAL RULES FOR IDENTIFICATIONS.—

(1) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall only identify those foreign countries—

(A) that have the most onerous or egregious acts, policies, or practices that—

(i) deny adequate and effective intellectual property rights, or

(ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection,

(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

(C) that are not—

(i) entering into good faith negotiations, or

(ii) making significant progress in bilateral or multilateral negotiations,

to provide adequate and effective protection of intellectual property rights.

(2) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall—

(A) consult with the Register of Copyrights, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office,[150] 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.

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[149] In an annual notice published on May 13, 2005 (70 F.R. 25645), the United States Trade Representative identified 52 trading partners that as of April 29, 2005 denied "adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection." In addition, the notice announced the results of the out-of-cycle review for China, stating that a multiple element determination had been made. Ukraine was identified as a "Priority Foreign Country", and Paraguay was designated for "Section 306 monitoring" under the 2004 Memorandum of Understanding regarding intellectual property agreements.

Fourteen trading partners were placed on the "Priority Watch List": Argentina, Brazil, China, Egypt, India, Indonesia, Israel, Kuwait, Lebanon, Pakistan, the Philippines, Russia, Turkey, and Venezuela. Thirty-six countries were placed on the special 301 "Watch List": Azerbaijan, Bahamas, Belarus, Belize, Bolivia, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Dominican Republic, Ecuador, European Union, Guatemala, Hungary, Italy, Jamaica, Kazakhstan, Republic of Korea, Latvia, Lithuania, Malaysia, Mexico, Peru, Poland, Romania, Saudi Arabia, Slovakia, Taiwan, Tajikistan, Thailand, Turkmenistan, Uruguay, Uzbekistan, and Vietnam. Out-of-cycle reviews will also be conducted for Canada, Indonesia, the Philippines, Russia, Saudi Arabia, and Ukraine.

[150] Sec. 4732(b)(8) of Public Law 106–113 (113 Stat. 1501A–584) struck out "Commissioner of Patents and Trademarks" in sec. 182(b)(2)(A) and inserted in lieu thereof "Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office".

(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)[151] 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 identifications under subsection (a)(2), and

(B) the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights.

(c) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS.—

(1) The Trade Representative may at any time—

(A) revoke the identification of any foreign country as a priority foreign country under this section, or

(B) identify any foreign country as a priority foreign country under this section,

if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 309(3) a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

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

(1) The term "persons that rely upon intellectual property protection" means persons involved in—

(A) the creation, production or licensing of works of authorship (within the meaning of sections 102 and 103 of title 17, United States Code) that are copyrighted, or

(B) the manufacture of products that are patented or for which there are process patents.

(2) A foreign country denies adequate and effective protection of intellectual property rights if the foreign country denies adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such foreign country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights and mask works.

(3)[152] 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,

[151] Sec. 313(1) of Public Law 103–465 (108 Stat. 4938) added para. (4).

[152] Sec. 313(2)(A) of Public Law 103–465 (108 Stat. 4939) amended and restated para. (3), which previously read as follows:

"(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, patent, or process patent through the use of laws, procedures, practices, or regulations which—".

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)[153] 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)[154] SPECIAL RULE FOR ACTIONS AFFECTING UNITED STATES CULTURAL INDUSTRIES.—

(1) IN GENERAL.—By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 181(b), the Trade Representative shall identify any act, policy, or practice of Canada which—

(A) affects cultural industries,

(B) is adopted or expanded after December 17, 1992, and

(C) is actionable under article 2106 of the North American Free Trade Agreement.

(2) SPECIAL RULES FOR IDENTIFICATIONS.—For purposes of section 302(b)(2)(A), an act, policy, or practice identified under this subsection shall be treated as an act, policy, or practice that is the basis for identification of a country under subsection (a)(2), unless the United States has already taken action pursuant to article 2106 of the North American Free Trade Agreement in response to such act, policy, or practice. In deciding whether to identify an act, policy, or practice under paragraph (1), the Trade Representative shall—

(A) consult with and take into account the views of representatives of the relevant domestic industries, appropriate committees established pursuant to section 135, and appropriate officers of the Federal Government, and

(B) take into account the information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b).

(3) CULTURAL INDUSTRIES.—For purposes of this subsection, the term 'cultural industries' means persons engaged in any of the following activities:

(A) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine read-

[153] Sec. 313(2)(B) of Public Law 103–465 (108 Stat. 4939) added para. (4).

[154] Sec. 513 of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2156) added subsec. (f).

able 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 broadcast network services.

(g)[155] 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.

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS[156]

SEC. 201.[157] 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.—

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[155] Sec. 313(3) of Public Law 103–465 (108 Stat. 4939) added subsec. (g).

[156] Sec. 1401(a) of Public Law 100–418 (102 Stat. 1225) amended and restated ch. 1 of title II and added new secs. 201 through 204. In addition, sec. 1401(c) of that Act stated the following:

"(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act and shall apply with respect to investigations initiated under chapter 1 of title II of the Trade Act of 1974 on or after that date. Any petition filed under section 201 of such chapter before such date of enactment, and with respect to which the United States International Trade Commission did not make a finding before such date with respect to serious injury or the threat thereof, may be withdrawn and refiled, without prejudice, by the petitioner under section 202(a) of such chapter (as amended by this section).".

[157] 19 U.S.C. 2251.

(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.[158] 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[159] 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

[158] 19 U.S.C. 2252.

[159] Sec. 303(1) of Public Law 103–465 (108 Stat. 4937) struck out ", or at any time before the 150th day after the date of filing be amended to request," after "request".

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)[160] 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, part 1 of title III of the North American Free Trade Agreement Implementation Act, title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Implementation Act, title III of the United States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, and title III of the United States-Bahrain Free Trade Agreement Implementation Act.[161] The Commission

[160] Sec. 317(b) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2108) added para. (8).

[161] Sec. 222 of the United States-Jordan Free Trade Area Implementation Act (Public Law 107–43; 115 Stat. 250) inserted the reference to title II of the United States-Jordan Free Trade Area Implementation Act. Sec. 316 of the United States-Chile Free Trade Agreement Implementation Act (Public Law 108–77; 117 Stat. 937) inserted the reference to title III of the United States-Chile Free Trade Agreement Implementation Act. Sec. 316 of the United States-Singapore Free Trade Agreement Implementation Act (Public Law 108–78; 117 Stat. 967) inserted

may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate 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.[162]

(b) INVESTIGATIONS AND DETERMINATIONS BY COMMISSION.—

(1)(A) Upon the filing of a petition under subsection (a),[163] 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)[164] 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)[165] after the date referred to in subparagraph (A).

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the reference to title III of the United States-Singapore Free Trade Agreement Implementation Act. Sec. 316 of the United States-Australia Free Trade Agreement Implementation Act (Public Law 108–286; 118 Stat. 945) inserted the reference to title III of the United States-Australia Free Trade Agreement Implementation Act. Sec. 316 of the United States-Morocco Free Trade Agreement Implementation Act (Public Law 108–302; 118 Stat. 1121) inserted the reference to title III of the United States-Morocco Free Trade Agreement Implementation Act. Sec. 316 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53; 119 Stat. 492) inserted the reference to title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act. Sec. 316 of the United States-Bahrain Free Trade Agreement Implementation Act (Public Law 109–169; 119 Stat. 3597) inserted the reference to title III of the United States-Bahrain Free Trade Agreement Implementation Act.

[162] Sec. 301(a) of Public Law 103–465 (108 Stat. 4932) added the latter two sentences to para. (8).

[163] Sec. 303(2) of Public Law 103–465 (108 Stat. 4937) struck out "(b)" and inserted in lieu thereof "(a)".

[164] Sec. 301(d)(2)(A)(i) of Public Law 103–465 (108 Stat. 4933) inserted "(180 days if the petition alleges that critical circumstances exist)" after "120 days".

[165] Sec. 301(d)(2)(A)(ii) of Public Law 103–465 (108 Stat. 4933) inserted "(210 days if the petition alleges that critical circumstances exist)" after "150 days".

(3)[166] 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,[167] 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

[166] Sec. 301(c) of Public Law 103–465 (108 Stat. 4933) struck out paras. (3) and (4) and inserted in lieu thereof a new para. (3).

[167] Sec. 301(e)(1) of Public Law 103–465 (108 Stat. 4934) inserted "productivity" after "wages".

(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:[168]

(A)[169] (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

[168] Sec. 303(5) of Public Law 103–465 (108 Stat. 4937) struck out "subsection" and inserted in lieu thereof "section".

[169] Sec. 301(e)(2)(A) of Public Law 103–465 (108 Stat. 4934) amended and restated subpara. (A), which formerly read as follows:

"(A) The term "domestic industry" includes producers located in the United States insular possession.".

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)[170] The term "serious injury" means a significant overall impairment in the position of a domestic industry.

(D)[152] 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[158] that is like or directly competitive with an imported perishable agricultural product or citrus product[171] 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;[158] 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[172] that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under subparagraph (B)[173] 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[172] are a substantial cause of serious injury, or the threat thereof, to the domestic

[170] Sec. 301(e)(2)(B) of Public Law 103–465 (108 Stat. 4934) added subparas. (C) and (D).

[171] Sec. 315(1) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2107) inserted "or citrus product" after "agricultural product" each place it appears in para. (1)(A).

[172] Sec. 315(2) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2108) inserted "or citrus product".

[173] Sec. 303(3)(A) of Public Law 103–465 (108 Stat. 4937) struck out "paragraph (2)" and inserted in lieu thereof "subparagraph (B)".

industry producing a like or directly competitive perishable product or citrus product,[172] 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 citrus product [172] 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.[174] 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.[174]

(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.[174]

(2) [175] (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

[174] Sec. 303(3)(B) of Public Law 103–465 (108 Stat. 4937) struck out "or threat thereof" in subparas. (E) and (G).

[175] Sec. 301(d)(1) of Public Law 103–465 (108 Stat. 4932) amended and restated para. (2).

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)[176] 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),[177] 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),[178] the Commission makes a negative determination under subsection (b)[179] 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

[176] Sec. 301(d)(4)(A)(i) of Public Law 103–465 (108 Stat. 4934) struck out "(2)(B)" and inserted in lieu thereof "(2)(D)".

[177] Sec. 301(d)(4)(A)(ii) of Public Law 103–465 (108 Stat. 4934) struck out "subsection (b)(1)," and inserted in lieu thereof "paragraph (2)(A)".

[178] Sec. 301(d)(4)(B) of Public Law 103–465 (108 Stat. 4934) inserted "or (2)(D)" after "(1)(G)".

[179] Sec. 303(4) of Public Law 103–465 (108 Stat. 4937) struck out "203(a)" and inserted in lieu thereof "202(b)". Sec. 20(c)(5) of Public Law 104–295 (110 Stat. 3528) subsequently struck out "section 202(b)" and inserted in lieu thereof "subsection (b)".

(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)[180] The term "citrus product" means any processed oranges or grapefruit, or any orange or grapefruit juice including concentrate.

(B)[180] 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)[180] 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;

[180] Sec. 315 of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2108) redesignated subparas. (A) and (B) as (B) and (C), and inserted a new subpara. (A).

(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 critical circumstances exist)[181] 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[182] 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

[181] Sec. 301(d)(2)(B) of Public Law 103–465 (108 Stat. 4933) inserted "(240 days if the petition alleges that critical circumstances exist)" after "180 days".

[182] Sec. 303(6) of Public Law 103–465 (108 Stat. 4937) struck out "is" and inserted in lieu thereof "are".

(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)[183] 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)[184] (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)[185] 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.[186] 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

[183] Sec. 302(b)(4)(B) of Public Law 103–465 (108 Stat. 4936) amended and restated subsec. (h)(2).
[184] Sec. 301(f) of Public Law 103–465 (108 Stat. 4934) added para. (3).
[185] Sec. 301(b) of Public Law 103–465 (108 Stat. 4932) added subsec. (i).
[186] 19 U.S.C. 2253.

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))[187] 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

[187] Sec. 303(7) of Public Law 103–465 (108 Stat. 4937) struck out "201(b)" and inserted in lieu thereof "202(a)".

(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[188] 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[189] 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)[190] 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).[191]

(B)[191] 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, ex-

[188] Sec. 302(a)(1) of Public Law 103–465 (108 Stat. 4934) struck out "orderly marketing" after "carry out".

[189] Sec. 301(d)(3)(A) of Public Law 103–465 (108 Stat. 4933) struck out "The" and inserted in lieu thereof "(A) Subject to subparagraph (B), the".

[190] Sec. 301(d)(3)(B) of Public Law 103–465 (108 Stat. 4933) inserted "(50 days if the President has proclaimed provisional relief under section 202(d)(2)(D) with respect to the article concerned)" after "60 days".

[191] Sec. 301(d)(3)(C) of Public Law 103–465 (108 Stat. 4933) struck out "; except that 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.", closed the sentence with a period, and added subpara. (B).

cept 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)) [192] 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 sub-

[192] Sec. 303(8) of Public Law 103–465 (108 Stat. 4937) struck out "(c)(2)" and inserted in lieu thereof "(d)(2)".

section (a)(3)(E)[193] 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)[194] (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)[195] only to the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury.[196]

(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)[197] 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.

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[193] Sec. 302(a)(2) of Public Law 103–465 (108 Stat. 4934) struck out "orderly marketing agreements" and inserted in lieu thereof "agreements described in subsection (a)(3)(E)".

[194] Sec. 302(b)(1) of Public Law 103–465 (108 Stat. 4935) amended and restated subsec. (e)(1).

[195] Sec. 303(9)(A) of Public Law 103–465 (108 Stat. 4937) struck out "may be taken under subsection (a)(1)(A), (B), or (C) or under section 202(d)(2)(B)" and inserted in lieu thereof "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)".

[196] Sec. 303(9)(B) of Public Law 103–465 (108 Stat. 4937) struck out "or threat thereof".

[197] Sec. 302(b)(2) of Public Law 103–465 (108 Stat. 4935) amended and restated subsec. (e)(4).

(5)[198] 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 subheadings 9802.00.80 of the Harmonized Tariff Schedule of the United States[199] 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),[187] 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)[200] 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)[201] the application of subheading 9802.00.60 or subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States;[202] or

(ii)[201] the designation of the article as an eligible article for the purposes of title V.

(7)[203] (A) If an article was the subject of an action under subparagraph (A), (B), (C), or (E) of subsection (a)(3), no new action 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

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[198] Sec. 302(b)(3) of Public Law 103–465 (108 Stat. 4936) amended and restated subsec. (e)(5).

[199] The text to this point beginning with "subheadings . . ." was inserted in lieu of "item 806.30 or 807.00 of the Tariff Schedules of the United States", by sec. 1214(j)(2) of Public Law 100–418 (102 Stat. 1158), as amended by sec. 9001(a)(2)(B) of Public Law 100–647 (102 Stat. 3342).

[200] Sec. 303(10) of Public Law 103–465 (108 Stat. 4937) struck out "203(c)" and inserted in lieu thereof "202(e)"; and struck out "203(a)" and inserted in lieu thereof "202(b)".

[201] Sec. 9001(a) of Public Law 100–647 (102 Stat. 3342) substituted "(i)" and "(ii)" in lieu of "(A)" and "(B)" which previously appeared at these points.

[202] The text to this point beginning with "subheading . . ." was inserted in lieu of "item 806.30 or 807.00", by sec. 1214(j)(2) of Public Law 100–418 (102 Stat. 1158), as amended by sec. 9001(a)(12(B) of Public Law 100–647 (102 Stat. 3342).

[203] Sec. 302(b)(4)(A) of Public Law 103–465 (108 Stat. 4936) added a new para. (7).

(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)[204] 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),[205] the President may, after such action takes effect, negotiate agreements of the type described in subsection (a)(3)(E),[206] 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)[207] 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[208] 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[209] 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,[210] 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.

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[204] Sec. 302(a)(3)(A) of Public Law 103–465 (108 Stat. 4935) struck out "ORDERLY MARKETING AND OTHER" in the subsection heading and inserted in lieu thereof "CERTAIN".

[205] Sec. 302(a)(3)(B)(i) of Public Law 103–465 (108 Stat. 4935) struck out "orderly marketing agreements" and inserted in lieu thereof "agreements of the type described in subsection (a)(3)(E)".

[206] Sec. 302(a)(3)(B)(ii) of Public Law 103–465 (108 Stat. 4935) struck out "orderly marketing agreements with foreign countries" and inserted in lieu thereof "agreements of the type described in subsection (a)(3)(E)".

[207] Sec. 302(a)(3)(C) of Public Law 103–465 (108 Stat. 4935) struck out "orderly marketing agreement implemented under subsection (a)" and inserted in lieu thereof "agreement implemented under subsection (a)(3)(E)".

[208] Sec. 302(a)(4)(A) of Public Law 103–465 (108 Stat. 4935) struck out "orderly marketing or other" after "carry out an".

[209] Sec. 302(a)(4)(B)(i) of Public Law 103–465 (108 Stat. 4935) struck out "orderly marketing agreement" and inserted in lieu thereof "agreement of the type described in subsection (a)(3)(E) that is".

[210] Sec. 302(a)(4)(B)(ii) of Public Law 103–465 (108 Stat. 4935) struck out "agreements" and inserted in lieu thereof "agreement".

SEC. 204.[211] 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)[212] 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[213] 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.

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[211] 19 U.S.C. 2254.

[212] Sec. 302(c)(1) of Public Law 103–465 (108 Stat. 4936) amended and restated para. (2).

[213] Sec. 302(c)(2) of Public Law 103–465 (108 Stat. 4936) struck out "extension" after "of any".

(3)[214] 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.

(c)[215] 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)[215] 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)[215] 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

[214] Sec. 129(a)(7) of Public Law 103–465 (108 Stat. 4837) added a new para. (3).

[215] Sec. 302(d)(1) and (2) of Public Law 103–465 (108 Stat. 4936) redesignated subsecs. (c) and (d) as subsecs. (d) and (e), respectively, and added a new subsec. (c). These subsections were originally redesignated as subsecs. (c) and (d) by sec. 9001(a)(8) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3342).

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).

CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

SUBCHAPTER A—PETITIONS AND DETERMINATIONS

SEC. 221.[216] PETITIONS.

(a)[217] (1) A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this chapter may be filed simultaneously with the Secretary and with the Governor of the State in which such workers' firm or subdivision is located by any of the following:

(A) The group of workers (including workers in an agricultural firm or subdivision of any agricultural firm).

(B) The certified or recognized union or other duly authorized representative of such workers.

(C) Employers of such workers, one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)), including State employment security agencies, or the State dislocated worker unit established under title I of such Act, on behalf of such workers.

(2) Upon receipt of a petition filed under paragraph (1), the Governor shall—

(A) ensure that rapid response assistance[218] and appropriate core and intensive services (as described in section 134 of the Workforce Investment Act of 1998 (29 U.S.C. 2864)) authorized under other Federal laws are made available to the workers covered by the petition to the extent authorized under such laws; and

(B) assist the Secretary in the review of the petition by verifying such information and providing such other assistance as the Secretary may request.

(3) Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that the Secretary 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

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[216] 19 U.S.C. 2271.

[217] Sec. 112(a) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 937) amended and restated subsec. (a). Sec. 151(a) of that Act further provided that this amendment shall apply to petitions for certification filed under chapter 2 or 3 of title II of the Trade Act of 1974 on or after the date that is 90 days after the date of enactment of this amendment. Public Law 107–210 was enacted on August 6, 2002. Previously, sec. 503(a) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2151) and sec. 13002(a) of Public Law 99–272 (100 Stat. 300) amended subsec. (a).

[218] Sec. 2004(a)(4) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2590) struck out a comma that appeared at this point.

for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

SEC. 222.[219] GROUP ELIGIBILITY REQUIREMENTS.

(a)[220] IN GENERAL.—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance under this chapter pursuant to a petition filed under section 221 if the Secretary determines that—

(1) 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; and

(2)(A)(i) the sales or production, or both, of such firm or subdivision have decreased absolutely;

(ii) imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and

(iii) the increase in imports described in 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)(i) there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

(ii)(I) the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

(II) the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

(III) there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

(b)[221] ADVERSELY AFFECTED SECONDARY WORKERS.—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for trade adjustment assistance benefits under this

[219] 19 U.S.C. 2272.

[220] Sec. 113(a)(1)(A) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 937) amended and restated subsec. (a). Sec. 151(a) of that Act further provided that this amendment shall apply to petitions for certification filed under chapter 2 or 3 of title II of the Trade Act of 1974 on or after the date that is 90 days after the date of enactment of this amendment. Public Law 107–210 was enacted on August 6, 2002. Previously, sec. 1421(a) of Public Law 100–418 (102 Stat. 1244) and sec. 1421(b) of Public Law 100–418 (102 Stat. 1242) had amended subsec. (a).

[221] Sec. 113(a)(1)(C) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 938) redesignated subsec. (b) as subsec. (c) and inserted a new subsec. (b). Sec. 151(a) of that Act further provided that this amendment shall apply to petitions for certification filed under chapter 2 or 3 of title II of the Trade Act of 1974 on or after the date that is 90 days after the date of enactment of this amendment. Public Law 107–210 was enacted on August 6, 2002. Sec. 1421(a)(1) of Public Law 100–418 (102 Stat. 1244) added the original subsec. (b), as redesignated as subsec. (c), and deleted the text "For purposes of paragraph (3), the term 'contributed importantly' means a cause which is important, but not necessarily more important than any other cause." which previously appeared as the final sentence in subsec. (a).

chapter pursuant to a petition filed under section 221[222] if the Secretary determines that—

(1) a significant number or proportion of the workers in the 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) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility under subsection (a), and such supply or production is related to the article that was the basis for such certification (as defined in subsection (c) (3) and (4)); and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

(c)[221] For purposes of this section—[223]

(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 producing articles directly competitive with imports of oil and with imports of natural gas.

(3)[223] DOWNSTREAM PRODUCER.—The term "downstream producer" means a firm that performs additional, value-added production processes for a firm or subdivision, including a firm that performs final assembly or finishing, directly for another firm (or subdivision), for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm, if the certification of eligibility under subsection (a) is based on an increase in imports from, or a shift in production to, Canada or Mexico.

(4)[223] SUPPLIER.—The term "supplier" means a firm that produces and supplies directly to another firm (or subdivision) component parts for articles that were the basis for a certifi-

[222] Sec. 2004(a)(5) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2590) made a technical correction to the heading of subsec. (b) and inserted "pursuant to a petition filed under section 221".

[223] Sec. 113(b) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 938) struck out "subsection (a)(3)" and inserted in lieu thereof "this section", and added paras. (3) and (4). Sec. 151(a) of that Act further provided that this amendment shall apply to petitions for certification filed under ch. 2 or 3 of title II of the Trade Act of 1974 on or after the date that is 90 days after the date of enactment of this amendment. Public Law 107–210 was enacted on August 6, 2002.

cation of eligibility under subsection (a) of a group of workers employed by such other firm.

SEC. 223.[224] **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 40 days[225] 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 assistance under this subchapter[226] 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)[227] 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.[228] **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 investiga-

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[224] 19 U.S.C. 2273.

[225] Sec. 112(b) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 937) struck out "60 days" and inserted in lieu thereof "40 days". Sec. 151(a) of that Act further provided that this amendment shall apply to petitions for certification filed under chapter 2 or 3 of title II of the Trade Act of 1974 on or after the date that is 90 days after the date of enactment of this amendment. Public Law 107–210 was enacted on August 6, 2002.

[226] Sec. 503(a) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2151) struck out "assistance under this chapter" and inserted in lieu thereof "assistance under this subchapter".

[227] Sec. 1421(a)(1)(B) of Public Law 100–418 (102 Stat. 1242) stated the following:

"(B) Notwithstanding section 223(b) of the Trade Act of 1974, or any other provision of law, any certification made under subchapter A of chapter 2 of title II of such Act which—

"(i) is made with respect to a petition filed before the date that is 90 days after the date of enactment of this Act, and

"(ii) would not have been made if the amendments made by subparagraph (A) had not been enacted into law,

shall apply to any worker whose most recent total or partial separation from the firm, or appropriate subdivision of the firm, described in section 222(a) of such Act occurs after September 30, 1985.".

[228] 19 U.S.C. 2274. Sec. 2513(a)(2) of Public Law 97–35 (95 Stat. 889) struck out "; **ACTION WHERE THERE IS AFFIRMATIVE FINDING**" from the section heading.

tion under section 202[229] 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).[208] 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.[230] BENEFIT INFORMATION TO WORKERS.

(a) The Secretary[231] 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.

Subsec. (c) of this section, relating to benefit information to workers now covered in sec. 225, was repealed by sec. 2513(a)(1) of Public Law 97–35 (95 Stat. 889).

[229] Sec. 1401(b)(1)(B) of Public Law 100–418 (102 Stat. 1239) inserted "202" in lieu thereof "201".

[230] 19 U.S.C. 2275. Sec. 2502 of Public Law 97–35 (95 Stat. 881) added sec. 225.

Sec. 125 of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 946) provided the following:

"SEC. 125. DECLARATION OF POLICY; SENSE OF CONGRESS.

"(a) DECLARATION OF POLICY.—Congress reiterates that, under the trade adjustment assistance program under chapter 2 of title II of the Trade Act of 1974, workers are eligible for transportation, childcare, and healthcare assistance, as well as other related assistance under programs administered by the Department of Labor.

"(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Labor, working independently and in conjunction with the States, should, in accordance with section 225 of the Trade Act of 1974, provide more specific information about benefit allowances, training, and other employment services, and the petition and application procedures (including appropriate filing dates) for such allowances, training, and services, under the trade adjustment assistance program under chapter 2 of title II of the Trade Act of 1974 to workers who are applying for, or are certified to receive, assistance under that program, including information on all other Federal assistance available to such workers.".

[231] Sec. 1422(1) of Public Law 100–418 (102 Stat. 1244) inserted "(a)" before "The Secretary" and added a new subsec. (b).

Sec. 1430(e) of Public Law 100–418 (102 Stat. 1257) further stated that "The amendments made by section 1422 shall take effect on the date that is 30 days after the date of enactment of this Act.".

(b)[231] (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[232] 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[231] in newspapers of general circulation in the areas in which such workers reside.

SUBCHAPTER B—PROGRAM BENEFITS

[Sections 231–238; 19 U.S.C. 2291–2298]

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SUBCHAPTER C—GENERAL PROVISIONS

[Sections 239–249; 19 U.S.C. 2311–2321]

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SUBCHAPTER D—NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM

[Section 250; 19 U.S.C. 2331—repealed 2002][233]

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CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

SEC. 251.[234] 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)[235] 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 Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such in-

[232] Sec. 123(b)(1) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 944) struck out "or subchapter D" that appeared at this point. Previously, sec. 503(b) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2151) had inserted "or subchapter D" after "subchapter A".

[233] Sec. 123(a) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 944) repealed subch. D of ch. 2 of title II.

[234] 19 U.S.C. 2341.

[235] Sec. 13002(b) of Public Law 99–272 (100 Stat. 300) added "(including any agricultural firm)".

terested persons an opportunity to be present, to produce evidence, and to be heard.

(c)(1)[236] The Secretary shall certify a firm (including any agricultural firm)[235] 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 such 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)[237] increases of imports of articles like or directly competitive with articles—

(i) which are produced by such firm, or

(ii) for which such firm provides essential goods or essential services,

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 produces oil or natural gas, shall be considered to be 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.

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SEC. 264.[238] 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[239] with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

[236] Sec. 1421(a)(2) of Public Law 100–418 (102 Stat. 1243) amended subsec. (c).

[237] Sec. 1421(a)(2) of Public Law 100–418 (102 Stat. 1243) added subpara. (C). Sec. 1421(b)(2) of that Act further amended subpara. (C).

[238] 19 U.S.C. 2354.

[239] Sec. 1401(b)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1239) inserted "202" in lieu thereof "201" in subsec. (a); inserted "202(f)" in lieu thereof "201" in subsec. (b); and inserted "202(b)" in lieu thereof "201(b)" in subsec. (c).

(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).[239] 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)[239] 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.[240] 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[241] have been certified as eligible to apply for technical assistance under section 223[241] or 251.

(b) Expenditures for technical assistance under this section may be up to $10,000,000[242] annually per industry and shall be made under such terms and conditions as the Secretary deems appropriate.

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CHAPTER 5—MISCELLANEOUS PROVISIONS

SEC. 280.[243] 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, 1983. Such report shall include an evaluation of—

[240] 19 U.S.C. 2355. Added by sec. 2527 of Public Law 97–35 (95 Stat. 893).
[241] Sec. 2673(1) of Public Law 98–369 inserted "or workers" and "223 or".
[242] Sec. 2673(2) of Public Law 98–369 struck out "$2,000,000" and inserted in lieu thereof "$10,000,000".
[243] 19 U.S.C. 2391.

(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.[244] COORDINATION.

There is established the Adjustment Assistance Coordinating Committee to consist of a Deputy Special 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.[245] 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.[246] FIRMS RELOCATING IN FOREIGN COUNTRIES.

(a) 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,

[244] 19 U.S.C. 2392. The position of Deputy Special Trade Representative referred to in this section was redesignated as the Deputy United States Trade Representative pursuant to sec. 1(c) of Reorganization Plan No. 3 of 1979.

[245] 19 U.S.C. 2393.

[246] 19 U.S.C. 2394.

(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.[247] **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[248] 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, an agricultural commodity producer (as defined in section 291(2)) aggrieved by a determination of the Secretary of Agriculture under section 293,[249] 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, the Secretary of Commerce, or the Secretary of Agriculture,[250] 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, the Secretary of Commerce, or the Secretary of Agriculture,[250] 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, the Secretary of Commerce, or the Secretary of Agriculture,[250] 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[251] as pre-

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[247] 19 U.S.C. 2395. Sec. 613(a) of Public Law 96–417 redesignated sec. 284 as sec. 285 and added a new sec. 284. Sec. 285, previously entitled "**EFFECTIVE DATE**", was retitled "**TERMINATION**" by sec. 13007 of Public Law 99–272 (100 Stat. 304).

[248] Sec. 123(b)(4) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 944) struck out "or section 250(c)" which had appeared at this point. Sec. 123(c) of that Act further provided that this amendment and other amendments to subsec. (a) shall apply to petitions filed under chapter 2 of title II of the Trade Act of 1974 on or after the date that is 90 days after the date of enactment of this amendment. Public Law 107–210 was enacted on August 6, 2002. Previously, sec. 503(d) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2151) added "or section 250(c)" after "section 223".

[249] Sec. 142(a) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 953) inserted "an agricultural commodity producer (as defined in section 291(2)) aggrieved by a determination of the Secretary of Agriculture under section 293,".

[250] Sec. 142(a) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 953) inserted the reference to the Secretary of Agriculture.

[251] Sec. 163(a)(5) of the Federal Courts Improvement Act (Public Law 97–164; 96 Stat. 49) struck out "Court of Customs and Patent Appeals" and inserted in lieu thereof "Court of Appeals for the Federal Circuit".

scribed by the rules of such court. The judgment of the Court of Appeals for the Federal Circuit[251] 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.[252] TERMINATION.

(a) ASSISTANCE FOR WORKERS.—

(1) IN GENERAL.—Except as provided in paragraph (2), trade adjustment assistance, vouchers, allowances, and other payments or benefits may not be provided under chapter 2 after September 30, 2007.

(2) EXCEPTION.—Notwithstanding paragraph (1), a worker shall continue to receive trade adjustment assistance benefits and other benefits under chapter 2 for any week for which the worker meets the eligibility requirements of that chapter, if on or before September 30, 2007, the worker is—

(A) certified as eligible for trade adjustment assistance benefits under chapter 2 of this title; and

(B) otherwise eligible to receive trade adjustment assistance benefits under chapter 2.

(b) OTHER ASSISTANCE.—

(1) ASSISTANCE FOR FIRMS.—Technical assistance may not be provided under chapter 3 after September 30, 2007.

(2) ASSISTANCE FOR FARMERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), adjustment assistance, vouchers, allowances, and other payments or benefits may not be provided under chapter 6 after September 30, 2007.

(B) EXCEPTION.—Notwithstanding subparagraph (A), an agricultural commodity producer (as defined in section 291(2)) shall continue to receive adjustment assistance benefits and other benefits under chapter 6, for any week for which the agricultural commodity producer meets the eligibility requirements of chapter 6, if on or before September 30, 2007, the agricultural commodity producer is—

(i) certified as eligible for adjustment assistance benefits under chapter 6; and

(ii) is otherwise eligible to receive adjustment assistance benefits under such chapter 6.

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[252] 19 U.S.C. 2271, preceding note. Sec. 111(c) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 936 amended and restated sec. 285. Sec. 151(a) of that Act further provided that this amendment shall apply to petitions for certification filed under ch. 2 or 3 of title II of the Trade Act of 1974 on or after the date that is 90 days after the date of enactment of this amendment. Public Law 107–210 was enacted on August 6, 2002.

Previously, sec. 285 had been amended by sec. 13007 of Public Law 99–272 (100 Stat. 304), sec. 1426(a) of Public Law 100–418 (102 Stat. 1251), sec. 13803(a)(1)(A) of Public Law 103–66 (107 Stat. 668), and by sec. 505 of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2152). The original termination date of September 30, 1982, had been amended as follows: to September 30, 1983 (Public Law 97–35; 95 Stat. 888); to September 30, 1985 (Public Law 98–120; 97 Stat. 809); to November 14, 1985 (Public Law 99–107; 99 Stat. 479); to December 14, 1985 (Public Law 99–155; 99 Stat. 814); to December 18, 1985 (Public Law 99–181; 99 Stat. 1172); and to December 19, 1985 (Public Law 99–189; 99 Stat. 1184).

SEC. 286.[253] **TRADE ADJUSTMENT ASSISTANCE TRUST FUND.**

(a) There is hereby established within the Treasury of the United States a trust fund to be known as the Trade Adjustment Assistance Trust Fund (hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be transferred or credited to the Trust Fund as provided in this section or appropriated to the Trust Fund under subsection (e).

(b)(1) The Secretary of the Treasury shall transfer to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into such general fund that are attributable to the duty imposed by section 287.

(2) The amounts which are required to be transferred under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury of the United States to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) that are received into the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

(c)(1) The Secretary of the Treasury shall be the trustee of the Trust Fund, and shall submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the financial condition and the results of the operations of the Trust Fund during the fiscal year preceding the fiscal year in which such report is submitted and on the expected condition and operations of the Trust Fund during the fiscal year in which such report is submitted and the 5 fiscal years succeeding such fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2)(A) The Secretary of the Treasury shall invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interestbearing obligations of the United States. For such purpose, such obligations may be acquired—

(i) on original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price.

(B) Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d)(1) Amounts in the Trust Fund shall be available—

(A) for the payment of drawbacks and refunds of the duty imposed by section 287 that are allowable under any other provision of Federal law,

(B) as provided in appropriation Acts—

[253] 19 U.S.C. 2396. Sec. 1427(a) of Public Law 100–418 (102 Stat. 1251) added sec. 286. Sec. 1430(c) of Public Law 100–418 (102 Stat. 1257) further stated that "the amendments made by section 1427 shall take effect on the first date on which the amendment made by section 1428(b) applies with respect to any articles.".

(i) for expenditures that are required to carry out the provisions of chapters 2 and 3, including administrative costs, and

(ii) for payments required under subsection (e)(2).

(2) None of the amounts in the Trust Fund shall be available for the payment of loans guaranteed under chapter 3 or for any other expenses relating to financial assistance provided under chapter 3.

(3)(A) If the total amount of funds expended in any fiscal year to carry out chapters 2 and 3 (including administrative costs) exceeds an amount equal to 0.15 percent of the total value of all articles upon which a duty was imposed by section 287 during the preceding 1-year period, the Secretary of Labor and the Secretary of Commerce (in consultation with the Secretary of the Treasury) shall, notwithstanding any provision of chapter 2 or 3, make a pro rata reduction in—

(i) the amounts of the trade readjustment allowances that are paid under part I of subchapter B of chapter 2, and

(ii) the assistance provided under chapter 3,

to ensure (based on estimates of the amount of funds that will be necessary to carry out chapters 2 and 3, and of the amount of revenue that will be raised by section 287, during the remainder of such fiscal year and for the fiscal year succeeding such fiscal year) that all workers and firms eligible for assistance under chapter 2 or 3 receive some assistance under chapter 2 or 3 and that the expenditures made in providing such assistance during the remainder of such fiscal year and the fiscal year succeeding such fiscal year do not exceed the amount of funds available in the Trust Fund to pay for such expenditures.

(B) No reduction may be made under this paragraph in the amount of any trade readjustment allowance payable under part I of subchapter B of chapter 2 to any worker who received such trade readjustment allowance under such part for the week preceding the first week for which such reduction is otherwise being made under this paragraph.

(C) If a pro rata reduction made under subparagraph (A) is in effect at the close of a fiscal year, the Secretary of Labor and the Secretary of Commerce, in consultation with the Secretary of the Treasury, may adjust or modify such reduction at the beginning of the fiscal year succeeding such fiscal year, based on estimates of the amount of funds that will be necessary to carry out chapters 2 and 3, and of the amount of revenue that will be raised by section 287, during that succeeding fiscal year.

(D) Any pro rata reduction made under subparagraph (A), and any pro rata reduction adjusted or modified under subparagraph (C), shall cease to apply after the week in which—

(i) a 1-year period ends during which the total amount of funds that would have been expended to carry out chapters 2 and 3, including administrative costs, if such reduction were not in effect did not exceed an amount equal to 0.15 percent of the total value of all articles upon which a duty was imposed during such 1-year period, or

(ii) the Secretary of Labor and the Secretary of Commerce, in consultation with the Secretary of the Treasury, determine

that the amount of funds available in the Trust Fund are sufficient to carry out chapters 2 and 3 without such reduction.

(e)(1)(A) There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures described in subsection (d)(1)(B).

(B) Any advance appropriated to the Trust Fund under the authority of subparagraph (A) may be paid to the Trust Fund only to the extent that the total amount of advances paid during the fiscal year to the Trust Fund from any appropriation authorized under subparagraph (A) that are outstanding after such advance is paid to the Trust Fund does not exceed the lesser of—

(i) the excess of—

(I) the total amount of funds that the Secretary of the Treasury (in consultation with the Secretary of Labor and the Secretary of Commerce) estimates will be necessary for the payments and expenditures described in subparagraphs (A) and (B) of subsection (d)(1) for such fiscal year, over

(II) the total amount of funds that the Secretary of the Treasury estimates will be available in the Trust Fund during the fiscal year (determined without regard to any advances made under this subsection during such fiscal year), or

(ii) the excess of—

(I) an amount equal to 0.15 percent of the total value of all articles upon which the Secretary of the Treasury estimates a duty will be imposed by section 287 during such fiscal year, over

(II) the amount described in clause (i)(II).

(2) Advances made to the Trust Fund from appropriations authorized under paragraph (1)(A) shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury of the United States when the Secretary of the Treasury determines that sufficient funds are available in the Trust Fund for such purposes.

(3) Interest on advances made from appropriations authorized under paragraph (1)(A) shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding.

SEC. 287.[254] IMPOSITION OF ADDITIONAL FEE.

(a) In addition to any other fee imposed by law, there is hereby imposed a fee on all articles entered, or withdrawn from ware-

[254] 19 U.S.C. 2397. Sec. 1428(b) of Public Law 100–418 (102 Stat. 1255) added sec. 287.
Sec. 1430(b) of Public Law 100–418 stated the following regarding additional fee:
"(b) ADDITIONAL FEE.—
"(1) Except as otherwise provided in this subsection, the amendment made by section 1428(b) shall apply (if at all) to any article entered, or withdrawn from warehouse for consumption, after the date that is 30 days after the earlier of—
"(A) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(A),

house, for consumption in the customs territory of the United States during any fiscal year.

(b)(1) The rate of the fee imposed by subsection (a) shall be a uniform ad valorem rate proclaimed by the President that is equal to the lesser of—

(A) 0.15 percent, or

(B) the percentage that is sufficient to provide the funding necessary to—

(i) carry out the provisions of chapters 2 and 3, and

(ii) repay any advances made under section 286(e).

(2) The President shall issue a proclamation setting forth the rate of the fee imposed by subsection (a) by no later than the date that is 15 days before the first date on which a fee is imposed under subsection (a).

(3)(A) For each fiscal year succeeding the first fiscal year in which a fee is imposed under subsection (a), the President shall issue a proclamation adjusting the rate of the fee imposed by subsection (a) during such fiscal year to the ad valorem rate that meets the requirements of paragraph (1) for such fiscal year.

(B) Any proclamation issued under subparagraph (A) for a fiscal year shall be issued at least 30 days before the beginning of such fiscal year.

(c)(1) Except as otherwise provided in this subsection, duty-free treatment provided with respect to any article under any other provision of law shall not prevent the imposition of a fee with respect to such article by subsection (a).

(2) No fee shall be imposed by subsection (a) with respect to—

(A) any article (other than an article provided for in item 870.40, 870.45, 870.50, 870.55, or 870.60 of the Tariff Schedules of the United States) that is treated as duty-free under schedule 8 of the Tariff Schedules of the United States, or

(B) any article which has a value of less than $1,000.

CHAPTER 6—ADJUSTMENT ASSISTANCE FOR FARMERS

SEC. 291.[255] DEFINITIONS.

In this chapter:

"(B) the date that is 2 years after the date of enactment of this Act, or

"(C) the date of the enactment of a disapproval resolution that passes both Houses of the Congress within the 90-day period beginning on the date that is 2 years after the date of enactment of this Act.

"(2) If the President determines on the date that is 2 years after the date of enactment of this Act that the fee imposed by the amendment made by section 1428(b) is not in the national economic interest, subparagraph (B) of paragraph (1) shall not be taken into account in applying the provisions of paragraph (1).

"(3) The amendment made by section 1428(b) shall apply (if at all) to the products of any foreign country described in section 1428(a)(1)(B) that are entered, or withdrawn from warehouse for consumption, after the later of—

"(A) the first date on which the fee imposed by such amendment applies with respect to products of foreign countries that are not described in section 1428(a)(1)(B), or

"(B) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(B) certifying the consent of such foreign country to the imposition of the fee.".

[255] 19 U.S.C. 2401. Sec. 141(a) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 947) added sec. 291. Sec. 141(b) of Public Law 107–210, enacted on August 6, 2006, provided that this amendment would take effect 180 days after enactment of the Act.

(1) AGRICULTURAL COMMODITY.—The term "agricultural commodity" means any agricultural commodity (including livestock) in its raw or natural state.

(2) AGRICULTURAL COMMODITY PRODUCER.—The term "agricultural commodity producer" has the same meaning as the term "person" as prescribed by regulations promulgated under section 1001(5) of the Food Security Act of 1985 (7 U.S.C. 1308(5)).

(3) CONTRIBUTED IMPORTANTLY.—

(A) IN GENERAL.—The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(B) DETERMINATION OF CONTRIBUTED IMPORTANTLY.—The determination of whether imports of articles like or directly competitive with an agricultural commodity with respect to which a petition under this chapter was filed contributed importantly to a decline in the price of the agricultural commodity shall be made by the Secretary.

(4) DULY AUTHORIZED REPRESENTATIVE.—The term "duly authorized representative" means an association of agricultural commodity producers.

(5) NATIONAL AVERAGE PRICE.—The term "national average price" means the national average price paid to an agricultural commodity producer for an agricultural commodity in a marketing year as determined by the Secretary.

(6) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

SEC. 292.[256] PETITIONS; GROUP ELIGIBILITY.

(a) IN GENERAL.—A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary by a group of agricultural commodity producers or by their duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that the Secretary has received the petition and initiated an investigation.

(b) HEARINGS.—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 person an opportunity to be present, to produce evidence, and to be heard.

(c) GROUP ELIGIBILITY REQUIREMENTS.—The Secretary shall certify a group of agricultural commodity producers as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

(1) that the national average price for the agricultural commodity, or a class of goods within the agricultural commodity, produced by the group for the most recent marketing year for

[256] 19 U.S.C. 2401a. Sec. 141(a) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 947) added sec. 292. Sec. 141(b) of Public Law 107–210, enacted on August 6, 2006, provided that this amendment would take effect 180 days after enactment of the Act.

which the national average price is available is less than 80 percent of the average of the national average price for such agricultural commodity, or such class of goods, for the 5 marketing years preceding the most recent marketing year; and

(2) that increases in imports of articles like or directly competitive with the agricultural commodity, or class of goods within the agricultural commodity, produced by the group contributed importantly to the decline in price described in paragraph (1).

(d) SPECIAL RULE FOR QUALIFIED SUBSEQUENT YEARS.—A group of agricultural commodity producers certified as eligible under section 293 shall be eligible to apply for assistance under this chapter in any qualified year after the year the group is first certified, if the Secretary determines that—

(1) the national average price for the agricultural commodity, or class of goods within the agricultural commodity, produced by the group for the most recent marketing year for which the national average price is available is equal to or less than the price determined under subsection (c)(1); and

(2) the requirements of subsection (c)(2) are met.

(e) DETERMINATION OF QUALIFIED YEAR AND COMMODITY.—In this chapter:

(1) QUALIFIED YEAR.—The term "qualified year", with respect to a group of agricultural commodity producers certified as eligible under section 293, means each consecutive year after the year in which the group is certified and in which the Secretary makes the determination under subsection (c) or (d), as the case may be.

(2) CLASSES OF GOODS WITHIN A COMMODITY.—In any case in which there are separate classes of goods within an agricultural commodity, the Secretary shall treat each class as a separate commodity in determining group eligibility, the national average price, and level of imports under this section and section 296.

SEC. 293.[257] DETERMINATIONS BY SECRETARY OF AGRICULTURE.

(a) IN GENERAL.—As soon as practicable after the date on which a petition is filed under section 292, but in any event not later than 40 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 292 (c) or (d), as the case may be, and shall, if the group meets the requirements, issue a certification of eligibility to apply for assistance under this chapter covering agricultural commodity producers in any group that meets the requirements. Each certification shall specify the date on which eligibility under this chapter begins.

(b) NOTICE.—Upon making a determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register, together with the Secretary's reasons for making the determination.

[257] 19 U.S.C. 2401b. Sec. 141(a) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 948) added sec. 293. Sec. 141(b) of Public Law 107–210, enacted on August 6, 2006, provided that this amendment would take effect 180 days after enactment of the Act.

(c) TERMINATION OF CERTIFICATION.—Whenever the Secretary determines, with respect to any certification of eligibility under this chapter, that the decline in price for the agricultural commodity covered by the certification is no longer attributable to the conditions described in section 292, the Secretary shall terminate such certification and promptly cause notice of such termination to be published in the Federal Register, together with the Secretary's reasons for making such determination.

SEC. 294.[258] STUDY BY SECRETARY OF AGRICULTURE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION.

(a) IN GENERAL.—Whenever the International Trade Commission (in this chapter referred to as the "Commission") begins an investigation under section 202 with respect to an agricultural commodity, the Commission shall immediately notify the Secretary of the investigation. Upon receipt of the notification, the Secretary shall immediately conduct a study of—

(1) the number of agricultural commodity producers producing a like or directly competitive agricultural commodity who have been or are likely to be certified as eligible for adjustment assistance under this chapter, and

(2) the extent to which the adjustment of such producers to the import competition may be facilitated through the use of existing programs.

(b) REPORT.—Not later than 15 days after the day on which the Commission makes its report under section 202(f), the Secretary shall submit a report to the President setting forth the findings of the study described in subsection (a). Upon making the report to the President, the Secretary shall also promptly make the report public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of the report published in the Federal Register.

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TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES[259]

[258] 19 U.S.C. 2401c. Sec. 141(a) of the Trade Adjustment Assistance Reform Act of 2002 (division A of Public Law 107–210; 116 Stat. 949) added sec. 294. Sec. 141(b) of Public Law 107–210, enacted on August 6, 2006, provided that this amendment would take effect 180 days after enactment of the Act.

[259] Sec. 901 of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 295) amended and restated ch. 1. Former secs. 301 and 302, entitled "**RESPONSES TO CERTAIN TRADE PRACTICES OF FOREIGN GOVERNMENTS**" and "**PROCEDURES FOR CONGRESSIONAL DISAPPROVAL OF CERTAIN ACTIONS TAKEN UNDER SECTION 301**," respectively, were replaced and new secs. 303 through 306 were added.

Sec. 1301(a) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1164) comprehensively amended ch. 1. Sec. 1301(c) of that Act stated the following:

"(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

"(1) petitions filed, and investigations initiated, under section 302 of the Trade Act of 1974 on or after the date of the enactment of this Act; and

"(2) petitions filed, and investigations initiated, before the date of enactment of this Act, if by that date no decision had been made under section 304 regarding the petition or investigation.".

SEC. 301.[260] **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.[261]

(2) The Trade Representative is not required to take action under paragraph (1) in any case in which—[262]

(A) the Dispute Settlement Body (as defined in section 121(5) of the Uruguay Round Agreements Act) has adopted a report,[263] 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—

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[260] 19 U.S.C. 2411.

[261] Sec. 314(a)(1) of Public Law 103–465 (108 Stat. 4939) inserted the sentence "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.".

[262] Executive Order 13155 of May 10, 2000 (65 F.R. 30521) stated, in part:

"the United States shall not seek, through negotiations or otherwise, the revocation or revision of any intellectual property law or policy of a beneficiary sub-Saharan African country, as determined by the President, that regulates HIV/AIDS or medical technologies if the law or policy of the country:

"(1) promotes access to HIV/AIDS pharmaceuticals or medical technologies for affected populations in that country; and

"(2) provides adequate and effective intellectual property protection consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)15).".

The full text of Executive Order 13155 can be found on page 925.

[263] Sec. 621(a)(9) of Public Law 103–465 (108 Stat. 4993) struck out "the Contracting Parties to the General Agreement on Tariffs and Trade have determined, a panel of experts has reported to the Contracting Parties," and inserted in lieu thereof "the Dispute Settlement Body (as defined in section 121(5) of the Uruguay Round Agreements Act) has adopted a report,".

(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.[264]

(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;

[264] Sec. 314(a)(1) of Public Law 103–465 (108 Stat. 4939) inserted the sentence "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.".

(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;[265]

(C)[266] 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)[266] 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.

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[265] Sec. 314(b)(1) of Public Law 103–465 (108 Stat. 4939) struck out "or" at the end of subpara. (B).

[266] Sec. 314(b)(1) of Public Law 103–465 (108 Stat. 4939) redesignated subpara. (C) as subpara. (D), and added a new subpara. (C).

(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)[267] 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)[268] 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)[268] 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.

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[267] Sec. 20(c)(4) of Public Law 104–295 (110 Stat. 3528) struck out "paragraph (1)(C)(iii)" and inserted in lieu thereof "paragraph (1)(D)(iii)".

[268] Sec. 314(a)(2) of Public Law 103–465 (108 Stat. 4939) amended para. (5) through subpara. (A).

(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)[269] 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)[269] nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection, or

(IV)[269] 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.

[269] Sec. 314(c)(I) of Public Law 103–465 (108 Stat. 4940) amended subclauses (II) and (III), and added a new subclause (IV).

(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)[270] (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 ex-

[270] Sec. 314(c)(2) of Public Law 103–465 (108 Stat. 4940) added subpara. (F).

porters, and any industrial user of any goods or services that may be affected by actions taken under subsection (a) or (b).

SEC. 302.[271] 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 the 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)[272] 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

[271] 19 U.S.C. 2412.

[272] The U.S. Trade Representative initiated such an investigation with respect to certain acts, policies and practices of the People's Republic of China on October 10, 1991 (56 F.R. 51943; October 16, 1991).

(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 Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office,[273] 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.[274] 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.—

[273] Sec. 4732(b)(9) of Public Law 106–113 (113 Stat. 1501A–584) struck out "Commissioner of Patents and Trademarks" and inserted in lieu thereof "Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office".

[274] 19 U.S.C. 2413.

(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.[275] **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,[276] except an investigation initiated pursuant to section 302(b)(2)(A) involving rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 101(d)(15) of the Uruguay Round Agreements Act) or the GATT 1994 (as defined in section 2(1)(B) of that Act) relating to products subject to intellectual property protection,[277] 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.

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[275] 19 U.S.C. 2414.

[276] Sec. 314(d)(1) of Public Law 103–465 (108 Stat. 4940) struck out "(other than the agreement on subsidies and countervailing measures described in section 2(c)(5) of the Trade Agreements Act of 1979)" after "a trade agreement".

[277] Sec. 2201(a) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2598) inserted "except an investigation initiated pursuant to section 302(b)(2)(A) involving rights under the Agreement on Trade–Related Aspects of Intellectual Property Rights (referred to in section 101(d)(15) of the Uruguay Round Agreements Act) or the GATT 1994 (as defined in section 2(1)(B) of that Act) relating to products subject to intellectual property protection,".

(3)(A)[278] If an investigation is initiated under this chapter by reason of section 302(b)(2) and—

(i) the Trade Representative considers that rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights or the GATT 1994 relating to products subject to intellectual property protection are involved, the Trade Representative shall make the determination required under paragraph (1) not later than 30 days after the date on which the dispute settlement procedure is concluded; or

(ii) the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, 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 not 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)[279] 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,[280] 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

[278] Sec. 2201(b) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2599) amended and restated para. (3)(A). Previously, sec. 20(c)(6) of Public Law 104–295 (110 Stat. 3528) and sec. 314(d)(2)(A) of Public Law 103–465 (108 Stat. 4940) had amended para. (3)(A).

[279] Sec. 314(d)(2)(B) of Public Law 103–465 (108 Stat. 4940) struck out "any investigation initiated by reason of section 302(b)(2)" and inserted in lieu thereof "an investigation initiated by reason of section 302(b)(2) (other than an investigation involving a trade agreement)".

[280] Sec. 314(d)(3) of Public Law 103–465 (108 Stat. 4941) struck out "(other than the agreement on subsidies and countervailing measures described in section 2(c)(5) of the Trade Agreements Act of 1979)" after "in a trade agreement".

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.[281] 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 a satisfactory

[281] 19 U.S.C. 2415.

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)(ii)[282] 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 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

[282] Sec. 2201(c) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2599) struck out "section 304(a)(3)(A)" and inserted in lieu thereof "section 304(a)(3)(A)(ii)".

the export targeting that is the subject of the affirmative determination made under section 304(a)(1)(A).

SEC. 306.[283] **MONITORING OF FOREIGN COMPLIANCE.**

(a)[284] IN GENERAL.—The Trade Representative shall monitor the implementation of each measure undertaken, or agreement that is entered into, by a foreign country 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)[284] 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)[285] WTO DISPUTE SETTLEMENT RECOMMENDATIONS.—

(A) FAILURE TO IMPLEMENT RECOMMENDATION.—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.

(B)[285] REVISION OF RETALIATION LIST AND ACTION.—

(i) IN GENERAL.—Except as provided in clause (ii), in the event that the United States initiates a retaliation list or takes any other action described in section 301(c)(1)(A) or (B) against the goods of a foreign country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, the Trade Representative shall periodically revise the list or action to affect other goods of the country or countries that have failed to implement the recommendation.

(ii) EXCEPTION.—The Trade Representative is not required to revise the retaliation list or the action described in clause (i) with respect to a country if—

(I) the Trade Representative determines that implementation of a recommendation made pursu-

[283] 19 U.S.C. 2416. Sec. 901 of Public Law 96–39 inserted sec. 306 (93 Stat. 299).

[284] Sec. 314(e) of Public Law 103–465 (108 Stat. 4941) amended subsecs. (a) and (b).

[285] Sec. 407 of Public Law 106–200 (114 Stat. 293) struck out "If the" at the beginning of para. (2), inserted in lieu thereof "(A) FAILURE TO IMPLEMENT RECOMMENDATION.—If the", and added new subparas. (B) through (F).

ant to a dispute settlement proceeding described in clause (i) by the country is imminent; or

(II) the Trade Representative together with the petitioner involved in the initial investigation under this chapter (or if no petition was filed, the affected United States industry) agree that it is unnecessary to revise the retaliation list.

(C) SCHEDULE FOR REVISING LIST OR ACTION.—The Trade Representative shall, 120 days after the date the retaliation list or other section 301(a) action is first taken, and every 180 days thereafter, review the list or action taken and revise, in whole or in part, the list or action to affect other goods of the subject country or countries.

(D) STANDARDS FOR REVISING LIST OR ACTION.—In revising any list or action against a country or countries under this subsection, the Trade Representative shall act in a manner that is most likely to result in the country or countries implementing the recommendations adopted in the dispute settlement proceeding or in achieving a mutually satisfactory solution to the issue that gave rise to the dispute settlement proceeding. The Trade Representative shall consult with the petitioner, if any, involved in the initial investigation under this chapter.

(E) RETALIATION LIST.—The term "retaliation list" means the list of products of a foreign country or countries that have failed to comply with the report of the panel or Appellate Body of the WTO and with respect to which the Trade Representative is imposing duties above the level that would otherwise be imposed under the Harmonized Tariff Schedule of the United States.

(F) REQUIREMENT TO INCLUDE RECIPROCAL GOODS ON RETALIATION LIST.—The Trade Representative shall include on the retaliation list, and on any revised lists, reciprocal goods of the industries affected by the failure of the foreign country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, except in cases where existing retaliation and its corresponding preliminary retaliation list do not already meet this requirement.

(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.[286] 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—

[286] 19 U.S.C. 2417.

(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.[264]

(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.[287] REQUEST FOR INFORMATION.

(a) IN GENERAL.—Upon receipt of written request therefor from any person, the Trade Representative shall make available to that

[287] 19 U.S.C. 2418.

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.[288] 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

[288] 19 U.S.C. 2419.

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.[289] 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 potential 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.

[289] 19 U.S.C. 2420. Sec. 314(f) of Public Law 103–465 (108 Stat. 4941) amended and restated sec. 310, which was originally added by sec. 1302 of Public Law 100–418 (102 Stat. 1176).

(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.

TITLE IV—TRADE RELATIONS WITH COUNTRIES NOT RECEIVING NONDISCRIMINATORY TREATMENT [290]

[290] Sec. 103(a)(1) of Public Law 106–286 (114 Stat. 882) struck out "CURRENTLY" from the title IV heading, which previously read "TRADE RELATIONS WITH COUNTRIES NOT CURRENTLY RECEIVING NONDISCRIMINATORY TREATMENT". See also section on MFN extensions, suspensions, and terminations, this volume, beginning on page 1170.

On October 7, 1992, the President determined that furnishing assistance, restoring nondiscriminatory trade treatment, and lifting the ban on Export-Import Bank loans for Afghanistan was in the national interest of the United States (Presidential Determination No. 93–3; 57 F.R. 47557; October 19, 1992). The application of Title IV of the Trade Act of 1974 has been terminated with respect to the following countries:

Czech and Slovak Federal Republics and Hungary: On April 10, 1992, the President determined that title IV of this Act should no longer apply to the Czech and Slovak Federal Republic or to the Republic of Hungary, pursuant to secs. 2(a)(1) and 2 of Public Law 102–182 (Presidential Determination No. 92–21; 57 F.R. 12863; April 14, 1992; and Proclamation 6419 of April 10, 1992; 57 F.R. 12865).

Prior to Public Law 102–182, Presidential Determination No. 90–3 of October 26, 1989 (54 F.R. 46591), stated that the Republic of Hungary was not in violation of paras. (1), (2), or (3) of subsec. 402(a) or paras. (1), (2), or (3) of subsec. 409(a). See also note at 409(a).

Also prior to the passage of Public Law 102–182, in Executive Order 12702 of February 29, 1990 (55 F.R. 6231), the President waived the application of subsecs. 402(a) and (b) with respect to Czechoslovakia. Subsequently, the President determined that the Czech and Slovak Federal Republic was not in violation of paras. (1), (2), or (3) of subsec. 402(a), or of paras. (1), (2), or (3) of subsec. 409(a) (Presidential Determination No. 92–3 of October 16, 1991; 56 F.R. 55203; October 25, 1991).

Mongolia: On July 1, 1996, the President determined that Title IV of this Act should no longer apply to Mongolia, pursuant to sec. 2414 of Public Law 106–36 (113 Stat. 180) (Presidential Determination No. 7207 (64 F.R. 36549). Prior to that date, Executive Order 12746 of January 21, 1991 (56 F.R. 2837) waived the application of secs. 402 (a) and (b) with respect to Mongolia.

Bulgaria: On September 27, 1996, the President determined that Title IV of this Act should no longer apply to Bulgaria (Proclamation No. 6922 of September 27, 1996; 61 F.R. 51205), pursuant to Public Law 104–162 (110 Stat. 1414). Subsequently, the President determined that Bulgaria was not in violation of paras. (1), (2), or (3) of subsec. 402(a) or of paras. (1), (2), or (3) of subsec. 409(a) (Presidential Determination No. 93–26 of June 3, 1993; 58 F.R. 33007).

Prior to that date, Executive Order 12745 waived the application of secs. 402 (a) and (b) with respect to Mongolia (January 22, 1991; 56 F.R. 2835).

Romania: On November 12, 1996, the President determined that Title IV should no longer apply to Romania (Proclamation No. 6951; 61 F.R. 58127), pursuant to sec. 2 of Public Law 104–171 (110 Stat. 1539). Subsequently, the President determined that Romania was not in violation of paras. (1), (2), or (3) of subsec. 402(a) or of paras. (1), (2), or (3) of subsec. 409(a) (Presidential Determination No. 95–22 of May 19, 1995; 60 F.R. 29463).

Prior to that date, Executive Order 12772 (August 17, 1991; 56 F.R. 41621) waived the application of secs. 402 (a) and (b) with respect to Romania.

CHAPTER 1—TRADE RELATIONS WITH CERTAIN COUNTRIES[291]

SEC. 401.[292] 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.[293] 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

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Albania and Kyrgyzstan: On June 29, 2000, the President determined that title IV of this Act should no longer apply to Albania and Kyrgyzstan, pursuant to secs. 301(b) and 302(b) of Public Law 106–200, respectively (Presidential Proclamation No. 7326 of June 29, 2000; 65 F.R. 41547).

Prior to Public Law 106–200, the President had waived the application of secs. 402 (a) and (b) with respect to Albania (Executive Order 12809, June 3, 1992, 57 F.R. 23925; Presidential Determination No. 92–26; 57 F.R. 48711) and Kyrgyzstan (Executive Order 12802, April 16, 1992, 57 F.R. 14321; Presidential Determination No. 92–20, 57 F.R. 13623).

Georgia: On December 29, 2000, the President determined that title IV of this Act should no longer apply to the Republic of Georgia, pursuant to sec. 3002 of Public Law 106–476 (Presidential Proclamation No. 7389 of December 29, 2000, 66 F.R. 703, January 3, 2001).

Prior to Public Law 106–476, the President had waived the application of subsecs. 402 (a) and (b) with respect to Georgia (Executive Order No. 12809, June 3, 1992, 57 F.R. 23925; Presidential Determination No. 92–25, 57 F.R. 22147).

China: On December 27, 2001, the President determined that chapter 1 of title IV of the Act should no longer apply to the People's Republic of China (Proclamation 7516; 67 F.R. 479), pursuant to Public Law 106–286 (114 Stat. 882).

Prior to Public Law 106–286, the President waived the application of subsecs. 402 (a) and (b) of the Act with respect to China (Executive Order 12167, October 23, 1979, 44 F.R. 61167).

[291] Sec. 103(a)(2) of Public Law 106–286 (114 Stat. 882) inserted "CHAPTER 1—TRADE RELATIONS WITH CERTAIN COUNTRIES".

[292] 19 U.S.C. 2431. Secs. 101 and 102 of Public Law 106–286 (114 Stat. 881) provided:

"SEC. 101. TERMINATION OF APPLICATION OF CHAPTER 1 OF TITLE IV OF THE TRADE ACT OF 1974 TO THE PEOPLE'S REPUBLIC OF CHINA

"(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of chapter 1 of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), as designated by section 3(a)(2) of this Act, the President may—

"(1) determine that such chapter should no longer apply to the People's Republic of China; and

"(2) after making a determination under paragraph (1) with respect to the People's Republic of China, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

"(b) ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION.—Prior to making the determination provided for in subsection (a)(1) and pursuant to the provisions of section 122 of the Uruguay Round Agreements Act (19 U.S.C. 3532), the President shall transmit a report to Congress certifying that the terms and conditions for the accession of the People's Republic of China to the World Trade Organization are at least equivalent to those agreed between the United States and the People's Republic of China on November 15, 1999.

"SEC. 102. EFFECTIVE DATE.

"(a) EFFECTIVE DATE OF NONDISCRIMINATORY TREATMENT.—The extension of nondiscriminatory treatment pursuant to section 101(a) shall be effective no earlier than the effective date of the accession of the People's Republic of China to the World Trade Organization.

"(b) TERMINATION OF APPLICABILITY OF TITLE IV.—On and after the effective date under subsection (a) of the extension of nondiscriminatory treatment to the products of the People's Republic of China, chapter 1 of title IV of the Trade Act of 1974 (as designated by section 103(a)(2) of this Act) shall cease to apply to that country.".

[293] 19 U.S.C. 2432. Popularly referred to as the Jackson-Vanik amendment.

Public Law 102–420 (106 Stat. 2149; 19 U.S.C. 2432 note) withdrew MFN status from Serbia and Montenegro.

receive nondiscriminatory treatment (normal trade relations),[294] such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to emigrate;

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose of 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)[295] After the date of the enactment of this Act, (A) products of a nonmarket economy country may be eligible to receive nondiscriminatory treatment (normal trade relations), (B) such country may participate in any program of the Government of the United States which extends 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—

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[294] Sec. 5003(b)(2) of Public Law 105–206 (112 Stat. 789) struck out "most-favored-nation treatment" each place it appears in sec. 402, and inserted in lieu thereof "normal trade relations".

[295] The President, in Executive Order 13313 (July 31, 2003; 68 F.R. 46073), delegated the congressional reporting function required under sec. 402(b) to the Secretary of the State.

Presidential determinations of "no violation" pursuant to subsec. (b) have been made for the following countries: Hungary, October 26, 1989 (Presidential Determination No. 89–14; 54 F.R. 46591); Czech and Slovak Federal Republics, October 16, 1991 (Presidential Determination No. 92–3; 56 F.R. 52203); Bulgaria, June 3, 1993 (Presidential Determination No. 93–26; 58 F.R. 33007); Russian Federation, September 21, 1994 (Presidential Determination No. 94–51; 59 F.R. 49783), September 24, 1994; Romania, May 19, 1995 (Presidential Determination No. 95–22; 60 F.R. 29463); Mongolia, September 4, 1996 (Presidential Determination No. 96–51, 61 F.R. 48603); Armenia, Azerbaijan, Georgia, Moldova, and Ukraine, June 3, 1997 (Presidential Determination No. 97–27; 62 F.R. 32017); Albania, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan, December 5, 1997 (Presidential Determination No. 98–7, 62 F.R. 66253).

On April 7, 1998, the President waived the application of secs. 402(a) and (b) with respect to Vietnam (Presidential Determination No. 98–17, 57 F.R. 14329; Executive Order 13079, 63 F.R. 17309).

On August 8, 2003, the President waived the application of secs. 402(a) and (b) with respect to Turkmenistan (Presidential Determination No. 2003–31, 68 F.R. 49325; Executive Order 13314, 68 F.R. 48249.

(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 subjection (d), and if he reports to the Congress that—

(A)[296] 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.

[296] The Presidential waiver by Executive order provision pursuant to sec. (c)(2)(A) has been applied with respect to the following countries:

Romania: April 24, 1975 (Presidential Determination No. 75–15, 40 F.R. 2060; Executive Order No. 11854, 40 F. R. 18391); in effect until 1988. Hungary: April 7, 1978 (Presidential Determination No. 78–10, 43 F.R. 16691; Executive Order No. 12501, 43 F. R. 15131). People's Republic of China: October 23, 1979 (Presidential Determination No. 80–2, 44 F.R. 64059; Executive Order No. 12167, 44 F. R. 61167). Czechoslovakia: February 20, 1990 (Presidential Determination No. 90–10, 55 F.R. 8889; Executive Order No. 12702, 55 F. R. 6231). German Democratic Republic: (Presidential Determination No. 90–30 of August 15, 1990; 55 F.R. 35421; Executive Order 12726, 55 F.R. 33637). Soviet Union: December 29, 1990 (Presidential Determination No. 91–11, 56 F.R. 1561; Executive Order 12740, 56 F.R. 355). Bulgaria: January 22, 1991 (Presidential Determination No. 91–18, 56 F.R. 4169; Executive Order 12745, 56 F.R. 2835). Mongolia: January 23, 1991 (Presidential Determination No. 91–19, 56 F.R. 4171; Executive Order 12746, 56 F.R. 2837). Romania: August 17, 1991 (second waiver) (Presidential Determination No. 91–48, 56 F.R. 43861; Executive Order 12772, 56 F.R. 41621). Armenia: April 3, 1992 (Presidential Determination No. 92–20, 57 F.R. 13623; Executive Order 12798, 57 F.R. 12175). Belarus [Republic of Byelarus]: Kyrgyzstan, and Russian Federation: April 6, 1992 (Presidential Determination No. 92–20, 57 F.R. 13623; Executive Order 12802, 57 F.R. 14321). Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan: June 3, 1992 (Presidential Determination No. 92–25, 57 F.R. 22147; Executive Order 12809, 57 F.R. 23925); Albania: June 3, 1992 (Presidential Determination No. 92–26, 57 F.R. 48711; Executive Order 12809, 57 F.R. 23925). Tajikistan and Turkmenistan: June 24, 1992 (Presidential Determination No. 92–31, 57 F.R. 24931; Executive Order 12811, 57 F.R. 28585); Belarus: (second waiver) (Executive Order No. 13220, 66 F.R. 35525, July 5, 2000); Belarus: (third waiver) (Executive Order No. 13220, 66 F.R. 35527, July 5, 2001).

(d)(1)[297] If[298] the President determines that the further extension of the waiver authority granted under subsection (c) of this section 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 sub-

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[297] Sec. 132(a)(2) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 644) struck out paras. (1) through (4), redesignated para. (5) as para. (1), and added a new para. (2). See box note, page 291, relating to effective date of amendment.

Prior to this amendment, in Presidential Determination 89–14 of May 31, 1989 (54 F.R. 26943), the President determined "pursuant to Subsection 402(d)(5) of the Act, that the further extension of the waiver authority granted by Subsection 402(c) of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that the continuation of the waivers applicable to the Hungarian People's Republic and the People's Republic of China will substantially promote the objectives of Section 402 of the Act.".

The waiver applicable to the People's Republic of China was extended on May 24, 1990 (Presidential Determination No. 90–21, 55 F.R. 23183); on May 29, 1991 (Presidential Determination No. 91–36, 56 F.R. 26757), on June 2, 1992 (Presidential Determination No. 92–29, 57 F.R. 24539); on May 28, 1993 (Presidential Determination No. 93–23, 58 F.R. 31329); on June 2, 1994 (Presidential Determination No. 94–26, 59 F.R. 31103); on June 2, 1995 (Presidential Determination No. 95–23, 60 F.R. 31047); on May 31, 1996 (Presidential Determination No. 96–29, 61 F.R. 29455); on May 29, 1997 (Presidential Determination No. 97–25, 62 F.R. 31313); on June 3, 1998 (Presidential Determination No. 98–25, 63 F.R. 32705); on June 3, 1999 (Presidential Determination No. 99–28, 64 F.R. 31113); on June 2, 2000 (Presidential Determination No. 2000–23; 65 F.R. 36313); and on June 1, 2001 (Presidential Determination No. 2001–16, 66 F.R. 30631).

See also Executive Order 12850 of May 28, 1993 (58 F.R. 31327).

Similar waivers were extended to Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan on June 2, 1994 (Presidential Determination No. 94–27, 59 F.R. 31105). These waivers were continued for the same countries except Romania and Russian Federation on June 2, 1995 (Presidential Determination No. 95–24, 60 F.R. 31049), on June 3, 1996 (Presidential Determination No. 96–30, 61 F.R. 29457); and on June 3, 1997 for Albania, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan (Presidential Determination No. 97–28, 62 F.R. 32019).

The Presidential waiver for Belarus was extended on June 3, 1998 (Presidential Determination No. 98–28, 63 F.R. 32709, June 16, 1998); on June 3, 1999 (Presidential Determination No. 99–26, 64 F.R. 31109, June 11, 1999); on June 2, 2000 (Presidential Determination No. 2000–22, 65 F.R. 36311, June 8, 2000); on June 3, 2002 (Presidential Determination No. 02–21, 67 F.R. 40833, June 14, 2002); on May 29, 2003 (Presidential Determination No. 2003–25, 68 F.R. 35527, June 16, 2003); and on June 3, 2004 (Presidential Determination No. 2004–33, 69 F.R. 32431, June 9, 2004).

The Presidential waiver for Turkmenistan was extended on June 3, 2004 (Presidential Determination No. 2004–32, 69 F.R. 32429, June 9, 2004).

The Presidential waiver for Vietnam was extended on June 3, 1998 (Presidential Determination No. 98–27, 63 F.R. 32707); on June 3, 1999 (Presidential Determination No. 99–27, 64 F.R. 31111); on June 2, 2000 (Presidential Determination No. 2000–21, 65 F.R. 36309); on June 1, 2001 (Presidential Determination No. 2001–17, 66 F.R. 30633, June 7, 2001); on June 3, 2002 (Presidential Determination No. 02–22, 67 F.R. 40835, June 14, 2002); on May 29, 2003 (Presidential Determination 2003–24, 68 F.R. 35525, June 16, 2003); on June 3, 2004 (Presidential Determination 2004–34, 69 F.R. 32433, June 9, 2004); and on June 27, 2005 (Secretary of State Determination, unnumbered, 70 F.R. 36998, June 27, 2005).

The President, in Executive Order 13346 (July 8, 2004; 69 F.R. 41905), delegated the reporting functions under sec. 401(d)(1) to the Secretary of State.

[298] Sec. 132(a)(1) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 643) struck out "If the waiver authority granted by subsection (c) of this section has been extended under paragraph (3) or (4) for any country for the 12-month period referred to in such paragraphs, and the President determines that the further extension of such authority will" and inserted in lieu thereof "If the President determines that the further extension of the waiver authority granted under subsection (c) of this section will". See box note, page 291, relating to effective date of amendment.

stantially 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).[299]

(2)[299] (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.[300] 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—

[299] Sec. 132(a)(1)(C) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 644) struck out ", unless before the end of the 60-day period following such previous 12–month extension, either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of the Members present and voting in the House and under the procedures set forth in section 153, a resolution disapproving the extension of such authority generally or with respect to such country specifically. Such authority shall cease to be effective with respect to all countries on the date of the adoption by either House before the end of such 60-day period of a resolution disapproving the extension of such authority, and shall cease to be effective with respect to any country on the date of the adoption by either House before the end of such 90-day period of a resolution disapproving the extension of such authority with respect to such country" and inserted text beginning at ", unless * * *". See box note, page 291, relating to effective date of amendment.

[300] 19 U.S.C. 2433.

(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 the enactment of this Act.

SEC. 404.[301] 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 periods 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[302] of the United States.

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[301] 19 U.S.C. 2434. See also Public Law 102–157 (105 Stat. 1040), relating to Mongolia; Public Law 102–158 (105 Stat. 1041), relating to Bulgaria; Public Law 102–197 (105 Stat. 1622), relating to the Union of Soviet Socialist Republics; Public Law 102–363 (106 Stat. 969), relating to Albania, Public Law 104–162 (110 Stat. 1414), relating to Bulgaria, and Public Law 104–171 (110 Stat. 1539), relating to Romania.

See also Public Law 102–182 (105 Stat. 1233) as it relates to Czechoslovakia, Estonia, Hungary, Latvia, and Lithuania; Public Law 102–420 (106 Stat. 2149) relating to Serbia and Montenegro; Public Law 106–36 (113 Stat. 180) relating to Mongolia; Public Law 106–200 (114 Stat. 257) relating to Albania and Kyrgyzstan; Public Law 106–286 (114 Stat. 880) relating to China; Public Law 106–476 (114 Stat. 2175) relating to Georgia; Public Law 107–52 (115 Stat. 268) relating to Vietnam; and Public Law 108–429 (118 Stat. 2434) relating to Armenia.

[302] Sec. 1214(j)(3) of Public Law 100–418 (102 Stat. 1158) struck out "Tariff Schedules for" and inserted in lieu thereof "Harmonized Tariff Schedule".

SEC. 405.[303] **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.[304]

(b) Any such bilateral commercial agreement shall—

(1)[305] 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 provi-

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[303] 19 U.S.C. 2435.

[304] Bilateral agreements pursuant to sec. 405 were entered into with Romania on April 24, 1975 (Presidential Proclamation No. 4369, 40 F.R. 18389); Hungary on April 7, 1978 (Presidential Proclamation No. 4560, 43 F.R. 15125); China on October 23, 1979 (Presidential Proclamation No. 4697, 44 F.R. 61161); Czech and Slovak Federal Republic on September 6, 1990 (Presidential Proclamation No. 6175, 55 F.R. 37643); Bulgaria on June 24, 1991 (Presidential Proclamation No. 6307, 56 F.R. 29787); Mongolia on June 24, 1991 (Presidential Proclamation No. 6308, 56 F.R. 29834); Union of Soviet Socialist Republics on August 2, 1991 (Presidential Proclamation No. 6320, 56 F.R. 37407); Albania on June 15, 1992 (Presidential Proclamation No. 6445, 57 F.R. 26921); Romania (second agreement) on June 22, 1992 (Presidential Proclamation No. 6449, 57 F.R. 28033); Vietnam on June 8, 2001 (Presidential Proclamation No. 7449, 66 F.R. 31375).

Pursuant to sec. 405, on September 6, 1990, the President determined "that the 'Agreement on Trade Relations Between the Government of the United States of America and the Government of the Czechoslovak Federative Republic' will promote the purposes of the Trade Act and is in the national interest." (Presidential Memorandum of September 6, 1990; 55 F.R. 39259).

Similar determinations were made relating to the Republic of Bulgaria on June 24, 1991 (Presidential Determination No. 91–43; 56 F.R. 31037; July 8, 1991); Mongolian People's Republic on June 24, 1991 (Presidential Determination No. 91–44; 56 F.R. 31039; July 8, 1991); Union of Soviet Socialist Republics on August 2, 1991 (Presidential Determination No. 91–47; 56 F.R. 40741; August 15, 1991); Republic of Albania on June 15, 1992 (Presidential Determination No. 92–33; 57 F.R. 28583; June 26, 1992; and Proclamation 6445 of June 15, 1992; 57 F.R. 26921).

[305] On June 22, 1990, the President determined "that actual or foreseeable reductions in U.S. tariffs and non-tariff trade barriers resulting from multilateral negotiations are satisfactorily reciprocated by the Republic of Hungary. I have further found that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the Republic of Hungary." (Presidential Determination No. 90–27 of June 22, 1990; 55 F.R. 25945).

A similar determination was made for the People's Republic of China on January 31, 1992 (Presidential Determination No. 92–12; 57 F.R. 19077); and reconfirmed on June 21, 1996 (Presidential Determination No. 96–33; 61 F.R. 32631).

Similar determinations were made relating to Belarus on March 7, 1996 (Presidential Determination No. 96–15; 61 F.R. 49935); Kazakhstan on March 7, 1996 (Presidential Determination No. 96–16; 61 F.R. 49937); Albania on August 27, 1996 (Presidential Determination No. 96–44; 61 F.R. 45849); Kyrgyzstan on August 27, 1996 (Presidential Determination No. 96–45; 61 F.R. 45861); Ukraine on August 27, 1996 (Presidential Determination No. 96–46; 61 F.R. 45863); Armenia on August 27, 1996 (Presidential Determination No. 96–47; 61 F.R. 45865); Moldova on August 27, 1996 (Presidential Determination No. 96–48; 61 F.R. 45867); Georgia on August 27, 1997 (Presidential Determination No. 96–49; 61 F.R. 45869); Turkmenistan on November 20, 1996 (Presidential Determination No. 97–5; 61 F.R. 59303); Uzbekistan on November 26, 1996 (Presidential Determination No. 97–6; 61 F.R. 63693); and Tajikistan on November 26, 1996 (Presidential Determination No. 97–7; 61 F.R. 63695).

sions 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 this 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[306] for the establishment of 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 purposes of this Act.

(c)[307] 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.[308] MARKET DISRUPTION.

(a)(1) Upon the filing of a petition by an entity described in section 202(a),[309] upon request of the President or the United States

[306] Sec. 1106(f)(3) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 312) struck out "those" and inserted in lieu thereof "arrangement".

[307] Sec. 132(b)(1) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 645) amended and restated subsec. (c). See box note, page 291, relating to effective date of amendment.

[308] 19 U.S.C. 2436. The President issued a memorandum for the USTR on April 21, 1994 in which he "determined that import relief for honey is not in the national economic interest of the United States. However, I am directing the USTR, in consultation with the appropriate agencies, to develop a plan to monitor imports of honey from China . . ." (59 F.R. 19627).

[309] Sec. 406 was amended by sec. 1411(b) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1242) which substituted "202(a)" in lieu of "201(a)(1)" in subsecs. (a)(1) and (d); and inserted "subsections (a)(3), (b)(4), and (c)(4) of section 202" in lieu of "subsections (a)(2), (b)(3), and (c) of section 201" in subsec. (a)(2).

Sec. 1411(c) of that Act further stated the following:

Trade Representative,[310] 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[309] 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 exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b)[311] 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

"(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) apply with respect to investigations initiated under section 406(a) of the Trade Act of 1974 on or after the date of the enactment of this Act.".

[310] This position, formerly entitled the Special Representative for Trade Negotiations, was redesignated as the United States Trade Representative pursuant to sec. 1(b)(1) of Reorganization Plan No. 3 of 1979.

[311] Sec. 1411(a) of Public Law 100–418 (102 Stat. 1241) amended and restated subsec. (b).

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)[312] 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 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)[309] 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)[313] 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-

[312] Sec. 1411(a)(2) of Public Law 100–418 (102 Stat. 1242) added the words "referred to in subsection (b)".

[313] Sec. 1411(a) of Public Law 100–418 (102 Stat. 1241) inserted "(A)" after "(2)" and added new subparas. "(B)" and "(C)". Previously, sec. 1001(a)(4) of Public Law 106–36 (113 Stat. 130) made technical corrections to subparas. (B) and (C).

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.

SEC. 407.[314] 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)[315] (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[316] 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

[314] 19 U.S.C. 2437.

[315] Sec. 132(b)(3) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 646) struck out paras. (1) and (2) of subsec. (c), inserted new text for para. (1), and redesignated para. (3) as para. (2). See box note, page 291, relating to effective date of amendment.

[316] Sec. 132(c)(1)(A) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 646) struck out "either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval (under the procedures set forth in section 152)" and inserted in lieu thereof "a joint resolution described in section 152(a)(1)(B) is enacted into law that disapproves". See box note, page 291, relating to effective date of amendment.

the enactment[317] 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[318] 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.[319]

SEC. 408.[320] PAYMENT BY CZECHOSLOVAKIA OF AMOUNTS OWED UNITED STATES CITIZENS AND NATIONALS.

(a) The arrangement initiated 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.[321] FREEDOM TO EMIGRATE TO JOIN A VERY CLOSE RELATIVE IN THE UNITED STATES.

(a)[322] 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—

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[317] Sec. 132(c)(1)(B) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 646) struck out "the date of the adoption" and inserted in lieu thereof "the end of the 60-day period beginning with the date of the enactment". See box note, page 291, relating to effective date of amendment.

[318] Sec. 1214(j)(4) of Public Law 100–418 (102 Stat. 1158) struck out "Tariff Schedules of" and inserted in lieu thereof "Harmonized Tariff Schedule of".

[319] Sec. 132(c)(1)(C) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 646) added the last sentence. See box note, page 291, relating to effective date of amendment.

[320] 19 U.S.C. 2438.

[321] 19 U.S.C. 2439.

[322] A Presidential Determination of January 22, 1991 (unnumbered) stated that the Republic of Hungary continued "to meet the emigration criteria of the Jackson-Vanik amendment to, and section 409 of, the Trade Act of 1974. This determination allowed for Hungary to retain most favored nation (MFN) status without an annual waiver.". The President extended this determination on August 5, 1991 (letter to Speaker of the House and President of the Senate).

(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.[323] * * * [Repealed—1996]

SEC. 411.[324] * * * [Repealed—1998]

CHAPTER 2—RELIEF FROM MARKET DISRUPTION TO INDUSTRIES AND DIVERSION OF TRADE TO THE UNITED STATES MARKET[325]

SEC. 421.[326] **ACTION TO ADDRESS MARKET DISRUPTION.**

(a) PRESIDENTIAL ACTION.—If a product of the People's Republic of China is being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of a like or directly

[323] Formerly at 19 U.S.C. 2440. Sec. 17 of Public Law 104–295 (110 Stat. 3524) repealed sec. 410, which had provided for an "East-West trade statistics monitoring system".

[324] Formerly at 19 U.S.C. 2441. Sec. 1401(b)(2) of Public Law 105–362 (112 Stat. 3294) repealed sec. 411, which had established an "East-West Foreign Trade Board". Sec. 1001(a)(4) Public Law 106–36 (113 Stat. 130) repealed the section (and the item relating to it in the table of contents) as well, failing to take into account its earlier repeal.

[325] Sec. 103(a)(3) of Public Law 106–286 (114 Stat. 882) added this chapter heading and secs. 421 through 423.

[326] 19 U.S.C. 2451a.

competitive product, the President shall, in accordance with the provisions of this section, proclaim increased duties or other import restrictions with respect to such product, to the extent and for such period as the President considers necessary to prevent or remedy the market disruption.

(b) INITIATION OF AN INVESTIGATION.—(1) Upon the filing of a petition by an entity described in section 2252(c) of this title, upon request of the President or the United States Trade Representative (in this part referred to as the "Trade Representative"), upon resolution of either the Committee on and Means of the House of Representatives, or the Committee on Finance of the Senate (in this chapter[327] referred to as the 'Committees') or on this chapter[327] referred to as the 'Commission') shall promptly make an investigation to determine whether products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

(2) The limitations on investigations set forth in section 202(h)(1) of the Trade Act of 1974 (19 U.S.C. 2252(h)(1)) shall apply to investigations conducted under this section.

(3) The provisions of subsections (a)(8) and (i) of section 202 of the Trade Act of 1974 (19 U.S.C. 2252(a)(8) and (i)), relating to treatment of confidential business information, shall apply to investigations conducted under this section.

(4) Whenever a petition is filed, or a request or resolution is received, under this subsection, the Commission shall transmit a copy thereof to the President, the Trade Representative, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, except that in the case of confidential business information, the copy may include only nonconfidential summaries of such information.

(5) 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 an opportunity to be present, to present evidence, to respond to the presentations of other parties, and otherwise to be heard.

(c) MARKET DISRUPTION.—(1) For purposes of this section, market disruption exists whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

(2) For purposes of paragraph (1) the term "significant cause" refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

(d) FACTORS IN DETERMINATION.—In determining whether market disruption exists, the Commission shall consider objective factors, including—

[327] Sec. 2204(d)(3) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2592) struck out "subtitle" and inserted in lieu thereof "chapter".

(1) the volume of imports of the product which is the subject of the investigation;

(2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and

(3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.

The presence or absence of any factor under paragraph (1), (2), or (3) is not necessarily dispositive of whether market disruption exists.

(e) TIME FOR COMMISSION DETERMINATIONS.—The Commission shall make and transmit to the President and the Trade Representative its determination under subsection (b)(1) at the earliest practicable time, but in no case later than 60 days (or 90 days in the case of a petition requesting relief under subsection (i)) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, under subsection (b). If the Commissioners voting are equally divided with respect to its determination, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(f) RECOMMENDATIONS OF COMMISSION ON PROPOSED REMEDIES.—If the Commission makes an affirmative determination under subsection (b), or a determination which the President or the Trade Representative may consider as affirmative under subsection (e), the Commission shall propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determination under subsection (b) are eligible to vote on the proposed action to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (g), separate views regarding what action, if any, should be taken to prevent or remedy market disruption.

(g) REPORT BY COMMISSION.—(1) Not later than 20 days after a determination under subsection (b) is made, the Commission shall submit a report to the President and the Trade Representative.

(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, or may be considered by the President or the Trade Representative as affirmative under subsection (e), the recommendations of the Commission on proposed remedies under subsection (f) 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) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection (f) 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 (but shall not include confidential business information) and cause a summary thereof to be published in the Federal Register.

(h) OPPORTUNITY TO PRESENT VIEWS AND EVIDENCE ON PROPOSED MEASURE AND RECOMMENDATION TO THE PRESIDENT.—(1) Within 20 days after receipt of the Commission's report under subsection (g) (or 15 days in the case of an affirmative preliminary determination under subsection (i)(1)(B)), the Trade Representative shall publish in the Federal Register notice of any measure proposed by the Trade Representative to be taken pursuant to subsection (a) and of the opportunity, including a public hearing, if requested, for importers, exporters, and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest.

(2) Within 55 days after receipt of the report under subsection (g) (or 35 days in the case of an affirmative preliminary determination under subsection (i)(1)(B)), the Trade Representative, taking into account the views and evidence received under paragraph (1) on the measure proposed by the Trade Representative, shall make a recommendation to the President concerning what action, if any, to take to prevent or remedy the market disruption.

(i) CRITICAL CIRCUMSTANCES.—(1) When a petition filed under subsection (b) alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to the product identified in the petition, the Commission shall, not later than 45 days after the petition containing the request is filed—

(A) determine whether delay in taking action under this section would cause damage to the relevant domestic industry which would be difficult to repair; and

(B) if the determination under subparagraph (A) is affirmative, make a preliminary determination of whether imports of the product which is the subject of the investigation have caused or threatened to cause market disruption.

If the Commissioners voting are equally divided with respect to either of its determinations, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(2) On the date on which the Commission completes its determinations under paragraph (1), the Commission shall transmit a report on the determinations to the President and the Trade Representative, including the reasons for its determinations. If the determinations under paragraph (1) are affirmative, or may be considered by the President or the Trade Representative as affirmative under paragraph (1), the Commission shall include in its report its recommendations on proposed provisional measures to be taken to prevent or remedy the market disruption. Only those members of

the Commission who agreed to the affirmative determinations under paragraph (1) are eligible to vote on the proposed provisional measures to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determinations may submit, in the report, dissenting or separate views regarding the determination and any recommendation of provisional measures referred to in this paragraph.

(3) If the determinations under paragraph (1) are affirmative, or may be considered by the President or the Trade Representative as affirmative under paragraph (1), the Trade Representative shall, within 10 days after receipt of the Commission's report, determine the amount or extent of provisional relief that is necessary to prevent or remedy the market disruption and shall provide a recommendation to the President on what provisional measures, if any, to take.

(4)(A) The President shall determine whether to provide provisional relief and proclaim such relief, if any, within 10 days after receipt of the recommendation from the Trade Representative.

(B) Such relief may take the form of—

(i) the imposition of or increase in 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).

(C) Any provisional action proclaimed by the President pursuant to a determination of critical circumstances shall remain in effect not more than 200 days.

(D) Provisional relief shall cease to apply upon the effective date of relief proclaimed under subsection (a), upon a decision by the President not to provide such relief, or upon a negative determination by the Commission under subsection (b).

(j) AGREEMENTS WITH THE PEOPLE'S REPUBLIC OF CHINA.—(1) The Trade Representative is authorized to enter into agreements for the People's Republic of China to take such action as necessary to prevent or remedy market disruption, and should seek to conclude such agreements before the expiration of the 60-day consultation period provided for under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO, which shall commence not later than 5 days after the Trade Representative receives an affirmative determination provided for in subsection (e) or a determination which the Trade Representative considers to be an affirmative determination pursuant to subsection (e).

(2) If no agreement is reached with the People's Republic of China pursuant to consultations under paragraph (1), or if the President determines than an agreement reached pursuant to such consultations is not preventing or remedying the market disruption at issue, the President shall provide import relief in accordance with subsection (a).

(k) STANDARD FOR PRESIDENTIAL ACTION.—(1) Within 15 days after receipt of a recommendation from the Trade Representative under subsection (h) on the appropriate action, if any, to take to prevent or remedy the market disruption, the President shall provide import relief for such industry pursuant to subsection (a), un-

less the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action pursuant to subsection (a) would cause serious harm to the national security of the United States.

(2) The President may determine under paragraph (1) that providing import relief is not in the national economic interest of the United States only if the President finds that the taking of such action would have an adverse impact on the United States economy clearly greater than the benefits of such action.

(l) PUBLICATION OF DECISION AND REPORTS.—(1) The President's decision, including the reasons therefor and the scope and duration of any action taken, shall be published in the Federal Register.

(2) The Commission shall promptly make public any report transmitted under this section, but shall not make public any information which the Commission determines to be confidential, and shall publish notice of such report in the Federal Register.

(m) EFFECTIVE DATE OF RELIEF.—Import relief under this section shall take effect not later than 15 days after the President's determination to provide such relief.

(n) MODIFICATIONS OF RELIEF.—(1) At any time after the end of the 6-month period beginning on the date on which relief under subsection (m) first takes effect, the President may request that the Commission provide a report on the probable effect of the modification, reduction, or termination of the relief provided on the relevant industry. The Commission shall transmit such report to the President within 60 days of the request.

(2) The President may, after receiving a report from the Commission under paragraph (1), take such action to modify, reduce, or terminate relief that the President determines is necessary to continue to prevent or remedy the market disruption at issue.

(3) Upon the granting of relief under subsection (k), the Commission shall collect such data as is necessary to allow it to respond rapidly to a request by the President under paragraph (1).

(o) 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 relief provided under subsection (k) is to terminate, the Commission shall investigate to determine whether action under this section continues to be necessary to prevent or remedy market disruption.

(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 subsection (m) is to terminate.

(4) The President, after receiving an affirmative determination from the Commission under paragraph (3), may extend the effec-

tive period of any action under this section if the President determines that the action continues to be necessary to prevent or remedy the market disruption.

SEC. 422.[328] **ACTION IN RESPONSE TO TRADE DIVERSION.**

(a) MONITORING BY CUSTOMS SERVICE.—In any case in which a WTO member other than the United States requests consultations with the People's Republic of China under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the World Trade Organization, the Trade Representative shall inform the United States Customs Service, which shall monitor imports into the United States of those products of Chinese origin that are the subject of the consultation request. Data from such monitoring shall promptly be made available to the Commission upon request by the Commission.

(b) INITIATION OF INVESTIGATION.—(1) Upon the filing of a petition by an entity described in section 202(a) of the Trade Act of 1974, upon the request of the President or the Trade Representative, upon resolution of either of the Committees, or on its own motion, the Commission shall promptly make an investigation to determine whether an action described in subsection (c) has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States.

(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 public hearings at which the Commission shall afford interested parties an opportunity to be present, to present evidence, to respond to the presentations of other parties, and otherwise to be heard.

(3) The provisions of subsections (a)(8) and (i) of section 202 of the Trade Act of 1974 (19 U.S.C. 2252(a)(8) and (i)), relating to treatment of confidential business information, shall apply to investigations conducted under this section.

(c) ACTIONS DESCRIBED.—An action is described in this subsection if it is an action—

(1) by the People's Republic of China to prevent or remedy market disruption in a WTO member other than the United States;

(2) by a WTO member other than the United States to withdraw concessions under the WTO Agreement or otherwise to limit imports to prevent or remedy market disruption;

(3) by a WTO member other than the United States to apply a provisional safeguard within the meaning of the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO; or

(4) any combination of actions described in paragraphs (1) through (3).

(d) BASIS FOR DETERMINATION OF SIGNIFICANT DIVERSION.—(1) In determining whether significant diversion or the threat thereof exists for purposes of this section, the Commission shall take into account, to the extent such evidence is reasonably available—

(A) the monitoring conducted under subsection (a);

[328] 19 U.S.C. 2451a. Sec. 103(a)(3) of Public Law 106–286 (114 Stat. 887) added sec. 422.

(B) the actual or imminent increase in United States market share held by such imports from the People's Republic of China;

(C) the actual or imminent increase in volume of such imports into the United States;

(D) the nature and extent of the action taken or proposed by the WTO member concerned;

(E) the extent of exports from the People's Republic of China to that WTO member and to the United States;

(F) the actual or imminent changes in exports to that WTO member due to the action taken or proposed;

(G) the actual or imminent diversion of exports from the People's Republic of China to countries other than the United States;

(H) cyclical or seasonal trends in import volumes into the United States of the products at issue; and

(I) conditions of demand and supply in the United States market for the products at issue.

The presence or absence of any factor under any of subparagraphs (A) through (I) is not necessarily dispositive of whether a significant diversion of trade or the threat thereof exists.

(2) For purposes of making its determination, the Commission shall examine changes in imports into the United States from the People's Republic of China since the time that the WTO member commenced the investigation that led to a request for consultations described in subsection (a).

(3) If more than one action by a WTO member or WTO members against a particular product is identified in the petition, request, or resolution under subsection (b) or during the investigation, the Commission may cumulatively assess the actual or likely effects of such actions jointly in determining whether a significant diversion of trade or threat thereof exists.

(e) COMMISSION DETERMINATION; AGREEMENT AUTHORITY.—(1) The Commission shall make and transmit to the President and the Trade Representative its determination under subsection (b) at the earliest practicable time, but in no case later than 45 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, under subsection (b). If the Commissioners voting are equally divided with respect to its determination, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(2) The Trade Representative is authorized to enter into agreements with the People's Republic of China or the other WTO members concerned to take such action as necessary to prevent or remedy significant trade diversion or threat thereof into the domestic market of the United States, and should seek to conclude such agreements before the expiration of the 60-day consultation period provided for under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO, which shall commence not later than 5 days after the Trade Representative receives an affirmative determination provided for in paragraph (1) or a determination which the Trade Representative

considers to be an affirmative determination pursuant to paragraph (1).

(3) REPORT BY COMMISSION.—

(A) Not later than 10 days after a determination under subsection (b), is made, the Commission shall transmit a report to the President and the Trade Representative.

(B) The Commission shall include in the report required under subparagraph (A) the following:

(i) The determination made under subsection (b) and an explanation of the basis for the determination.

(ii) If the determination under subsection (b) is affirmative, or may be considered by the President or the Trade Representative as affirmative under subsection (e)(1), the recommendations of the Commission on increased tariffs or other import restrictions to be imposed to prevent or remedy the trade diversion or threat thereof, and explanations of the bases for such recommendations. Only those members of the Commission who agreed to the affirmative determination under subsection (b) are eligible to vote on the proposed action to prevent or remedy the trade diversion or threat thereof.

(iii) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in clauses (i) and (ii).

(iv) A description of—

(I) the short- and long-term effects that implementation of the action recommended under clause (ii) 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.

(C) The Commission, after submitting a report to the President under subparagraph (A), shall promptly make it available to the public (with the exception of confidential business information) and cause a summary thereof to be published in the Federal Register.

(f) PUBLIC COMMENT.—If consultations fail to lead to an agreement with the People's Republic of China or the WTO member concerned within 60 days, the Trade Representative shall promptly publish notice in the Federal Register of any proposed action to prevent or remedy the trade diversion, and provide an opportunity for interested persons to present views and evidence on whether the proposed action is in the public interest.

(g) RECOMMENDATION TO THE PRESIDENT.—Within 20 days after the end of consultations pursuant to subsection (e), the Trade Representative shall make a recommendation to the President on what action, if any, should be taken to prevent or remedy the trade diversion or threat thereof.

(h) PRESIDENTIAL ACTION.—Within 20 days after receipt of the recommendation from the Trade Representative, the President

shall determine what action to take to prevent or remedy the trade diversion or threat thereof.

(i) DURATION OF ACTION.—Action taken under subsection (h) shall be terminated not later than 30 days after expiration of the action taken by the WTO member or members involved against imports from the People's Republic of China.

(j) REVIEW OF CIRCUMSTANCES.—[329] The Commission shall review the continued need for action taken under subsection (h) if the WTO member or members involved notify the Committee on Safeguards of the WTO of any modification in the action taken by them against the People's Republic of China pursuant to consultation referred to in subsection (a). The Commission shall, not later than 60 days after such notification, determine whether a significant diversion of trade continues to exist and report its determination to the President. The President shall determine, within 15 days after receiving the Commission's report, whether to modify, withdraw, or keep in place the action taken under subsection (h).

SEC. 423.[330] REGULATIONS; TERMINATION OF PROVISION.

(a) TO CARRY OUT RESTRICTIONS AND MONITORING.—The President shall by regulation provide for the efficient and fair administration of any restriction proclaimed pursuant to the subtitle and to provide for effective monitoring of imports under section 422(a).

(b) TO CARRY OUT AGREEMENTS.—To carry out an agreement concluded pursuant to consultations under section 421(j) or 422(e)(2), the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement.

(c) TERMINATION DATE.—This subtitle and any regulations issued under this subtitle shall cease to be effective 12 years after the date of entry into force of the Protocol of Accession of the People's Republic of China to the WTO.

TITLE V—GENERALIZED SYSTEM OF PREFERENCES[331]

SEC. 501.[332] 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;

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[329] Sec. 2204(d)(4) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2592) struck out "(1)" which had appeared at this point.

[330] 19 U.S.C. 2451b. Sec. 103(a)(3) of Public Law 106–286 (114 Stat. 890) inserted sec. 423.

[331] Sec. 1952(a) of the GSP Renewal Act of 1996 (in subtitle J of title I of the Small Business Job Protection Act of 1996; Public Law 104–188; 110 Stat. 1917) amended and restated title V in its entirety, effective October 1, 1996.

For amendment history and related executive actions before enactment of the amendment see page 879.

[332] 19 U.S.C. 2461.

(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.[333] **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—

[333] 19 U.S.C. 2462.

(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)[334] Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has

[334] Sec. 35(a) of Public Law 104–295 (110 Stat. 3538) amended and restated subpara. (F), effective October 1, 1996. It formerly read as follows: "Such country aids or abets, by granting

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 or such country has not taken steps to support the efforts of the United States to combat terrorism.[335]

(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).

(H)[336] Such country has not implemented its commitments to eliminate the worst forms of child labor.

Subparagraphs (D), (E), (F), (G), and (H) (to the extent described in section 507(6)(D))[337] 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.

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sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.".

[335] Sec. 4102(a) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 1040) inserted "or such country has not taken steps to support the efforts of the United States to combat terrorism".

[336] Sec. 412(a)(1) of Public Law 106–200 (114 Stat. 298) added subpara. (H).

[337] Sec. 412(a)(2) of Public Law 106–200 (114 Stat. 298) struck out "and (G)" and inserted in lieu thereof "(G), and (H) (to the extent described in section 507(6)(D))".

(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.[338] **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)[339] 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.

[338] 19 U.S.C. 2463.

[339] Sec. 1001(a)(7) of Public Law 106–36 (113 Stat. 130) struck out subclause (II) and inserted in lieu thereof a new subclause (II). The subclause formerly read as follows: "(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) Except as provided in paragraph (4),[340] 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 ac-

[340] Sec. 1555(a) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2578) inserted "Except as provided in paragraph (4)," and added a new para. (4). Sec. 1555(c) of Public Law 108–429 further provided that these amendments "shall apply to any article entered, or withdrawn from warehouse for consumption, on or after the date on which the President makes a designation with respect to the article under section 503(b)(4) of the Trade Act of 1974, as added by subsection (a).".

tion 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.

(4)[340] CERTAIN HAND-KNOTTED OR HAND-WOVEN CARPETS.—Notwithstanding paragraph (1)(A), the President may designateas an eligible article or articles under subsection (a) carpets or rugs which are hand-loomed, hand-woven, hand-hooked, hand-tufted, or hand-knotted, and classifiable under subheading 5701.10.16, 5701.10.40, 5701.90.10, 5701.90.20, 5702.10.90, 5702.42.20, 02.49.10, 5702.51.20, 5702.91.30, 5702.92.00, 5702.99.10, 5703.10.00, 5703.20.10, or 5703.30.00 of the Harmonized Tariff Schedule of the United States.

(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)[341] LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES AND BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES.—Subparagraph (A) shall not apply to any least-developed beneficiary developing country or any beneficiary sub-Saharan African 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.

[341] Sec. 111(b) of Public Law 106–200 (114 Stat. 58) amended and restated subpara. (D).

(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.

SEC. 504.[342] 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, including the findings of the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.[343]

SEC. 505.[344] DATE OF TERMINATION.

No duty-free treatment provided under this title shall remain in effect after December 31, 2006.

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[342] 19 U.S.C. 2464.

[343] Sec. 412(c) of Public Law 106–200 (114 Stat. 298) inserted ", including the findings of the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor".

[344] 19 U.S.C. 2465. The May 31, 1997 termination date was extended to June 30, 1998 by sec. 981(a) of Public Law 105–34 (111 Stat. 302), to June 30, 1999 by sec. 1101(a) of Public Law 105–277 (112 Stat. 2681–900), to September 30, 2001 by sec. 508(a) of Public Law 106–170 (113 Stat. 1922), and to December 31, 2006 by sec. 4101(a) of Public Law 107–210 (116 Stat. 1040).

Sec. 4101(b) of Public Law 107–210, as amended by sec. 2004(a)(2) of Public Law 108–429 (118 Stat. 2591), further provided:

"(b) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

"(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to paragraph (2), the entry of any article—

"(A) to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on September 30, 2001,

"(B) that was made after September 30, 2001, and before the date of the enactment of this Act, and

"(C) to which duty-free treatment under title V of that Act did not apply,

"shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

"(2) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

"(A) to locate the entry; or

"(B) to reconstruct the entry if it cannot be located.

SEC. 506.[345] 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. 506A.[346] DESIGNATION OF SUB-SAHARAN AFRICAN COUNTRIES FOR CERTAIN BENEFITS.

(a) AUTHORITY TO DESIGNATE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President is authorized to designate a country listed in section 107 of the African Growth and Opportunity Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b)—

(A) if the President determines that the country meets the eligibility requirements set forth in section 104 of that Act, as such requirements are in effect on the date of the enactment of that Act; and

(B) subject to the authority granted to the President under subsections (a), (d), and (e) of section 502, if the country otherwise meets the eligibility criteria set forth in section 502.

(2) MONITORING AND REVIEW OF CERTAIN COUNTRIES.—The President shall monitor, review, and report to Congress annually on the progress of each country listed in section 107 of the African Growth and Opportunity Act in meeting the requirements described in paragraph (1) in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country for purposes of this section. The President's determinations, and explanations of such determinations, with specific analysis of the eligibility requirements described in paragraph (1)(A), shall be included in the annual report required by section 106 of the African Growth and Opportunity Act.

(3) CONTINUING COMPLIANCE.—If the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements described in paragraph (1), the President shall terminate the designation of that country as a beneficiary sub-Saharan African country for purposes of this section, effective on January 1 of the year following the year in which such determination is made.

(b) PREFERENTIAL TARIFF TREATMENT FOR CERTAIN ARTICLES.—

(1) IN GENERAL.—The President may provide duty-free treatment for any article described in section 503(b)(1)(B) through (G) that is the growth, product, or manufacture of a beneficiary sub-Saharan African country described in subsection (a), if, after receiving the advice of the International Trade Commission in accordance with section 503(e), the President deter-

"(3) DEFINITION.—As used in this subsection, the term 'entry' includes a withdrawal from warehouse for consumption.".

Similar language providing for retroactive application for duty-free treatment accompanied each extension of the Act.

[345] 19 U.S.C. 2466.

[346] 19 U.S.C. 2466a. Sec. 111(a) of Public Law 106–200 (114 Stat. 257) added this section.

mines that such article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.

(2) RULES OF ORIGIN.—The duty-free treatment provided under paragraph (1) shall apply to any article described in that paragraph that meets the requirements of section 503(a)(2), except that—

(A) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, 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 (A) of section 503(a)(2); and

(B) the cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries[347] shall be applied in determining such percentage.

(c) BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES, ETC.—For purposes of this title—[348]

(1) the terms "beneficiary sub-Saharan African country" and "beneficiary sub-Saharan African countries" mean a country or countries listed in section 107 of the African Growth and Opportunity Act that the President has determined is eligible under subsection (a) of this section.

(2)[348] the term "former beneficiary sub-Saharan African country" means a country that, after being designated as a beneficiary sub-Saharan African country under the African Growth and Opportunity Act, ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States.

SEC. 506B.[349] TERMINATION OF BENEFITS FOR SUB-SAHARAN AFRICAN COUNTRIES.

In the case of a beneficiary sub-Saharan African country, as defined in section 506A(c), duty-free treatment provided under this title shall remain in effect through September 30, 2015.

SEC. 507.[350] 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 subchapter.

(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

[347] Sec. 7(a)(2)(A) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 823) inserted "or former beneficiary sub-Saharan African countries".

[348] Sec. 7(a)(2)(B) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 823) struck out "title, the terms", inserted in lieu thereof "title—(1) the terms", and added para. (2).

[349] 19 U.S.C. 2466b. Sec. 114 of Public Law 106–200 (114 Stat. 266) added sec. 506B. Sec. 7(a)(1) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 823) extended the termination date from September 30, 2008 to September 30, 2015.

[350] 19 U.S.C. 2467.

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)[351] a minimum age for the employment of children, and a prohibition on the worst forms of child labor, as defined in paragraph (6); 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).

(6)[352] WORST FORMS OF CHILD LABOR.—The term "worst forms of child labor" means—

(A) all forms of slavery or practices similar to slavery such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes;

(C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and

(D) work by which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

The work referred to in subparagraph (D) shall be determined by the laws, regulations, or competent authority of the beneficiary developing country involved.

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[351] Sec. 4102(b) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 1041) amended and restated subpara. (D). It previously read as follows:

"(D) a minimum age for the employment of children;".

[352] Sec. 412(b) of Public Law 106–200 (114 Stat. 298) inserted para. (6).

TITLE VI—GENERAL PROVISIONS

SEC. 601.[353] **DEFINITIONS.**

For purposes of this Act—

(1) The term "duty" includes the rate and form of any import duty, including but not limited to tariff-rate quotas.

(2) The term "other import restriction" includes a limitation, prohibition, charge, or[354] exaction other than duty, imposed on importation, or imposed for the regulation of importation. The term does not include any orderly marketing agreement.

(3) The term "ad valorem" includes ad valorem equivalent. Whenever any limitation on the amount by which or to which any rate of duty may be decreased or increased pursuant to a trade agreement is expressed in terms of an ad valorem percentage, the ad valorem amount taken into account for purposes of such limitation shall be determined by the President on the basis of the value of imports of the articles concerned during the most recent representative period.

(4) The term "ad valorem equivalent" means the ad valorem equivalent of a specific rate or, in the case of a combination of rates including a specific rate, the sum of the ad valorem equivalent of the specific rate and of the ad valorem rate. The ad valorem equivalent shall be determined by the President on the basis of the value of imports of the article concerned during the most recent representative period. In determining the value of imports, the President shall utilize, to the maximum extent practicable, the standards of valuation contained in section 402 or 402a of the Tariff Act of 1930 (as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in section 402 of such Act of 1930 (as in effect on the effective date of such title II amendments) whichever is[355] applicable to the article concerned during such representative period.

(5) An imported article is "directly competitive with" a domestic article at an earlier or later stage of processing, and a domestic article is "directly competitive with" an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article. For purposes of this paragraph, the unprocessed article is at an earlier stage of processing.

(6) The term "modification", as applied to any duty or other import restriction, includes the elimination of any duty or other import restriction.

(7) The term "existing" means (A) when used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this Act, existing on the day on which such

[353] 19 U.S.C. 2481.

[354] Sec. 1106(h)(1) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 313) struck out "and" and inserted in lieu thereof "or".

[355] Sec. 202(c)(1) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 202) added the language following "as in effect before the effective date". A reference to 19 U.S.C. 1401a or 1402, which had appeared at this point, was also struck out by sec. 202(c)(1).

trade agreement is entered into or such other action is taken; and (B) when used with respect to a rate of duty, the nonpreferential rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) set forth in rate column numbered 1 of chapters 1 through 97 of the Harmonized Tariff Schedule of the United States[356] on the date specified or (if no date is specified) on the day referred to in clause (A).

(8) A product of a country or area is an article which is the growth, produce, or manufacture of such country or area.

(9)[357] The term "nondiscriminatory treatment" means trade treatment based on normal trade relations (known under international law as most-favored-nation treatment).

(10) The term "commerce" includes services associated with international trade.

SEC. 602. RELATION TO OTHER LAWS.

[Subsections (a) through (e) amend the Tariff Act of 1930 and the Trade Expansion Act of 1962.]

* * * * * * *

(f)[358] All provisions of law (other than this Act, the Trade Expansion Act of 1962, and the Trade Agreements Extension Act of 1951) in effect after the date of enactment of this Act, referring to section 350 of the Tariff Act of 1930, to that section as amended, to the Act entitled "An Act to amend the Tariff Act of 1930," approved

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[356] Sec. 1214(j)(5) of Public Law 100–418 (102 Stat. 1158) struck out "schedules 1 through 7 of the Tariff Schedules . . ." and inserted in lieu thereof "chapters 1 through 97 of the Harmonized Tariff Schedule . . .".

[357] Sec. 5003(b)(2)(B) of Public Law 105–206 (112 Stat. 789) struck out "most-favored-nation treatment" and inserted in lieu thereof "trade treatment based on normal trade relations (known under international law as most-favored-nation treatment).".

Sec. 5003(a) of the Act further provided:

"(a) FINDINGS AND POLICY.—

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

"(A) Since the 18th century, the principle of nondiscrimination among countries with which the United States has trade relations, commonly referred to as 'most-favored-nation' treatment, has been a cornerstone of United States trade policy.

"(B) Although the principle remains firmly in place as a fundamental concept in United States trade relations, the term 'most-favored-nation' is a misnomer which has led to public misunderstanding.

"(C) It is neither the purpose nor the effect of the most-favored-nation principle to treat any country as "most-favored". To the contrary, the principle reflects the intention to confer on a country the same trade benefits that are conferred on any other country, that is, the intention not to discriminate among trading partners.

"(D) The term 'normal trade relations' is a more accurate description of the principle of nondiscrimination as it applies to the tariffs applicable generally to imports from United States trading partners, that is, the general rates of duty set forth in column 1 of the Harmonized Tariff Schedule in the United States.

"(2) POLICY.—It is the sense of the Congress that—

"(A) the language used in United States laws, treaties, agreements, executive orders, directives, and regulations should more clearly and accurately reflect the underlying principles of United States trade policy; and

"(B) accordingly, the term 'normal trade relations' should, where appropriate, be substituted for the term 'most-favored-nation'.".

Sec. 5003(c) of Public Law 105–206 further provided the following:

"(c) SAVINGS PROVISIONS.—Nothing in this section shall affect the meaning of any provision of law, Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States relating to the principle of 'most-favored-nation' (or 'most favored nation') treatment. Any Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States that has been issued, made, granted, or allowed to become effective and that is in effect on the effective date of this Act, or was to become effective on or after the effective date of this Act, shall continue in effect according to its terms until modified, terminated, superseded, set aside, or revoked in accordance with law.".

[358] 19 U.S.C. 2101 note.

June 12, 1934, to that Act as amended or to the Trade Expansion Act of 1962, or to agreements entered into, or proclamations issued, or actions taken under any of such provisions, shall be construed, unless clearly precluded by the context, to refer also to this Act, or to agreements entered into or proclamations or orders issued pursuant to this Act.

SEC. 603.[359] 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.

SEC. 604.[360] CONSEQUENTIAL CHANGES IN THE TARIFF SCHEDULES.

The President shall from time to time, as appropriate, embody in the Harmonized Tariff Schedule of[361] the United States the substance of the relevant provisions of this Act, and of other Acts affecting import treatment, and actions thereunder, including removal,[362] modification, continuance, or imposition of any rate of duty or other import restriction.

SEC. 605. SEPARABILITY.

If any provision of this Act or the application of any provision to any circumstances or persons shall be held invalid, the validity of the remainder of this Act, and of the application of such provision to other circumstances or persons, shall not be affected thereby.

SEC. 606.[363] INTERNATIONAL DRUG CONTROL.

The President shall submit a report to Congress at least once each calendar year listing those foreign countries in which narcotic drugs and other controlled substances (as listed under section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812) are produced, processed, or transported for unlawful entry into the United States. Such report shall include a description of the measures such countries are taking to prevent such production, processing, or transport.

SEC. 607.[364] VOLUNTARY LIMITATIONS ON EXPORTS OF STEEL TO THE UNITED STATES.

No person shall be liable for damages, penalties, or other sanctions under the Federal Trade Commission Act (15 U.S.C. 41–77) or the Antitrust Acts (as defined in section 4 of the Federal Trade Commission Act (15 U.S.C. 44)), or under any similar State law, on account of his negotiating, entering into, participating in, or imple-

[359] 19 U.S.C. 2482.
[360] 19 U.S.C. 2483.
[361] Sec. 1214(j)(4) of Public Law 100–418 (102 Stat. 1158) struck out "Tariff Schedules of" and inserted in lieu thereof "Harmonized Tariff Schedule of".
[362] Sec. 1213(a) of Public Law 100–418 (102 Stat. 1155) inserted "removal.".
[363] 19 U.S.C. 2484.
[364] 19 U.S.C. 2485.

menting an arrangement providing for the voluntary limitation on exports of steel and steel products to the United States, or any modification or renewal of such an arrangement, if such arrangement or such modification or renewal—

(1) was undertaken prior to the date of the enactment of this Act at the request of the Secretary of State or his delegate, and

(2) ceases to be effective not later than January 1, 1975.

SEC. 608. UNIFORM STATISTICAL DATA ON IMPORTS, EXPORTS, AND PRODUCTION.

(a)[365] * * *

(b)[366] In carrying out the responsibilities under section 484(e), Tariff Act of 1930 and other pertinent statutes, the Secretary of Commerce and the United States International Trade Commission shall conduct jointly a study of existing commodity classification systems with a view to identifying the appropriate principles and concepts which should guide the organization and development of an enumeration of articles which would result in comparability of United States import, production, and export data. The Secretary and the United States International Trade Commission shall submit a report to both Houses of Congress and to the President with respect to such study no later than August 1, 1975.

(c)[366] In further connection with its responsibilities pursuant to subsections (a) and (b), the United States International Trade Commission shall undertake an investigation under section 332(g) of the Tariff Act of 1930 which would provide the basis for—

(1) a report on the appropriate concepts and principles which should underlie the formulation of an international commodity code adaptable for modernized tariff nomenclature purposes and for recording, handling, and reporting of transactions in national and international trade, taking into account how such a code could meet the needs of sound customs and trade reporting practices reflecting the interests of United States and other countries, such report to be submitted to both Houses of Congress and to the President as soon as feasible, but in any event, no later than June 1, 1975; and

(2) full and immediate participation by the United States International Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices,

and, in carrying out such responsibilities, the Commission shall report to both Houses of Congress and to the President, as it deems appropriate.

(d) The President is requested to direct the appropriate agencies to cooperate fully with the Secretary of Commerce and the United States International Trade Commission in carrying out their responsibilities under subsections (a), (b), and (c).

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[365] Subsec. (a) amended sec. 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)).

[366] 19 U.S.C. 2484 note.

(e) The amendment made by subsection (a) insofar as it relates to export declarations shall take effect on January 1, 1976.

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SEC. 612.[367] **TRADE RELATIONS WITH NORTH AMERICAN COUNTRIES.**

(a)[368] It is the sense of the Congress that the United States should enter into a trade agreement with Canada which will guarantee continued stability to the economies of the United States and Canada. In order to promote such economic stability, the President may initiate negotiations for a trade agreement with Canada to establish a free trade area covering the United States and Canada. Nothing in this section shall be construed as prior approval of any legislation which may be necessary to implement such a trade agreement.

(b)[367] The President shall study the desirability of entering into trade agreements with countries in the northern portion of the western hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions within 2 years after the date of enactment of this Act. The study shall include an examination of competitive opportunities and conditions of competition between such countries and the United States in the agricultural, energy, and other appropriate sectors.

SEC. 613.[369] **LIMITATION ON CREDIT TO RUSSIA.—*** * * [Repealed—1992]

* * * * * * *

TITLE VIII—TARIFF TREATMENT OF PRODUCTS OF, AND OTHER SANCTIONS AGAINST, UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES[370]

SEC. 801.[371] **SHORT TITLE.**

This title may be cited as the "Narcotics Control Trade Act".

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[367] 19 U.S.C. 2486. The reference to North American Countries in the section heading replaced a reference to Canada, pursuant to sec. 1104(b) of Public Law 96–39 (Trade Agreements Act of 1979; 93 Stat. 310).

[368] Sec. 1104(a) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 310) added the subsec. designation "(a)" and added a new subsec. (b).

[369] Formerly 19 U.S.C. 2487. Sec. 121 of the Further Continuing Appropriations, Fiscal Year 1992 (Public Law 102–145, as amended by Public Law 102–266; 106 Stat. 95) repealed sec. 613. The section previously read as follows:

"After the date of enactment of the Trade Act of 1974, no agency of the Government of the United States, other than the Commodity Credit Corporation, shall approve any loans, guarantees, insurance, or any combination thereof, in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of $300,000,000 without prior congressional approval as provided by law.".

[370] Sec. 9001 of the Anti-Drug Abuse Act of 1986 (Public Law 99–570; 100 Stat. 3207–164) inserted Title VIII. Public Law 100–204 (101 Stat. 1399) amended the Title VIII heading by adding the words "AND OTHER SANCTIONS AGAINST".

[371] 19 U.S.C. 2491.

SEC. 802.[372] TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES.

(a)[373] 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 purpose 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)[373] 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)[373] 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)[374](A) Subject to paragraph (3), subsection (a) shall not apply with respect to a country if the President determines and

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[372] 19 U.S.C. 2492. In Proclamation 6103 of February 28, 1990 (55 F.R. 7685), the President determined, in part, that:

"2. * * * pursuant to section 802(b)(1) of the Act, that the Government of Panama is taking adequate steps to prevent such drugs and other controlled substances from being sold illegally within its own jurisdiction * * * or from being transported, directly or indirectly, into the United States, and to prevent and punish the laundering in that country of drug-related profits or drug-related monies. * * *

"4. Accordingly, under the terms of sections 802(b)(1)(A) and 802(b)(4)(B) of the Act, I have decided to restore the preferential tariff treatment under the GSP and the CBERA to articles that are currently eligible for such treatment and that are imported from Panama. * * *".

That Proclamation amended the HTS to make Panama eligible for benefits under the GSP and the CBERA.

[373] Sec. 806 of Public Law 100–204 (101 Stat. 1398) struck out "or" at the end of para. (3), redesignated para. (4) as para. (6), inserted new paras. (4) and (5), and amended para. (6) by striking out "in paragraphs (1), (2), and (3).", and inserting in lieu thereof "in paragraphs (1) through (5).".

[374] Sec. 4408 of the Anti-Drug Abuse Act of 1988 (Public Law 100–690; 102 Stat. 4181) comprehensive amended and restated paras. (1) and (2). As previously amended by sec. 806 of Public Law 100–204 (101 Stat. 1398), the paragraphs read as follows:

"(b) CERTIFICATIONS; CONGRESSIONAL ACTION.—(1) Subsection (a) shall not apply with respect to a country if the President determines and so 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, that during the previous year that country has cooperated fully with the United States, or has taken adequate steps on its own, 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 and in preventing and punishing corruption by government officials and the laundering in that country of drug-related profits or drug-related monies.

"(2) In making the certification required by paragraph (1), the President shall give foremost consideration to whether the actions of the government of the country have 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. The President shall also consider whether such government—

Continued

certifies to the Congress, at the time of the submission of the report required by section 489[375] of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h),[376] 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[377] 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;

"(A) has 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 manufacture of and traffic 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;

"(B) has 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 monies, as evidence by—

"(i) the enactment and enforcement of laws prohibiting such conduct,

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts; and

"(C) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, corruption by government officials, with particular emphasis on the elimination of bribery;".

[375] Formerly read "section 481(e)". Sec. 6(a) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4932) provided that "Any reference in any provision of law enacted before the date of enactment of this Act to section 481(e) of that Act shall be deemed to be a reference to section 489.". Sec. 1001(a)(8)(A) of Public Law 106–36 (113 Stat. 131) subsequently struck out "481(e)" and inserted in lieu thereof "489".

[376] Sec. 1001(a)(8)(B) of Public Law 106–36 (113 Stat. 131) added "(22 U.S.C. 2291h)".

[377] Sec. 17(h)(1) of the International Narcotics Control Act of 1989 (Public Law 101–231; 103 Stat. 1965) inserted "illicit".

(ii) increase drug interdiction and enforcement;

(iii) increase drug education and treatment programs;[378]

(iv) increase the identification of and elimination of illicit drug laboratories;

(v) increase the identification and elimination of the trafficking of essential[379] 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 subparagraph (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)[380] 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

[378] Sec. 17(h)(2) of the International Narcotics Control Act of 1989 (Public Law 101–231; 103 Stat. 1965) struck out "treatment" and inserted in lieu thereof "education and treatment programs".

[379] Sec. 17(h)(3) of the International Narcotics Control Act of 1989 (Public Law 101–231; 103 Stat. 1965) inserted "essential".

[380] On January 26, 1990, the President determined that "Panama has fully cooperated with the United States, or taken adequate steps on its own, to control narcotics production, trafficking, and money laundering, as defined in Section 481(h)(2) of the FAA and Section 802(b) of the Trade Act, and that Panama does not have a government involved in the trade of illicit narcotics. In making this determination, I have considered the factors set forth in Section 481(h)(3) of the FAA and Section 802(b)(2) of the Trade Act." (Presidential Determination No. 90–9 of January 26, 1990; 55 F.R. 4827).

481(e)(4) of the Foreign Assistance Act of 1961? 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,

(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[381] 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 there-

[381] Sec. 17(h)(4) of the International Narcotics Control Act of 1989 (Public Law 101–231; 103 Stat. 1965) inserted "illicit".

of, 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, within 45[382] 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 (1), a period of 45[382] 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[382] days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving the 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[383] 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.

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[382] Sec. 4408(b) of Public Law 100–690 (102 Stat. 4181) struck out "30" and inserted in lieu thereof "45".

[383] Sec. 806 of Public Law 100–204 (101 Stat. 1398) inserted "paragraph (1), (2), or (3) of".

(d)[384] 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 indirectly, 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 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).

(e)[385] 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).

[384] Sec. 806 of Public Law 100–204 (101 Stat. 1398) added subsec. (d).
[385] Sec. 4408(c) of Public Law 100–690 (102 Stat. 4181) added subsec. (e).

SEC. 803.[386] **SUGAR QUOTA.**

Notwithstanding any other provisions 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.[387] **PROGRESS REPORTS.**

The President shall include as a part of the annual report required under section 489 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h)[388] 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.[389] **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)[390] the term "major drug producing country" means a country that illicitly produces during a fiscal year 5 metric tons or more of opium or opium derivative, 500 metric tons or more of coca, or 500 metric tons or more of marijuana;

(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.

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[386] 19 U.S.C. 2493.

[387] 19 U.S.C. 2494.

[388] Formerly read "section 481(e)(1)". Sec. 6(a) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4932) provided that "Any reference in any provision of law enacted before the date of enactment of this Act to section 481(e) * * * of that Act shall be deemed to be a reference to section 489.". Sec. 1001(a)(9) of Public Law 106–36 (113 Stat. 131) subsequently struck out "481(e) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(1))" and inserted in lieu thereof "489 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h).".

[389] 19 U.S.C. 2495.

[390] Sec. 17(h)(5) of the International Narcotics Control Act of 1989 (Public Law 101–231; 103 Stat. 1965) restated para. (2). Sec. 1001(a)(10) of Public Law 106–36 (113 Stat. 131) struck out "and" at the end of the paragraph.

(2) Tariff Act of 1930, as amended

Partial text of Public Law 71–361 [H.R. 2667], approved June 17, 1930, as amended

AN ACT To provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE III—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

* * * * * * *

SEC. 303.[1] COUNTERVAILING DUTIES. * * * [Repealed—1994]

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SEC. 307.[2] CONVICT-MADE GOODS; IMPORTATION PROHIBITED

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January

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[1] Formerly at 19 U.S.C. 1303. Sec. 261 of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4908) repealed sec. 303. See title II of that Act, relating to antidumping and countervailing duty provisions (108 Stat. 4842). See also sec. 261(b), relating to the continuing effect of certain legal documents and proceedings not affected by the repeal.

[2] 19 U.S.C. 1307. Sec. 3702 of Public Law 105–261 (112 Stat. 2275) provided the following:

"SEC. 3702. REPORTING REQUIREMENT ON FORCED LABOR PRODUCTS DESTINED FOR THE UNITED STATES MARKET.

"(a) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Commissioner of Customs shall prepare and transmit to the Congress a report on products made with forced labor that are designed for the United States market.

"(b) CONTENTS OF REPORT.—The report under subsection (a) shall include information concerning the following:

"(1) The extent of the use of forced labor in manufacturing products destined for the United States market.

"(2) The volume of products made with forced labor, destined for the United States market, that is violation of section 307 of the Tariff Act of 1930 or section 1761 of title 18, United States Code, and is seized by the United States Customs Service.

"(3) The progress of the United States Customs Service in identifying and interdicting products made with forced labor that are destined for the United States market.".

Title V of the Department of Homeland Security Appropriations Act, 2004 (Public Law 108–90; 117 Stat. 1154), provided the following:

"Sec. 514. For fiscal year 2004 and thereafter, none of the funds appropriated or otherwise made available to the Department of Homeland Security shall be available for any activity or

1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States. For purposes of this section, the term "forced labor or/and indentured labor" includes forced or indentured labor.[3]

"Forced labor," as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily.

SEC. 308.[4] PROHIBITION ON IMPORTATION OF DOG AND CAT FUR PRODUCTS.

(a) DEFINITIONS.—In this section:

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for paying the salary of any Government employee where funding an activity or paying a salary to a Government employee would result in a determination, regulation, or policy that would prohibit the enforcement of section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).

"Sec. 515. For fiscal year 2004 and thereafter, none of the funds appropriated or otherwise made available to the Department of Homeland Security may be used to allow—

"(1) the importation into the United States of any good, ware, article, or merchandise mined, produced, or manufactured by forced or indentured child labor, as determined under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307); or

"(2) the release into the United States of any good, ware, article, or merchandise on which there is in effect a detention order under such section 307 on the basis that the good, ware, article, or merchandise may have been mined, produced, or manufactured by forced or indentured child labor.".

[3] Sec. 411(a) of Public Law 106–200 (114 Stat. 298) inserted the final sentence.

[4] 19 U.S.C. 1308. Sec. 1443 of the Tariff Suspension and Trade Act of 2000 (Public Law 106–476; 114 Stat. 2164), inserted sec. 308. Sec. 1442 of that Act (19 U.S.C. 1308 note) further provided the following:

"SEC. 1442. FINDINGS AND PURPOSES.

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

"(1) An estimated 2,000,000 dogs and cats are slaughtered and sold annually as part of the international fur trade. Internationally, dog and cat fur is used in a wide variety of products, including fur coats and jackets, fur trimmed garments, hats, gloves, decorative accessories, stuffed animals, and other toys.

"(2) The United States represents one of the largest markets for the sale of fur and fur products in the world. Market demand for fur products in the United States has led to the introduction of dog and cat fur products into United States commerce, frequently based on deceptive or fraudulent labeling of the products to disguise the true nature of the fur and mislead United States wholesalers, retailers, and consumers.

"(3) Dog and cat fur, when dyed, is not easily distinguishable to persons who are not experts from other furs such as fox, rabbit, coyote, wolf, and mink, and synthetic materials made to resemble real fur. Dog and cat fur is generally less expensive than other types of fur and may be used as a substitute for more expensive types of furs, which provides an incentive to engage in unfair or fraudulent trade practices in the importation, exportation, distribution, or sale of fur products, including deceptive labeling and other practices designed to disguise the true contents or origin of the product.

"(4) Forensic texts have documented that dog and cat fur products are being imported into the United States subject to deceptive labels or other practices designed to conceal the use of dog or cat fur in the production of wearing apparel, toys, and other products.

"(5) Publicly available evidence reflects ongoing significant use of dogs and cats bred expressly for their fur by foreign fur producers for manufacture into wearing apparel, toys, and other products that have been introduced into United States commerce. The evidence indicates that foreign fur producers also rely on the use of stray dogs and cats and stolen pets for the manufacture of fur products destined for the world and United States markets.

"(6) The methods of housing, transporting, and slaughtering dogs and cats for fur production are generally unregulated and inhumane.

"(7) The trade of dog and cat fur products is ethically and aesthetically abhorrent to United States citizens. Consumers in the United States have a right to know if products offered for sale contain dog or cat fur and to ensure that they are not unwitting participants in this gruesome trade.

"(8) Persons who engage in the sale of dog or cat fur products, including the fraudulent trade practices identified above, gain an unfair competitive advantage over persons who engage in legitimate trade in apparel, toys, and other products, and derive an unfair benefit from consumers who buy their products.

Continued

(1) CAT FUR.—The term "cat fur" means the pelt or skin of any animal of the species Felis catus.

(2) INTERSTATE COMMERCE.—The term "interstate commerce" means the transportation for sale, trade, or use between any State, territory, or possession of the United States, or the District of Columbia, and any place outside thereof.

(3) CUSTOMS LAWS.—The term "customs laws of the United States" means any other law or regulation enforced or administered by the United States Customs Service.

(4) DESIGNATED AUTHORITY.—The term "designated authority" means the Secretary of the Treasury, with respect to the prohibitions under subsection (b)(1)(A), and the President (or the President's designee), with respect to the prohibitions under subsection (b)(1)(B).

(5) DOG FUR.—The term "dog fur" means the pelt or skin of any animal of the species Canis familiaris.

(6) DOG OR CAT FUR PRODUCT.—The term "dog or cat fur product" means any item of merchandise which consists, or is composed in whole or in part, of any dog fur, cat fur, or both.

(7) PERSON.—The term "person" includes any individual, partnership, corporation, association, organization, business trust, government entity, or other entity subject to the jurisdiction of the United States.

(8) UNITED STATES.—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.

(b) PROHIBITIONS.—

(1) IN GENERAL.—It shall be unlawful for any person to—

(A) import into, or export from, the United States any dog or cat fur product; or

(B) introduce into interstate commerce, manufacture for introduction into interstate commerce, sell, trade, or advertise in interstate commerce, offer to sell, or transport or distribute in interstate commerce in the United States, any dog or cat fur product.

(2) EXCEPTION—This subsection shall not apply to the importation, exportation, or transportation, for noncommercial purposes, of a personal pet that is deceased, including a pet preserved through taxidermy.

(c) PENALTIES AND ENFORCEMENT.—

(1) CIVIL PENALTIES.—

"(9) The imposition of a ban on the sale, manufacture, offer for sale, transportation, and distribution of dog and cat fur products, regardless of their source, is consistent with the international obligations of the United States because it applies equally to domestic and foreign producers and avoids any discrimination among foreign sources of competing products. Such a ban is also consistent with provisions of international agreements to which the United States is a party that expressly allow for measures designed to protect the health and welfare of animals and to enjoin the use of deceptive trade practices in international or domestic commerce.

"(b) PURPOSES.—The purposes of this chapter are to—

"(1) prohibit imports, exports, sale, manufacture, offer for sale, transportation, and distribution in the United States of dog and cat fur products, in order to ensure that United States market demand does not provide an incentive to slaughter dogs or cats for their fur;

"(2) require accurate labeling of fur species so that consumers in the United States can make informed choices and ensure that they are not unwitting contributors to this gruesome trade; and

"(3) ensure that the customs laws of the United States are not undermined by illicit international traffic in dog and cat fur products.".

(A) IN GENERAL.—Any person who violates any provision of this section or any regulation issued under this section may, in addition to any other civil or criminal penalty that may be imposed under title 18, United States Code, or any other provision of law, be assessed a civil penalty by the designated authority of not more than

(i) $10,000 for each separate knowing and intentional violation;

(ii) $5,000 for each separate grossly negligent violation; or

(iii) $3,000 for each separate negligent violation.

(B) DEBARMENT.—The designated authority may prohibit a person from importing, exporting, transporting, distributing, manufacturing, or selling any fur product in the United States, if the designated authority finds that the person has engaged in a pattern or practice of actions that has resulted in a final administrative determination with respect to the assessment of civil penalties for knowing and intentional or grossly negligent violations of any provision of this section or any regulation issued under this section.

(C) FACTORS IN ASSESSING PENALTIES.—In determining the amount of civil penalties under this paragraph, the designated authority shall take into account the degree of culpability, any history of prior violations under this section, ability to pay, the seriousness of the violation, and such other matters as fairness may require.

(D) NOTICE.—No penalty may be assessed under this paragraph against a person unless the person is given notice and opportunity for a hearing with respect to such violation in accordance with section 554 of title 5, United States Code.

(2) FORFEITURE.—Any dog or cat fur product manufactured, taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, imported, or exported contrary to the provisions of this section or any regulation issued under this section shall be subject to forfeiture to the United States.

(3) ENFORCEMENT.—The Secretary of the Treasury shall enforce the provisions of this section with respect to the prohibitions under subsection (b)(1)(A), and the President shall enforce the provisions of this section with respect to the prohibitions under subsection (b)(1)(B).

(4) REGULATIONS.—Not later than 270 days after the date of the enactment of this section, the designated authorities shall, after notice and opportunity for comment, issue regulations to carry out the provisions of this section. The regulations of the Secretary of the Treasury shall provide for a process by which testing laboratories, whether domestic or foreign, can qualify for certification by the United States Customs Service by demonstrating the reliability of the procedures used for determining the type of fur contained in articles intended for sale or consumption in interstate commerce. Use of a laboratory certified by the United States Customs Service to determine

the nature of fur contained in an item to which subsection (b) applies is not required to avoid liability under this section but may, in a case in which a person can establish that the goods imported were tested by such a laboratory and that the item was not found to be a dog or cat fur product, prove dispositive in determining whether that person exercised reasonable care for purposes of paragraph (6).

(5) REWARD.—The designated authority shall pay a reward of not less than $500 to any person who furnishes information that establishes or leads to a civil penalty assessment, debarment, or forfeiture of property for any violation of this section or any regulation issued under this section.

(6) AFFIRMATIVE DEFENSE.—Any person accused of a violation under this section has a defense to any proceeding brought under this section on account of such violation if that person establishes by a preponderance of the evidence that the person exercised reasonable care—

(A) in determining the nature of the products alleged to have resulted in such violation; and

(B) in ensuring that the products were accompanied by documentation, packaging, and labeling that were accurate as to the nature of the products.

(7) COORDINATION WITH OTHER LAWS.—Nothing in this section shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the customs laws of the United States.

(d) PUBLICATION OF NAMES OF CERTAIN VIOLATORS.—The designated authorities shall, at least once each year, publish in the Federal Register a list of the names of any producer, manufacturer, supplier, seller, importer, or exporter, whether or not located within the customs territory of the United States or subject to the jurisdiction of the United States, against whom a final administrative determination with respect to the assessment of a civil penalty for a knowing and intentional or a grossly negligent violation has been made under this section.

(e) REPORTS.—In order to enable Congress to engage in active, continuing oversight of this section, the designated authorities shall provide the following:

(1) PLAN FOR ENFORCEMENT.—Within 3 months after the date of the enactment of this section, the designated authorities shall submit to Congress a plan for the enforcement of the provisions of this section, including training and procedures to ensure that United States Government personnel are equipped with state-of-the-art technologies to identify potential dog or cat fur products and to determine the true content of such products.

(2) REPORT ON ENFORCEMENT EFFORTS.—Not later than 1 year after the date of the enactment of this section, and on an annual basis thereafter, the designated authorities shall submit a report to Congress on the efforts of the United States Government to enforce the provisions of this section and the adequacy of the resources to do so. The report shall include an analysis of the training of United States Government personnel to identify dog and cat fur products effectively and to

take appropriate action to enforce this section. The report shall include the findings of the designated authorities as to whether any government has engaged in a pattern or practice of support for trade in products the importation of which are prohibited under this section.

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SEC. 323.[5] CONSERVATION OF FISHERY RESOURCES.

Upon the convocation of a conference on the use or conservation of international fishery resources, the President shall, by all appropriate means at his disposal, seek to persuade countries whose domestic fishing practices or policies affect such resources, to engage in negotiations in good faith relating to the use or conservation of such resources. If, after such efforts by the President and by other countries which have agreed to engage in such negotiations, any other country whose conservation practices or policies affect the interests of the United States and such other countries, has, in the judgment of the President, failed or refused to engage in such negotiations in good faith, the President may, if he is satisfied that such action is likely to be effective in inducing such country to engage in such negotiations in good faith, increase the rate of duty on any fish (in any form) which is the product of such country, for such time as he deems necessary, to a rate not more than 50 percent above the rate existing on July 1, 1934.

PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION

SEC. 330.[6] ORGANIZATION OF COMMISSION.

(a) MEMBERSHIP.—The United States International Trade Commission (referred to in this subtitle 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 knowledge 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 the 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, 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

[5] 19 U.S.C. 1323. Sec. 257(i) of Public Law 87–794 (76 Stat. 883) inserted sec. 323.

[6] 19 U.S.C. 1330. As amended by title I of the Trade Act of 1974 (Public Law 93–618; 88 Stat. 2009–2011); by sec. 1801(a) of Public Law 94–455 (90 Stat. 1762); by secs. 1 and 2(a) of Public Law 95–106 (91 Stat. 867); and by Public Law 95–430 (92 Stat. 1020).

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 this 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.[7]

(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)[8] 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.[9]

(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.

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[7] Sec. 1(c)(1) of Public Law 102–185 (105 Stat. 1280) added from "If, as of the date * * *", effective December 14, 1991.

[8] Sec. 1(a)(1)(A) of Public Law 102–185 (105 Stat. 1280) amended and restated para. (3)(A), applicable to terms beginning on and after June 17, 1990.

In the case of the term of the chairman of the USITC beginning June 17, 1992, this section shall not apply, pursuant to sec. 1(b) of Public Law 102–185 (105 Stat. 1280). Furthermore, sec. 1(b)(2) of that Act requires that "the President shall designate as chairman a Commissioner who is a member of the same political party as the chairman of the Commission serving on June 16, 1986.".

[9] Sec. 1(a)(2)(A) of Public Law 102–185 (105 Stat. 1280) inserted ", or who has less than 1 year of continuous service as a commissioner as of the date such designation is being made", applicable to terms beginning on and after June 17, 1996.

(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).[10]

(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) VOTING PROCEDURES.—(1) In a proceeding in which the Commission is required to determine—

(A) under section 202[11] of the Trade Act of 1974, whether increased imports of an article are a substantial cause of serious injury, or the threat thereof, as described in subsection (b)(1) of that section (hereinafter 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)[12] 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 201(e)(1)[12] 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 202[11] of such Act be treated as the remedy finding of the Commission, or

[10] Sec. 1(a)(1)(B) of Public Law 102–185 (105 Stat. 1280) struck out the last sentence of subpara. (C), which had referred to struck out language in subpara. (A), applicable to terms beginning on and after June 17, 1990. Sec. 1(a)(2)(B) of Public Law 102–185 inserted the current last sentence, applicable to terms beginning on and after June 17, 1996.

[11] Sec. 1401(b)(4) of Public Law 100–418 (102 Stat. 1240) struck out "201" and inserted in lieu thereof "202".

[12] Sec. 1401(b)(4) of Public Law 100–418 (102 Stat. 1240) struck out "201", inserted in lieu thereof "202(b)", and struck out "201(d)(1)" and inserted in lieu thereof "202(e)(1)".

(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)[13] 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 Commissioner 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)[14] of the Trade Act of 1974, notwithstanding section 152(a)(1)(A) of such Act the second blank space in the joint resolution described in such section 152(a)(1)(A)[15] shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(a)[14] 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.

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[13] Sec. 1401(b)(4)(B) of Public Law 100–418 (102 Stat. 1241) struck out "203(b)" and inserted in lieu thereof "204(a)".

[14] Sec. 1401(b)(4)(C) of Public Law 100–418 (102 Stat. 1241) struck out "203(c)(1)" and inserted in lieu thereof "203(a)".

[15] Sec. 248(c) of Public Law 98–573 (98 Stat. 2998) inserted this reference to a joint resolution described in sec. 152(a)(1)(A) in lieu of a reference to a concurrent resolution described in sec. 152.

(2)[16] (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.

(4)[17] By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the Commission shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Commission to carry out its functions.

(f)[18] The Commission shall be considered to be an independent regulatory agency for purposes of chapter 35 of title 44, United States Code.

SEC. 331.[19] GENERAL POWERS.

(a)(1)(A) Except as provided in paragraph (2), the chairman of the Commission shall—

(i) 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,

(ii) procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, and

(iii) exercise and be responsible for all other administrative functions of the Commission.

(B) The chairman of the Commission may accept, hold, administer and utilize gifts, devises, and bequests of property, both real

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[16] Sec. 101 of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 633) amended and restated subsec. (e)(2).

Previously, sec. 701 of Public Law 98–573 (98 Stat. 3043) replaced language authorizing not to exceed $19,737,000 for the Commission during fiscal year 1983. This sentence was subsequently amended by sec. 13021 of Public Law 99–272 (100 Stat. 305) which substituted "1986" and "$28,901,000" in lieu of "1985" and "$28,410,000"; by sec. 9502 of Public Law 100–203 (101 Stat. 1330–380) which inserted "1988" and "$35,386,000" in lieu of "1986" and "$28,901,000"; and by sec. 2 of Public Law 101–207 (103 Stat. 1833) which inserted "1990" and "$39,943,000" in lieu of "1988" and "$35,386,000".

[17] Sec. 371(b) of the Customs Border Security Act of 2002 (title III of Public Law 107–210; 116 Stat. 991) added para. (4).

[18] Sec. 1612 of Public Law 100–418 (102 Stat. 1262) added subsec. (f).

[19] 19 U.S.C. 1331. As amended by sec. 3 of Public Law 95–106 (91 Stat. 868). Further amended in subsec. (a)(1) by sec. 1(b) of Public Law 97–456 (96 Stat. 2503).

and personal, for the purpose of aiding or facilitating the work of the Commission.

(C) Any decision by the chairman under subparagraph (A) or (B) shall be subject to disapproval of 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 matter 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[20] 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 the 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.

[20] This authority was transferred from the Civil Service Commission to the Director of the Office of Personnel Management by Reorganization Plan No. 2 of 1978 and Executive Order 12107, December 28, 1978.

SEC. 332.[21] **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 now in force or which may be hereafter enacted, 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, preferential 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 import 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

[21] 19 U.S.C. 1332.

(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)[22] 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 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) The Tariff Commission is hereby directed, within eight months from the passage of this Act, to ascertain the approximate average cost per barrel to the oil refineries located on the Atlantic seaboard of crude petroleum delivered to them from the oil fields of the United States during the three years preceding 1930, and the present approximate average cost per barrel of crude petroleum from Lake Maracaibo, Venezuela, delivered to the same points. Such relative costs shall be immediately certified to the Speaker of the House of Representatives and to the President of the Senate for the information of the Congress.

(g)[23] REPORTS TO THE 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[24] 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 1337 of this title

[22] Sec. 202(a)(1) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 201) amended the definintion of "import cost", effective January 1, 1981.

[23] Secs. 173 and 341 of the Trade Act of 1974 (Public Law 93–618; 88 Stat. 2010, 2056) amended and restated subsec. (g).

[24] Sec. 1613 of Public Law 100–418 (102 Stat. 1262) struck out ", and shall report to Congress", and inserted the text to this point beginning with ". However, the Commission may not release information * * *". Sec. 9001(a)(16) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3342) struck out the period which appeared after "Congress".

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.

SEC. 333.[25] 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 oaths 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 or the United States District Court for the District of Columbia in requiring 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)[26] MANDAMUS.—At the request of the Commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this part of any order of the Commission made in pursuance thereof.

(d) DEPOSITION.—The Commission may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any state of such proceeding or investigation. Such deposition may be taken before any person designated by the Commission and having power to administer oaths. Such

[25] 19 U.S.C. 1333. As amended by sec. 9 of Public Law 85–686 (72 Stat. 679).

[26] Formerly, this request was required to be submitted through the Attorney General of the United States. Sec. 174(1) of the Trade Act of 1974 (Public Law 93–618; 88 Stat. 2011) struck out this provision.

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 persons 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 courts of the United States.[27]

(f) STATEMENTS UNDER OATH.—The Commission is authorized, in order to ascertain any facts required by subdivision (d) of section 1332 of this title 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)[28] 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)[29] 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 establishment 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.

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[27] Sec. 229 of Public Law 91–452 (84 Stat. 930) struck out a provision that had previously appeared at this point relating to the immunity from prosecution of any natural person compelled to testify or produce evidence in obedience to the subpoena of the Commission.

[28] Sec. 174 of the Trade Act of 1974 (Public Law 93–618; 88 Stat. 2011) added subsec (g).

[29] Sec. 135(a) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 651) added subsec. (h).

SEC. 335.[30] 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.

SEC. 336.[31] EQUALIZATION OF COSTS OF PRODUCTION.

(a) CHANGE OF CLASSIFICATION OF DUTIES.—In order to put into force and effect the policy of Congress by this chapter intended, the Commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the Commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the Commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings. The Commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the Commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country, the Commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by the statute.

(b)[32] * * *

(c) PROCLAMATION BY THE PRESIDENT.—The President shall by proclamation approve the rates of duty and changes in classification[33] specified in any report of the Commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the Commission to be necessary to equalize such differences in costs of production.

(d) EFFECTIVE DATE OF RATES AND CHANGES.—Commencing thirty days after the date of any Presidential proclamation of approval the increased or decreased rates of duty and changes in classification[34] specified in the report of the commission shall take effect.

(e) ASCERTAINMENT OF DIFFERENCES IN COSTS OF PRODUCTION.—In ascertaining under this section the differences in costs of production, the Commission shall take into consideration, in so far as it finds it practicable:

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[30] 19 U.S.C. 1335. Sec. 9(c) of Public Law 85–686 (72 Stat. 680) added sec. 335. Previously, the authorization under this section was contained in sec. 336(a) which was struck out by sec. 9 of Public Law 85–686.

[31] 19 U.S.C. 1336. Sec. 9(c)(1) of Public Law 85–686 (72 Stat. 679) amended subsec. 336.

[32] Sec. 202(a)(2) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 202) struck out subsec. (b), which concerned changes to American selling price, effective January 1, 1981.

[33] Sec. 202(a)(2) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 202) struck out the words "and in basis of value" which previously appeared at this point, effective January 1, 1981.

[34] Sec. 202(a)(2) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 202) struck out the words "or in basis of value" which previously appeared at this point.

(1) IN THE CASE OF A DOMESTIC ARTICLE.—(A) The cost of production as hereinafter in this section defined; (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; and (C) other relevant factors that constitute an advantage or disadvantage in competition.

(2) IN THE CASE OF A FOREIGN ARTICLE.—(A) The cost of production as hereinafter in this section defined, or, if the commission finds that such cost is not readily ascertainable, the commission may accept as evidence thereof, or as supplemental thereto, the weighted average of the invoice prices or values for a representative period and/or the average wholesale selling price for a representative period (which price shall be that at which the article is freely offered for sale to all purchasers in the principal market or markets of the principal competing country or countries in the ordinary course of trade and in the usual wholesale quantities in such market or markets); (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; (C) other relevant factors that constitute an advantage or disadvantage in competition, including advantages granted to the foreign producers by a government, person, partnership, corporation, or association in a foreign country.

(f) MODIFICATION OF CHANGES IN DUTY.—Any increased or decreased rate of duty or change in classification[29] which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of taking effect) as is provided in this section in the case of original increases, decreases, or changes.

(g) PROHIBITION AGAINST TRANSFERS FROM THE FREE LIST TO THE DUTIABLE LIST OR FROM THE DUTIABLE LIST TO THE FREE LIST.—Nothing in this section shall be construed to authorize a transfer of an article from the dutiable list to the free list or from the free list to the dutiable list, nor a change in form of duty. Whenever it is provided in any paragraph of Subtitle I of this chapter, or in any amendatory act, that the duty or duties shall not exceed a specified ad valorem rate upon the articles provided for in such paragraph, no rate determined under the provisions of this section upon such articles shall exceed the maximum ad valorem rate so specified.

(h) DEFINITIONS.—For the purpose of this section—

(1) The term "domestic article" means an article wholly or in part the growth or product of the United States; and the term "foreign article" means an article wholly or in part the growth or product of a foreign country.

(2) The term "United States" includes the several States and Territories and the District of Columbia.

(3) The term "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions).

(4) The term "cost of production", when applied with respect to either a domestic article or a foreign article, includes, for a period which is representative of conditions in production of

the article: (A) The price or cost of materials, labor costs, and other direct charges incurred in the production of the article and in the processes or methods employed in its production; (B) the usual general expenses, including charges for depreciation or depletion which are representative of the equipment and property employed in the production of the article and charges for rent or interest which are representative of the cost of obtaining capital or instruments of production; and (C) the cost of containers and coverings of whatever nature, and other costs, charges, and expenses incident to placing the article in condition packed ready for delivery.

(i) RULES AND REGULATIONS OF PRESIDENT.—The President is authorized to make all needful rules and regulations for carrying out his functions under the provisions of this section.

(j) * * *[35]

(k) INVESTIGATIONS PRIOR TO JUNE 17, 1930.—All uncompleted investigations instituted prior to June 17, 1930, under the provisions of sections 154–159 of this title, including investigations in which the President has not proclaimed changes in classification[33] or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section.

SEC. 337.[36] UNFAIR PRACTICES IN IMPORT TRADE.

(a)[37] (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), (D), and (E)[38] into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of 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—

[35] Sec. 202(a)(2) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 202) struck out subsec. (j), concerning rules and regulations of the Secretary of the Treasury, effective January 1, 1981.

[36] 19 U.S.C. 1337. Sec. 341 of the Trade Act of 1974 (Public Law 96–618; 88 Stat. 2053), amended and restated sec. 337. Sec. 1342 of Public Law 100–418 (102 Stat. 1212) further amended the section. Public Law 100–418 further provided:

"(2) Notwithstanding any provision of section 337 of the Tariff Act of 1930, the United States International Trade Commission may extend, by not more than 90 days, the period within which the Commission is required to make a determination in an investigation conducted under such section 337 if—

"(A) the Commission would, but for this paragraph, be required to make such determination before the 180th day after the date of enactment of this Act; and

"(B) the Commission finds that the investigation is complicated.".

[37] Sec. 1312 of Public Law 100–418 (102 Stat. 1184) amended and restated subsec. (a).

[38] Sec. 5005(b)(1) of Public Law 106–113 (113 Stat. 1501A–594) struck out "and (D)", and inserted in lieu thereof "(D), and (E)".

(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.

(E)[39] The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consigner, of an article that constitutes infringement of the exclusive rights in a design protected under chapter 13 of title 17, United States Code.

(2) Subparagraphs (B), (C), (D), and (E)[40] of paragraph (1) apply only if an industry in the United States, relating to the articles protected by the patent, copyright, trademark, mask work, or design[41] 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, mask work, or design[40] 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)[42] 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

[39] Sec. 5005(b)(1)(ii) of Public Law 106–113 (112 Stat. 1501A–594) added subpara. (E).

[40] Sec. 2004(d)(5) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2592) struck out "and (D)" and inserted in lieu thereof "(D), and (E)".

[41] Sec. 5005(b)(1)(B) of Public Law 106–113 (113 Stat. 1501A–594) struck out "or mask work" and inserted in lieu thereof "mask work, or design".

[42] Sec. 321(a)(1) of Public Law 103–465 (108 Stat. 4943) struck out "; TIME LIMITS" from the subsection heading, struck out "The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than one year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the Federal Register its reasons for designating any investigation as a more complicated investigation. For purposes of the one-year and 18-month periods prescribed by this subsection, there shall be excluded any period of time during which such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.", and inserted in lieu thereof "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.".

any such investigation, the Commission shall publish notice thereof in the Federal Register.[41] 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,[43] 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,[44] may come within the purview of subtitle B of title VII of this Act,[45] it shall promptly notify the Secretary of Commerce[43] so that such action may be taken as is otherwise authorized by such subtitle.[46] 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,[47] 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.[48] If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 701[49] 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

[43] Sec. 1342(b)(1) of Public Law 100–418 (102 Stat. 1215) struck out "Department of Health, Education, and Welfare" in para. (2) and inserted in lieu thereof "Department of Health and Human Services", and struck out "Secretary of the Treasury" in para. (3) and inserted in lieu thereof "Secretary of Commerce".

[44] Sec. 1105(a)(1) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 310) added the reference to a partial or whole matter.

[45] Sec. 106 of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 193) struck out a reference to the Antidumping Act, 1921 (which was repealed) and inserted in lieu thereof a reference to subtitle B of title VII of the Tariff Act of 1930. Sec. 321(a)(1)(C)(i)(I) of Public Law 103–465 (108 Stat. 4943) subsequently struck out "the Tariff Act of 1930" and inserted in lieu thereof "this Act". Sec. 261(d)(1)(B)(ii) of Public Law 103–465 (108 Stat. 4909) struck out "of section 303 or subtitle B of title VII of the Tariff Act of 1930" and inserted in lieu thereof "of subtitle B of title VII of this Act".

[46] Sec. 321(a)(1)(C)(i)(II) of Public Law 103–465 (108 Stat. 4943) struck out "such Act" and inserted in lieu thereof "such subtitle". Sec. 20(b)(12) of Public Law 104–295 (110 Stat. 3527) struck out "such section and" before "such subtitle".

[47] Sec. 261(d)(1)(B)(ii)(II) of Public Law 103–465 (108 Stat. 4909) struck out "section 303, 671, or 673" and inserted in lieu thereof "section 701 or 731".

[48] Sec. 3(d) of the Audio Home Recording Act of 1992 (Public Law 102–563; 106 Stat. 4248) amended and restated the second sentence in para. (3). It formerly read as follows: "If the Commission has reason to believe the matter before it is based solely on alleged acts and effects which are within the purview of section 303, 701, or 731 of this Act, it shall terminate, or not institute, any investigation into the matter.".

[49] Sec. 261(d)(1)(B)(ii)(III) of Public Law 103–465 (108 Stat. 4909) struck out "section 303, 701," and inserted in lieu thereof "section 701".

under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision.[50] Any final decision[51] by the administering authority under section 701 or 731 of this Act with respect to the matter within such section 701 or[51] 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.[52]

(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,[53] 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,[54] 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.[55] Any person adversely affected by a final determination of the Commission under subsection (d), (e), (f),[56] or (g)[56] may appeal such determination, within 60 days after

[50] Sec. 321(a)(1)(C)(ii) of Public Law 103–465 (108 Stat. 4943) struck out "For purposes of computing the 1-year or 18-month periods prescribed by this subsection, there shall be excluded such period of suspension." from this point.

[51] Sec. 261(d)(1)(B)(ii) of Public Law 103–465 (108 Stat. 4910) struck out "of the Secretary under section 303 of this Act or" which previously appeared after "decision", and struck out "matter within such section 303, 701 or" and inserted in lieu thereof "matter within such section 701 or".

[52] Sec. 1105(a)(2) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 310) added the last four sentences of para. (3).

[53] Sec. 1342(a)(2) of Public Law 100–418 (102 Stat. 1213) inserted "except that the Commission may, by issuing a consent order or on the basis of a settlement agreement, terminate any such investigation, in whole or in part, without making such a determination.".

[54] Sec. 321(a)(2)(A) of Public Law 103–465 (108 Stat. 4943) struck out "a settlement agreement" and inserted in lieu thereof "an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration".

[55] Sec. 321(a)(2)(B) of Public Law 103–465 (108 Stat. 4944) added "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.".

[56] Sec. 1105(c) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 311) added the reference to subsec. (f). Sec. 1342(b)(2) of Public Law 100–418 (102 Stat. 1215) added the reference to subsec. (g).

the determination becomes final,[57] to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5, United States Code.[58] Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsection (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.[59] 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.[60]

(d) EXCLUSION OF ARTICLES FROM ENTRY.—(1)[61] If the Commission determines, as a result of an investigation under this section, that there is a violation[62] 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)[63] 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.

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[57] Sec. 413 of Public Law 98–620 (98 Stat. 3362) inserted "within 60 days after the determination becomes final".

[58] Sec. 163(a)(4) of the Federal Courts Improvement Act (Public Law 97–164; 96 Stat. 49) struck out "Court of Customs and Patent Appeals" and inserted in lieu thereof "Court of Appeals for the Federal Circuit". Sec. 6041 of Public Law 96–417 (94 Stat. 1744) inserted "for review in accordance with chapter 7 of title 5, United States Code".

[59] Sec. 321(a)(2)(C) of Public Law 103–465 (108 Stat. 4944) added "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.".

[60] Sec. 604(2) of Public Law 96–417 (94 Stat. 1744) substituted this sentence in lieu of previous text which read as follows: "Such Court shall have jurisdiction to review such determination in the same manner and subject to the same limitations and conditions as in the case of appeals from decisions of the United States Customs Court.".

[61] Sec. 321(a)(5)(A)(i) of Public Law 103–465 (108 Stat. 4944) inserted the paragraph designation "(1)".

[62] Sec. 321(a)(5)(A)(ii) of Public Law 103–465 (108 Stat. 4944) struck out "there is violation" and inserted in lieu thereof "there is a violation".

[63] Sec. 321(a)(5)(A)(iii) of Public Law 103–465 (108 Stat. 4944) added para. (2).

(e) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.—(1)[64] 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.[65]

(2)[64] 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 complainant to post a bond[66] 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.[67]

(3)[64] 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.

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[64] Sec. 1342(a)(3) of Public Law 100–418 (102 Stat. 1213) amended subsec. (e) by inserting "(1)" in the first sentence and added new paras. (2) and (3).

[65] Sec. 321(a)(3)(A) of Public Law 103–463 (108 Stat. 4944) struck out "determined by the Commission and prescribed by the Secretary." and inserted in lieu thereof "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.".

[66] Sec. 1342(d) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1216) further provided:

"(B) The United States International Trade Commission is not required to apply the provision in section 337(e)(2) of the Tariff Act of 1930 (as amended by subsection (a)(3) of this section) relating to the posting of bonds until the earlier of—

"(i) the 90th day after such date of enactment; or

"(ii) the day on which the Commission issues interim regulations setting forth the procedures relating to such posting.".

[67] Sec. 321(a)(3)(B) of Public Law 103–463 (108 Stat. 4944) inserted "If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent." at the end of para. (2).

(4)[68] The Commission shall prescribe the terms and conditions under which bonds may be forfeited under paragraphs (1) and (2).

(f)(1)[69] CEASE AND DESIST ORDERS.—In addition to, or in lieu of,[70] 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.[71] 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)[69] 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 or twice[72] 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)[73] (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;

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[68] Sec. 321(a)(3)(C) of Public Law 103–463 (108 Stat. 4944) added para. (4).

[69] Sec. 1105(b) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 310) inserted the paragraph designation "(1)" and a new para. (2).

[70] Sec. 1342(a)(4)(A) of Public Law 100–418 (102 Stat. 1213) struck out "In lieu of" in para. (1) and inserted in lieu thereof "In addition to, or in lieu of,".

[71] Sec. 321(a)(4) of Public Law 103–465 (108 Stat. 4944) added text to end of subsec. (f)(1) from this point.

[72] Sec. 1342(a)(4)(B) of Public Law 100–418 (102 Stat. 1213) struck out "$10,000 or" and inserted in lieu thereof "$100,000 or twice".

[73] Sec. 1342(a)(5)(A) of Public Law 100–418 (102 Stat. 1213) redesignated subsecs. (g), (h), (i), and (j) as subsecs. (j), (k), (l), and (m), respectively, and inserted a new subsec. (g).

(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 the 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,[74]

(B) such a violation is established by substantial, reliable, and probative evidence, and [74]

(C) [74] the requirements of subsection (d)(2) are met.

(h) [73] 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) [73] 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

[74] Sec. 321(a)(5)(B) of Public Law 103–465 (108 Stat. 4945) struck out "and" at the end of para. (A), replaced the period at the end of para. (B) with ", and", and added a new para. (C).

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 denied 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)[73] REFERRALS 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),[75] 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),[75] 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),[75] 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.[76]

(4) If the President does not approve 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.

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[75] Sec. 1342(b)(3) of Public Law 100–418 (102 Stat. 1215) added the reference to subsecs. (g) or (i).

[76] Sec. 321(a)(6) of Public Law 103–465 (108 Stat. 4945) struck out "shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final." and inserted in lieu thereof "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.".

(k)[73] PERIOD OF EFFECTIVENESS.—(1)[77] Except as provided in subsections (f) and (j),[77] 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 exists.

(2)[77] 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)[73] IMPORTATION BY OR FOR THE UNITED STATES.—Any exclusion from entry or order under subsection (d), (e), (f), (g), or (i)[78] in cases based on a proceeding involving a patent, copyright, mask work, or design under subsection (a)(1),[79] 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, mask work, or design[79] adversely affected shall be entitled to reasonable and entire compensation in an action before the United States Court of Federal Claims[80] pursuant to the procedures of section 1498 of title 28, United States Code.

(m)[73] 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 headnote 2 of the Tariff Schedules of the United States.

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[77] Sec. 1342(a)(6) of Public Law 100–418 (102 Stat. 1214) inserted "(1)" before the first sentence and added new para. (2). Sec. 1341(b)(4) of that Act added the reference to subsec. (j).

[78] Sec. 1342(b)(5) of Public Law 100–418 (102 Stat. 1215) struck out "or (f)" and inserted in lieu thereof "(f), (g), or (i)".

[79] Sec. 1342(a)(7) of Public Law 100–418 (102 Stat. 1215) struck out "claims of United States letters patent" in the first sentence and inserted in lieu thereof "a proceeding involving a patent, copyright, or mask work under subsection (a)(1)". Sec. 1342(b)(2) of the Act struck out "a patent owner" in the second sentence and inserted in lieu thereof "an owner of the patent, copyright, or mask work". Sec. 5005(b)(2) of Public Law 106–113 (113 Stat. 1501A–594) further amended subsec. (l) by striking "or mask work" each place it appeared and inserting in lieu thereof "mask work, or design".

[80] Sec. 160(a)(5) of the Federal Courts Improvement Act (Public Law 97–164; 96 Stat. 49) struck out a reference to the Court of Claims and inserted in lieu thereof a reference to the United States Claims Court. Sec. 902(b) of the Federal Courts Administration Act of 1992 (Public Law 102–572; 106 Stat. 4516) subsequently provided that any reference in Federal law to the "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims". Sec. 321(a)(8) of Public Law 103–465 (108 Stat. 4945) struck out "Claims Court" and inserted in lieu thereof "Court of Federal Claims".

(n)[81] (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)[82] 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),[83] or

(C)[84] 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.

SEC. 338.[85] DISCRIMINATION BY FOREIGN COUNTRIES.

(a) ADDITIONAL DUTIES.—The President when he finds that the public interest will be served thereby shall by proclamation specify and declare new or additional duties as hereinafter provided upon articles wholly or in part the growth or product of, or imported in a vessel of, any foreign country whenever he shall find as a fact that such country—

(1) Imposes, directly or indirectly, upon the disposition in or transportation in transit through or reexportation from such country of any article wholly or in part the growth or product of the United States any unreasonable charge, exaction, regulation, or limitation which is not equally enforced upon the like article of every foreign country; or

[81] Sec. 1342(a)(8) of Public Law 100–418 (102 Stat. 1215) added subsec. (n).

[82] Sec. 321(a)(7)(A) of Public Law 103–465 (108 Stat. 4945) amended and restated subpara. (A).

[83] Sec. 9001(a)(12) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3342) struck out "(h)" and inserted in lieu thereof "(j)".

[84] Sec. 321(a)(7)(B) of Public Law 103–465 (108 Stat. 4945) amended and restated subpara. (C).

[85] 19 U.S.C. 1338.

(2) Discriminates in fact against the commerce of the United States, directly or indirectly, by law or administrative regulation or practice, by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition, in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any foreign country.

(b) EXCLUSION FROM IMPORTATION.—If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the United States, as aforesaid, but has, after the issuance of a proclamation as authorized subdivision (a) of this section, maintained or increased its said discriminations against the commerce of the United States, the President is hereby authorized, if he deems it consistent with the interests of the United States, to issue a further proclamation directing that such products of said country or such articles imported in its vessels as he shall deem consistent with the public interests shall be excluded from importation into the United States.

(c) APPLICATION OF PROCLAMATION.—Any proclamation issued by the President under the authority of this section shall, if he deems it consistent with the interests of the United States, extend to the whole of any foreign country or may be confined to any subdivision or subdivisions thereof; and the President shall, whenever he deems the public interests require, suspend, revoke, supplement, or amend any such proclamation.

(d) DUTIES TO OFFSET COMMERCIAL DISADVANTAGES.—Whenever the President shall find as a fact that any foreign country places any burden or disadvantage upon the commerce of the United States by any of the unequal impositions or discriminations aforesaid, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty as he shall determine will offset such burden or disadvantage, not to exceed 50 per centum ad valorem or its equivalent, on any products, or on articles imported in a vessel of, such foreign country; and thirty days after the date of such proclamation there shall be levied, collected, and paid upon the articles enumerated in such proclamation when imported into the United States from such foreign country such new or additional rate or rates of duty; or, in case of articles declared subject to exclusion from importation into the United States under the provisions of subdivision (b) of this section, such articles shall be excluded from importation.

(e) DUTIES TO OFFSET BENEFITS TO THIRD COUNTRY.—Whenever the President shall find as a fact that any foreign country imposes any unequal imposition or discrimination as aforesaid upon the commerce of the United States, or that any benefits accrue or are likely to accrue to any industry in any foreign country by reason of any such imposition or discrimination imposed by any foreign country other than the foreign country in which such industry is located, and whenever the President shall determine that any new or additional rate or rates of duty or any prohibition hereinbefore provided for do not effectively remove such imposition or discrimination and that any benefits from any such imposition or discrimination accrue or are likely to accrue to any industry in any foreign

country, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate of rates of duty upon the articles wholly or in part the growth or product of any such industry as he shall determine will offset such benefits, not to exceed 50 per centum ad valorem or its equivalent, upon importation from any foreign country into the United States of such articles; and on and after thirty days after the date of any such proclamation such new or additional rate or rates of duty so specified and declared in such proclamation shall be levied, collected, and paid upon such articles.

(f) FORFEITURE OF ARTICLES.—All articles imported contrary to the provisions of this section shall be forfeited to the United States and shall be liable to be seized, prosecuted, and condemned in like manner and under the same regulations, restrictions, and provisions as may from time to time be established for the recover, collection, distribution, and remission of forfeitures to the United States by the several revenue laws. Whenever the provisions of this Act shall be applicable to importations into the United States of articles wholly or in part the growth or product of any foreign country, they shall be applicable thereto whether such articles are imported directly or indirectly.

(g) ASCERTAINMENT BY COMMISSION OF DISCRIMINATIONS.—It shall be the duty of the commission to ascertain and at all times to be informed whether any of the discriminations against the commerce of the United States enumerated in subdivisions (a), (b), and (e) of this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the commission to bring the matter to the attention of the President, together with recommendations.

(h) RULES AND REGULATIONS OF SECRETARY OF TREASURY.—The Secretary of the Treasury with the approval of the President shall make such rules and regulations as are necessary for the execution of such proclamations as the President may issue in accordance with the provisions of this section.

(i) DEFINITION.—When used in this section, the term "foreign country" means any empire, country, dominion, colony or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions), within which separate tariff rates or separate regulations of commerce are enforced.

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SEC. 339.[86] TRADE REMEDY ASSISTANCE OFFICE.

(a) There is established in the Commission a separate office to be known as the Trade[87] 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

[86] 19 U.S.C. 1339. Sec. 221 of Public Law 98–573 (98 Stat. 2989) added sec. 339.

[87] Sec. 1614(1) of Public Law 100–418 (102 Stat. 1263) inserted "a separate office to be known as the Trade", struck out "upon request, concerning—", and inserted in lieu thereof "upon request and shall, to the extent feasible, provide assistance and advice to interested parties concerning—".

(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b)[88] 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. An 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 injury[89] 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.

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PART III—PROMOTION OF FOREIGN TRADE

SEC. 350.[90] FOREIGN TRADE AGREEMENTS.

(a) AUTHORITY OF PRESIDENT; MODIFICATION AND DECREASE OF DUTIES; ALTERING IMPORT RESTRICTIONS.—(1) For the purpose of expanding foreign markets for the products of the United States (as

[88] Sec. 1614(2) of Public Law 100–418 (102 Stat. 1263) amended and restated subsec. (b).

[89] Sec. 1888 of Public Law 99–514 (100 Stat. 2924) struck out "relief" and inserted in lieu thereof "injury".

[90] 19 U.S.C. 1351. Sec. 1, 48 Stat. 943, added sec. 350. It has been amended at 57 Stat. 125, 59 Stat. 410, 63 Stat. 698, 69 Stat. 162, 72 Stat. 673, 76 Stat. 881, and 93 Stat. 202.

a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(A) To enter into foreign trade agreements with foreign governments or instrumentalities thereof: *Provided,* That the enactment of the Trade Agreements Extension Act of 1955 shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.

(B) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder.

(2) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made—

(A) Increasing by more than 50 per centum any rate of duty existing on July 1, 1934; except that a specific rate of duty existing on July 1, 1934, may be converted to its ad valorem equivalent based on the value of imports of the article concerned during the calendar year 1934 (determined in the same manner as provided in subparagraph (D)(ii)) and the proclamation may provide an ad valorem rate of duty not in excess of 50 per centum above such ad valorem equivalent.

(B) Transferring any article between the dutiable and free lists.

(C) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, or with respect to which notice of intention to negotiate was published in the Federal Register on November 16, 1954, decreasing by more than 50 per centum any rate of duty existing on January 1, 1945.

(D) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1958, decreasing (except as provided in subparagraph (C) of this paragraph) any rate of duty below the lowest of the following rates:

(i) The rate 15 per centum below the rate existing on January 1, 1955.

(ii) In the case of any article subject to an ad valorem rate of duty above 50 per centum (or a combination of ad

valorem rates aggregating more than 50 per centum), the rate 50 per centum ad valorem (or a combination of ad valorem rates aggregating 50 per centum). In the case of any article subject to a specific rate of duty (or a combination of rates including a specific rate) the ad valorem equivalent of which has been determined by the President to have been above 50 per centum during a period determined by the President to be a representative period, the rate 50 per centum ad valorem or the rate (or a combination of rates), however stated, the ad valorem equivalent of which the President determines would have been 50 per centum during such period. The standards of valuation contained in section 402 of this Act (as in effect, with respect to the article concerned, during the representative period) shall be utilized by the President, to the maximum extent he finds such utilization practicable, in making the determinations under the preceding sentence.

(E) In order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the lowest of the rates provided for in paragraph (4)(A) of this subsection.

(3)(A) Subject to the provisions of subparagraphs (B) and (C) of this paragraph and of subparagraph (B) of paragraph (4) of this subsection, the provisions of any proclamation made under paragraph (1)(B) of this subsection, and the provisions of any proclamation of suspension under paragraph (5) of this subsection, shall be in effect from and after such time as is specified in the proclamation.

(B) In the case of any decrease in duty to which paragraph (2)(D) of this subsection applies—

(i) if the total amount of the decrease under the foreign trade agreement does not exceed 15 per centum of the rate existing on January 1, 1955, the amount of decrease becoming initially effective at one time shall not exceed 5 per centum of the rate existing on January 1, 1955;

(ii) except as provided in clause (i), not more than one-third of the total amount of the decrease under the foreign trade agreement shall become initially effective at one time; and

(iii) no part of the decrease after the first part shall become initially effective until the immediately previous part shall have been in effect for a period or periods aggregating not less than one year.

(C) No part of any decrease in duty to which the alternative specified in paragraph (2)(D)(i) of this subsection applies shall become initially effective after the expiration of the three-year period which begins on July 1, 1955. If any part of such decrease has become effective, then for purposes of this subparagraph any time thereafter during which such part of the decrease is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining when the three-year period expires.

(D) If (in order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955) the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed

any limitation specified in paragraph (2) (C) or (D) or paragraph (4) (A) or (B) of this subsection or subparagraph (B) of this paragraph by not more than whichever of the following is lesser:

(i) The difference between the limitation and the next lower whole number, or

(ii) One-half of 1 per centum ad valorem.

In the case of a specific rate (or of a combination of rates which includes a specific rate), the one-half of 1 per centum specified in clause (ii) of the preceding sentence shall be determined in the same manner as the ad valorem equivalent of rates not stated wholly in ad valorem terms is determined for the purposes of paragraph (2)(D)(ii) of this subsection.

(4)(A) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made, in order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the lowest of the following rates:

(i) The rate which would result from decreasing the rate existing on July 1, 1958, by 20 per centum of such rate.

(ii) Subject to paragraph (2)(B) of this subsection, the rate 2 per centum ad valorem below the rate existing on July 1, 1958.

(iii) The rate 50 per centum ad valorem or, in the case of any article subject to a specific rate of duty or to a combination of rates including a specific rate, any rate (or combination of rates), however stated, the ad valorem equivalent of which has been determined as 50 per centum ad valorem.

The provisions of clauses (ii) and (iii) of this subparagraph and of subparagraph (B)(ii) of this paragraph shall, in the case of any article, subject to a combination of ad valorem rates of duty, apply to the aggregate of such rates; and, in the case of any article, subject to a specific rate of duty or to a combination of rates including a specific rate, such provisions shall apply on the basis of the ad valorem equivalent of such rate or rates, during a representative period (whether or not such period includes July 1, 1958), determined in the same manner as the ad valorem equivalent of rates not stated wholly in ad valorem terms is determined for the purpose of paragraph (2)(D)(ii) of this subsection.

(B)(i) In the case of any decrease in duty to which clause (i) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed 10 per centum of the rate of duty existing on July 1, 1958, or, in any case in which the rate has been increased since that date, exceed such 10 per centum or one-third of the total amount of the decrease under the foreign trade agreement, whichever is the greater.

(ii) In the case of any decrease in duty to which clause (ii) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed 1 per centum ad valorem or, in any case in which the rate has been increased since July 1, 1958, exceed such 1 per centum or one-third of the total amount of the decrease under the foreign trade agreement, whichever is the greater.

(iii) In the case of any decrease in duty to which clause (iii) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed one-third of the total amount of the decrease under the foreign trade agreement.

(C) In the case of any decrease in duty to which subparagraph (A) of this paragraph applies (i) no part of a decrease after the first part shall become initially effective until the immediately previous part shall have been in effect for a period or periods aggregating not less than one year, nor after the first part shall have been in effect for a period or periods aggregating more than three years, and (ii) no part of a decrease shall become initially effective after the expiration of the four-year period which begins on July 1, 1962. If any part of a decrease has become effective, then for the purposes of clauses (i) and (ii) of the preceding sentence any time thereafter during which such part of the decrease is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining when the three-year period or the four-year period, as the case may be, expires.

(5)[91] * * * [Repealed—1962]

(6) The President may at any time terminate, in whole or in part, any proclamation made pursuant to this section.

(b)[92] CUBA; PREFERENTIAL CUSTOMS TREATMENT: DECREASE OF RATES.—Nothing in this section or the Trade Expansion Act of 1962 shall be construed to prevent the application, with respect to rates of duty established under this section or the Trade Expansion Act of 1962 pursuant to agreements with countries other than Cuba, of the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, or to preclude giving effect to an agreement with Cuba concluded under this section, or the Trade Expansion Act of 1962, modifying the existing preferential customs treatment of any article the growth, produce, or manufacture of Cuba. Nothing in this chapter or the Trade Expansion Act of 1962 shall be construed to preclude the application to any product of Cuba (including products preferentially free of duty) of a rate of not higher than the rate applicable to the like products of other foreign countries (except the Philippines), whether or not the application of such rate involves any preferential customs treatment. No rate of duty on products of Cuba shall be decreased—

(1) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, by more than 50 per centum of the rate of duty existing on January 1, 1945, with respect to products of Cuba.

(2) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1962, below the applicable alternative specified in subsection (a)(2) (C) or (D) or (4)(A) of this section (subject to the applicable provisions of subsection (a)(3) (B), (C), and (D) and (4) (B) and (C) of this section), each such alternative to be read

[91] Sec. 257(b) of Public Law 87–794 (76 Stat. 882) repealed para. (5).
[92] See also Tariff Treatment of Cuban Products (Public Law 87–456; 76 Stat. 78).

for the purposes of this paragraph as relating to the rate of duty applicable to products of Cuba. With respect to products of Cuba, the limitation of subsection (a)(2)(D)(ii) or (4)(A)(iii) of this section may be exceeded to such extent as may be required to maintain an absolute margin of preference to which such products are entitled.

(3) In order to carry out a foreign trade agreement entered into after June 30, 1962, and before July 1, 1967, below the lowest rate permissible by applying title II of the Trade Expansion Act of 1962 to the rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on July 1, 1962, with respect to such product.

(c) DEFINITIONS.—(1) As used in this section, the term "duties and other import restrictions" includes (A) rate and form of import duties and classification of articles, and (B) limitations, prohibitions, charges, and exactions other than duties, imposed on importation or imposed for the regulation of imports.

(2) For purposes of this section—

(A) Except as provided in subsection (d) of this section, the terms "existing on July 1, 1934", "existing on January 1, 1945", "existing on January 1, 1955", and "existing on July 1, 1958" refer to rates of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on the date specified, except rates in effect by reason of action taken pursuant to section 1362 of this title.

(B) The term "existing" without the specification of any date, when used with respect to any matter relating to the conclusion of, or proclamation to carry out, a foreign trade agreement, means existing on the day on which that trade agreement is entered into.

(d) RATE BASIS FOR ADDITIONAL INCREASES OR DECREASES; RESTORATION OF TERMINATED TREATIES FORBIDDEN.—(1) When any rate of duty has been increased or decreased for the duration of war or an emergency, by agreement or otherwise, any further increase or decrease shall be computed upon the basis of the post-war or post-emergency rate carried in such agreement or otherwise.

(2) Where under a foreign trade agreement the United States has reserved the unqualified right to withdraw or modify, after the termination of war or an emergency, a rate on a specific commodity, the rate on such commodity to be considered as "existing on January 1, 1945" for the purpose of this section shall be the rate which would have existed if the agreement had not been entered into.

(3) No proclamation shall be made pursuant to this section for the purpose of carrying out any foreign trade agreement the proclamation with respect to which has been terminated in whole by the President prior to July 5, 1945.

(e)[93] * * * [Repealed—1962]

(f) INFORMATION AND ADVICE FROM INDUSTRY, AGRICULTURE, AND LABOR.—It is declared to be the sense of the Congress that the President, during the course of negotiating any foreign trade agreement under this section, should seek information and advice with

[93] Sec. 257(b) of Public Law 87–794 (76 Stat. 882) repealed subsec. (e).

respect to such agreement from representatives of industry, agriculture, and labor.

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TITLE IV—ADMINISTRATIVE PROVISIONS

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PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

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SEC. 516A.[94] JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTI-DUMPING DUTY PROCEEDINGS.

(a) REVIEW OF DETERMINATION.—

(1)[95] 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,[96]

(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[96]

(D)[96] 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 DETERMINATION ON RECORD.—

(A) IN GENERAL.—Within thirty days after—[97]

(i)[97] the date of publication in the Federal Register of—

[94] 19 U.S.C. 1516a. Sec. 1001 of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 300) inserted sec. 516A.

[95] Sec. 623(a)(1) of Public Law 98–573 (98 Stat. 3040) amended and restated para. (1). Previously, para. (1) had been amended and restated by sec. 608(a) of Public Law 96–417 (94 Stat. 1745). Sec. 626(b)(2) of Public Law 98–573 further provided that this amendment should apply with respect to civil actions pending on, or filed on or after, the date of enactment of this Act (October 30, 1984).

[96] Sec. 220(b)(1) of Public Law 103–465 (108 Stat. 4864) struck out "or" at the end of subpara. (B), added "or" at the end of subpara. (C), and added a new subpara. (D).

[97] Sec. 623(a)(2) of Public Law 98–573 (98 Stat. 3040) amended subpara. (A) by deleting the words "the date of publication in the Federal Register of" in the first sentence, and by amending and restating clauses (i) and (ii). This amendment essentially consolidated the previous text of clauses (i) and (ii) into a new clause (i) and added a new clause (ii). Sec. 626(b)(2) of Public Law 98–573 further stated that this amendment applied with respect to civil actions pending on, or filed on or after, the date of enactment of this Act (October 30, 1984).

(I) notice of any determination described in clause (ii), (iii), (iv), (v), or (viii)[98] of subparagraph (B),[99]

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(III)[99] 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[100] 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)[101] REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) 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 countervailable subsidy[102]

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[98] Sec. 271(b)(1) of Public Law 103–465 (108 Stat. 4921) struck out "or (v)" and inserted in lieu thereof "(v), or (viii)".

[99] Sec. 129(e)(1)(A) of Public Law 103–465 (108 Stat. 4838) struck out "(B), or" and inserted in lieu thereof "(B)" at the end of subclause (I), and added subclause (III). Sec. 20(a)(1) of Public Law 104–295 (110 Stat. 3526) inserted a comma after "subparagraph (B)".

[100] Sec. 601(7) of Public Law 96–417 (94 Stat. 1744) struck out a reference to the Customs Court and inserted in lieu thereof a reference to the Court of International Trade.

[101] Sec. 623(a)(3) of Public Law 98–573 (98 Stat. 3040) amended and restated subpara. (B). Sec. 626(b)(2) of Public Law 98–573 further provided that this amendment shall apply with respect to civil actions pending on, or filed on or after, the date of enactment of this Act (October 30, 1984).

[102] Sec. 270(a)(1)(N) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable 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)[103] 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.

(viii)[104] A determination by the Commission under section 753(a)(1).

(3)[105] EXCEPTION.—Notwithstanding the limitation imposed by paragraph (2)(A)(i)(II)[106] 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 which is predicated upon the size of either the dumping margin or net subsidy determined to exist.

(4)[107] PROCEDURES AND FEES.—The procedures and fees set forth in chapter 169 of title 28, United States Code,[101] apply to an action under this section.

(5)[108] 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.

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[103] Sec. 129(e)(1)(B) of Public Law 103–465 (108 Stat. 4838) added clause (vii).

[104] Sec. 271(b)(2) of Public Law 103–465 (108 Stat. 4921) added clause (viii).

[105] Sec. 623(a)(4) of Public Law 98–573 (98 Stat. 3041) redesignated existing para. (3) as para. (4), and added a new para. (3). Sec. 626(b)(2) of Public Law 98–573 further provided that this amendment should apply with respect to civil sections pending on, or filed on or after, the date of enactment of this Act (October 30, 1984).

[106] Sec. 1888(6) of Public Law 99–514 (100 Stat. 2925) substituted "(2)(A)(i)(II)" in lieu of "(2)(A)(ii)".

[107] Sec. 608(b) of Public Law 96–417 (94 Stat. 1746) struck out "sec. 2632" and inserted in lieu thereof "chapter 169". Sec. 2 of Public Law 96–542 (94 Stat. 3215) further struck out a reference to subsecs. (b), (c), and (e) of ch. 169.

[108] Sec. 401(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449; 102 Stat. 1878) inserted para. (5). Sec. 411(1) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2140) amended and restated the paragraph.

(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), 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).

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), 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), the day after the date that notice of settlement is published in the Federal Register.

(E)[109] 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),[110] to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B)[111] (i) in an action brought under paragraph (2) of subsection (a), to be unsupported by substantial evidence

[109] Sec. 129(e)(2) of Public Law 103–465 (108 Stat. 4838) added subpara. (E).

[110] Sec. 220(b)(2)(A) of Public Law 103–465 (108 Stat. 4865) struck out "under paragraph (1) of subsection (a)" and inserted in lieu thereof "under subparagraph (A), (B), or (C) of subsection (a)(1)".

[111] Sec. 220(b)(2)(B)(i) of Public Law 103–465 (108 Stat. 4865) struck out "(B) in an action" and inserted in lieu thereof "(B)(i) in an action".

on the record, or otherwise not in accordance with law, or[112]

(ii)[113] 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); 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)[114] EFFECT OF DECISIONS BY NAFTA OR[115] UNITED STATES-CANADA BINATIONAL PANELS.—In making a decision in any action brought under subsection (a), 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[116] 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) 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 notice of a decision of the United States Court of International Trade,[100]

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[112] Sec. 220(b)(2)(B)(ii) of Public Law 103–465 (108 Stat. 4865) struck out a period at the end of subpara. (B), and inserted ", or".

[113] Sec. 220(b)(2)(B)(iii) of Public Law 103–465 (108 Stat. 4865) added clause (ii).

[114] Sec. 401(d) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449; 102 Stat. 1883) added para. (3).

[115] Sec. 411(2)(A) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2141) inserted "NAFTA OR" in the heading.

[116] Sec. 411(2)(B) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2141) inserted "of the NAFTA or" after "article 1904".

or of the United States Court of Appeals for the Federal Circuit,[117] 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) by the Secretary, the administering authority, or the Commission, the United States Court of International Trade[100] may enjoin the liquidation of some or all entries of merchandise covered by a determination 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.[118]

(3) REMAND FOR FINAL DISPOSITION.—If the final disposition 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.[100] The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.[119]

(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[94] or of the United States Court of Appeals for the Federal Circuit—[111]

(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),

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.—For purposes of this section—

(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.

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[117] Sec. 163(a)(2) of the Federal Court Improvement Act (Public Law 97–164; 96 Stat. 49) struck out a reference to the United States Court of Customs and Patent Appeals and inserted in lieu thereof a reference to the United States Court of Appeals for the Federal Circuit.

[118] Sec. 604(c) of Public Law 96–417 (94 Stat. 1746) struck out the final sentence in para. (2), which listed factors which the court should consider in ruling on a request for injunctive relief.

[119] Sec. 604(d) of Public Law 96–417 (94 Stat. 1746) amended and restated this sentence.

(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)[120] AGREEMENT.—The term "Agreement" means the United States-Canada Free-Trade Agreement.

(6)[120] 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)[120] 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)[121] NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(9)[121] RELEVANT FTA COUNTRY.—The term "relevant FTA country" means the free trade area country to which an antidumping or countervailing duty proceeding pertains.

(10)[121] 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)[122] 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),

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[120] Sec. 401(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449; 102 Stat. 1878) added paras. (5), (6), and (7). Sec. 411(3)(A) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2141) amended and restated paras. (6) and (7).

[121] Sec. 411(3)(B) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2142) added paras. (8), (9), and (10).

[122] Sec. 401(c) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449; 102 Stat. 1878) added subsec. (g). Sec. 411(4)(A) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2142) struck out "CANADIAN MERCHANDISE" in the subsection heading, and inserted in lieu thereof "FREE TRADE AREA COUNTRY MERCHANDISE".

if made in connection with a proceeding regarding a class or kind of free trade area country merchandise,[123] 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 [124] of the Agreement, then, except as provided in paragraphs (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) if the determination sought to be reviewed is—

(i) a determination as to which neither the United States nor the relevant FTA country [125] requested review by a binational panel pursuant to article 1904 of the NAFTA or [126] 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 [125] requested review of the original determination,[127]

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) prior to the entry into force of the NAFTA or [126] of the Agreement,[128]

(iv) [128] a determination which a binational panel has determined [128] is not reviewable by the binational panel,[128]

(v) [128] a determination as to which binational panel review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA, or

(vi) [128] a determination as to which extraordinary challenge committee review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.

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[123] Sec. 411(4)(B) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2142) struck out "Canadian merchandise" and inserted in lieu thereof "free trade area country merchandise".

[124] Sec. 411(4)(C) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2142) inserted "of the NAFTA or" after "article 1904".

[125] Sec. 411(4)(D)(i) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2142) struck out "nor Canada" and inserted in lieu thereof "nor the relevant FTA country" in clauses (i) and (ii).

[126] Sec. 411(4)(D)(ii) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2142) inserted "of the NAFTA or" before "of the Agreement" in clauses (i) and (iii) .

[127] Sec. 134(a)(3)(B) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) struck out "or" at the end of clause (ii); struck out the period at the end of clause (iii), and inserted in lieu thereof ", or"; and added a new clause (iv). In subpara. (B), that section inserted "or (iv)" after "subparagraph (A)(i)".

[128] Sec. 411(4)(D) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2142) struck out "or" at the end of clause (iii); struck out "under paragraph (2)(A)" in clause (iv); further amended clause (iv) by striking out a period and inserting in lieu thereof a comma; and added new clauses (v) and (vi).

(B) SPECIAL RULE.—A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) 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 and 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 timely provided if the notice is delivered no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) 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.[129] 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, or[130] the United States-Canada Free-Trade Agreement Implementation Act of 1988[131] implementing the binational panel dispute settlement system under chapter 19 of the Agreement,[132] violates the Constitution may be brought only[133] in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of such action.[134]

(B) OTHER CONSTITUTIONAL REVIEW.—Review is available under subsection (a) with respect to a determination solely concerning a constitutional issue (other than an

[129] Sec. 411(4)(E) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) amended and restated para. (3)(B) to this point.

[130] Sec. 411(4)(F)(i)(I) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) inserted "the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or" after "or amendment made by,".

[131] Sec. 22 of Public Law 104–295 (110 Stat. 3531) struck out "Implementation Agreement Act of 1988" and inserted in lieu thereof "Agreement Implementation Act of 1988".

[132] Sec. 411(4)(F)(i)(II) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) inserted the comma before "violates".

[133] Sec. 411(4)(F)(i)(III) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) inserted "only" after "may be brought".

[134] Sec. 411(4)(F)(i)(IV) and (ii) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) inserted ", which shall have jurisdiction of such action", after "Circuit", and struck out a sentence at this point, which had read as follows: "Any action brought under this subparagraph shall be heard and determined by a 3-judge court in accordance with section 2284 of title 28, United States Code.".

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 subparagraph (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 [135] 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 [135] 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 [135] 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,[136] and all interested parties who were parties to the proceeding in connection with which the matter arises.

[135] Sec. 411(4)(G)(i) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) inserted "of the NAFTA or" after "article 1904" in subparas. (A), (B), and (C)(i).

[136] Sec. 411(4)(G)(ii) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) struck out "the Canadian Secretary," and inserted in lieu thereof "the relevant FTA Secretary,".

(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 imported 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 [137] 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 panel review is requested pursuant to article 1904 of the NAFTA or [138] 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.— [139]

(A) [140] ACTION UPON REMAND.—If a determination is referred to a binational panel or extraordinary challenge committee under the NAFTA or [141] 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

[137] Sec. 411(4)(G)(iii) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) inserted "of the NAFTA or" after "chapter 19".

[138] Sec. 411(4)(H) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) inserted "of the NAFTA or" after "article 1904".

[139] Sec. 411(4)(I)(i) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) inserted "OF THE NAFTA OR THE AGREEMENT" in the paragraph heading.

[140] Sec. 411(4)(I)(ii) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) struck out "IN GENERAL.—" in the subparagraph heading and inserted in lieu thereof "ACTION UPON REMAND.—"

[141] Sec. 411(4)(I)(iii) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2143) inserted "the NAFTA or" before "the Agreement" in subpara. (A).

(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 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.

(8) REQUESTS FOR BINATIONAL PANEL REVIEW.—

(A) INTERESTED PARTY REQUESTS FOR BINATIONAL PANEL REVIEW.—

(i)[142] 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)[143] of subsection (a)(5) 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[142] 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)[142] 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

[142] Sec. 411(4)(J) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2144) realigned the text of (8)(A) to create clause (i), added "(i) GENERAL RULE.—", inserted "of the NAFTA or" after "article 1904(4)", and added a new clause (ii).

[143] Sec. 129(e)(3) of Public Law 103–465 (108 Stat. 4839) struck out "subparagraph (A) or (B)" and inserted in lieu thereof "subparagraph (A), (B), or (E)".

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,[144] 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 of a determination under article 1904 of the NAFTA or the Agreement.[145]

(9) REPRESENTATION IN PANEL PROCEEDINGS.—In the case of binational panel proceedings convened under chapter 19 of the NAFTA or[146] 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 paragraph 4 of article 1904 of the NAFTA or the Agreement.[147]

(11)[148] 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.

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[144] Sec. 411(4)(K) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2144) struck out "Canadian Secretary," and inserted in lieu thereof "relevant FTA Secretary,".

[145] Sec. 411(4)(L) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2144) struck out "under article 1904 of the Agreement of a determination" and inserted in lieu thereof "of a determination under article 1904 of the NAFTA or the Agreement".

[146] Sec. 411(4)(M) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2144) inserted "of the NAFTA or" after "chapter 19".

[147] Sec. 411(4)(N) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2144) struck out "Government of Canada received notice of the determination under article 1904(4) of the Agreement." and inserted in lieu thereof "Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.".

[148] Sec. 411(4)(O) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2144) added paras. (11) and (12).

(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)[148] 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) 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) 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); 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).

(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),

(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) 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)[149] If the Trade Representative achieves a settlement with the government of a country described in subsection (f)(10) (A) or (B) 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).

(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.

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[149] Sec. 21(c)(3) of Public Law 104–295 (110 Stat. 3530) moved the clause designation "(i)" from immediately after "(D)" to immediately preceding "If the Trade Representative".

TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES [150]

SUBTITLE A—IMPOSITION OF COUNTERVAILING DUTIES

SEC. 701.[151] COUNTERVAILING DUTIES IMPOSED.

(a) [152] 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) [152] 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—

[150] Sec. 101 of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 150) inserted Title VII.

[151] 19 U.S.C. 1671.

[152] Sec. 262 of Public Law 103–465 (108 Stat. 4910) amended and restated subsecs. (a), (b), and (c).

(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)[152] 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)[153] 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[154] receive countervailable subsidies[155] 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,[155] as well as countervailable subsidies[155] provided directly to the international consortium, in determining any countervailing duty upon such merchandise.

(e)[156] 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).

(f)[157] * * * [Repealed—1994]

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[153] Sec. 1315 of Public Law 100–418 (102 Stat. 1185) added subsec. (d). Sec. 1337(b) of the Act further provided that the amendments made by sec. 1315 should only apply with respect to investigations initiated after the date of enactment of that Act, and to reviews initiated under sec. 736(c) or 751 of the Tariff Act of 1930 after the date of enactment of that Act.

[154] Sec. 233(a)(5)(A) of Public Law 103–465 (108 Stat. 4899) struck out "a class or kind of merchandise subject to a countervailing duty investigation" and inserted in lieu thereof "subject merchandise".

[155] Sec. 270(b)(1)(A) of Public Law 103–465 (108 Stat. 4917) struck out "subsidies" and inserted in lieu thereof "countervailable subsidies".

[156] Sec. 613(b) of Public Law 98–573 (98 Stat. 1973) originally added subsec. (e), which was designated as subsec. (g). Sec. 1886(a)(1)(B) of Public Law 99–514 (100 Stat. 2921) amended and redesignated the subsection as subsec. (c), Subsequently, sec. 1314 of Public Law 100–418 (102 Stat. 1185) redesignated the subsection as subsec. (d). Sec. 1315 of Public Law 100–418 redesignated the subsection as subsec. (e).

[157] Sec. 261(d)(1)(B)(iii) of Public Law 103–465 (108 Stat. 4910) repealed subsec. (f), which provided a cross-reference to former sec. 303.

SEC. 702.[158] PROCEDURES OF INITIATING A COUNTERVAILING DUTY INVESTIGATION.

(a) INITIATION BY ADMINISTERING AUTHORITY.—A countervailing duty investigation shall be initiated[159] 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[158] whenever an interested party described in subparagraph (C), (D), (E), (F), or (G)[160] 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)[161] PETITION BASED UPON A DEROGATION OF AN INTERNATIONAL UNDERTAKING ON OFFICIAL EXPORT CREDITS.—If the sole basis of a petition filed under paragraph (1)[162] is the derogation of an international undertaking on official export credits, the Administering Authority shall immediately notify the Secretary 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)[163] determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

(4)[164] ACTION WITH RESPECT TO PETITIONS.—

(A) NOTIFICATION OF GOVERNMENTS.—Upon receipt of a petition filed under paragraph (1), the administering authority shall—

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[158] 19 U.S.C. 1671a. Sec. 626(c) of Public Law 98–573 (98 Stat. 3042) further provided the following:

"(c)(1) No provision of title VII of the Tariff Act of 1930 shall be interpreted to prevent the refiling of a petition under section 702 or 732 of that title that was filed before the data of the enactment of this title, if the purpose of such refiling is to avail the petitioner of the amendment made by section 612(a)(1).

"(2) The amendment made by section 612(a)(1) shall not apply with respect to petitions filed (or refiled under paragraph (1)) under section 702 or 732 of the Tariff Act of 1930 after September 30, 1986.".

[159] Sec. 233(a)(6)(A) of Public Law 103–465 (108 Stat. 4901) struck out "commenced" and inserted in lieu thereof "initiated".

[160] Sec. 1326(d)(1) of Public Law 100–418 (102 Stat. 1203) added the reference to subpara. (G). Previously, sec. 1886(a)(2) of Public Law 99–514 (100 Stat. 2921) added the reference to subpara. (F).

[161] Sec. 650(a) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1266) added para. (3).

[162] Sec. 211(a)(1) of Public Law 103–465 (108 Stat. 4842) struck out "subsection 702(b)(1)" and inserted in lieu thereof "paragraph (1)".

[163] Sec. 212(b)(1)(E) of Public Law 103–465 (108 Stat. 4848) struck out "twenty days" and inserted in lieu thereof "5 days after the date on which the administering authority initiates an investigation under subsection (c)".

[164] Sec. 211(a)(2) of Public Law 103–465 (108 Stat. 4842) added para. (4).

(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)[165] 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

[165] Sec. 212(a)(1) of Public Law 103–465 (108 Stat. 4843) amended and restated subsec. (c).

(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 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).[166]

(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)[167] 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[168] is inconsistent with the Subsidies Agreement,[169] the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise.[170] Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise[170] and shall transmit such information to the administering authority at such times as the administering authority

[166] Sec. 20(b)(3) of Public Law 104–295 (110 Stat. 3527) struck out "(b)(1)(A)" and inserted in lieu thereof "(b)(1)".

[167] Sec. 1324(a) of Public Law 100–418 (102 Stat. 1199) added subsec. (e). Sec. 1337(c) of that Act further stated that the amendments made by sec. 1324 shall only apply with respect to investigations initiated after the date of enactment of that Act.

[168] Sec. 270(a)(1)(A) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

[169] Sec. 270(d) of Public Law 103–465 (108 Stat. 4918) struck out "Agreement" and inserted in lieu thereof "Subsidies Agreement".

[170] Sec. 233(a)(5)(B) of Public Law 103–465 (108 Stat. 4899) struck out "class or kind of merchandise that is the subject of the investigation" each place it appeared and inserted in lieu thereof "subject merchandise".

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.[171] **PRELIMINARY DETERMINATIONS.**

(a)[172] 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)[173] PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—Within 65 days after the date on which the administering authority initiates an investigation under section 702(c)[174], or an investigation is initiated[175] 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 on the information[176] available to it at the time of the determination, of whether there is a reasonable basis

[171] 19 U.S.C. 1671b.

[172] Sec. 212(b)(1)(A) of Public Law 103–465 (108 Stat. 4847) amended and restated subsec. (a).

[173] Sec. 650(b) of the Export-Import Bank Act Amendments of 1983 (Public Law 98–181; 97 Stat. 1266) inserted the paragraph designation "(1)" and added a new para. (2).

[174] Sec. 212(b)(1)(C)(i)(I) of Public Law 103–465 (108 Stat. 4848) struck out "85 days after the date on which a petition is filed under section 702(b)" and inserted in lieu thereof "65 days after the date on which the administering authority initiates an investigation under section 702(c)".

[175] Sec. 233(a)(6)(A)(iii) of Public Law 103–465 (108 Stat. 4901) struck out "commenced" and inserted in lieu thereof "initiated".

[176] Sec. 212(b)(1)(C)(i)(II) of Public Law 103–465 (108 Stat. 4848) struck out "best information" and inserted in lieu thereof "information".

to believe or suspect that a countervailable subsidy[177] is being provided with respect to the subject merchandise.[178]

(2)[173] Notwithstanding paragraph (1),[179] when the petition is one subject to section 702(b)(3),[179] the Administering Authority shall, taking into account the nature of the countervailable subsidy[180] concerned, make the determination required by paragraph (1)[179] on an expedited basis and within 65 days after the date on which the administering authority initiates an investigation under section 702(c)[181] unless the provisions of subsection (c) of this section[179] apply.

(3)[182] 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)[160] 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 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)[160] 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)[183] DE MINIMIS COUNTERVAILABLE SUBSIDY.—

(A) GENERAL RULE.—In making a determination under this subsection, the administering authority shall disregard any de

[177] Sec. 270(a)(1)(B) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

[178] Sec. 233(a)(5)(C) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise". Sec. 212(b)(1)(C)(i)(III) of that Act (108 Stat. 4848) struck out a sentence at this point that read: "If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.".

[179] Sec. 264(c)(1) of Public Law 103–465 (108 Stat. 4914) struck out "subsection (b)(1)" and inserted in lieu thereof "paragraph (1)"; struck out "subsection 702(b)(3)" and inserted in lieu thereof "section 702(b)(3)"; struck out subsection 703(b)(1)" and inserted in lieu thereof "paragraph (1)"; and struck out "section 703(c)" and inserted in lieu thereof "subsection (c) of this section".

[180] Sec. 270(a)(1)(C) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

[181] Sec. 212(b)(1)(C)(ii) of Public Law 103–465 (108 Stat. 4848) struck out "85 days after the date on which the petition is filed under section 702(b)" and inserted in lieu thereof "65 days after the date on which the administering authority initiates an investigation under section 702(c)".

[182] Sec. 603 of Public Law 98–573 (98 Stat. 3024) added para. (3).

[183] Sec. 263(a) of Public Law 103–465 (108 Stat. 4911) added para. (4).

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,

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)[184] 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

[184] Sec. 283(a) of Public Law 103–465 (108 Stat. 4930) added para. (5).

(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[185] practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies[186] 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),[187] or an investigation is initiated[188] 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 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)[189] (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

[185] Sec. 270(a)(1)(D) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

[186] Sec. 270(b)(1)(B) of Public Law 103–465 (108 Stat. 4917) struck out "subsidies" and inserted in lieu thereof "countervailable subsidies".

[187] Sec. 212(b)(1)(D) of Public Law 103–465 (108 Stat. 4848) struck out "150th day after the date on which a petition is filed under section 702(b)" and inserted in lieu thereof "130th day after the date on which the administering authority initiates an investigation under section 702(c)".

[188] Sec. 233(a)(6)(A)(iv) of Public Law 103–465 (108 Stat. 4901) struck out "commenced" and inserted in lieu thereof "initiated".

[189] Sec. 264(a) of Public Law 103–465 (108 Stat. 4912) struck out para. (2) in subsec. (d), redesignated para. (1) as para. (2), added "and" at the end of that paragraph, and added a new para. (1).

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,[190] 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,[190] and [189]

(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.[191]

(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) [192] determine, on the basis of the information [193] available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) [194] the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and

(B) [194] 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) [195] shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated

[190] Sec. 215(a)(1)(A) of Public Law 103–465 (108 Stat. 4852) struck out "warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register" and inserted in lieu thereof language from "warehouse" through subpara. (B).

[191] Sec. 215(a)(1)(B) of Public Law 103–465 (108 Stat. 4852) added this sentence.

[192] Sec. 1324(a)(2) of Public Law 100–418 (102 Stat. 1200) added "(at any time after the initiation of the investigation under this subtitle)".

[193] Sec. 214(a)(1)(A) of Public Law 103–465 (108 Stat. 4850) struck out "best information" and inserted in lieu thereof "information".

[194] Sec. 214(a)(1)(A) of Public Law 103–465 (108 Stat. 4850) amended and restated subparas. (A) and (B).

[195] Sec. 264(c)(2) of Public Law 103–465 (108 Stat. 4914) struck out "subsection (d)(1)" and inserted in lieu thereof "subsection (d)(2)".

entries of merchandise entered, or withdrawn from warehouse,[196] 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)[197] 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)[198] 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[199] 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);[200] 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

[196] Sec. 215(a)(2) of Public Law 103–465 (108 Stat. 4852) struck out "warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered" and inserted language from "warehouse," through subpara. (B).

[197] Sec. 212(b)(1)(F) of Public Law 103–465 (108 Stat. 4848) amended and restated subsec. (f).

[198] Originally added as subsec. (h) by sec. 613(c) of Public Law 98–573 (98 Stat. 3036). Sec. 1886(a)(3) of Public Law 99–514 (100 Stat. 2921) redesignated subsec. (h) as subsec. (g).

[199] Sec. 233(a)(6)(B) of Public Law 103–465 (108 Stat. 4901) struck out "commencement" and inserted in lieu thereof "initiation".

[200] Sec. 1886(a)(3)(A) of Public Law 99–514 (100 Stat. 2921) struck out "days under section 705(a)(1) or 225 days under section 705(a)(2), as appropriate" and inserted in lieu thereof the words to this point beginning with "or 225 days".

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),[201] 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.[202] TERMINATION OR SUSPENSION OF INVESTIGATION.

(a)[203] TERMINATION OF INSPECTION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—

(A)[204] 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[205] practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into

[201] Sec. 1886(a)(3)(A) of Public Law 99–514 (100 Stat. 2921) struck out "days under section 705(a)(2)" and inserted in lieu thereof the words to this point beginning with "or 225 days as appropriate". The words "as appropriate" following this note probably should have been deleted.

[202] 19 U.S.C. 1671c.

[203] Sec. 604(a)(1) of Public Law 98–573 (98 Stat. 3025) amended and restated subsec. (a).

[204] Sec. 217(a) of Public Law 103–465 (108 Stat. 4853) struck out "Except", inserted in lieu thereof "(A) WITHDRAWAL OF PETITION.—Except", indented the newly designated subpara. (A), and added new subpara. (B).

[205] Sec. 270(a)(1)(E) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" each place it appeared and inserted in lieu thereof "countervailable subsidy".

the United States of the subject merchandise[206] unless the administering authority is satisfied that termination on the basis on 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 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)[207] 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[205] practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the subject merchandise[208] agree—

(1) to eliminate the countervailable subsidy[205] completely or to offset completely the amount of the net countervailable subsidy,[205] 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 the merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

[206] Sec. 233(a)(5)(D) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise that is subject to the investigation" and inserted in lieu thereof "subject merchandise".

[207] Sec. 270(a)(1)(E) and sec. 270(a)(2)(A) of Public Law 103–465 (108 Stat. 4917) both struck out "SUBSIDY" and inserted in lieu thereof "COUNTERVAILABLE SUBSIDY" in the subsection heading. Sec. 270(c)(1) of that Act struck out "SUBSIDIZED MERCHANDISE" and inserted in lieu thereof "SUBJECT MERCHANDISE" in the subsection heading.

[208] Sec. 233(a)(5)(E) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".

(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 the exports to the United States of the subject merchandise.[209]

(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[210] 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[205] 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[211] 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[205] 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 authorities 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

[209] Sec. 233(a)(5)(F) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".

[210] Sec. 233(a)(5)(G) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".

[211] Sec. 233(a)(5)(H) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".

possible, an opportunity to submit comments thereon. In applying[212] 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).[213]

(2)[213] 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[205] 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)[213] REGULATIONS GOVERNING ENTRY OR WITHDRAWALS.—In order to carry out an agreement concluded under subsection (b) or (c), administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of subject merchandise.[214]

(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)[215] 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—

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[212] Sec. 216(a) of Public Law 103–465 (108 Stat. 4853) struck out "In applying" and inserted text to this point beginning with "Where practicable,".

[213] Sec. 604(a)(2) of Public Law 98–573 (98 Stat. 3026) amended subsec. (d) by adding the final sentence in para. (1), by striking out para. (2), and by redesignating existing para. (3) as para. (2). Subsequently, sec. 1886(a)(4) of Public Law 99–514 (100 Stat. 2921) redesignated para. (2) as para. (3) and reinserted the para. (2) deleted by Public Law 98–573.

[214] Sec. 233(a)(5)(I) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise covered by such agreement" and inserted in lieu thereof "subject merchandise".

[215] Sec. 604(a)(3) of Public Law 98–573 (98 Stat. 3026) struck out "all parties to the investigation" and inserted in lieu thereof "all interested parties described in section 771(9)".

(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,[216] 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.[205]—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[217] shall not be suspended under section 703(d)(2).[218]

(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).[219]

(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[217] shall be suspended under section 703(d)(1),[220] 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)[221] 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,

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[216] Sec. 233(a)(5)(J) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise which is the subject of an investigation" and inserted in lieu thereof "subject merchandise".

[217] Sec. 233(a)(5)(K) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".

[218] Sec. 264(c)(3)(A) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(2)".

[219] Sec. 264(c)(3)(B) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(1)(B)".

[220] Sec. 264(c)(4)(A) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(2)".

[221] Sec. 264(c)(4)(B) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(1)(B)".

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[205] practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G)[160] 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)[160] 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[222] 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[222] 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

[222] Sec. 233(a)(5)(L) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".

Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(2),[223] and

(B) release any bond or other security, and refund any cash deposit, required under section 703(d)(1)(B).[224]

(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)[225] 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)[226] if it considers the violation to be intentional,[227] notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E)[226] 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.

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[223] Sec. 264(c)(5)(A) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(2)".

[224] Sec. 264(c)(5)(B) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(1)(B)".

[225] Sec. 264(c)(6) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(2)".

[226] Sec. 604(a)(4) of Public Law 98–573 (98 Stat. 3026) redesignated existing subpara. (D) as subpara. (E) and added a new subpara. (D).

[227] Sec. 1886(a)(2)(B) of Public Law 99–514 (100 Stat. 2921) struck out "international" and inserted in lieu thereof "intentional".

(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 as investigation under subsection (g), the Commission and the administering authority shall consider all of the subject merchandise,[228] without regard to the effect of any agreement under subsection (b) or (c).

(k)[229] 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)[230] 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.[231] FINAL DETERMINATIONS.

(a) FINAL DETERMINATION BY ADMINISTERING AUTHORITY.—

(1)[232] 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

[228] Sec. 233(a)(5)(M) of Public Law 103–465 (108 Stat. 4899) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".
[229] Sec. 604(a)(5) of Public Law 98–573 (98 Stat. 3026) added subsec. (k).
[230] Sec. 218(a)(1) of Public Law 103–465 (108 Stat. 4854) added subsec. (l).
[231] 19 U.S.C. 1671d.
[232] Sec. 606 of Public Law 98–573 (98 Stat. 3029) amended and restated para. (1).

or not a countervailable subsidy[233] is being provided with respect to the subject merchandise;[234] 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[235] is inconsistent with the Subsidies Agreement,[236] and

(B) there have been massive imports of the subject merchandise[237] over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 703(e)(1) was negative.[238]

(3)[239] 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,[240] 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.[241]

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[233] Sec. 270(a)(1)(F) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

[234] Sec. 233(a)(5)(N) of Public Law 103–465 (108 Stat. 4899) struck out "the merchandise" and inserted in lieu thereof "the subject merchandise".

[235] Sec. 270(a)(1)(G) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

[236] Sec. 214(a)(2)(A)(i) of Public Law 103–465 (108 Stat. 4850) inserted "Subsidies" before "Agreement".

[237] Sec. 214(a)(2)(A)(ii) of Public Law 103–465 (108 Stat. 4850) struck out "class or kind of merchandise involved" and inserted in lieu thereof "subject merchandise".

[238] Sec. 605(a)(1) of Public Law 98–573 (98 Stat. 3028) added this sentence.

[239] Sec. 263(b) of Public Law 103–465 (108 Stat. 4912) added para. (3).

[240] Sec. 602(a)(2) of Public Law 98–573 (98 Stat. 3024) added the words ", or sales (or the likelihood of sales) for importation,". Sec. 626(b) of Public Law 98–573 further stated that this amendment shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after the effective date of this Act (October 30, 1984).

[241] Sec. 212(b)(1)(B) of Public Law 103–465 (108 Stat. 4848) added this sentence.

(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)[242] 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.

(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, the—

(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

[242] Sec. 214(a)(2)(B) of Public Law 103–465 (108 Stat. 4850) amended and restated subpara. (A). It was previously amended and restated by sec. 1324(a)(3) of Public Law 100–418 (102 Stat. 1200).

information to which confidential treatment has been given by the administering authority,[243]

(B)[243] (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[244] 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 estimated country-wide subsidy rate, whichever is applicable, and

(C)[243] 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).[245]

(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),[246] and

(B) release any bond or other security and refund any cash deposit required under section 703(d)(1)(B).[247]

(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[248] section 703(e)(2), and

[243] Sec. 264(b) of Public Law 103–465 (108 Stat. 4913) struck out "and" at the end of subpara. (A), redesignated subpara. (B) as subpara. (C), and added a new subpara. (B).

[244] Sec. 20(b)(15) of Public Law 104–295 (110 Stat. 3527) inserted "section".

[245] Sec. 264(b)(1)(ii) of Public Law 103–465 (108 Stat. 4913) struck out "under paragraphs (1) and (2) of section 703(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security" and inserted in lieu thereof "the suspension of liquidation under paragraph (2) of section 703(d)".

[246] Sec. 264(c)(7)(A) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(2)".

[247] Sec. 264(c)(7)(B) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(1)(B)".

[248] Sec. 605(a) of Public Law 98–573 (98 Stat. 3028) amended subsec. (c) by inserting the reference to para. (4) in para. (3) and by adding a new para. (4).

(B) release any bond or other security, and refund any cash deposit required, under section 703(d)(1)(B)[249] with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).

(4)[248] 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) 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)[250] 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

[249] Sec. 264(c)(8) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(1)(B)".

[250] Sec. 265(b)(2) of Public Law 103–465 (108 Stat. 4913) added para. (5).

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)[251] 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.[252] 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[253] 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)[254] includes a description of the subject merchandise,[255] in such detail as the administering authority deems necessary, and

[251] Sec. 1333(a) of Public Law 100–418 (102 Stat. 1209) added subsec. (e).

[252] 19 U.S.C. 1671e.

[253] Sec. 270(a)(1)(H) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

[254] Sec. 265 of Public Law 103–465 (108 Stat. 4914) struck out para. (2) and redesignated paras. (3) and (4) as paras. (2) and (3). Sec. 607 of Public Law 98–573 (98 Stat. 3029) had added the original para. (2).

[255] Sec. 233(a)(5)(O) of Public Law 103–465 (108 Stat. 4899) struck out "class or kind of merchandise to which it applies" and inserted in lieu thereof "subject merchandise".

(3)[254] requires the deposit of estimated countervailing duties pending liquidation of entries on the merchandise are deposited.

(b) IMPOSITION OF DUTIES.—

(1) GENERAL RULE.—If the Commission, it 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),[256] 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),[250] 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)[257] 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.[258] 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)[259] is different from

[256] Sec. 264(c)(9) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(1)" and inserted in lieu thereof "section 703(d)(2)".

[257] Sec. 218(b)(1) of Public Law 103–465 (108 Stat. 4855) added subsec. (c).

[258] 19 U.S.C. 1671f.

[259] Sec. 264(c)(10) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(2)" and inserted in lieu thereof "section 703(d)(1)(B)".

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.[260] 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),[261] 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.[262] 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,

[260] 19 U.S.C. 1671g. Sec. 650(c) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1266) added sec. 708. Sec. 1886(a)(2) of Public Law 99–514 (100 Stat. 2921) added the section heading.

[261] Sec. 264(c)(11) of Public Law 103–465 (108 Stat. 4914) struck out "section 703(d)(2)" and inserted in lieu thereof "section 703(d)(1)(B)".

[262] 19 U.S.C. 1671h. Sec. 608 of Public Law 98–573 (98 Stat. 3029) added sec. 709.

(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.

SUBTITLE B—IMPOSITION OF ANTIDUMPING DUTIES [263]

SEC. 731.[264] 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,[265]

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 [266] exceeds the export price (or the constructed export price) [267] for the merchandise. For purposes of this section 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.[265]

SEC. 732.[268] PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.

(a) [269] INITIATION BY ADMINISTERING AUTHORITY.—

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[263] Subtitle B, as added by Public Law 96–39, replaces the Antidumping Act of 1921, which was repealed by Public Law 96–39.

[264] 19 U.S.C. 1673.

[265] Sec. 602(b) of Public Law 98–573 (98 Stat. 3024) amended sec. 731 by inserting the words "or by reason of sales (or the likelihood of sales) of that merchandise for importation", and by adding the final sentence.

Sec. 626(b) of Public Law 98–573 further stated that this amendment shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after the effective date of this Act (October 30, 1984).

Sec. 626(c) of Public Law 98–573 (98 Stat. 3042) further provided the following:

"(c)(1) No provision of title VII of the Tariff Act of 1980 shall be interpreted to prevent the refilling of a petition under section 702 or 732 of that title that was filed before the date of the enactment of this title, if the purpose of such refiling is to avail the petitioner of the amendment made by section 612(a)(1).

"(2) The amendment made by section 612(a)(1) shall not apply with respect to petitions filed (or refiled under paragraph (1)) under section 702 or 732 of the Tariff Act of 1930 after September 30, 1986.".

[266] Sec. 233(a)(1)(A) of Public Law 103–465 (108 Stat. 4898) struck out "foreign market value" and inserted in lieu thereof "normal value".

[267] Sec. 233(a)(2)(A)(i) of Public Law 103–465 (108 Stat. 4898) struck out "United States price" and inserted in lieu thereof "export price (or the constructed export price)".

[268] 19 U.S.C. 1673a.

[269] Sec. 609 of Public Law 98–573 (98 Stat. 3030) amended and restated subsec. (a). Subsec. (a) previously read as follows:

Continued

(1) IN GENERAL.—An antidumping duty investigation shall be initiated[270] 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[271] a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately commence 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 kinds 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[272] under subparagraph (B).

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—An antidumping proceeding shall be initiated[273] whenever an interested party described in subparagraph (C), (D), (E), (F), or (G)[160] 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

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"(a) INITIATION BY ADMINISTERING AUTHORITY.—An antidumping duty investigation shall be commenced 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.".

[270] Sec. 233(a)(6)(A)(v) of Public Law 103–465 (108 Stat. 4901) struck out "commenced" and inserted in lieu thereof "initiated".

[271] Sec. 233(a)(6)(C) of Public Law 103–465 (108 Stat. 4901) struck out "commence" and inserted in lieu thereof "initiate".

[272] Sec. 233(a)(6)(A)(vi) of Public Law 103–465 (108 Stat. 4901) struck out "commenced" and inserted in lieu thereof "initiated".

[273] Sec. 233(a)(6)(A)(vii) of Public Law 103–465 (108 Stat. 4901) struck out "commenced" and inserted in lieu thereof "initiated".

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)[274] 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)[160] 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)[275] 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".

[274] Sec. 211(b) of Public Law 103–465 (108 Stat. 4843) added para. (3).
[275] Sec. 212(a)(2) of Public Law 103–465 (108 Stat. 4845) amended and restated subsec. (c).

(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).[276]

(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)[277] 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,[278] 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 merchandise which is the subject of the investigation at less than its fair value,

[276] Sec. 20(b)(4) of Public Law 104–295 (110 Stat. 3527) struck out "(b)(1)(A)" and inserted in lieu thereof "(b)(1)".

[277] Sec. 1324(b)(1) of Public Law 100–418 (102 Stat. 1200) added subsec. (e).

[278] Sec. 233(a)(5)(P) of Public Law 103–465 (108 Stat. 4900) struck out "class or kind of the merchandise which is the subject of the investigation" and inserted in lieu thereof "the subject merchandise", resulting in a double "the". Sec. 20(b)(8) of Public Law 104–295 (110 Stat. 3527) struck out the second "the".

the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise.[279] Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise[279] 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.[280] PRELIMINARY DETERMINATIONS.

(a)[281] 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)[282] PERIOD OF ANTIDUMPING DUTY INVESTIGATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), 140 days after the date on which the administering

[279] Sec. 233(a)(5)(Q) and (R) of Public Law 103–465 (108 Stat. 4900) struck out "class or kind of the merchandise which is the subject of the investigation" and "class or kind of the merchandise that is the subject of the investigation", and inserted in lieu thereof "subject merchandise".

[280] 19 U.S.C. 1673b. Sec. 101 of Public Law 96–39 (93 Stat. 163) added sec. 733.

[281] Sec. 212(b)(2)(A) of Public Law 103–465 (108 Stat. 4848) amended and restated subsec. (a).

[282] Sec. 1323(b) of Public Law 100–418 (102 Stat. 1198) amended and restated para. (1).

authority initiates an investigation under section 732(c),[283] or an investigation is initiated[284] 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[285] 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.[286]

(B) IF CERTAIN SHORT LIFE CYCLE MERCHANDISE INVOLVED.—If a petition filed under section 732(b), or an investigation initiated[284] 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"[287] 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"[288] 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).

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[283] Sec. 212(b)(2)(C)(i)(I) of Public Law 103–465 (108 Stat. 4849) struck out "within 160 days after the date on which a petition is filed under section 732(b)" and inserted in lieu thereof "140 days after the date on which the administering authority initiates an investigation under section 732(c)".

[284] Sec. 233(a)(6)(A)(viii) of Public Law 103–465 (108 Stat. 4901) struck out "commenced" and inserted in lieu thereof "initiated".

[285] Sec. 212(b)(2)(C)(i)(II) of Public Law 103–465 (108 Stat. 4849) struck out "best information" and inserted in lieu thereof "information".

[286] Sec. 219(a)(2) of Public Law 103–465 (108 Stat. 4856) deleted "If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price." at this point.

[287] Sec. 212(b)(2)(C)(ii) of Public Law 103–465 (108 Stat. 4849) struck out "120" and "160" and inserted "100" and "140" respectively.

[288] Sec. 212(b)(2)(C)(ii) of Public Law 103–465 (108 Stat. 4849) struck out "100" and "160" and inserted "80" and "140" respectively.

(2) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 75 days after the initiation of an investigation to 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 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), or (E) 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), or (E) 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[289] of the investigation on the basis of the record established during the first 60 days after the investigation was initiated.[290]

(3)[291] 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,

[289] Sec. 233(a)(6)(B) of Public Law 103–465 (108 Stat. 4901) struck out "commencement" and inserted in lieu thereof "initiation".

[290] Sec. 233(a)(6)(A)(ix) of Public Law 103–465 (108 Stat. 4901) struck out "commenced" and inserted in lieu thereof "initiated".

[291] Sec. 213(a) of Public Law 103–465 (108 Stat. 4850) added para. (3).

(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),[292] or an investigation is initiated[293] 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.[294]

(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)[295] (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)[295] 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

[292] Sec. 212(b)(2)(D) of Public Law 103–465 (108 Stat. 4849) struck out "210th day after the date on which a petition is filed under section 732(b)" and inserted in lieu thereof "190th day after the date on which the administering authority initiates an investigation under section 732(c)".

[293] Sec. 233(a)(6)(A)(x) of Public Law 103–465 (108 Stat. 4901) struck out "commenced" and inserted in lieu thereof "initiated".

[294] Sec. 1323(b)(2) of Public Law 100–418 (102 Stat. 1199) inserted this sentence.

[295] Sec. 219(a)(1) of Public Law 103–465 (108 Stat. 4855) struck out para. (2); redesignated para. (1) as para. (2); inserted "and" at the end of para. (2); and added a new para. (1).

(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[296]

(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.[297]

(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)[298] determine, on the basis of the information[299] available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)[300] 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.

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.[301]

(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)[302] 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

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[296] Sec. 215(b)(1)(A) of Public Law 103–465 (108 Stat. 4852) struck out "warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register" and inserted in lieu thereof language from "warehouse," through subpara. (B).

[297] Sec. 215(b)(1)(B) of Public Law 103–465 (108 Stat. 4852) added this sentence.

[298] The text within the parentheses to this point was added by sec. 1324(b)(2) of Public Law 100–418 (102 Stat. 1201).

[299] Sec. 214(b)(1)(A) of Public Law 103–465 (108 Stat. 4851) struck out "best information" and inserted in lieu thereof "information".

[300] Sec. 214(b)(1)(A) of Public Law 103–465 (108 Stat. 4851) amended and restated subparas. (A) and (B).

[301] Sec. 1323(b)(3) of Public Law 100–418 (102 Stat. 1199) added this sentence.

[302] Sec. 219(c)(1) of Public Law 103–465 (108 Stat. 4857) struck out "subsection (d)(1)" and inserted in lieu thereof "subsection (d)(2)".

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.[303]

(f)[304] 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.[305] TERMINATION OR SUSPENSION OF INVESTIGATION.

(a)[306] TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—

(A)[307] 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)[307] 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 AGREEMENT.—

(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

[303] Sec. 215(b)(2) of Public Law 103–465 (108 Stat. 4853) struck out "warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered." and inserted in lieu thereof language beginning at "warehouse," through subpara. (B).

[304] Sec. 212(b)(2)(E) of Public Law 103–465 (108 Stat. 4850) amended and restated subsec. (f).

[305] 19 U.S.C. 1673c.

[306] Sec. 604(b) of Public Law 98–573 (98 Stat. 3026) amended and restated subsec. (a).

[307] Sec. 217(b) of Public Law 103–465 (108 Stat. 4853) struck out "Except", inserted in lieu thereof "(A) WITHDRAWAL OF PETITION.—Except", indented subpara. (A), and added a new subpara. (B).

imports into the United States of the subject merchandise[308] 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 administrative authority under section 703(b).

(b) AGREEMENTS TO ELIMINATE COMPLETELY SALES AT LESS THAN FAIR VALUE OR TO CEASE EXPORT OF MERCHANDISE.—The administering authority may suspend an investigation if the exporters of the subject merchandise[309] 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[310] of the merchandise which is the subject of the agreement exceeds the export price (or the constructed export price)[311] of that merchandise.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFORTS.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case,

[308] Sec. 233(a)(5)(S) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise that is subject to the investigation" and inserted in lieu thereof "subject merchandise".

[309] Sec. 233(a)(5)(T) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise" in subsecs. (b), (c)(1), (f)(1)(A), (f)(2)(A)(i), (g)(1), (h)(2), (h)(3), and (j) of sec. 734.

[310] Sec. 233(a)(1)(B) of Public Law 103–465 (108 Stat. 4898) struck out "foreign market value" and inserted in lieu thereof "normal value".

[311] Sec. 233(a)(2)(A)(ii) of Public Law 103–465 (108 Stat. 4898) struck out "United States price" and inserted in lieu thereof "export price (or the constructed export price)".

it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the subject merchandise[309] 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[310] exceeds the export price (or the constructed export price)[311] will not exceed 15 percent of the weighted average amount by which the estimated normal value[310] exceeded the export price (or the constructed export price)[311] 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)[312] 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.[313]

(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,

[312] Sec. 604(b)(2) of Public Law 98–573 (98 Stat. 3027) amended and restated subsec. (d).
[313] Sec. 216(b) of Public Law 103–465 (108 Stat. 4853) added this sentence.

(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)[314] 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,[309] 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[309] shall not be suspended under section 733(d)(2),[315]

(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).[316]

(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[317] shall be suspended under section 733(d)(2),[318] or, if the liquidation of entries of such merchandise was

[314] Sec. 604(b)(3) of Public Law 98–573 (98 Stat. 3027) struck out "all parties to the investigation" and inserted in lieu thereof "all interested parties described in section 771(9)".

[315] Sec. 219(c)(2)(A) of Public Law 103–465 (108 Stat. 4857) struck out "section 733(d)(1)" and inserted in lieu thereof "section 733(d)(2)".

[316] Sec. 219(c)(2)(B) of Public Law 103–465 (108 Stat. 4857) struck out "section 733(d)(2)" and inserted in lieu thereof "section 733(d)(1)(B)".

[317] Sec. 233(a)(5)(U) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise subject to the investigation" and inserted in lieu thereof "subject merchandise".

[318] Sec. 219(c)(3) of Public Law 103–465 (108 Stat. 4857) struck out "section 733(d)(1)" and inserted in lieu thereof "section 733(d)(2)", and struck out "section 733(d)(2)" and inserted in lieu thereof "section 733(d)(1)(B)", respectively.

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)[318] 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 of the United States of the subject merchandise,[309] or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G)[160] 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)[160] 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[309] 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[309] 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),[319] and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(1)(B).[320]

(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)[321] 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)[322] if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

[319] Sec. 219(c)(4)(A) of Public Law 103–465 (108 Stat. 4857) struck out "section 733(d)(1)" and inserted in lieu thereof "section 733(d)(2)".

[320] Sec. 219(c)(4)(B) of Public Law 103–465 (108 Stat. 4857) struck out "section 733(d)(2)" and inserted in lieu thereof "section 733(d)(1)(B)".

[321] Sec. 219(c)(5) of Public Law 103–465 (108 Stat. 4857) struck out "section 733(d)(1)" and inserted in lieu thereof "section 733(d)(2)".

[322] Sec. 604(b) (4) of Public Law 98–573 (98 Stat. 3027) redesignated existing subpara. (D) as subpara. (E), and added a new subpara. (D).

(E)[322] 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[309] without regard to the effect of any agreement under subsection (b) or (c).

(k)[323] 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)[324] 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)[325] 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

[323] Sec. 604(b)(5) of Public Law 98–573 (98 Stat. 3027) added subsec. (k).

[324] Sec. 1316(c) of Public Law 100–418 (102 Stat. 1187) added subsec. (l). Sec. 1337(b) of that Act further stated that the amendments made by sec. 1316 shall only apply with respect to investigations initiated after the date of enactment of that Act, and to reviews initiated under secs. 736(c) or 751 of the Tariff Act of 1930 after the date of enactment of that Act.

[325] Sec. 218(a)(2) of Public Law 103–465 (108 Stat. 4854) added subsec. (m).

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.[326] FINAL DETERMINATIONS.

(a) FINAL DETERMINATION 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[327] 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—

[326] 19 U.S.C. 1673d.

[327] Sec. 233(a)(5)(V) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise which was the subject of the investigation" and inserted in lieu thereof "subject merchandise".

(A)(i) there is a history of dumping and material injury by reason of dumped imports[328] in the United States or elsewhere of the subject merchandise,[329] 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,[330] and

(B) there have been massive imports of the subject merchandise[331] over a relatively short period.

(4)[332] 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).

Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.[333]

(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,[334] 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.[335]

(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

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[328] Sec. 214(b)(2)(A)(i)(I) of Public Law 103–465 (108 Stat. 4851) inserted "and material injury by reason of dumped imports" after "history of dumping".

[329] Sec. 214(b)(2)(A)(i)(II) of Public Law 103–465 (108 Stat. 4851) struck out "class or kind of merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".

[330] Sec. 214(b)(2)(A)(ii) of Public Law 103–465 (108 Stat. 4851) struck out "merchandise which is the subject of the investigation at less than its fair value" and inserted in lieu thereof "subject merchandise at less than its fair value and that there would be material injury by reason of such sales".

[331] Sec. 214(b)(2)(A)(iii) of Public Law 103–465 (108 Stat. 4851) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".

[332] Sec. 213(b) of Public Law 103–465 (108 Stat. 4850) added para. (4).

[333] Sec. 605(b)(1) of Public Law 98–573 (98 Stat. 3028) added this sentence.

[334] Sec. 602(c) of Public Law 98–573 (98 Stat. 3024) added the words ", or sales (or the likelihood of sales) for importation,". Sec 626(b) of Public Law 98–573 further stated that this amendment shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after the effective date of this Act (October 30, 1984).

[335] Sec. 212(b)(1)(B) of Public Law 103–465 (108 Stat. 4849) added this sentence.

(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)[336] 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) of this section 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 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

[336] Sec. 1324(b)(3) of Public Law 100–418 (102 Stat. 1201) amended and restated subpara. (A). Subsequently, sec. 214(b)(2)(B) of Public Law 103–465 (108 Stat. 4851) amended and restated subpara. (A).

information as to which confidential treatment has been given by the administering authority,[337]

(B)[337] (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)[337] 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).[338]

(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 733(d)(2),[339] and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(1)(B).[340]

(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)[341] 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)[342] with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2).

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[337] Sec. 219(b)(1) of Public Law 103–465 (108 Stat. 4856) redesignated subpara. (B) as subpara. (C); struck out "and" at the end of subpara. (A); and inserted a new subpara. (B).

[338] Sec. 219(b)(1)(A)(ii) of Public Law 103–465 (108 Stat. 4856) struck out "under paragraphs (1) and (2) of section 733(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security" and inserted in lieu thereof "the suspension of liquidation under section 733(d)(2)".

[339] Sec. 219(c)(6) of Public Law 103–465 (108 Stat. 4857) struck out "section 703(d)(1)" and inserted in lieu thereof "section 733(d)(2)".

[340] Sec. 219(c)(7) of Public Law 103–465 (108 Stat. 4857) struck out "section 733(d)(2)" and inserted in lieu thereof "section 733(d)(1)(B)".

[341] Sec. 605(b) of Public Law 98–573 (98 Stat. 3028) amended subsec. (c) by inserting the reference to para. (4) in para. (3), and by adding a new para. (4).

[342] Sec. 219(c)(8) of Public Law 103–465 (108 Stat. 4857) struck out "section 733(d)(2)" and inserted "section 733(d)(1)(B)".

(4)[341] 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)[343] 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

[343] Sec. 219(b)(2) of Public Law 103–465 (108 Stat. 4856) added para. (5).

based, and it shall publish notice of its determination in the Federal Register.

(e)[344] 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.[345] 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[346] of the merchandise exceeds the export price (or the constructed export price)[347] 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 of 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 the merchandise.

(2) includes a description of the subject merchandise,[348] 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

[344] Sec. 1333(a) of Public Law 100–418 (102 Stat. 1209) added subsec. (e).

[345] 19 U.S.C. 1673e.

[346] Sec. 233(a)(1)(C) of Public Law 103–465 (108 Stat. 4898) struck out "foreign market value" and inserted in lieu thereof "normal value".

[347] Sec. 233(a)(2)(A)(iii) of Public Law 103–465 (108 Stat. 4898) struck out "United States price" and inserted in lieu thereof "export price (or the constructed export price)".

[348] Sec. 233(a)(5)(W) of Public Law 103–465 (108 Stat. 4900) struck out "class or kind of merchandise to which it applies" and inserted in lieu thereof "subject merchandise".

under section 733(d)(2)[349] would have led to a finding of material injury, then entries of the subject merchandise,[350] the liquidation of which has been suspended under section 733(d)(2),[343] 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[351] 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)[352] 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[346] and the export price (or the constructed export price)[347] for all merchandise of such manufacturer, producer, or exporter described in that

[349] Sec. 219(c)(9) of Public Law 103–465 (108 Stat. 4857) struck out "section 733(d)(1)" and inserted in lieu thereof "section 733(d)(2)".

[350] Sec. 233(a)(5)(X) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise subject to the antidumping duty order" and inserted in lieu thereof "subject merchandise".

[351] Sec. 233(a)(5)(Y) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise subject to an antidumping duty order" and inserted in lieu thereof "subject merchandise".

[352] Sec. 1325(a) of Public Law 100–418 (102 Stat. 1201) amended and restated para. (1). Sec. 1337(b) of that Act further stated that the amendments made by sec. 1325 shall only apply with respect to investigations initiated after the date of enactment of that Act, and to reviews initiated under secs. 736(c) or 751 of the Tariff Act of 1930 after the date of enactment of that Act.

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[346] of the merchandise exceeds the export price (or the constructed export price)[347] 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[346] and the export price (or the constructed export price)[347] 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[346] and the export price (or the constructed export price)[347] of 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[346] and the export price (or the constructed export price),[347] 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)[353] 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

[353] Sec. 1325(b) of Public Law 100–418 (102 Stat. 1202) added para. (4).

(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)[354] 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.[355] TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED ANTIDUMPING DUTY AND FINAL ASSESSED DUTY UNDER ANTIDUMPING DUTY ORDER.

(a)[356] 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[357] 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[358] is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security[359] 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—

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[354] Sec. 218(b)(2) of Public Law 103–465 (108 Stat. 4855) added subsec. (d).

[355] 19 U.S.C. 1673f.

[356] Sec. 219(c)(10) of Public Law 103–465 (108 Stat. 4857) struck out "section 733(d)(2)" and inserted in lieu thereof "section 733(d)(1)(B)" at each point it appeared in this subsection.

[357] Sec. 40(1) of Public Law 104–295 (110 Stat. 3541) struck out "deposit collected" and inserted in lieu thereof "deposit, or the amount of any bond or other security, required".

[358] Sec. 40(2) of Public Law 104–295 (110 Stat. 3541) struck out "the cash deposit collected" and inserted in lieu thereof "that the cash deposit, bond, or other security".

[359] Sec. 40(2) of Public Law 104–295 (110 Stat. 3541) struck out "refunded, to the extent the cash deposit" and inserted in lieu thereof "refunded or released, to the extent that the cash deposit, bond, or other security".

(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.[360] 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)[361] 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[362] 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.[363] 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.

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[360] 19 U.S.C. 1673g.

[361] Sec. 233(a)(2)(A)(iv) of Public Law 103–465 (108 Stat. 4898) struck out "United States price" and inserted in lieu thereof "export price (or the constructed export price)".

[362] Sec. 233(a)(2)(B) of Public Law 103–465 (108 Stat. 4898) struck out "exporter's sales price" and inserted in lieu thereof "constructed export price".

[363] 19 U.S.C. 1673h. Sec. 1323(a) of Public Law 100–418 (102 Stat. 1195) added sec. 739. A previous sec. 739, entitled "**DUTIES OF CUSTOMS OFFICERS**", was repealed in 1984 by Public Law 98–573 (98 Stat. 3031).

(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.[364]

(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

[364] Sec. 139(a)(2) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 653) struck out "Tariff Schedules of the United States" and inserted in lieu thereof "Harmonized Tariff Schedule of the United States".

(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[365] of the merchandise exceeds the export price (or the constructed export price)[366] 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 affirmative dumping determination only if the administering authority—

[365] Sec. 233(a)(1)(D) of Public Law 103–465 (108 Stat. 4898) struck out "foreign market value" and inserted in lieu thereof "normal value".

[366] Sec. 233(a)(2)(A)(v) of Public Law 103–465 (108 Stat. 4898) struck out "United States price" and inserted in lieu thereof "export price (or the constructed export price)".

(i) makes a separate determination of the amount by which the normal value[365] of such merchandise of the manufacturer exceeds the export price (or the constructed export price)[366] 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[359] of the merchandise in such group exceeds the export price (or the constructed export price)[360] 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.—The 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).

SEC. 740.[367] **ANTIDUMPING DUTY TREATED AS REGULAR DUTY FOR DRAWBACK PURPOSES.** * * * [Repealed—1984]

SUBTITLE C—REVIEWS; OTHER ACTIONS REGARDING AGREEMENTS [368]

CHAPTER 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS [368]

SEC. 751.[369] **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

[367] Sec. 622(a)(1) of Public Law 98–573 (98 Stat. 3039) repealed sec. 740. See sec. 779 of this Act for new text regarding drawbacks.

[368] Sec. 611(a)(1) of Public Law 98–573 (98 Stat. 3031) amended the subtitle heading and added the chapter heading. Previously, the subtitle heading read: "SUBTITLE C—REVIEW OF DETERMINATIONS".

[369] 19 U.S.C. 1675. Sec. 220(a) of Public Law 103–465 (108 Stat. 4857) amended and restated sec. 751.

(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.

(7)[370] EXCLUSIONS FROM COMPUTATIONS.

(A) IN GENERAL.—Subject to subparagraph (B), there shall be excluded from the computation of the 5-year period described in paragraph (1) and the periods described in paragraph (6) any period during which the importation of the subject merchandise is prohibited on account of the imposition, under the International Emergency Economic Powers Act or other provision of law, of sanctions by the United States against the country in which the subject merchandise originates.

(B) APPLICATION OF EXCLUSION.—Subparagraph (A) shall apply only with respect to subject merchandise which originates in a country that is not a WTO member.

(d) REVOCATION OF ORDER OR FINDING; TERMINATION OF SUSPENDED INVESTIGATION.—

[370] Sec. 2410 of Public Law 106–36 (113 Stat. 171) inserted para. (7).

(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)[371] 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

[371] Sec. 283(c) of Public Law 103–465 (108 Stat. 4930) redesignated subsec. (g) as subsec. (h), and added a new subsec. (g).

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)[371] 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.[372] 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

[372] 19 U.S.C. 1675a. Sec. 221(a) of Public Law 103–465 (108 Stat. 4865) added sec. 752.

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 termination 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.

SEC. 753.[373] 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,

[373] 19 U.S.C. 1675b. Sec. 271(a) of Public Law 103–465 (108 Stat. 4918) added sec. 753. Sec. 39(1) of Public Law 104–295 (110 Stat. 3540) inserted "or section 701(c)" after "section 303" each place it appeared in sec. 753.

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[374] 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

[374] Sec. 39(2) of Public Law 104–295 (110 Stat. 3541) struck out "under section 303(a)(2)" in subsecs. (a)(2) and (c).

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[374] 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.

SEC. 754.[375] **CONTINUED DUMPING AND SUBSIDY OFFSET.**

(a) IN GENERAL.—Duties assessed pursuant to a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921 shall be distributed on an annual basis under this section to the affected domestic producers for qualifying expenditures. Such distribution shall be known as the "continued dumping and subsidy offset".

(b) DEFINITIONS.—As used in this section:

(1) AFFECTED DOMESTIC PRODUCER.—The term "affected domestic producer" means any manufacturer, producer, farmer, rancher, or worker representative (including associations of such persons) that—

(A) was a petitioner or interested party in support of the petition with respect to which an antidumping duty order,

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[375] 19 U.S.C. 1675c. Sec. 1003(a) of Public Law 106–387 (114 Stat. 1549A–73) added sec. 754. Title X of that Act further provided the following:

"SEC. 11001. SHORT TITLE.

"This title may be cited as the 'Continued Dumping and Subsidy Offset Act of 2000'.

"SEC. 1002. FINDINGS OF CONGRESS.

"Congress makes the following findings:

"(1) Consistent with the rights of the United States under the World Trade Organization, injurious dumping is to be condemned and actionable subsidies which cause injury to domestic industries must be effectively neutralized.

"(2) United States unfair trade laws have as their purpose the restoration of conditions of fair trade so that jobs and investment that should be in the United States are not lost through the false market signals.

"(3) The continued dumping or subsidization of imported products after the issuance of antidumping orders or findings or countervailing duty orders can frustrate the remedial purpose of the laws by preventing market prices from returning to fair levels.

"(4) Where dumping or subsidization continues, domestic producers will be reluctant to reinvest or rehire and may be unable to maintain pension and health care benefits that conditions of fair trade would permit. Similarly, small businesses and American farmers and ranchers may be unable to pay down accumulated debt, to obtain working capital, or to otherwise remain viable.

"(5) United States trade laws should be strengthened to see that the remedial purpose of those laws is achieved.".

Sec. 1003(c) of that Act further provided:

"(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to all antidumping and countervailing duty assessments made on or after October 1, 2000.".

a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered, and

(B) remains in operation.

Companies, businesses, or persons that have ceased the production of the product covered by the order or finding or who have been acquired by a company or business that is related to a company that opposed the investigation shall not be an affected domestic producer.

(2) COMMISSIONER.—The term "Commissioner" means the Commissioner of Customs.

(3) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(4) QUALIFYING EXPENDITURE.—The term "qualifying expenditure" means an expenditure incurred after the issuance of the antidumping duty finding or order or countervailing duty order in any of the following categories:

(A) Manufacturing facilities.

(B) Equipment.

(C) Research and development.

(D) Personnel training.

(E) Acquisition of technology.

(F) Health care benefits to employees paid for by the employer.

(G) Pension benefits to employees paid for by the employer.

(H) Environmental equipment, training, or technology.

(I) Acquisition of raw materials and other inputs.

(J) Working capital or other funds needed to maintain production.

(5) RELATED TO.—A company, business, or person shall be considered to be "related to" another company, business, or person if—

(A) the company, business, or person directly or indirectly controls or is controlled by the other company, business, or person,

(B) a third party directly or indirectly controls both companies, businesses, or persons,

(C) both companies, businesses, or persons directly or indirectly control a third party and there is reason to believe that the relationship causes the first company, business, or persons to act differently than a nonrelated party.

For purposes of this paragraph, 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) DISTRIBUTION PROCEDURES.—The Commissioner shall prescribe procedures for distribution of the continued dumping or subsidies offset required by this section. Such distribution shall be made not later than 60 days after the first day of a fiscal year from duties assessed during the preceding fiscal year.

(d) PARTIES ELIGIBLE FOR DISTRIBUTION OF ANTIDUMPING AND COUNTERVAILING DUTIES ASSESSED.—

(1) LIST OF AFFECTED DOMESTIC PRODUCERS.—The Commission shall forward to the Commissioner within 60 days after

the effective date of this section in the case of orders or findings in effect on January 1, 1999, or thereafter, or in any other case, within 60 days after the date an antidumping or countervailing duty order or finding is issued, a list of petitioners and persons with respect to each order and finding and a list of persons that indicate support of the petition by letter or through questionnaire response. In those cases in which a determination of injury was not required or the Commission's records do not permit an identification of those in support of a petition, the Commission shall consult with the administering authority to determine the identity of the petitioner and those domestic parties who have entered appearances during administrative reviews conducted by the administering authority under section 751.

(2) PUBLICATION OF LIST; CERTIFICATION.—The Commissioner shall publish in the Federal Register at least 30 days before the distribution of a continued dumping and subsidy offset, a notice of intention to distribute the offset and the list of affected domestic producers potentially eligible for the distribution based on the list obtained from the Commission under paragraph (1). The Commissioner shall request a certification from each potentially eligible affected domestic producer—

(A) that the producer desires to receive a distribution;

(B) that the producer is eligible to receive the distribution as an affected domestic producer; and

(C) the qualifying expenditures incurred by the producer since the issuance of the order or finding for which distribution under this section has not previously been made.

(3) DISTRIBUTION OF FUNDS.—The Commissioner shall distribute all funds (including all interest earned on the funds) from assessed duties received in the preceding fiscal year to affected domestic producers based on the certifications described in paragraph (2). The distributions shall be made on a pro rata basis based on new and remaining qualifying expenditures.

(e) SPECIAL ACCOUNTS.—

(1) ESTABLISHMENTS.—Within 14 days after the effective date of this section, with respect to antidumping duty orders and findings and countervailing duty orders notified under subsection (d)(1), and within 14 days after the date an antidumping duty order or finding or countervailing duty order issued after the effective date takes effect, the Commissioner shall establish in the Treasury of the United States a special account with respect to each such order or finding.

(2) DEPOSITS INTO ACCOUNTS.—The Commissioner shall deposit into the special accounts, all antidumping or countervailing duties (including interest earned on such duties) that are assessed after the effective date of this section under the antidumping order or finding or the countervailing duty order with respect to which the account was established.

(3) TIME AND MANNER OF DISTRIBUTIONS.—Consistent with the requirements of subsections (c) and (d), the Commissioner shall by regulation prescribe the time and manner in which distribution of the funds in a special account shall be made.

(4) TERMINATION.—A special account shall terminate after—

(A) the order or finding with respect to which the account was established has terminated;

(B) all entries relating to the order or finding are liquidated and duties assessed collected;

(C) the Commissioner has provided notice and a final opportunity to obtain distribution pursuant to subsection (c); and

(D) 90 days has elapsed from the date of the notice described in subparagraph (C).

Amounts not claimed within 90 days of the date of the notice described in subparagraph (C), shall be deposited into the general fund of the Treasury.

CHAPTER 2—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 761.[376] REQUIRED CONSULTATIONS.

(a) AGREEMENTS IN RESPONSE OF COUNTERVAILABLE SUBSIDIES.[377]—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[378] completely, or

(2) reducing the net countervailable subsidy[376] 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.[379] 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[380] is being provided with respect to

[376] 19 U.S.C. 1676. Sec. 611(a)(4) of Public Law 98–573 (98 Stat. 3031) added sec. 761. Sec. 626(b) of Public Law 98–573 further stated that this amendment shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after the effective date of this Act (October 30, 1984).

[377] Sec. 270(b)(1)(C) and 270(b)(2) of Public Law 103–465 (108 Stat. 4917) struck out "SUBSIDIES" and inserted in lieu thereof "COUNTERVAILABLE SUBSIDIES".

[378] Sec. 270(a)(1)(I) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

[379] 19 U.S.C. 1676a. Sec. 611(a)(4) of Public Law 98–573 (89 Stat. 3031) added sec. 762. Sec. 626(b) of Public Law 98–573 further stated that this amendment shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after the effective date of this Act (October 30, 1984).

[380] Sec. 270(a)(1)(J) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

the subject merchandise[381] and, if being so provided, the net countervailable subsidy;[380] 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 administering 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[382] 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.

SUBTITLE D—GENERAL PROVISIONS

SEC. 771.[383] DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) ADMINISTERING AUTHORITY.—The term "administering authority" means the Secretary of Commerce,[384] 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.

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[381] Sec. 233(a)(5)(Z) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise subject to the agreement" and inserted in lieu thereof "subject merchandise".

[382] Sec. 233(a)(5)(AA) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise subject to the order" and inserted in lieu thereof "subject merchandise".

[383] 19 U.S.C. 1677.

[384] Sec. 233(b)(2) of Public Law 103–465 (108 Stat. 4901) struck out "the Treasury" and inserted in lieu thereof "Commerce".

(4) INDUSTRY.—

(A)[385] 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)[385] 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[386] 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[386] constitutes a major proportion of

[385] Sec. 222(a)(1) of Public Law 103–465 (108 Stat. 4869) amended and restated subparas. (A) and (B).

[386] Sec. 233(a)(3)(A)(i) of Public Law 103–465 (108 Stat. 4898) struck out "like product" and inserted in lieu thereof "domestic like product".

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[380] 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.[387] The term "regional industry" means the domestic producers within a region who are treated as a separate industry under this subparagraph.[388]

(D) PRODUCT LINES.—The effect of dumped imports or imports of merchandise benefiting from a countervailable subsidy[387] shall be assessed in relation to the United States production of a domestic like product[386] if available data permit 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[386] 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[387] shall be assessed by the examination of the production of the narrowest group or range of products, which include a domestic like product,[386] for which the necessary information can be provided.

(E)[389] 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).

[387] Sec. 270(c)(2) of Public Law 103–465 (108 Stat. 4917) struck out "subsidized or" before "dumped imports" and inserted "or imports of merchandise benefiting from a countervailable subsidy" after "dumped imports".

[388] Sec. 222(a)(2) of Public Law 103–465 (108 Stat. 4869) added this sentence.

[389] Sec. 1326(a) of Public Law 100–418 (102 Stat. 1203) inserted subpara. (E).

(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)[390] 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

[390] Sec. 251(a) of Public Law 103–465 (108 Stat. 4902) amended and restated para. (5). The paragraph was previously amended and restated by sec. 1312 of Public Law 100–418 (102 Stat. 1184).

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)[391] 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)[392] 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,[393]

(II) the effect of imports of that merchandise on prices in the United States for domestic like products,[394] and

(III) the impact of imports of such merchandise on domestic producers of domestic like products,[394] 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.

[391] Sec. 251(b) of Public Law 103–465 (108 Stat. 4908) inserted "countervailable" before "subsidy" throughout para. (6).

[392] Sec. 1328 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1205) amended and restated subpara. (B).

[393] Sec. 233(a)(5)(BB) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".

[394] Sec. 233(a)(3)(B) of Public Law 103–465 (108 Stat. 4898) struck out "like products" and inserted in lieu thereof "domestic like products".

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)[395] 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[395] by the imported merchandise as compared with the price of domestic like products[394] 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)[395] IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(i)(III),[396] the Commission shall evaluate all relevant economic factors which have a bearing 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,[397]

(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,[398] and[397]

(V)[397] in a proceeding under subtitle B, the magnitude of the margin of dumping.

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[395] Sec. 1328(2) of Public Law 100–418 (102 Stat. 1205) amended subpara. (C) by amending the heading which previously read "EVALUATION OF VOLUME AND OF PRICE EFFECTS"; by striking out "price undercutting" in clause (ii)(I) and inserting in lieu thereof "price underselling"; and by restating clause (iii).

[396] Sec. 222(b)(3) of Public Law 103–465 (108 Stat. 4870) struck out "subparagraph (B)(iii)" and inserted in lieu thereof "subparagraph (B)(i)(III)".

[397] Sec. 222(b)(1) of Public Law 103–465 (108 Stat. 4870) struck out "and" at the end of subclause (III), struck out a period and inserted in lieu thereof ", and" at the end of subclause (IV), and added a new subclause (V).

[398] Sec. 233(a)(3)(A)(ii) of Public Law 103–465 (108 Stat. 4898) struck out "like product" and inserted in lieu thereof "domestic like product".

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)[399] 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.

(v)[400] * * * [Repealed—1994]

(D) SPECIAL RULES FOR AGRICULTURAL PRODUCTS.—

(i) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because of 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)[401] 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

[399] Sec. 222(b)(2) of Public Law 103–465 (108 Stat. 4870) amended and restated clause (iv).
[400] Sec. 222(d)(1) of Public Law 103–465 (108 Stat. 4871) repealed clause (v), relating to the treatment of negligible imports. See sec. 771(24).
[401] Sec. 266 of Public Law 103–465 (108 Stat. 4915) amended and restated clause (i).

the determination by the Commission of material injury.

(F)[402] THREAT OF MATERIAL INJURY.—

(i)[403] 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),

[402] Sec. 612(a)(2)(B) of Public Law 98–573 (98 Stat. 3033) added subpara. (F). Sec. 626(b) of Public Law 98–573 further stated that this amendment shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after the effective date of this Act (October 30, 1984).

[403] Sec. 222(c) of Public Law 103–465 (108 Stat. 4870) amended and restated clauses (i) and (ii).

(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)[403] 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)[404] 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[405] 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)[406] WTO MEMBER MARKET.—For purposes of this clause, the term "WTO member market" means the market of any country which is a WTO member.[407]

(III) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities shall be treated as a foreign country.

(iv)[408] * * * [Repealed—1994]

[404] Sec. 1329(4) of Public Law 100–418 (102 Stat. 1206) added clause (iii).

[405] Sec. 233(b)(1)(A) of Public Law 103–465 (108 Stat. 4901) struck out "GATT member" and inserted in lieu thereof "WTO member".

[406] Sec. 233(b)(1)(B) of Public Law 103–465 (108 Stat. 4901) struck out "GATT member" and inserted in lieu thereof "WTO member" in the subclause heading and in the text.

[407] Sec. 233(b)(1)(B)(iii) of Public Law 103–465 (108 Stat. 4901) struck out "signatory to The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures)" and inserted in lieu thereof "WTO member".

[408] Sec. 222(e) of Public Law 103–465 (108 Stat. 4873) struck out clause (iv), relating to cumulation, and added new subparas. (G) and (H).

(G)[408] 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)[409] 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

[409] Sec. 201(a)(3)(B)(i) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53; 119 Stat. 467) provided that each CAFTA-DR country shall be considered a beneficiary country under sec. 212(a) of the Caribbean Basin Economic Recovery Act for the purposes of secs. 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930.

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)[408, 409] 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)[410] 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)[411] 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

[410] Sec. 222(f) of Public Law 103–465 (108 Stat. 4874) added subpara. (I).
[411] Sec. 270(e) of Public Law 103–465 (108 Stat. 4918) amended and restated para. (8).

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[412] or a trade or business association a majority of the members of which are producers, exporters, or[413] 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,[414]

(C) a manufacturer, producer, or wholesaler in the United States of a domestic like product,[415]

(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,[415] and

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product[415] in the United States,[416]

(F)[417] 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,[415] and[416]

(G)[416] 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)[415] 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.

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[412] Sec. 233(a)(5)(CC) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise which is the subject of an investigation under this title" and inserted in lieu thereof "subject merchandise".

[413] Sec. 222(g)(1) of Public Law 103–465 (108 Stat. 4874) inserted "producers, exporters, or" before "importers".

[414] Sec. 222(g)(2) of Public Law 103–465 (108 Stat. 4874) inserted "or from which such merchandise is exported" after "manufactured".

[415] Sec. 233(a)(3)(A) of Public Law 103–465 (108 Stat. 4898) struck out "like product" and inserted in lieu thereof "domestic like product".

[416] Sec. 1326(c) of Public Law 100–418 (102 Stat. 1204) struck out "and" at the end of subpara. (E); struck out the period at the end of subpara. (F) and inserted ", and"; and added new subpara. (G).

[417] Sec. 612(a)(3) of Public Law 98–573 (98 Stat. 3034) added subpara. (F). Sec. 626(b) of Public Law 98–573 further stated that this amendment shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after the effective date of this Act (October 30, 1984).

(11) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commission voting on a determination by the Commission, including a determination under section 751,[418] 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)[419] * * * [Repealed—1994]

(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,[420] or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale 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 therefore 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,[421] 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).

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[418] Sec. 221(b) of Public Law 103–465 (108 Stat. 4869) inserted ", including a determination under section 751,".

[419] Sec. 222(i)(2) of Public Law 103–465 (108 Stat. 4876) struck para. (13), relating to the term "exporter".

[420] Sec. 612(a)(4) of Public Law 98–573 (98 Stat. 3034) struck out "at wholesale" and inserted in lieu thereof "in commercial quantities". Sec. 626(b) of Public Law 98–573 further stated that this amendment shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after the effective date of this Act (October 30, 1984).

[421] Sec. 222(h)(1) of Public Law 103–465 (108 Stat. 4874) struck out "merchandise which is the subject of an investigation" and inserted in lieu thereof "subject merchandise".

(B) Transactions disregarded under section 773(f)(2).[422]

(16)[423] 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[424] 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,[425]

(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[426] QUANTITIES.—The term "usual commercial quantities", in any case in which the subject merchandise[427] 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)[428] 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.

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[422] Sec. 222(h)(2) of Public Law 103–465 (108 Stat. 4874) added the last sentence through subpara. (B).

[423] Sec. 233(a)(4) of Public Law 103–465 (108 Stat. 4899) struck out "such or similar merchandise" and inserted in lieu thereof "foreign like product".

[424] Sec. 233(a)(5)(DD) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise which is the subject of an investigation" and inserted in lieu thereof "subject merchandise".

[425] Sec. 233(a)(5)(EE) of Public Law 103–465 (108 Stat. 4900) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise". Sec. 20(b)(7) of Public Law 104–295 (110 Stat. 3527) made the same amendment.

[426] Sec. 612(a)(5) of Public Law 98–573 (98 Stat. 3034) struck out "wholesale" and inserted in lieu thereof "commercial". Sec. 626(b) of Public Law 98–573 further stated that this amendment shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after the effective date of this Act (October 30, 1984).

[427] Sec. 233(a)(5)(FF) of Public Law 103–465 (108 Stat. 4901) struck out "merchandise which is the subject of the investigation" and inserted in lieu thereof "subject merchandise".

[428] Sec. 1316(b) of Public Law 100–418 (102 Stat. 1187) added para. (18).

(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)[429] 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

[429] Sec. 1327 of Public Law 100–418 (102 Stat. 1205) added para. (19).

(F) other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

(20)[430] 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)[431] 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 superceding 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)[432] UNITED STATES-CANADA AGREEMENT.—The term "United States-Canada Agreement" means the United States-Canada Free-Trade Agreement.

(22)[433] NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(23)[434] 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

[430] Sec. 1335 of Public Law 100–418 (102 Stat. 1210) added para. (20) as para. (19). Subsequently, sec. 9001(a)(5) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3342) redesignated para. (19) as para. (20). Sec. 1337(e) of Public Law 100–418 further stated that the amendments made by sec. 1335 shall apply with respect to entries, and withdrawals from warehouse for consumption, that are liquidated on or after the date of enactment of this Act.

[431] Sec. 139(a)(3) of the Customs and Trade Act (Public Law 101–382; 104 Stat. 653) struck out "schedule 8 of the Tariff Schedules of the United States" and inserted in lieu thereof "chapter 98 of the Harmonized Tariff Schedule of the United States".

[432] Sec. 403(d) of Public Law 100–449 (102 Stat. 1887) added para. (21) as a second para. (18). Subsequently, sec. 412(b)(1) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) redesignated the second para. (18) as para. (21).

[433] Sec. 412(b)(2) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) added para. (22).

[434] Sec. 637(b) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2203) added para. (23).

entries; but the suspension of liquidation of the reconciliation entry or entries for such purpose does not preclude liquidation for any other purpose.

(24)[435] 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 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),

[435] Sec. 221(d)(2) of Public Law 103–465 (108 Stat. 4871) added para. (24).

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)[436] 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)[436] 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)[436] SUSPENSION AGREEMENT.—The term "suspension agreement" means an agreement described in section 704(b), 704(c), 734(b), 734(c), or 734(l).

(28)[436] 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)[436] WTO AGREEMENT.—The term "WTO Agreement" means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

(30)[436] 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.[437]

(31)[436] GATT 1994.—The term "GATT 1994" means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

(32)[436] TRADE REPRESENTATIVE.—The term "Trade Representative" means the United States Trade Representative.

(33)[436] 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.

[436] Sec. 222(i)(1) of Public Law 103–465 (108 Stat. 4875) added paras. (25) through (34).

[437] Sec. 20(b)(14) of Public Law 104–295 (110 Stat. 3527) struck out "agreement" and inserted in lieu thereof "Agreement".

(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)[436] DUMPED; DUMPING.—The terms "dumped" and "dumping" refer to the sale or likely sale of goods at less than fair value.

(35)[438] 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)[439] DEVELOPING AND LEAST DEVELOPED COUNTRY.—

[438] Sec. 229(b) of Public Law 103–465 (108 Stat. 4890) added para. (35).
[439] Sec. 267 of Public Law 103–465 (108 Stat. 4915) added para. (36).

(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.[440] UPSTREAM SUBSIDIES.

(a)[441] 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.

[440] 19 U.S.C. 1677–1. Sec. 613(a) of Public Law 98–573 (98 Stat. 3035) added sec. 771A.

[441] Sec. 268(1) of Public Law 103–465 (108 Stat. 4916) amended and restated subsec. (a) through para. (1).

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[442] 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[443] 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 effects of the countervailable subsidy,[443] or (B) select in lieu of that price a price from another source.

(c) INCLUSION OF AMOUNT OF COUNTERVAILABLE SUBSIDY.[444]—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,[445] 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 countervailable subsidy determined with respect to the upstream product.

SEC. 771B.[446] 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,

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[442] Sec. 268(2) of Public Law 103–465 (108 Stat. 4916) inserted "countervailable".

[443] Sec. 270(a)(1)(K) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

[444] Sec. 270(a)(1)(L) and sec. 270(2)(B) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy" in subsec. (c) and the subsection heading. Sec. 270(c)(3) of that Act struck out "subsidization" and inserted in lieu thereof "countervailable subsidy".

[445] Sec. 233(a)(5)(GG) of Public Law 103–465 (108 Stat. 4901) struck out "merchandise under investigation" and inserted in lieu thereof "subject merchandise".

[446] 19 U.S.C. 1677–2. Sec. 1313 of Public Law 100–418 (102 Stat. 1185) added sec. 771B. Subsequently, sec. 9001(a)(3) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3342) changed the format of the section. Sec. 270(b)(1)(D) and 270(b)(2) of Public Law 103–465 (108 Stat. 4917) inserted "**COUNTERVAILABLE**" before "**SUBSIDIES**" in the section catchline.

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.[447] **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

(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

[447] 19 U.S.C. 1677a. Sec. 223 of Public Law 103–465 (108 Stat. 4876) amended and restated sec. 772.

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 administering 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.[448] **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

[448] 19 U.S.C. 1677b. Sec. 224 of Public Law 103–465 (108 Stat. 4878) amended and restated sec. 773.

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 constructed 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 foreign 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 amortization 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 administering 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.[449] CURRENCY CONVERSION.

(a) IN GENERAL.—In an antidumping proceeding under this title, the administering authority shall convert foreign currencies into

[449] 19 U.S.C. 1677b–1. Sec. 225(a) of Public Law 103–465 (108 Stat. 4886) added sec. 773A.

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.[450] HEARINGS.

(a)[451] 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.[452] 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 alleged 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—

[450] 19 U.S.C. 1677c. Sec. 101 of Public Law 96–39 (93 Stat. 186) added sec. 774.

[451] Sec. 616 of Public Law 98–573 (98 Stat. 3037) amended and restated subsec. (a).

[452] 19 U.S.C. 1677d. Sec. 283(b) of Public Law 103–465 (108 Stat. 4930) amended and restated sec. 775.

(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.[453] 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.

[453] 19 U.S.C. 1677e. Sec. 231(c) of Public Law 103–465 (108 Stat. 4896) amended and restated sec. 776.

SEC. 777.[454] **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)[455] 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[456] SUBMISSIONS.—The administering authority and the Commission shall[457] disclose—

(A) any proprietary[456] 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[456] by the person submitting it.

(b) PROPRIETARY[456] INFORMATION.—

(1)[458] PROPRIETARY STATUS MAINTAINED.—

(A) IN GENERAL.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the

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[454] 19 U.S.C. 1677f. Sec. 101 of Public Law 96–39 (93 Stat. 187) added sec. 777.

[455] Sec. 619(1) of Public Law 98–573 (98 Stat. 3038) amended and restated para. (3). Previously, para. (3) read as follows:

"(3) EX PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of ex parte meetings between—

"(A) interested parties or other persons providing factual information in connection with an investigation, and

"(B) the person charged with making the determination, and any person charged with making a final recommendation to that person, in connection with that investigation.

The record of the 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.".

[456] Sec. 1886(a)(13) of Public Law 99–514 (100 Stat. 2922) struck out "confidential", "nonconfidential", and "confidentiality" and inserted in lieu thereof "proprietary", "non-proprietary", and "proprietary status", respectively, each place they appeared in the text.

[457] Sec. 231(b) of Public Law 103–465 (108 Stat. 4896) struck out "may disclose" and inserted in lieu thereof "shall disclose".

[458] Sec. 226(a)(1) of Public Law 103–465 (108 Stat. 4886) amended and restated para. (1).

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[456] 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.[459]

[459] Sec. 226(b) of Public Law 103–465 (108 Stat. 4887) added this sentence.

(3)[460] 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[456] INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

(A)[461] 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.[462]

(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)[463] 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—

[460] Sec. 226(a)(2) of Public Law 103–465 (108 Stat. 4887) added para. (3).
[461] Sec. 1332(2)(A) of Public Law 100–418 (102 Stat. 1208) amended and restated subpara. (A).
[462] Sec. 135(b)(1) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) added text beginning at "Customer names * * *".
[463] Sec. 1332(2)(B) of Public Law 100–418 (102 Stat. 1208) added subparas. (C), (D) and (E).

(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)[463] 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)[463] 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),[464] 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),

[464] Sec. 1332(3) of Public Law 100–418 (102 Stat. 1208) struck out "or the Commission denies a request for proprietary information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product," which previously appeared at this point.

(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)[465] 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)[465] * * * [Repealed—1994]

(f)[466] 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[467] the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the NAFTA or[467] 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[468] in the administrative record made during the proceeding in question. If the administering 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

[465] Sec. 1332(4) of Public Law 100–418 (102 Stat. 1209) added subsecs. (d) and (e), which related to timely submissions. Subsequently, sec. 231(d)(1) of Public Law 103–465 (108 Stat. 4897) repealed subsec. (e).

[466] Sec. 403(c) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449; 102 Stat. 1884) added subsec. (f) as a second subsec. (d). Sec. 134(a)(4) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) redesignated the second subsec. (d) as subsec. (f). Sec. 412(c)(1) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) inserted "THE NORTH AMERICAN FREE TRADE AGREEMENT OR" before "THE UNITED STATES-CANADA AGREEMENT" in the subsection heading.

[467] Sec. 412(c)(2) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) inserted "the NAFTA or" before "the United States-Canada Agreement" each place it appears in para. (1)(A).

[468] Sec. 134(a)(4)(A)(i) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) struck out "(but not privileged material as defined by the rules of procedure referred to in article 1904(14) of the United States-Canada Agreement)" which previously appeared at this point.

committee[469] 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[470] as requiring access and may require such persons to obtain access under a protective order described in paragraph (2).[471]

(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,[472] of such counsel,[473]

(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[474]

(iv)[475] 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[476] to whom disclosure is necessary in order to make decisions regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or[474] 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.

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[469] Sec. 412(c)(3)(A) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) inserted "or extraordinary challenge committee".

[470] Sec. 412(c)(3)(B) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) inserted "or committee".

[471] Sec. 134(a)(4)(A)(ii) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) inserted this sentence.

[472] Sec. 134(a)(4)(B)(i) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) inserted ", and persons under the direction and control,".

[473] Sec. 134(a)(4)(B)(ii) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) struck out "and" at the end of clause (ii).

[474] Sec. 134(a)(4)(B)(iii) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) struck out "implement the United States-Canada Agreement with respect to such proceeding." following "in order to", and inserted in lieu thereof "make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the Agreement, and".

Subsequently, sec. 412(c)(4)(A) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) inserted "the NAFTA or" before "the Agreement" in clauses (iii) and (iv).

[475] Sec. 134(a)(4)(B)(iv) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) added clause (iv).

[476] Sec. 412(c)(4)(B) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) struck out "Government of Canada designated by an authorized agency of Canada" and inserted in lieu thereof "Government of a free trade area country (as defined in section 516A(f)(10)) designated by an authorized agency of such country".

(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,[477] 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,[478] to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of[478] 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))[479] to protect proprietary material during binational panel or extraordinary challenge committee[480] review pursuant to article 1904 of the NAFTA or[481] 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,[482] 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

[477] Sec. 412(c)(5) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) inserted ", including any extraordinary challenge,".

[478] Sec. 134(a)(4)(C) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) struck out "or" after "violate,"; and inserted "or knowingly to receive information the receipt of which constitutes a violation of" after "violation of,".

[479] Sec. 412(c)(7) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) struck out "agency of Canada" in paras. (3) and (4) and inserted "agency of a free trade area country (as defined in section 516A(f)(10))".

[480] Sec. 412(c)(6)(A) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) inserted "or extraordinary challenge committee".

[481] Sec. 412(c)(6)(B) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) inserted "the NAFTA or".

[482] Sec. 412(c)(8) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2146) inserted ", 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,".

shall be made by the administering authority for violation, inducement of a violation or receipt of information with reason to know that such information was disclosed in violation,[483] 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)).[479]

(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 authority 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,

[483] Sec. 134(a)(4)(D) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) struck out "or inducement of a violation," and inserted in lieu thereof "inducement of a violation or receipt of information with reason to know that such information was disclosed in violation,".

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)[484] 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 relations to investigations and actions involving a

[484] Sec. 135(b)(2) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 650) added subsec. (g).

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)[485] 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)[486] 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—

[485] Sec. 227 of Public Law 103–465 (108 Stat. 4888) added subsec. (h).
[486] Sec. 228 of Public Law 103–465 (108 Stat. 4888) added subsec. (i).

(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.[487] 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.

[487] 19 U.S.C. 1677f–1. Sec. 620(a) of Public Law 98–573 (98 Stat. 3039) inserted sec. 777A. Sec. 229(a) of Public Law 103–465 (108 Stat. 4889) amended and restated the section. Sec. 269(b)(1) of Public Law 103–465 (108 Stat. 4916) added "**AND COUNTERVAILABLE SUBSIDY RATE**" after "**MARGIN**" in the section catchline.

(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)[488] DETERMINATION OF COUNTERVAILABLE SUBSIDY RATE.—

(1) GENERAL RULE.—In determining countervailable subsidy rates under section 703(d), 705(c), or 751(a), the administering

[488] Sec. 269(a) of Public Law 103–465 (108 Stat. 4916) inserted subsec. (e).

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.[489] **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 1986[490] for such period.

SEC. 779.[491] **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.[492]

SEC. 780.[493] **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

[489] 19 U.S.C. 1677g. Sec. 621 of Public Law 98–573 (98 Stat. 3039) amended and restated sec. 778.

[490] Sec. 2 of the Tax Reform Act of 1986 (Public Law 99–514; 100 Stat. 2095) struck out "Internal Revenue Code of 1954" and inserted in lieu thereof "Internal Revenue Code of 1986", wherever it is cited in any law.

[491] 19 U.S.C. 1677h. Sec. 622(a)(2) of Public Law 98–573 (98 Stat. 3039) added sec. 779. Sec. 626(b) of Public Law 98–573 further stated that this amendment shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after the effective date of this Act (October 30, 1984).

[492] Sec. 1334 of Public Law 100–418 (102 Stat. 1209) struck out "shall be treated as any other customs duties" and inserted in lieu thereof "shall not be treated as being regular customs duties", and amended the section heading which previously read "**DRAWBACKS**".

[493] 19 U.S.C. 1677i. Sec. 1320 of Public Law 100–418 (102 Stat. 1189) inserted sec. 780.

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)[494] 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[495] was at least 15 percent ad valorem or that the estimated average amount by which the normal

[494] Sec. 261(d)(1)(B)(iv) of Public Law 103–465 (108 Stat. 4910) struck out ", 732(a), or 303" and inserted in lieu thereof "or 732(a)".

[495] Sec. 270(a)(1)(M) of Public Law 103–465 (108 Stat. 4917) struck out "subsidy" and inserted in lieu thereof "countervailable subsidy".

value[496] exceeded the export price (or the constructed export price)[497] 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.[498] 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,

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[496] Sec. 233(a)(1)(E) of Public Law 103–465 (108 Stat. 4898) struck out "foreign market value" and inserted in lieu thereof "normal value".

[497] Sec. 233(a)(2)(A)(vi) of Public Law 103–465 (108 Stat. 4898) struck out "United States price" and inserted in lieu thereof "export price (or the constructed export price)".

[498] 19 U.S.C. 1677j. Sec. 1321(a) of Public Law 100–418 (102 Stat. 1192) added sec. 781. Sec. 1337(d) of that Act further provided that the provisions of sec. 781 of the Tariff Act of 1930, as added by sec. 1321(a), and the amendments made by sec. 1334 should apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of enactment of that Act. Sec. 230(a) of Public Law 103–465 (108 Stat. 4891) amended and restated subsecs. (a) and (b).

(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 consultation 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)[499] 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.[500] 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

[499] Sec. 230(b) of Public Law 103–465 (108 Stat. 4893) added subsec. (f).
[500] 19 U.S.C. 1677m. Sec. 231(a) of Public Law 103–465 (108 Stat. 4893) added sec. 782.

(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.

SEC. 783.[501] **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 procedural 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 (e),[502] the final determinations of the administering authority and the Commission under this section shall be treated as final determinations made under section 735.

[501] 19 U.S.C. 1677n. Sec. 232(a) of Public Law 103–465 (108 Stat. 4897) added sec. 783.

[502] Sec. 20(b)(17) of Public Law 104–295 (110 Stat. 3528) struck out "subsection (d)" and inserted in lieu thereof "subsection (e)".

(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.

(3) Miscellaneous Trade and Technical Corrections Act of 2004

Partial text of Public Law 108–429 [H.R. 1047], 118 Stat. 2434, approved December 3, 2004

AN ACT To amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes.

NOTE.—Public Law 108–429 consists primarily of amendments to the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007) and to other Acts found in this volume, and have been incorporated at the appropriate points.

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TITLE I—TARIFF PROVISIONS

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SEC. 1560.[1] CLARIFICATION OF DESIGNATION OF NORMAL TRADE RELATIONS.

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

(1) The increased security and safety concerns that developed in the aftermath of the terrorist attacks in the United States on September 11, 2001, need to be addressed.

(2) One concern that has come to light is the vulnerability of the international bridges and tunnels along the United States borders.

(3) It is necessary to ensure that potentially dangerous vehicles are inspected prior to crossing these bridges and tunnels; however, currently these vehicles are not inspected until after they have crossed into the United States.

(4) Establishing Integrated Border Inspection Areas (IBIAs) would address these concerns by inspecting vehicles before they gained access to the infrastructure of international bridges and tunnels joining the United States and Canada.

(b) CREATION OF INTEGRATED BORDER INSPECTION AREAS.—

(1) IN GENERAL.—The Commissioner of the Customs Service, in consultation with the Canadian Customs and Revenue Agency (CCRA), shall seek to establish Integrated Border Inspection Areas (IBIAs), such as areas on either side of the

[1] 19 U.S.C. 1629 note.

United States-Canada border, in which United States Customs officers can inspect vehicles entering the United States from Canada before they enter the United States, or Canadian Customs officers can inspect vehicles entering Canada from the United States before they enter Canada. Such inspections may include, where appropriate, employment of reverse inspection techniques.

(2) ADDITIONAL REQUIREMENT.—The Commissioner of Customs, in consultation with the Administrator of the General Services Administration when appropriate, shall seek to carry out paragraph (1) in a manner that minimizes adverse impacts on the surrounding community.

(3) ELEMENTS OF THE PROGRAM.—Using the authority granted by this section and under section 629 of the Tariff Act of 1930, the Commissioner of Customs, in consultation with the Canadian Customs and Revenue Agency, shall seek to—

(A) locate Integrated Border Inspection Areas in areas with bridges or tunnels with high traffic volume, significant commercial activity, and that have experienced backups and delays since September 11, 2001;

(B) ensure that United States Customs officers stationed in any such IBIA on the Canadian side of the border are vested with the maximum authority to carry out their duties and enforce United States law;

(C) ensure that United States Customs officers stationed in any such IBIA on the Canadian side of the border shall possess the same immunity that they would possess if they were stationed in the United States; and

(D) encourage appropriate officials of the United States to enter into an agreement with Canada permitting Canadian Customs officers stationed in any such IBIA on the United States side of the border to enjoy such immunities as permitted in Canada.

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TITLE II—OTHER TRADE PROVISIONS

SUBTITLE A—MISCELLANEOUS PROVISIONS

SEC. 2001.[2] TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ARMENIA.

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SEC. 2003.[3] ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE ANDEAN TRADE PREFERENCE ACT.

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SEC. 2005.[4] EXTENSION OF NORMAL TRADE RELATIONS TO LAOS.

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[2] 19 U.S.C. 2434 note. Sec. 2001 can be found in this volume on page 1170.
[3] 19 U.S.C. 3203 note.
[4] Sec. 2005 can be found in this volume on page 1171.

TITLE III—IRAQI CULTURAL ANTIQUITIES

SEC. 3001. SHORT TITLE.

This title may be cited as the "Emergency Protection for Iraqi Cultural Antiquities Act of 2004".

SEC. 3002. EMERGENCY IMPLEMENTATION OF IMPORT RESTRICTIONS.

(a) AUTHORITY.—The President may exercise the authority of the President under section 304 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603) with respect to any archaeological or ethnological material of Iraq without regard to whether Iraq is a State Party under that Act, except that, in exercising such authority, subsection (c) of such section shall not apply.

(b) DEFINITION.—In this section, the term "archaeological or ethnological material of Iraq" means cultural property of Iraq and other items of archaeological, historical, cultural, rare scientific, or religious importance illegally removed from the Iraq National Museum, the National Library of Iraq, and other locations in Iraq, since the adoption of United Nations Security Council Resolution 661 of 1990.

SEC. 3003. TERMINATION OF AUTHORITY.

The authority of the President under section 3002(a) shall terminate on September 30, 2009.

TITLE IV—WOOL TRUST FUND

SEC. 4001.[5] SHORT TITLE.

This title may be cited as the "Wool Suit and Textile Trade Extension Act of 2004".

SEC. 4002. EXTENSION AND MODIFICATION OF DUTY SUSPENSION ON WOOL PRODUCTS, WOOL RESEARCH FUND, WOOL DUTY REFUNDS.

(a) * * *

(b) * * *

(c) EXTENSION OF DUTY REFUNDS AND WOOL RESEARCH TRUST FUND.—

(1) ESTABLISHMENT OF TRUST FUND.—There is hereby established within the Treasury of the United States a trust fund to be known as the Wool Apparel Manufacturers Trust Fund (in this subsection referred to as the "Trust Fund"), consisting of such amounts as may be transferred to the Trust Fund under paragraph (2).

(2) TRANSFER OF AMOUNTS.—

(A) IN GENERAL.—The Secretary of the Treasury shall transfer to the Trust Fund, out of the general fund of the Treasury of the United States, amounts determined by the Secretary of the Treasury to be equivalent to the amounts received in the general fund that are attributable to the duty received on articles classified under chapter 51 of the Harmonized Tariff Schedule of the United States, subject to the limitation in subparagraph (B).

(B) LIMITATION.—In any fiscal year, the Secretary shall not transfer more than the amount determined by the Sec-

[5] 7 U.S.C. 7101 note.

retary necessary for the Bureau of Customs and Border Protection to make payments authorized under paragraph (3) and the Secretary of Commerce to make grants under paragraph (6).

(3) AVAILABILITY OF AMOUNTS FROM TRUST FUND.—From amounts in the Trust Fund, the Bureau of Customs and Border Protection shall pay to each manufacturer that receives a payment during calendar year 2005 under section 505 of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 303), as amended by section 5101 of the Trade Act of 2002 (116 Stat. 1041), and that provides an affidavit, no later than March 1 of the year of the payment, that it remains a manufacturer in the United States as of January 1 of the year of the payment, 2 additional payments, each payment equal to the payment received for calendar year 2005 as follows:

(A) The first payment to be made after January 1, 2006, but on or before April 15, 2006.

(B) The second payment to be made after January 1, 2007, but on or before April 15, 2007.

(4) SUCCESSOR-IN-INTEREST.—Any manufacturer that becomes a successor-in-interest to a claimant of a payment under section 505 of the Trade and Development Act of 2000, as amended by section 5101 of the Trade Act of 2002, because of—

(A) an assignment of the claim,

(B) an assignment of the original claimant's right to manufacture under the same trade name, or

(C) a reorganization,

or otherwise, shall be eligible to claim the payment as if the successor manufacturer were the original claimant, without regard to section 3727 of title 31, United States Code. Such right to claim payment as a successor shall be effective as if the right were included in section 505 of the Trade and Development Act of 2000.

(5) EXTENSION OF WOOL RESEARCH, DEVELOPMENT, AND PROMOTION TRUST FUND.—Section 506(f) of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 303), as amended by section 5102(c)(2) of the Trade Act of 2002 (116 Stat. 1047), is amended by striking "2006" and inserting "2008".

(6) COMMERCE AUTHORITY TO PROMOTE DOMESTIC EMPLOYMENT.—

(A) GRANTS TO MANUFACTURERS OF WORSTED WOOL FABRICS.—The Secretary of Commerce shall provide to—

(i) persons who were, during calendar years 1999, 2000, and 2001, manufacturers of worsted wool fabric of the kind described in heading 9902.51.12 of the Harmonized Tariff Schedule of the United States (as in effect on the day before the date of the enactment of this Act), and

(ii) persons who were, during such calendar years, manufacturers of worsted wool fabric of the kind described in heading 9902.51.11 of the Harmonized Tariff Schedule of the United States,

grants in each of calendar years 2005 through 2007 in the amounts determined under subparagraph (B).

(B) AMOUNTS.—(i) The total amount of grants to manufacturers under subparagraph (A)(i) shall be $2,666,000 each calendar year, allocated among such manufacturers on the basis of the percentage of each manufacturer's production of the fabric described in heading 9902.51.12 of the Harmonized Tariff Schedule of the United States (as in effect on the day before the date of the enactment of this Act) for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all such manufacturers who qualify under subparagraph (A)(i) for such grants.

(ii) The total amount of grants to manufacturers under subparagraph (A)(ii) shall be $2,666,000 each calendar year, allocated among such manufacturers on the basis of the percentage of each manufacturer's production of the fabric described in heading 9902.51.11 of the Harmonized Tariff Schedule of the United States for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all manufacturers who qualify under subparagraph (A)(ii) for such grants.

(iii) Any grant awarded by the Secretary under this paragraph shall be final and not subject to appeal or protest.

(d) * * *

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(4) Trade Act of 2002

Partial text of Public Law 107–210 [H.R. 3009], 116 Stat. 933, approved May 6, 2002; as amended by Public Law 108–429 [Miscellaneous Trade and Technical Corrections Act of 2004; H.R. 1047], 118 Stat. 2434, approved December 3, 2004

AN ACT To extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Trade Act of 2002".

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into 5 divisions as follows:

(1) DIVISION A.—Trade Adjustment Assistance.

(2) DIVISION B.—Bipartisan Trade Promotion Authority.

(3) DIVISION C.—Andean Trade Preference Act.

(4) DIVISION D.—Extension of Certain Preferential Trade Treatment and Other Provisions.

(5) DIVISION E.—Miscellaneous Provisions.

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DIVISION A—TRADE ADJUSTMENT ASSISTANCE

SEC. 101.[1] SHORT TITLE.

This division may be cited as the "Trade Adjustment Assistance Reform Act of 2002".

TITLE I—TRADE ADJUSTMENT ASSISTANCE PROGRAM

NOTE.—Title I consists primarily of amendments to the Trade Act of 1974 (19 U.S.C. 2101) found in this volume, and have been incorporated at the appropriate points.

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TITLE II—CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS

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[1] 19 U.S.C. 2101 note.

TITLE III—CUSTOMS REAUTHORIZATION

SEC. 301.[2] SHORT TITLE.

This Act may be cited as the "Customs Border Security Act of 2002".

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CHAPTER 5—TEXTILE TRANSSHIPMENT PROVISIONS

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SEC. 353. IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT.

Of the amount made available for fiscal year 2003 under section 301(b)(2)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(2)(A)), as amended by section 311(b)(1) of this Act, 1,317,000 shall be available until expended for the Customs Service to provide technical assistance to help sub-Saharan African countries develop and implement effective visa and anti-transshipment systems as required by the African Growth and Opportunity Act (title I of Public Law 106–200), as follows:

(1) TRAVEL FUNDS.—$600,000 for import specialists, special agents, and other qualified Customs personnel to travel to sub-Saharan African countries to provide technical assistance in developing and implementing effective visa and anti-transshipment systems.

(2) IMPORT SPECIALISTS.—$266,000 for 4 import specialists to be assigned to Customs headquarters to be dedicated to providing technical assistance to sub-Saharan African countries for developing and implementing effective visa and anti-transshipment systems.

(3) DATA RECONCILIATION ANALYSTS.—$151,000 for 2 data reconciliation analysts to review apparel shipments.

(4) SPECIAL AGENTS.—$300,000 for 2 special agents to be assigned to Customs headquarters to be available to provide technical assistance to sub-Saharan African countries in the performance of investigations and other enforcement initiatives.

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DIVISION B—BIPARTISAN TRADE PROMOTION AUTHORITY

TITLE XXI—TRADE PROMOTION AUTHORITY

SEC. 2101.[3] SHORT TITLE AND FINDINGS.

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

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

(1) The expansion of international trade is vital to the national security of the United States. Trade is critical to the economic growth and strength of the United States and to its leadership in the world. Stable trading relationships promote

[2] 19 U.S.C. 1654 note.
[3] 19 U.S.C. 3801.

security and prosperity. Trade agreements today serve the same purposes that security pacts played during the Cold War, binding nations together through a series of mutual rights and obligations. Leadership by the United States in international trade fosters open markets, democracy, and peace throughout the world.

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

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

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

(B) the Congress is concerned that dispute settlement panels of the WTO and the Appellate Body appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member of provisions of that Agreement, and to the evaluation by a WTO member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

SEC. 2102.[4] TRADE NEGOTIATING OBJECTIVES.

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

(1) to obtain more open, equitable, and reciprocal market access;

(2) to obtain the reduction or elimination of barriers and distortions that are directly related to trade and that decrease market opportunities for United States exports or otherwise distort United States trade;

(3) to further strengthen the system of international trading disciplines and procedures, including dispute settlement;

[4] 19 U.S.C. 3802.

(4) to foster economic growth, raise living standards, and promote full employment in the United States and to enhance the global economy;

(5) to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources;

(6) to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO (as defined in section 2113(6)) and an understanding of the relationship between trade and worker rights;

(7) to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade;

(8) to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export market opportunities, and provide for the reduction or elimination of trade barriers that disproportionately impact small businesses; and

(9) to promote universal ratification and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

(b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES.—

(1) TRADE BARRIERS AND DISTORTIONS.—The principal negotiating objectives of the United States regarding trade barriers and other trade distortions are—

(A) to expand competitive market opportunities for United States exports and to obtain fairer and more open conditions of trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for United States exports or otherwise distort United States trade; and

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

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

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

United States, and to secure for investors important rights comparable to those that would be available under United States legal principles and practice, by—

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

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

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

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

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

(F) providing meaningful procedures for resolving investment disputes;

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

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

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

(iii) procedures to enhance opportunities for public input into the formulation of government positions; and

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

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

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

(ii) ensuring that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) to ensure that—

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

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

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

(D) where legitimate policy objectives require domestic regulations that affect electronic commerce, to obtain commitments that any such regulations are the least restric-

tive on trade, nondiscriminatory, and transparent, and promote an open market environment; and

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

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

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

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

(II) providing reasonable adjustment periods for United States import-sensitive products, in close consultation with the Congress on such products before initiating tariff reduction negotiations;

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

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

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

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

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

(vii) eliminating state trading enterprises whenever possible;

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

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

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

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

(IV) other unjustified technical barriers to trade; and

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

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

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

(xi) taking into account whether a party to the negotiations has failed to adhere to the provisions of already existing trade agreements with the United States or has circumvented obligations under those agreements;

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

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

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

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

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

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

(ii) During any negotiations on agricultural subsidies, the United States Trade Representative shall seek to establish the common base year for calculating the Aggregated Measurement of Support (as defined in the Agreement on Agriculture)

as the end of each country's Uruguay Round implementation period, as reported in each country's Uruguay Round market access schedule.

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

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

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

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

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

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

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

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

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

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

(A) to seek provisions in trade agreements providing for resolution of disputes between governments under those

trade agreements in an effective, timely, transparent, equitable, and reasoned manner, requiring determinations based on facts and the principles of the agreements, with the goal of increasing compliance with the agreements;

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

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

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

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

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

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

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

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

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

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

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

(iii) the availability of equivalent remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) in connection with any trade negotiations entered into under this title,[5] submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating, on a time frame determined in accordance with section 2107(b)(2)(E);

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

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

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

(12) seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government is engaged[6] in a pattern of manipulating its currency to promote a competitive advantage in international trade.

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

(d) CONSULTATIONS.—

(1) CONSULTATIONS WITH CONGRESSIONAL ADVISERS.—In the course of negotiations conducted under this title, the United States Trade Representative shall consult closely and on a

[5] Sec. 2004(a)(16)(A) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2591) struck out "this Act" and inserted in lieu thereof "this title".

[6] Sec. 2004(a)(16)(B) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2591) struck out "government engaged" and inserted in lieu thereof "government is engaged".

timely basis with, and keep fully apprised of the negotiations, the Congressional Oversight Group convened under section 2107 and all committees of the House of Representatives and the Senate with jurisdiction over laws that would be affected by a trade agreement resulting from the negotiations.

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

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

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

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

SEC. 2103.[7] TRADE AGREEMENTS AUTHORITY.

(a) AGREEMENTS REGARDING TARIFF BARRIERS.—

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

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

(i) July 1, 2005;[8] or

(ii) July 1, 2007,[8] if trade authorities procedures are extended under subsection (c); and

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

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

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

(iii) such additional duties,

[7] 19 U.S.C. 3803.

[8] Sec. 2004(a)(17) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2591) struck out "June 1" and inserted in lieu thereof "July 1".

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

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

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

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

(B) reduces the rate of duty below that applicable under the Uruguay Round Agreements, on any import sensitive agricultural product; or

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

(3) AGGREGATE REDUCTION; EXEMPTION FROM STAGING.—

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

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

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

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

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

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

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

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

(6) OTHER TARIFF MODIFICATIONS.—Notwithstanding paragraphs (1)(B), (2)(A), (2)(C), and (3) through (5), and subject to the consultation and layover requirements of section 115 of the

Uruguay Round Agreements Act, the President may proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX, as defined in section 2(5) of that Act, if the United States agrees to such modification or staged rate reduction in a negotiation for the reciprocal elimination or harmonization of duties under the auspices of the World Trade Organization.

(7) AUTHORITY UNDER URUGUAY ROUND AGREEMENTS ACT NOT AFFECTED.—Nothing in this subsection shall limit the authority provided to the President under section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)).

(b) AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS.—

(1) IN GENERAL.—(A) Whenever the President determines that—

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

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

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

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

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

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

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

(i) July 1, 2005;[8] or

(ii) July 1, 2007,[8] if trade authorities procedures are extended under subsection (c).

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

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

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

(i) a provision approving a trade agreement entered into under this subsection and approving the statement of ad-

ministrative action, if any, proposed to implement such trade agreement; and

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

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

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

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

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

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

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before July 1, 2005.[8]

(2) REPORT TO CONGRESS BY THE PRESIDENT.—If the President is of the opinion that the trade authorities procedures should be extended to implementing bills described in paragraph (1)(B), the President shall submit to the Congress, not later than April 1, 2005,[9] a written report that contains a request for such extension, together with—

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

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

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

(3) OTHER REPORTS TO CONGRESS.—

(A) REPORT BY THE ADVISORY COMMITTEE.—The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) of the President's decision to submit a report to the Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but not later than June 1, 2005,[10] a written report that contains—

[9] Sec. 2004(a)(17)(C)(ii) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2591) struck out "March 1" and inserted in lieu thereof "April 1".

[10] Sec. 2004(a)(17)(C)(iii) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2591) struck out "May 1" and inserted in lieu thereof "June 1".

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

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

(B) REPORT BY ITC.—The President shall promptly inform the International Trade Commission of the President's decision to submit a report to the Congress under paragraph (2). The International Trade Commission shall submit to the Congress as soon as practicable, but not later than June 1, 2005,[10] a written report that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between the date of enactment of this Act and the date on which the President decides to seek an extension requested under paragraph (2).

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

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

(B) Extension disapproval resolutions—

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

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

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

(D) It is not in order for—

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

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

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

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

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

SEC. 2104.[11] CONSULTATIONS AND ASSESSMENT.

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

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

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

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

(b) NEGOTIATIONS REGARDING AGRICULTURE.—

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

[11] 19 U.S.C. 3804.

the assessment, and how all applicable negotiating objectives will be met.

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

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

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

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

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

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

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

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

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

(i) the United States Trade Representative identifies any additional agricultural product described in subparagraph

(A)(i) for tariff reductions which were not the subject of a notification under subparagraph (A)(iv), or

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

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

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

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

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

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

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

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

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

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

(A) the nature of the agreement;

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

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

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

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

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

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

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

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

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

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

(ii) For purposes of this subparagraph, the term "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the ____ finds that the proposed changes to United States trade remedy laws contained in the report of the President transmitted to the Congress on ____ under section 2104(d)(3) of the Bipartisan Trade Promotion Authority Act of 2002 with respect to ____, are inconsistent with the negotiating objectives described in section 2102(b)(14) of that Act.", with the first blank space being filled with the name of the resolving House of Congress, the second blank space being filled with the appropriate date of the report, and the third blank space being filled with the name of the country or countries involved.

(iii) Resolutions in the House of Representatives—

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

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

(III) may not be amended by either Committee.

(iv) Resolutions in the Senate—

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

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

(III) may not be amended.

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

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

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

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

(f) ITC ASSESSMENT.—

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

(2) ITC ASSESSMENT.—Not later than 90 calendar days after the President enters into the agreement, the Commission shall submit to the President and the Congress a report assessing the likely impact of the agreement on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers.

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

analyses and conclusions, including those of the Commission regarding the agreement.

SEC. 2105.[12] IMPLEMENTATION OF TRADE AGREEMENTS.

(a) IN GENERAL.—

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

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

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

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

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

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

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

(D) the implementing bill is enacted into law.

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

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

(B) a statement—

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

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

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

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

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

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

(V) how and to what extent the agreement makes progress in achieving the applicable pur-

[12] 19 U.S.C. 3805.

poses, policies, and objectives referred to in section 2102(c) regarding the promotion of certain priorities.

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

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

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

(B) is not disclosed to the Congress before an implementing bill with respect to that agreement is introduced in either House of Congress,

shall not be considered to be part of the agreement approved by the Congress and shall have no force and effect under United States law or in any dispute settlement body.

(b) LIMITATIONS ON TRADE AUTHORITIES PROCEDURES.—

(1) FOR LACK OF NOTICE OR CONSULTATIONS.—

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

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

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

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

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

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

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

(2) PROCEDURES FOR CONSIDERING RESOLUTIONS.—(A) Procedural disapproval resolutions—

(i) in the House of Representatives—

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

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

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

(ii) in the Senate—

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

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

(III) may not be amended.

(B) The provisions of section 152(d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192(d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to a procedural disapproval resolution introduced with respect to a trade agreement if no other procedural disapproval resolution with respect to that trade agreement has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, and if no resolution described in section 2104(d)(3)(C)(ii) with respect to that trade agreement has been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to the procedures set forth in clauses (iii) through (vi) of such section 2104(d)(3)(C).

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

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

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

(c) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsection (b) of this section, section 2103(c), and[13] section 2104(d)(3)(C) are enacted by the Congress—

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

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

SEC. 2106.[14] TREATMENT OF CERTAIN TRADE AGREEMENTS FOR WHICH NEGOTIATIONS HAVE ALREADY BEGUN.

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

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

(2) is entered into with Chile,

(3) is entered into with Singapore, or

(4) establishes a Free Trade Area for the Americas,

and results from negotiations that were commenced before the date of the enactment of this Act, subsection (b) shall apply.

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

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

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

(A) notify the Congress of the negotiations described in subsection (a), the specific United States objectives in the

[13] Sec. 2004(a)(18) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2591) struck out "aand" and inserted in lieu thereof "and".

[14] 19 U.S.C. 3806.

negotiations, and whether the President is seeking a new agreement or changes to an existing agreement; and

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

SEC. 2107.[15] **CONGRESSIONAL OVERSIGHT GROUP.**

(a) MEMBERS AND FUNCTIONS.—

(1) IN GENERAL.—By not later than 60 days after the date of the enactment of this Act, and not later than 30 days after the convening of each Congress, the chairman of the Committee on Ways and Means of the House of Representatives and the chairman of the Committee on Finance of the Senate shall convene the Congressional Oversight Group.

(2) MEMBERSHIP FROM THE HOUSE.—In each Congress, the Congressional Oversight Group shall be comprised of the following Members of the House of Representatives:

(A) The chairman and ranking member of the Committee on Ways and Means, and 3 additional members of such Committee (not more than 2 of whom are members of the same political party).

(B) The chairman and ranking member, or their designees, of the committees of the House of Representatives which would have, under the Rules of the House of Representatives, jurisdiction over provisions of law affected by a trade agreement negotiations for which are conducted at any time during that Congress and to which this title would apply.

(3) MEMBERSHIP FROM THE SENATE.—In each Congress, the Congressional Oversight Group shall also be comprised of the following members of the Senate:

(A) The chairman and ranking member of the Committee on Finance and 3 additional members of such Committee (not more than 2 of whom are members of the same political party).

(B) The chairman and ranking member, or their designees, of the committees of the Senate which would have, under the Rules of the Senate, jurisdiction over provisions of law affected by a trade agreement negotiations for which are conducted at any time during that Congress and to which this title would apply.

(4) ACCREDITATION.—Each member of the Congressional Oversight Group described in paragraph (2)(A) and (3)(A) shall be accredited by the United States Trade Representative on behalf of the President as an official adviser to the United States delegation in negotiations for any trade agreement to which this title applies. Each member of the Congressional Oversight Group described in paragraph (2)(B) and (3)(B) shall be accredited by the United States Trade Representative on behalf of the President as an official adviser to the United States delegation in the negotiations by reason of which the member is in the Congressional Oversight Group. The Congressional Over-

[15] 19 U.S.C. 3807.

sight Group shall consult with and provide advice to the Trade Representative regarding the formulation of specific objectives, negotiating strategies and positions, the development of the applicable trade agreement, and compliance and enforcement of the negotiated commitments under the trade agreement.

(5) CHAIR.—The Congressional Oversight Group shall be chaired by the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate.

(b) GUIDELINES.—

(1) PURPOSE AND REVISION.—The United States Trade Representative, in consultation with the chairmen and ranking minority members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(A) shall, within 120 days after the date of the enactment of this Act, develop written guidelines to facilitate the useful and timely exchange of information between the Trade Representative and the Congressional Oversight Group convened under this section; and

(B) may make such revisions to the guidelines as may be necessary from time to time.

(2) CONTENT.—The guidelines developed under paragraph (1) shall provide for, among other things—

(A) regular, detailed briefings of the Congressional Oversight Group regarding negotiating objectives, including the promotion of certain priorities referred to in section 2102(c), and positions and the status of the applicable negotiations, beginning as soon as practicable after the Congressional Oversight Group is convened, with more frequent briefings as trade negotiations enter the final stage;

(B) access by members of the Congressional Oversight Group, and staff with proper security clearances, to pertinent documents relating to the negotiations, including classified materials;

(C) the closest practicable coordination between the Trade Representative and the Congressional Oversight Group at all critical periods during the negotiations, including at negotiation sites;

(D) after the applicable trade agreement is concluded, consultation regarding ongoing compliance and enforcement of negotiated commitments under the trade agreement; and

(E) the time frame for submitting the report required under section 2102(c)(8).

(c) REQUEST FOR MEETING.—Upon the request of a majority of the Congressional Oversight Group, the President shall meet with the Congressional Oversight Group before initiating negotiations with respect to a trade agreement, or at any other time concerning the negotiations.

SEC. 2108.[16] ADDITIONAL IMPLEMENTATION AND ENFORCEMENT REQUIREMENTS.

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

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

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

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

(4) IMPACT ON STATE AND LOCAL GOVERNMENTS.—A description of the impact the trade agreement will have on State and local governments as a result of increases in trade.

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

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

SEC. 2109.[17] COMMITTEE STAFF.

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

SEC. 2110. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Title I of the Trade Act of 1974 (19 U.S.C. 2111 et seq.) is amended as follows: * * *

(b)[18] APPLICATION OF CERTAIN PROVISIONS.—For purposes of applying sections 125, 126, and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and 2137)—

(1) any trade agreement entered into under section 2103 shall be treated as an agreement entered into under section

[16] 19 U.S.C. 3808.
[17] 19 U.S.C. 3809.
[18] 19 U.S.C. 3810.

101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C. 2111 or 2112); and

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

SEC. 2111.[19] REPORT ON IMPACT OF TRADE PROMOTION AUTHORITY.

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

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

(1) The United States-Israel Free Trade Agreement.

(2) The United States-Canada Free Trade Agreement.

(3) The North American Free Trade Agreement.

(4) The Uruguay Round Agreements.

(5) The Tokyo Round of Multilateral Trade Negotiations.

SEC. 2112.[20] INTERESTS OF SMALL BUSINESS.

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

SEC. 2113.[21] DEFINITIONS.

In this title:

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

(2) AGREEMENT ON SAFEGUARDS.—The term "Agreement on Safeguards means the agreement referred to in section 101(d)(13)[22] of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(13)).[22]

(3)[23] AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES.—The term "Agreement on Subsidies and Countervailing Measures" means the agreement referred to in section 101(d)(12)[23] of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(12)).[23]

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[19] 19 U.S.C. 3811.

[20] 19 U.S.C. 3812.

[21] 19 U.S.C. 3813.

[22] Sec. 2004(a)(19)(A) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2591) struck out "101(d)(12)" and "3511(d)12)" and inserted in lieu thereof "101(d)(13)" and "3511(d)(13)", respectively.

[23] Sec. 2004(a)(19)(B) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2591) redesignated this second para. (2) in sec. 2113 as para. (3), and struck out "101(d)(13)" and "3511(d)(13)" and inserted in lieu thereof "101(d)(12)" and "3511(d)(12)", respectively.

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

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

(6) CORE LABOR STANDARDS.—The term "core labor standards" means—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

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

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

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

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

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

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

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

(A) a United States citizen;

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

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

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

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

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

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

DIVISION C—ANDEAN TRADE PREFERENCE ACT

TITLE XXXI—ANDEAN TRADE PREFERENCE

SEC. 3101.[24] SHORT TITLE.

This title may be cited as the "Andean Trade Promotion and Drug Eradication Act". * * *

SEC. 3102.[24] FINDINGS. * * *

SEC. 3103.[25] ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT. * * *

SEC. 3104.[26] TERMINATION. * * *

SEC. 3105.[27] REPORT ON FREE TRADE AGREEMENT WITH ISRAEL. * * *

SEC. 3106.[28] MODIFICATION OF DUTY TREATMENT FOR TUNA. * * *

SEC. 3107.[29] TRADE BENEFITS UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT. * * *

SEC. 3108.[30] TRADE BENEFITS UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT. * * *

DIVISION D—EXTENSION OF CERTAIN PREFERENTIAL TRADE TREATMENT[31] * * *

DIVISION E—MISCELLANEOUS PROVISIONS

TITLE L—MISCELLANEOUS TRADE BENEFITS

SUBTITLE A—WOOL PROVISIONS

[24] Secs. 3101 and 3102, which make up the Andean Trade Promotion and Drug Eradication Act, can be found on page 941 of this volume.

[25] Sec. 3103 consists of amendments to the Andean Trade Preference Act (Public Law 102–182; 19 U.S.C. 3201). These amendments have been incorporated at the appropriate places in that Act. See page 960 of this volume.

[26] Sec. 3104 is part of the Andean Trade Promotion and Drug Eradication Act and can be found on page 941 of this volume. Sec. 3104 also amends the Andean Trade Preference Act (Public Law 102–182; 19 U.S.C. 3201).

[27] Sec. 3105 can be found on page 1127 of this volume.

[28] Sec. 3106 consists of amendments to the Harmonized Tariff Schedule of the United States.

[29] Sec. 3107 consists of amendments to the Caribbean Basin Economic Recovery Act (Title II of Public Law 98–67; 19 U.S.C. 2701). These amendments have been incorporated at the appropriate places in that Act. See page 1023 of this volume.

[30] Sec. 3108 consists of amendments to the African Growth and Opportunity Act (Title I of Public Law 106–200; 19 U.S.C. 3701). These amendments have been incorporated at the appropriate places in that Act. See page 1028 of this volume.

[31] Division D primarily consists of amendments to the Trade Act of 1974 (Public Law 93–618; 19 U.S.C. 2101). These amendments have been incorporated at the appropriate places in that Act. See page 256 of this volume.

SEC. 5101.[32] **WOOL PROVISIONS.** * * *

SEC. 5102.[33] **DUTY SUSPENSION ON WOOL.** * * *

SUBTITLE B—OTHER PROVISIONS

SEC. 5201.[34] **FUND FOR WTO DISPUTE SETTLEMENTS.**

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

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

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

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

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

(1) $50,000,000; and

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

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

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

SEC. 5202.[35] **CERTAIN STEAM OR OTHER VAPOR GENERATING BOILERS USED IN NUCLEAR FACILITIES.** * * *

SEC. 5203.[35] **SUGAR TARIFF-RATE QUOTA CIRCUMVENTION.** * * *

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[32] Sec. 5101 primarily consists of amendments to the Trade and Development Act of 2000 (Public Law 106–200). These amendments have been incorporated at the appropriate places in that Act. See page 650 of this volume.

[33] Sec. 5102 primarily consists of amendments to the Harmonized Tariff Schedule of the United States.

[34] 19 U.S.C. 3539.

[35] Secs. 5202 and 5203 primarily consist of amendments to the Harmonized Tariff Schedule of the United States.

(5) Trade and Development Act of 2000

Partial text of Public Law 106–200 [H.R. 434], 114 Stat. 251, approved May 18, 2000, as amended by Public Law 107–210 [Trade Act of 2002; H.R. 3009], 116 Stat. 933, approved May 6, 2002

AN ACT To authorize a new trade and investment policy for sub-Saharan Africa, expand trade benefits to the countries in the Caribbean Basin, renew the generalized system of preferences, and reauthorize the trade adjustment assistance programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Trade and Development Act of 2000".

(b) * * *

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TITLE I—EXTENSION OF CERTAIN TRADE BENEFITS TO SUB-SAHARAN AFRICA

NOTE.—The African Growth and Opportunity Act can be found on page 1078.

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Subtitle C—Economic Development Related Issues

NOTE.—Secs. 121 through 131 of the Act are found in *Legislation on Foreign Relations Through 2005*, vol. I–B.

[1] 19 U.S.C. 3701 note.

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TITLE II—TRADE BENEFITS FOR CARIBBEAN BASIN

NOTE.—The United States-Caribbean Basin Trade Partnership can be found on page 944.

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TITLE III—NORMAL TRADE RELATIONS

SEC. 301.[2] NORMAL TRADE RELATIONS FOR ALBANIA.

(a) * * *

SEC. 302.[3] NORMAL TRADE RELATIONS FOR KYRGYZSTAN.

(a) * * *

TITLE IV—OTHER TRADE PROVISIONS

SEC. 401. REPORT ON EMPLOYMENT AND TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Not later than 9 months after the date of the enactment of this section, the Comptroller General of the United States shall submit to Congress a report regarding the efficiency and effectiveness of Federal and State coordination of employment and retraining activities associated with the following programs and legislation:

(1) Trade adjustment assistance (including NAFTA trade adjustment assistance) provided for under title II of the Trade Act of 1974.

(2) The Job Training Partnership Act.

(3) The Workforce Investment Act of 1998.

(4) Unemployment insurance.

(b) PERIOD COVERED.—The report shall cover the activities involved in the programs and legislation listed in subsection (a) from January 1, 1994, to December 31, 1999.

(c) DATA AND RECOMMENDATIONS.—The report shall at a minimum include specific data and recommendations regarding—

(1) the compatibility of program requirements related to the employment and retraining of dislocated workers in the United States, with particular emphasis on the trade adjustment assistance programs provided for under title II of the Trade Act of 1974;

(2) the compatibility of application procedures related to the employment and retraining of dislocated workers in the United States;

[2] 19 U.S.C. 2434 note. Sec. 301 can be found in this volume on page 1178.
[3] 19 U.S.C. 2434 note. Sec. 302 can be found in this volume on page 1179.

(3) the capacity of the programs in addressing foreign trade and the transfer of production to other countries on workers in the United States measured in terms of loss of employment and wages;

(4) the capacity of the programs in addressing foreign trade and the transfer of production to other countries on secondary workers in the United States measured in terms of loss of employment and wages;

(5) how the impact of foreign trade and the transfer of production to other countries would have changed the number of beneficiaries covered under the trade adjustment assistance program if the trade adjustment assistance program covered secondary workers in the United States; and

(6) the effectiveness of the programs described in subsection (a) in achieving reemployment of United States workers and maintaining wage levels of United States workers who have been dislocated as a result of foreign trade and the transfer of production to other countries.

SEC. 402. TRADE ADJUSTMENT ASSISTANCE.

(a) CERTIFICATION OF ELIGIBILITY FOR WORKERS REQUIRED FOR DECOMMISSIONING OR CLOSURE OF FACILITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law or any decision by the Secretary of Labor denying certification or eligibility for certification for adjustment assistance under title II of the Trade Act of 1974, a qualified worker described in paragraph (2) shall be certified by the Secretary as eligible to apply for adjustment assistance under such title II.

(2) QUALIFIED WORKER.—For purposes of this subsection, a "qualified worker" means a worker who—

(A) was determined to be covered under Trade Adjustment Assistance Certification TA–W–28,438; and

(B) was necessary for the decommissioning or closure of a nuclear power facility.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 403.[4] RELIQUIDATION OF CERTAIN NUCLEAR FUEL ASSEMBLIES. * * *

SEC. 404.[5] REPORTS TO THE FINANCE AND WAYS AND MEANS COMMITTEES. * * *

SEC. 405.[6] CLARIFICATION OF SECTION 334 OF THE URUGUAY ROUND AGREEMENTS ACT. * * *

SEC. 406.[7] CHIEF AGRICULTURAL NEGOTIATOR. * * *

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[4] Sec. 403 refers to the customs treatment of particular imported commodities.

[5] Sec. 404 makes technical corrections to reporting requirements, in particular, trade laws. These reporting requirements appear, as amended, in this volume.

[6] Sec. 405 amends the Uruguay Round Agreements Act by revising the rules of origin for textile and apparel products.

[7] Sec. 406 amends sec. 141 of the Trade Act of 1974 (19 U.S.C. 2171) to establish the position of Chief Agricultural Negotiator in the Office of the United States Trade Representative, as found on page 285.

SEC. 407.[8] REVISION OF RETALIATION LIST OR OTHER REMEDIAL ACTION. * * *

SEC. 408. REPORT ON TRADE ADJUSTMENT ASSISTANCE FOR AGRICULTURAL COMMODITY PRODUCERS.

(a) IN GENERAL.—Not later than 4 months after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Commerce, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that—

(1) examines the applicability to agricultural commodity producers of trade adjustment assistance programs established under title II of the Trade Act of 1974; and

(2) sets forth recommendations to improve the operation of those programs as the programs apply to agricultural commodity producers or to establish a new trade adjustment assistance program for agricultural commodity producers.

(b) CONTENTS.—In preparing the report required by subsection (a), the Secretary of Labor shall—

(1) assess the degree to which the existing trade adjustment assistance programs address the adverse effects on agricultural commodity producers due to price suppression caused by increased imports of like or directly competitive agricultural commodities; and

(2) examine the effectiveness of the program benefits authorized under subchapter B of chapter 2 and chapter 3 of title II of the Trade Act of 1974 in remedying the adverse effects, including price suppression, caused by increased imports of like or directly competitive agricultural commodities.

(c) DEFINITIONS.—In this section:

(1) AGRICULTURAL COMMODITY.—The term "agricultural commodity" means any agricultural commodity, including livestock, fish or harvested seafood in its raw or natural state.

(2) AGRICULTURAL COMMODITY PRODUCER.—The term "agricultural commodity producer" means any person who is engaged in the production and sale of an agricultural commodity in the United States and who owns or shares the ownership and risk of loss of the agricultural commodity.

SEC. 409.[9] AGRICULTURAL TRADE NEGOTIATING OBJECTIVES AND CONSULTATIONS WITH CONGRESS.

(a) FINDINGS.—Congress finds that—

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

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

[8] Sec. 407 amends sec. 306 of the Trade Act of 1974 (19 U.S.C. 2417, on page 365, this volume) directing the United States Trade Representative to periodically revise the commodities on a retaliation list if one is initiated as a result of a trade dispute.

[9] 7 U.S.C. 1736r note.

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

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

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

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

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

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

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

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

(B) restrictive rules in the administration of tariff-rate quotas; and

(C) other barriers to agriculture trade, including unjustified restrictions or commercial requirements affecting new technologies, including biotechnology;

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

(7) strengthening dispute settlement procedures to ensure prompt compliance by foreign governments with their World Trade Organization obligations including commitments not to maintain unjustified restrictions on United States exports.

(c) CONSULTATION WITH CONGRESSIONAL COMMITTEES.—

(1) CONSULTATION BEFORE OFFER MADE.—In developing and before submitting an initial or revised negotiating proposal that would reduce United States tariffs on agricultural products or require a change in United States agricultural law, the United States Trade Representative shall consult with the Committee on Agriculture, Nutrition, and Forestry and the

Committee on Finance of the Senate and the Committee on Agriculture and the Committee on Ways and Means of the House of Representatives.

(2) CONSULTATION WITH CONGRESSIONAL TRADE ADVISERS.—Prior to and during the course of current negotiations on agricultural trade, the United States Trade Representative shall consult closely with the congressional trade advisers.

(3) CONSULTATION BEFORE AGREEMENT INITIALED.—Not less than 48 hours before initialing an agreement reached as part of current World Trade Organization agricultural negotiations, the United States Trade Representative shall consult closely with the committees referred to in paragraph (1) regarding—

(A) the details of the agreement;

(B) the potential impact of the agreement on United States agricultural producers; and(C) any changes in United States law necessary to implement the agreement.

(4) DISCLOSURE OF COMMITMENTS.—Any agreement or other understanding addressing agricultural trade with a foreign government or governments (whether oral or in writing) that relates to a trade agreement with respect to which Congress must enact implementing legislation and that is not disclosed to Congress before legislation implementing that agreement is introduced in either House of Congress shall not be considered to be part of the agreement approved by Congress and shall have no force and effect under United States law or in any dispute settlement body.

(d) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) granting the President trade negotiating authority is essential to the successful conclusion of the new round of World Trade Organization agricultural negotiations;

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

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

SEC. 410.[10] ENTRY PROCEDURES FOR FOREIGN TRADE ZONE OPERATIONS.

(a) * * *

(b)[11] EFFECTIVE DATE.—The amendment made by this section shall take effect on the date that is 60 days after the date of the enactment of this Act.

[10] Subsec. 410(a) amends sec. 484 of the Tariff Act of 1930 (19 U.S.C. 1484) to require that merchandise withdrawn from a foreign trade zone during a 7-day period to be treated upon entry as a single entry (at the option of the operator or user of the zone) for purposes of customs user fees by making technical changes to customs laws relating to treatment.

[11] 19 U.S.C. 1484 note.

SEC. 411.[12] GOODS MADE WITH FORCED OR INDENTURED CHILD LABOR. * * *

SEC. 412. WORST FORMS OF CHILD LABOR.

(a)[13] * * *

(b)[14] DEFINITION OF WORST FORMS OF CHILD LABOR. * * *

(c)[15] ANNUAL REPORT. * * *

TITLE V—IMPORTS OF CERTAIN WOOL ARTICLES[16]

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SEC. 505.[17] REFUND OF DUTIES PAID ON IMPORTS OF CERTAIN WOOL ARTICLES.

(a) WORSTED WOOL FABRICS.—In each of the calendar years 2000, 2001, and 2002, a manufacturer of men's or boys' suits, suit-type jackets, or trousers (not a broker or other individual acting on behalf of the manufacturer to process the import) of imported worsted wool fabrics of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States shall be eligible for a refund of duties paid on entries of such fabrics in each such calendar year in an amount equal to one-third of the amount of duties paid by the importer on such worsted wool fabrics (without regard to micron level) imported in calendar year 1999.

(b) WOOL YARN.—In each of the calendar years 2000, 2001, and 2002, a manufacturer of worsted wool fabrics who imports wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a refund of duties paid on entries of such wool yarn in each such calendar year in an amount equal to one-third of the amount of du-

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[12] 19 U.S.C. 1307 note. Sec. 411 amends sec. 307 of the Tariff Act of 1930 (19 U.S.C. 1307) by including "forced or indentured child labor" within the prohibition of the importation of goods manufactured by forced or indentured labor.

[13] Subsec. 412(a) amends sec. 502(b)(2) of the Trade Act of 1974 (19 U.S.C. 2462(b)(2)) by making ineligible for the Generalized System of Preferences any country that has not implemented its commitment to eliminate the worst forms of child labor.

[14] Subsec. 412(b) amends sec. 507 of the Trade Act of 1974 (19 U.S.C. 2467) by adding at the end a new paragraph defining the term "worst forms of child labor" as (1) all forms of slavery or practices similar to slavery; (2) child prostitution or use of a child for pornographic purposes; (3) use of a child for the production or trafficking of drugs; and (4) work which, by nature, is likely to harm the health or safety of children. See page 404.

[15] Subsec. (c) amends sec. 504 of the Trade Act of 1974 (19 U.S.C. 2464) by requiring that annual reports to the Congress on labor rights in Generalized System of Preferences (GSP) beneficiary countries include findings with respect to implementation of its international commitments to eliminate the worst forms of child labor.

[16] Secs. 501 to 505 of this title amend the Harmonized Tariff Schedule of the United States (HTSUS) to reduce or suspend the duty on certain wool yarn, wool fiber, and wool top of a specified fiber diameter from January 1, 2001 through December 31, 2003. The President is authorized to proclaim a reduction in rate of duty for certain imports of worsted wool fabrics similar to the rate of duty for such fabrics imported from Canada. The President is further directed to monitor U.S. market conditions for these fabrics, and to consider requests made by U.S. manufacturers of apparel products to modify the quantity of such articles imported into the United States.

[17] Sec. 5102(c)(1) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 1046) provided the following:

"(c) EXTENSION OF DUTY REFUNDS AND WOOL RESEARCH TRUST FUND.—

"(1) IN GENERAL.—The United States Customs Service shall pay each manufacturer that receives a payment under section 505 of the Trade and Development Act of 2000 (Public Law 106-200) for calendar year 2002, and that provides an affidavit that it remains a manufacturer in the United States as of January 1 of the year of the payment, 2 additional payments, each payment equal to the payment received for calendar year 2002 as follows:

"(A) The first payment to be made after January 1, 2004, but on or before April 15, 2004.

"(B) The second payment to be made after January 1, 2005, but on or before April 15, 2005.".

ties paid by the manufacturer on such wool yarn (without regard to micron level) imported in calendar year 1999.

(c) WOOL FIBER AND WOOL TOP.—In each of the calendar years 2000, 2001, and 2002, a manufacturer of wool yarn or wool fabric who imports wool fiber or wool top of the kind described in heading 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a refund of duties paid on entries of such wool fiber in each such calendar year in an amount equal to one-third of the amount of duties paid by the manufacturer on such wool fiber (without regard to micron level) imported in calendar year 1999.

(d) PROPER IDENTIFICATION AND APPROPRIATE CLAIM.—Any person applying for a rebate under this section shall properly identify and make appropriate claim to the United States Customs Service for each entry involved.

SEC. 506.[18] WOOL RESEARCH, DEVELOPMENT, AND PROMOTION TRUST FUND.

(a) ESTABLISHMENT.—There is hereby established within the Treasury of the United States a trust fund to be known as the Wool Research, Development, and Promotion Trust Fund (hereafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be transferred to the Trust Fund under subsection (b)(1) and any amounts as may be credited to the Trust Fund under subsection (c)(2).

(b) TRANSFER OF AMOUNTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall transfer to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into such general fund that are attributable to the duty received on articles under chapters 51 and 52 of the Harmonized Tariff Schedule of the United States, subject to the limitation in paragraph (2).

(2) LIMITATION.—The Secretary shall not transfer more than $2,250,000 to the Trust Fund in any fiscal year.

(3) TRANSFERS BASED ON ESTIMATES.—The amounts required to be transferred under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury of the United States to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) that are received into the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

(c) INVESTMENT OF TRUST FUND.—

(1) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the Secretary's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired on original

[18] 7 U.S.C. 7101 note.

issue at the issue price or by purchase of outstanding obligations at the market price. Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.

(2) INTEREST AND PROCEEDS FROM SALE OR REDEMPTION OF OBLIGATIONS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d) AVAILABILITY OF AMOUNTS FROM TRUST FUND.—From amounts available in the Trust Fund (including any amounts not obligated in previous fiscal years), the Secretary of Agriculture is authorized to provide grants to a nationally-recognized council established for the development of the United States wool market for the following purposes:

(1) Assist United States wool producers to improve the quality of wool produced in the United States, including to improve wool production methods.

(2) Disseminate information on improvements described in paragraph (1) to United States wool producers generally.

(3) Assist United States wool producers in the development and promotion of the wool market.

(e) REPORTS TO CONGRESS.—The Secretary of the Treasury, in consultation with the Secretary of Agriculture, shall prepare and submit to Congress an annual report on the financial condition and the results of the operations of the Trust Fund, including a description of the use of amounts of grants provided under subsection (d), during the preceding fiscal year and on its expected condition and operations during the next fiscal year.

(f) SUNSET PROVISION.—Effective January 1, 2008,[19] the Trust Fund shall be abolished and all amounts in the Trust Fund on such date shall be transferred to the general fund of the Treasury of the United States.

TITLE VI—REVENUE PROVISIONS

SEC. 601. APPLICATION OF DENIAL OF FOREIGN TAX CREDIT REGARDING TRADE AND INVESTMENT WITH RESPECT TO CERTAIN FOREIGN COUNTRIES. * * *[20]

SEC. 602.[21] ACCELERATION OF COVER OVER PAYMENTS TO PUERTO RICO AND VIRGIN ISLANDS.

(a)[22] INITIAL PAYMENT.—Section 512(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 is amended—

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[19] Sec. 5102(c)(2) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 1047) struck out "2004" and inserted in lieu thereof "2006". Subsequently, sec. 4002(c)(5) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2603) struck out "2006" and inserted in lieu thereof "2008".

[20] Subsec. 601 amends sec. 901(j) of the Internal Revenue Code of 1986 to provide for a waiver of the denial of a foreign tax credit for certain taxes paid or accrued to a foreign country, if the President determines and reports to Congress that such waiver is in the U.S. national interest and will expand trade and investment opportunities for U.S. companies in such country.

[21] 26 U.S.C. 7652 note.

[22] Sec. 602 amends the Ticket to Work and Work Incentives Improvement Act of 1999 to accelerate the deadline for the Secretary of the Treasury to make the second transfer to Puerto Rico and the Virgin Islands of incremental increases in cover over excise taxes on distilled spirits imported from such places.

(6) Trade Deficit Review Commission Act

Partial text of Public Law 105–277 [Omnibus Consolidated and Emergency Appropriations Act, 1999; H.R. 4328], 112 Stat. 2681–547, approved October 21, 1998; as amended by Public Law 106–57 [Legislative Branch Appropriations Act, 2000; H.R. 1905], 113 Stat. 407, approved September 29, 1999; and Pubic Law 107–107 [National Defense Authorization Act of 2002; S. 1438], 115 Stat. 1012, approved December 28, 2001

AN ACT Making omnibus consolidated and emergency supplemental appropriations for the fiscal year ending September 30, 1999, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DIVISION A—OMNIBUS CONSOLIDATED APPROPRIATIONS

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SEC. 127.[1] (a) SHORT TITLE.—This section may be cited as the "Trade Deficit Review Commission Act".

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

(1) The United States continues to run substantial merchandise trade and current account deficits.

(2) Economic forecasts anticipate continued growth in such deficits in the next few years.

(3) The positive net international asset position that the United States built up over many years was eliminated in the 1980s. The United States today has become the world's largest debtor nation.

(4) The United States merchandise trade deficit is characterized by large bilateral trade imbalances with a handful of countries.

(5) The United States has one of the most open borders and economies in the world. The United States faces significant tariff and nontariff trade barriers with its trading partners. The United States does not benefit from fully reciprocal market access.

(6) The United States is once again at a critical juncture in trade policy development. The nature of the United States trade deficit and its causes and consequences must be analyzed and documented.

(c) ESTABLISHMENT OF COMMISSION.—

(1) ESTABLISHMENT.—There is established a commission to be known as the Trade Deficit Review Commission (hereafter in this section referred to as the "Commission").

(2) PURPOSE.—The purpose of the Commission is to study the nature, causes, and consequences of the United States merchandise trade and current account deficits.

(3) MEMBERSHIP OF COMMISSION.—

[1] 19 U.S.C. 2213 note.

(A) COMPOSITION.—The Commission shall be composed of 12 members as follows:

(i) Three persons shall be appointed by the President pro tempore of the Senate upon the recommendation of the Majority Leader of the Senate, after consultation with the Chairman of the Committee on Finance.

(ii) Three persons shall be appointed by the President pro tempore of the Senate upon the recommendation of the Minority Leader of the Senate, after consultation with the ranking minority member of the Committee on Finance.

(iii) Three persons shall be appointed by the Speaker of the House of Representatives, after consultation with the Chairman of the Committee on Ways and Means.

(iv) Three persons shall be appointed by the Minority Leader of the House of Representatives, after consultation with the ranking minority member of the Committee on Ways and Means.

(B) QUALIFICATIONS OF MEMBERS.—

(i) APPOINTMENTS.—Persons who are appointed under subparagraph (A) shall be persons who—

(I) have expertise in economics, international trade, manufacturing, labor, environment, business, or have other pertinent qualifications or experience; and

(II) are not officers or employees of the United States.

(ii) OTHER CONSIDERATIONS.—In appointing Commission members, every effort shall be made to ensure that the members—

(I) are representative of a broad cross-section of economic and trade perspectives within the United States; and

(II) provide fresh insights to analyzing the causes and consequences of United States merchandise trade and current account deficits.

(4) PERIOD OF APPOINTMENT; VACANCIES.—

(A) IN GENERAL.—Members shall be appointed not later than 60 days after the date of enactment of this Act and the appointment shall be for the life of the Commission.

(B) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(5) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(6) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(7) CHAIRPERSON AND VICE CHAIRPERSON.—The members of the Commission shall elect a chairperson and vice chairperson from among the members of the Commission.

(8) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(9) VOTING.—Each member of the Commission shall be entitled to 1 vote, which shall be equal to the vote of every other member of the Commission.

(d) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall be responsible for examining the nature, causes, and consequences of, and the accuracy of available data on, the United States merchandise trade and current account deficits.

(2) ISSUES TO BE ADDRESSED.—The Commission shall examine and report to the President, the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and other appropriate committees of Congress on the following:

(A) The relationship of the merchandise trade and current account balances to the overall well-being of the United States economy, and to wages and employment in various sectors of the United States economy.

(B) The impact that United States monetary and fiscal policies may have on United States merchandise trade and current account deficits.

(C) The extent to which the coordination, allocation, and accountability of trade responsibilities among Federal agencies may contribute to the trade and current account deficits.

(D) The causes and consequences of the merchandise trade and current account deficits and specific bilateral trade deficits, including—

(i) identification and quantification of—

(I) the macroeconomic factors and bilateral trade barriers that may contribute to the United States merchandise trade and current account deficits;

(II) any impact of the merchandise trade and current account deficits on the domestic economy, industrial base, manufacturing capacity, technology, number and quality of jobs, productivity, wages, and the United States standard of living;

(III) any impact of the merchandise trade and current account deficits on the defense production and innovation capabilities of the United States; and

(IV) trade deficits within individual industrial, manufacturing, and production sectors, and any relationship between such deficits and the increasing volume of intra-industry and intra-company transactions;

(ii) a review of the adequacy and accuracy of the current collection and reporting of import and export data, and the identification and development of additional data bases and economic measurements that may be needed to properly quantify the merchandise trade and current account balances, and any impact

the merchandise trade and current account balances may have on the United States economy; and

(iii) the extent to which there is reciprocal market access substantially equivalent to that afforded by the United States in each country with which the United States has a persistent and substantial bilateral trade deficit, and the extent to which such deficits have become structural.

(E) Any relationship of United States merchandise trade and current account deficits to both comparative and competitive trade advantages within the global economy, including—

(i) a systematic analysis of the United States trade patterns with different trading partners and to what extent the trade patterns are based on comparative and competitive trade advantages;

(ii) the extent to which the increased mobility of capital and technology has changed both comparative and competitive trade advantages;

(iii) any impact that labor, environmental, or health and safety standards may have on comparative and competitive trade advantages;

(iv) the effect that offset and technology transfer agreements have on the long-term competitiveness of the United States manufacturing sectors; and

(v) any effect that international trade, labor, environmental, or other agreements may have on United States competitiveness.

(F) The extent to which differences in the growth rates of the United States and its trading partners may impact on United States merchandise trade and current account deficits.

(G) The impact that currency exchange rate fluctuations and any manipulation of exchange rates may have on United States merchandise trade and current account deficits.

(H) The flow of investments both into and out of the United States, including—

(i) any consequences for the United States economy of the current status of the United States as a debtor nation;

(ii) any relationship between such investment flows and the United States merchandise trade and current account deficits and living standards of United States workers;

(iii) any impact such investment flows may have on United States labor, community, environmental, and health and safety standards, and how such investment flows influence the location of manufacturing facilities; and

(iv) the effect of barriers to United States foreign direct investment in developed and developing nations, particularly nations with which the United States has a merchandise trade and current account deficit.

(e) FINAL REPORT.—

(1) IN GENERAL.—Not later than 15 months[2] after the date of the initial meeting of the Commission, the Commission shall submit to the President and Congress a final report which contains—

(A) the findings and conclusions of the Commission described in subsection (d); and

(B) recommendations for addressing the problems identified as part of the Commission's analysis.

(2) SEPARATE VIEWS.—Any member of the Commission may submit additional findings and recommendations as part of the final report.

(f) POWERS OF COMMISSION.—

(1) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission may find advisable to fulfill the requirements of this section. The Commission shall hold at least 1 or more hearings in Washington, D.C., and 4 in different regions of the United States.

(2) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(g) COMMISSION PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) STAFF.—

(A) IN GENERAL.—The Chairperson of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

[2] Sec. 2501 of Public Law 106–246 (114 Stat. 556) struck out "12 months" and inserted in lieu thereof "15 months".

(B) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(6)[3] APPLICABILITY OF CERTAIN PAY AUTHORITIES.—An individual who is a member of the Commission and is an annuitant or otherwise covered by section 8344 or 8468 of title 5, United States Code, by reason of membership on the Commission is not subject to the provisions of section 8344 or 8468 (whichever is applicable) with respect to such membership.

(h) SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(i) APPROPRIATIONS.—There are appropriated 2,000,000 to the Commission to carry out the provisions of this section. Amounts appropriated pursuant to this subsection shall remain available until the date which is 90 days after the date on which the Commission submits the final report described in subsection (e).[4]

(j)[5] FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App.) shall not apply to the Commission.

(k)[5] TERMINATION.—The Commission shall terminate 90 days after the date on which the Commission submits the final report under subsection (e).

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[3] Sec. 310(b) of the Legislative Branch Appropriations Act, 2000 (Public Law 106–57; 113 Stat. 428) added para (6).

Subsequently, sec. 1048(i)(10) of the National Defense Authorization Act for 2002 (P.L. 107–107; 115 Stat. 1229) struck out subpara. (A) designation and the text of subpara. (B). Previously subpara. (B) read as follows:

"(B) UNIFORMED SERVICE.—An individual who is a member of the Commission and is a member or former member of a uniformed service is not subject to the provisions of subsections (b) and (c) of section 5532, United States Code, with respect to membership on the Commission.".

[4] Sec. 310(a) of the Legislative Branch Appropriations Act, 2000 (Public Law 106–57; 113 Stat. 428) added this sentence.

[5] Sec. 310(c) of the Legislative Branch Appropriations Act, 2000 (Public Law 106–57; 113 Stat. 428) added subsecs. (j) and (k).

(7) Steel Imports Into the United States

Partial text of Public Law 105–277 [Omnibus Consolidated and Emergency Appropriations Act, 1999; H.R. 4328], 112 Stat. 2681–591, approved October 21, 1998

AN ACT Making omnibus consolidated and emergency supplemental appropriations for the fiscal year ending September 30, 1999, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 111. (a) FINDINGS.—Congress makes the following findings:

(1) The current financial crises in Asia, the independent States of the former Soviet Union (as defined in section 3 of the FREEDOM Support Act), Russia, and other areas of the world, involve significant depreciation in the currencies of several key steel-producing and steel-consuming countries, along with a collapse in the domestic demand for steel in the countries.

(2) The crises have generated and will continue to generate increases in United States imports of steel, both from the countries whose currencies have been depreciated and from other Asian steel-producing countries that are no longer able to export steel to the countries that are experiencing an economic crisis.

(3) United States imports of finished steel mill products from Asian steel-producing countries, such as the People's Republic of China, Japan, Korea, India, Taiwan, Indonesia, Thailand, and Malaysia, increased by 79 percent in the first 5 months of 1998.

(4) Year-to-date imports of steel from Russia now exceed the record import levels of 1997, and steel imports from Russia and the Ukraine now approach 2,500,000 net tons.

(5) Foreign government trade restrictions and private restraints of trade distort international trade and investment patterns and result in burdens on United States commerce, including absorption of a disproportionate share of steel diverted from other countries.

(6) The European Union, for example, despite also being a major economy, in 1997 imported only one-tenth as much finished steel products from Asian steel-producing countries as the United States did and has restricted imports of steel from the independent states of the former Soviet Union and Russia.

(7) The United States is simultaneously facing a substantial increase in steel imports from the independent states of the former Soviet Union and Russia, caused in part by the closure of Asian markets to steel imports.

(8) There is a well recognized need for improvement in the enforcement of the United States trade laws to provide an effective response to situations of such increased imports.

(b) SENSE OF CONGRESS.—Congress calls upon the President to—

(1) pursue enhanced enforcement of the United States trade laws with respect to the increase in steel imports into the United States, using all remedies available under United States laws including imposition of offsetting duties, quantitative restrictions, and other appropriate remedial measures;

(2) pursue with all methods at the President's disposal to achieve a more equitable sharing of the burden of accepting imports of finished steel products from Asia and the independent states of the former Soviet Union;

(3) establish a task force within the executive branch that has responsibility for closely monitoring imports of steel into the United States; and

(4) report to Congress not later than January 5, 1999, with a comprehensive plan for responding to the increase in steel imports, including ways of limiting the deleterious effects on employment, prices, and investment in the United States steel industry.

* * * * * * *

(8) Tariffs, Trade Barriers, and the Internet

Partial text of Public Law 105–277 [Omnibus Consolidated and Emergency Appropriations Act, 1999; H.R. 4328], 112 Stat. 2681–727, approved October 21, 1998

AN ACT Making omnibus consolidated and emergency supplemental appropriations for the fiscal year ending September 30, 1999, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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DIVISION C—OTHER MATTERS

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TITLE XII—OTHER PROVISIONS

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SEC. 1203. DECLARATION THAT THE INTERNET SHOULD BE FREE OF FOREIGN TARIFFS, TRADE BARRIERS, AND OTHER RESTRICTIONS.

(a) IN GENERAL.—It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the Americas, the North American Free Trade Agreement, and other appropriate venues.

(b) NEGOTIATING OBJECTIVES.—The negotiating objectives of the United States shall be—

(1) to assure that electronic commerce is free from—

(A) tariff and nontariff barriers;

(B) burdensome and discriminatory regulation and standards; and

(C) discriminatory taxation; and

(2) to accelerate the growth of electronic commerce by expanding market access opportunities for—

(A) the development of telecommunications infrastructure;

(B) the procurement of telecommunications equipment;

(C) the provision of Internet access and telecommunications services; and

(D) the exchange of goods, services, and digitalized information.

(c) ELECTRONIC COMMERCE.—For purposes of this section, the term "electronic commerce" has the meaning given that term in section 1104(3).

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(9) Clarification of Normal Trade Relations

Partial text of Public Law 105–206 [H.R. 2676], 112 Stat. 686, approved July 22, 1998

AN ACT To amend the Internal Revenue Code of 1986 to restructure and reform the Internal Revenue Service, and for other purposes.

NOTE.—Public Law 105–206 consists primarily of amendments to the Internal Revenue Code. Sec. 5003(b) amends applicable trade statutes by striking out "most-favored-nation" (MFN) and inserting in lieu thereof "normal trade relations" (NTR).

TITLE V—ADDITIONAL PROVISIONS

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SEC. 5003.[1] CLARIFICATION OF DESIGNATION OF NORMAL TRADE RELATIONS.

(a) FINDINGS AND POLICY.—

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

(A) Since the 18th century, the principle of nondiscrimination among countries with which the United States has trade relations, commonly referred to as "most-favored-nation" treatment, has been a cornerstone of United States trade policy.

(B) Although the principle remains firmly in place as a fundamental concept in United States trade relations, the term "most-favored-nation" is a misnomer which has led to public misunderstanding.

(C) It is neither the purpose nor the effect of the most-favored-nation principle to treat any country as "most favored". To the contrary, the principle reflects the intention to confer on a country the same trade benefits that are conferred on any other country, that is, the intention not to discriminate among trading partners.

(D) The term "normal trade relations" is a more accurate description of the principle of nondiscrimination as it applies to the tariffs applicable generally to imports from United States trading partners, that is, the general rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States.

[1] 19 U.S.C. 2481 note.

(2) POLICY.—It is the sense of the Congress that—

(A) the language used in United States laws, treaties, agreements, executive orders, directives, and regulations should more clearly and accurately reflect the underlying principles of United States trade policy; and

(B) accordingly, the term "normal trade relations" should, where appropriate, be substituted for the term "most-favored-nation".

(b) CHANGE IN TERMINOLOGY.—[2] * * *

(c) SAVINGS PROVISIONS.—Nothing in this section shall affect the meaning of any provision of law, Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States relating to the principle of "most-favored-nation" (or "most favored nation") treatment. Any Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States that has been issued, made, granted, or allowed to become effective and that is in effect on the effective date of this Act, or was to become effective on or after the effective date of this Act, shall continue in effect according to its terms until modified, terminated, superseded, set aside, or revoked in accordance with law.

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[2] Subsec. (b) makes amendments to U.S. trade laws to reflect terminology changes.

(10) World Trade Organization Transparency

Partial text of Public Law 105–174 [1998 Supplemental Appropriations and Rescissions Act; H.R. 3579], 112 Stat. 58, approved May 1, 1998

AN ACT Making emergency supplemental appropriations for the fiscal year ending September 30, 1998, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE III—SUPPLEMENTAL APPROPRIATIONS

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GENERAL PROVISIONS—THIS TITLE

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SEC. 10006. The President shall instruct the United States Representatives to the World Trade Organization to seek the adoption of procedures that will ensure broader application of the principles of transparency and openness in the activities of the organization, including by urging the World Trade Organization General Council to—

(1) permit appropriate meetings of the Council, the Ministerial conference, dispute settlement panels, and the Appellate Body to be made open to the public; and

(2) provide for timely public summaries of the matters discussed and decisions made in any closed meeting of the Conference or Council.

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(11) Uruguay Round Agreements Act

Partial text of Public Law 103–465 [H.R. 5110], 108 Stat. 4809, approved December 8, 1994; as amended by Public Law 104–127 [Federal Agriculture Improvement and Reform Act of 1996; H.R. 2854], 110 Stat. 888, approved April 4, 1996; Public Law 104–188 [Small Business Job Protection Act of 1996; H.R. 3448], 110 Stat. 1755, approved August 20, 1996; and Public Law 104–295 [Miscellaneous Trade and Technical Corrections Act of 1996; H.R. 3815], 110 Stat. 3514, approved October 11, 1996

AN ACT To approve and implement the trade agreements concluded in the Uruguay Round of multilateral trade negotiations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Uruguay Round Agreements Act".

(b) TABLE OF CONTENTS.—* * *

SEC. 2.[2] DEFINITIONS.

For purposes of this Act:

(1) GATT 1947; GATT 1994.—

(A) GATT 1947.—The term "GATT 1947" means the General Agreement on Tariffs and Trade, dated October 30, 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended, or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement.

(B) GATT 1994.—The term "GATT 1994" means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

(2) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

(3) INTERNATIONAL TRADE COMMISSION.—The term "International Trade Commission" means the United States International Trade Commission.

(4) MULTILATERAL TRADE AGREEMENT.—The term "multilateral trade agreement" means an agreement described in section 101(d) of this Act (other than an agreement described in paragraph (17) or (18) of such section).

(5) SCHEDULE XX.—The term "Schedule XX" means Schedule XX—United States of America annexed to the Marrakesh Protocol to the GATT 1994.

(6) TRADE REPRESENTATIVE.—The term "Trade Representative" means the United States Trade Representative.

[1] 19 U.S.C. 3501 note.
[2] 19 U.S.C. 3501.

(7) URUGUAY ROUND AGREEMENTS.—The term "Uruguay Round Agreements" means the agreements approved by the Congress under section 101(a)(1).

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

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

(10) WTO MEMBERS AND WTO MEMBER COUNTRY.—The terms "WTO member" and "WTO member country" means 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.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE URUGUAY ROUND AGREEMENTS

SUBTITLE A—APPROVAL OF AGREEMENTS AND RELATED PROVISIONS

SEC. 101.[3] 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)[4] 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.

(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 AGREEMENTS TO WHICH THIS ACT APPLIES.—Subsection (a) applies to the WTO Agreement and to the following agreements annexed to that Agreement:

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[3] 19 U.S.C. 3511.

[4] In a memorandum for the USTR, the President, on December 23, 1994, determined that, with the commitment of Canada, the European Community, Mexico, Japan, and other major trading countries, a sufficient number of foreign countries had accepted the obligations of the Agreement Establishing the World Trade Organization, and so directed the USTR or his designee to accept the Uruguay Round Agreements on behalf of the United States (60 F.R. 1003).

(1) The General Agreement on Tariffs and Trade 1994.
(2) The Agreement on Agriculture.
(3) The Agreement on the Application of Sanitary and Phytosanitary Measures.
(4) The Agreement on Textiles and Clothing.
(5) The Agreement on Technical Barriers to trade.
(6) The Agreement on Trade-Related Investment Measures.
(7) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.
(8) The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.
(9) The Agreement on Preshipment Inspection.
(10) The Agreement on Rules of Origin.
(11) The Agreement on Import Licensing Procedures.
(12) The Agreement on Subsidies and Countervailing Measures.
(13) The Agreement on Safeguards.
(14) The General Agreement on Trade in Services.
(15) The Agreement on Trade-Related Aspects of Intellectual Property Rights.
(16) The Understanding on Rules and Procedures Governing the Settlement of Disputes.
(17) The Agreement on Government Procurement.
(18) The International Bovine Meat Agreement.

SEC. 102.[5] 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) * * *

(c) * * *

(d) * * *

SEC. 103.[6] IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE; REGULATIONS.

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

[5] 19 U.S.C. 3512.
[6] 19 U.S.C. 3513.

(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 any of the Uruguay Round Agreements enters into force with respect to the United States is appropriately implemented on such date. Such proclamation or regulation may not have an effective date earlier than the date of entry into force with respect to the United States of the agreement to which the proclamation or regulation relates.

(b) REGULATIONS.—Any interim regulation necessary or appropriate to carry out any action proposed in the statement of administrative action approved under section 101(a) to implement an agreement described in section 101(d) (7), (12), or (13) shall be issued not later than 1 year after the date on which the agreement enters into force with respect to the United States.

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SUBTITLE D—RELATED PROVISIONS

SEC. 131.[7] WORKING PARTY ON WORKER RIGHTS.

(a) IN GENERAL.—The President shall seek the establishment in the GATT 1947, and, upon entry into force of the WTO Agreement with respect to the United States, in the WTO, of a working party to examine the relationship of internationally recognized worker rights, as defined in section 507(4)[8] of the Trade Act of 1974, to the articles, objectives, and related instruments of the GATT 1947 and of the WTO, respectively.

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

(1) explore the linkage between international trade and internationally recognized worker rights, as defined in section 507(4)[8] 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.[9] 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

[7] 19 U.S.C. 3551.

[8] Sec. 1954(a)(6) of Public Law 104–188 (110 Stat. 1928) struck out "504(a)(7)" and inserted in lieu thereof "507(4)".

[9] 19 U.S.C. 3552.

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.[10]

SEC. 133.[11] MEMBERSHIP IN WTO OF BOYCOTTING COUNTRIES.

It is the sense of the Congress that the Trade Representative should vigorously oppose the admission into the World Trade Organization of any country which, through its laws, regulations, official policies, or governmental practices, fosters, imposes, complies with, furthers, or supports any boycott described in section 8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a)) (as in effect on August 20, 1994), including requiring or encouraging entities within that country to refuse to do business with persons who do not comply with requests to take any action prohibited under that section.

SEC. 134.[12] AFRICA TRADE AND DEVELOPMENT POLICY.

(a) DEVELOPMENT OF POLICY.—The President should develop and implement a comprehensive trade and development policy for the countries of Africa.

(b) REPORTS TO CONGRESS.—The President shall, not later than 12 months after the date of the enactment of this Act and annually thereafter for a period of 4 years, submit to the Committee on Ways and Means and the Committee on Foreign Affairs[13] of the House of Representatives, the Committee on Finance and the Committee on Foreign Relations of the Senate, and other appropriate committees of the Congress, a report on the steps taken to carry out subsection (a).

* * * * * * *

TITLE IV—AGRICULTURE-RELATED PROVISIONS

SUBTITLE A—AGRICULTURE

* * * * * * *

PART II—EXPORTS

SEC. 411.[14] EXPORT PROGRAMS.

(a) EXPORT ENHANCEMENT PROGRAM.—

(1) SHORT TITLE.—This subsection may be cited as the "Export Enhancement Program Amendments of 1994".

(2) * * *

(3) * * *

(4) * * *

(b) * * *

(c) * * *

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[10] Sec. 20(a)(2) of Public Law 104–295 (110 Stat. 3527) struck out "title" and inserted in lieu thereof "section".

[11] 19 U.S.C. 3553.

[12] 19 U.S.C. 3554.

[13] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives should be treated as referring to the Committee on International Relations of the House of Representatives.

[14] 7 U.S.C. 5601 note.

(d) * * *
(e)[15] * * * [Repealed—1996]

* * * * * * *

[15] Formerly at 19 U.S.C. 3611. Sec. 201(b) of the Federal Agriculture Improvement and Reform Act (Public Law 104–127; 110 Stat. 951) repealed sec. 411 after inserting nearly identical language into sec. 3 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691a; see *Legislation on Foreign Relations Through 2005*, vol. I–B).

(12) Jobs Through Exports Act of 1992

Partial text of Public Law 102–549 [Jobs Through Exports Act of 1992; H.R. 4996], 106 Stat. 3651, approved October 28, 1992; as amended by Public Law 104–66 [Federal Reports Elimination and Sunset Act of 1995; S. 790], 109 Stat. 707, approved December 21, 1995

NOTE.—The Jobs Through Exports Act of 1992 primarily consists of amendments to the Foreign Assistance Act of 1961, Trade and Development Enhancement Act of 1983, Agricultural Trade Development and Assistance Act of 1954, and 5 U.S.C. These amendments have been incorporated into those Acts and sections of the U.S. Code at the appropriate locations.

These freestanding sections are also printed in *Legislation on Foreign Relations Through 2005*, vols. I–A and I–B.

AN ACT To extend the authorities of the Overseas Private Investment Corporation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Jobs Through Exports Act of 1992".

* * * * * * *

TITLE III—AID, TRADE, AND COMPETITIVENESS

SEC. 301.[2] SHORT TITLE.

This title may be cited as the "Aid, Trade, and Competitiveness Act of 1992".

SEC. 302.[3] CAPITAL PROJECTS OFFICE WITHIN THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

(a) ESTABLISHMENT OF OFFICE.—The Administrator of AID shall establish a capital projects office to carry out the purposes described in subsection (b).

(b) PURPOSES OF OFFICE.—The purposes referred to in subsection (a) are—

(1) to develop an AID program that would focus solely on developmentally sound capital projects, taking into consideration

[1] 22 U.S.C. 2151 note.
[2] 22 U.S.C. 2421a note.
[3] 22 U.S.C. 2421a.

development needs of the host country and the export opportunities for the United States; and

(2) to consider specifically opportunities for United States high-technology firms, including small- and medium-sized firms, in supporting capital projects for developing countries and for countries making the transition from nonmarket to market economies.

(c) ACTIVITIES OF AID.—The Administrator of AID (acting through the capital projects office), in coordination with the appropriate members of the Trade Promotion Coordination Committee—

(1) shall support capital projects in developing countries and in countries making the transition from nonmarket to market economies;

(2) shall periodically review infrastructure needs in developing countries and countries making the transition from nonmarket to market economies and shall explore opportunities for United States firms in the development of new capital projects in these countries, keeping both United States firms and the Congress informed of these reviews;

(3) shall ensure that each capital project for which AID provides funding is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development;

(4) shall coordinate its activities with other AID offices, and work with AID country missions, in developing capital projects that provide opportunities for United States firms consistent with AID's primary mission to help developing countries with traditional development projects;

(5) shall coordinate, where appropriate, funds available to AID for tied-aid purposes; and

(6) shall play a special role in helping to meet the infrastructure needs of countries making the transition from nonmarket to market economies by meeting the challenge of infrastructure assistance provided by foreign governments to those countries, including by undertaking a comprehensive study of the infrastructure needs of the various countries making the transition from nonmarket to market economies—

(A) to identify those sectors in the economies of these countries that are most in need of rebuilding, and

(B) to identify the state of technology in these countries and the opportunity for United States high technology firms to help develop a technological infrastructure in these countries, including an assessment of export opportunities for United States high technology companies.

The results of the study conducted pursuant to paragraph (6) shall be reported to the appropriate congressional committees within 12 months after the date of the enactment of this Act.

SEC. 303.[4] CAPITAL PROJECTS FOR POVERTY ALLEVIATION AND ENVIRONMENTAL SAFETY AND SUSTAINABILITY.

(a) PURPOSES.—The Administrator of AID shall develop a program, in accordance with subsection (b), that focuses on develop-

[4] 22 U.S.C. 2421b.

mentally sound capital projects for basic infrastructure that will measurably alleviate the worst manifestations of poverty or directly promote environmental safety and sustainability at the community level, taking into consideration development needs of the host country and export opportunities for services and goods from the United States.

(b) ACTIVITIES OF AID.—In order to carry out subsection (a), the Administrator of AID shall, working with AID technical support staff, regional bureau staff, and country missions, identify and provide funding for capital projects to alleviate the worst manifestations of poverty or to promote environmental safety and sustainability at the community level in countries receiving assistance under part I of the Foreign Assistance Act of 1961. Such projects may include basic sanitation systems, basic water supply and treatment, pollution control, and rural infrastructure benefiting poor communities or establishing environmentally sustainable patterns of rural development. Such projects should have measurable positive effects on indicators of human and environmental health.

SEC. 304.[5] COORDINATION.

The President shall use the Trade Promotion Coordination Committee to coordinate activities under this title with other relevant activities of the United States Government.

SEC. 305.[6] REPORTS TO CONGRESS ON CAPITAL PROJECTS.

Not later than May 1, 1993, the President shall submit to the Congress a report describing—

(1) the extent to which United States Government resources have been expended specifically to support the projects described in this title in developing countries and countries making the transition from nonmarket to market economies;

(2) the extent to which the activities of the United States Government have been coordinated pursuant to section 304; and

(3) the extent to which United States Government capital projects and tied-aid credit programs have affected United States exports.

SEC. 306.[7] FUNDING FOR CAPITAL PROJECTS.

(a) FUNDING LEVEL.—The Congress strongly urges the President to use at least $650,000,000 for fiscal year 1993 and at least $700,000,000 for fiscal year 1994 of the total amounts made available for assistance under chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund), assistance under the Support for East European Democracy (SEED) Act of 1989, assistance under the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992, and assistance under the Multilateral Assistance Initiative for the Philippines, for grants for developmentally sound capital projects. Such grants may be combined with financing offered by private financial entities or other entities.

[5] 22 U.S.C. 2421c.
[6] 22 U.S.C. 2421a note.
[7] 22 U.S.C. 2421d.

(b) DEVELOPMENT ASSISTANCE CAPITAL PROJECTS.—Funds appropriated to carry out chapter 1 or chapter 10 of part I of the Foreign Assistance Act of 1961 (relating to development assistance and the Development Fund for Africa) may not be used for capital projects that do not meet the criteria contained in section 303 of this Act. This subsection does not apply with respect to capital projects for which funds have been obligated or expended before the date of the enactment of this Act.

SEC. 307.[8] REPORT ON THE FEASIBILITY OF AID CREDIT GUARANTEES TO FINANCE CAPITAL PROJECTS.

Not later than May 1, 1993, the President shall submit to the Committee on Foreign Affairs[9] and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate a report on the feasibility of allowing AID to offer credit guarantees for the financing of capital projects.

SEC. 308.[10] DEFINITIONS.

For purposes of this title—

(1) the term "AID" means the Agency for International Development; and

(2) the term "capital project" means a project involving the construction, expansion, alteration of, or the acquisition of equipment for, a physical facility or physical infrastructure, including related engineering design (concept and detail) and other services, the procurement of equipment (including any related services), and feasibility studies or similar engineering and economic services.

TITLE IV—UNITED STATES COMMERCIAL CENTERS

SEC. 401.[11] UNITED STATES COMMERCIAL CENTERS.

(a) ESTABLISHMENT.—The Secretary of Commerce, in his or her role as chairperson of the Trade Promotion Coordinating Committee, is authorized and encouraged to establish United States Commercial Centers (hereinafter in this section referred to as "Centers") in Asia, in Latin America, and in Africa.

(b) PURPOSE OF THE CENTERS.—The purpose of the Centers shall be to provide additional resources for the promotion of exports of United States goods and services to the host countries, by familiarizing United States exporters with the industries, markets, and customs of the host countries, thus facilitating commercial ties and trade.

(c) FUNCTIONS OF THE CENTERS.—Each Center shall—

(1) collect and publish economic and market data with respect to the host country;

(2) provide, on a user-fee basis, preliminary technical and clerical assistance, language translation, and administrative assistance, and information regarding the legal systems, laws,

[8] 22 U.S.C. 2421a note.

[9] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[10] 22 U.S.C. 2421e.

[11] 22 U.S.C. 4723a.

regulations, and procedures of the host country, to United States exporters seeking to do business in the host country; and

(3) in other ways promote exports of United States goods and services to the host country.

(d) SPECIFIC SERVICES TO BE PROVIDED.—To carry out its objectives, each Center shall make available the following (on a user-fee basis):

(1) BUSINESS FACILITIES.—Business facilities, including exhibition space, conference rooms, office space (including telephones and other basic office equipment), and, where warranted by impeding deficiencies in the public system, high quality international telecommunications facilities.

(2) BUSINESS SERVICES.—Business support services, including language translation services, clerical services, and a commercial library containing a comprehensive collection of reference materials covering United States and host country industries and markets.

(3) COMMERCIAL LAW INFORMATION SERVICES.—Commercial law information services, including—

(A) a clearinghouse for information regarding the relevant commercial laws, practices, and regulations of the host country;

(B) publications to assist United States businesses;

(C) legal referral services; and

(D) lists of local agents and distributors.

(e) OTHER TRADE PROMOTION ACTIVITIES.—Each Center shall also promote United States export trade by—

(1) facilitating contacts between buyers, sellers, bankers, traders, distributors, agents, and necessary government officials from the United States and the host country;

(2) coordinating trade missions; and

(3) assisting with applications, contracts, and clearances for imports into the host country and exports from the United States.

(f) STAFFING OF CENTERS.—Each Center shall be staffed by members of the United States and Foreign Commercial Service, participants in the Market Development Cooperator Program established under section 2303 of the Export Enhancement Act of 1988 (15 U.S.C. 4723), other employees of the Department of Commerce, and employees of appropriate executive branch departments and agencies which are members of the Trade Promotion Coordinating Committee.

(g) CENTER FACILITIES AND THEIR RELATIONSHIP TO UNITED STATES DEPARTMENT OF COMMERCE OPERATIONS IN HOST COUNTRIES.—

(1) PHYSICAL ACCOMMODATIONS FOR THE CENTERS.—The Secretary of Commerce shall locate each Center in the primary commercial city of the host country. The Secretary shall acquire office space, exhibition space, and other facilities and equipment that are necessary for each Center to perform its functions. To the extent feasible, each Center shall be located in the central commercial district of the host city.

(2) CONSOLIDATION OF DEPARTMENT OF COMMERCE OPERATIONS IN HOST COUNTRIES.—For the purpose of obtaining maximum effectiveness and efficiency and to the extent consistent with the purposes of the Centers, the Secretary of Commerce is encouraged to place all personnel of the Department of Commerce who are assigned to the city in which a Center is located in the same facilities as those in which the Center conducts its activities.

(h) USE OF MARKET DEVELOPMENT COOPERATOR PROGRAM.—The Secretary of Commerce shall, to the greatest extent feasible, use the Market Development Cooperator Program established under section 2303 of the Export Enhancement Act of 1988 (15 U.S.C. 4723) to assist in carrying out the purposes of the Centers established under this section.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce to carry out this section $8,000,000 for fiscal year 1993, and $5,500,000 for fiscal year 1994. Funds made available under this subsection may be used for the acquisition of real property.

(j)[12] * * * [Repealed—1996]

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

(1) the term "United States exporter" means—

(A) a United States citizen,

(B) a corporation, partnership, or other association created under the laws of the United States or of any State, or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B),

that exports, or seeks to export, goods or services produced in the United States;

(2) the term "State" means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States; and

(3) the term "United States" means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

TITLE V—OTHER EXPORT PROMOTION ACTIVITIES

SEC. 501.[13] ADDITIONAL PROCUREMENT OFFICERS.

(a) APPOINTMENT.—The Secretary of Commerce, in consultation with the Secretary of the Treasury, shall appoint one or more full-time additional procurement officers, for each multilateral development bank, to promote exports of goods and services from the United States by doing the following:

(1) Acting as the liaison between the business community and one or more multilateral development banks, whether or not the banks have offices in the United States. The Secretary of Commerce shall ensure that the procurement officer has ac-

[12] Sec. 1021(b) of Public Law 104–66 (109 Stat. 712) repealed subsec. (j), which had required the Secretary of Commerce to report annually to the House Committee on International Relations and the Senate Committee on Banking, Housing and Urban Affairs on the status, activities, and effectiveness of Commercial Centers.

[13] 22 U.S.C. 262s–2 note.

cess to, and disseminates to United States businesses, information relating to projects which are being proposed by the multilateral development bank involved, and bid specifications and deadlines for projects about to be developed by the bank. The procurement officer shall make special efforts to disseminate such information to small- and medium-sized businesses interested in participating in such projects. The procurement officer shall explore opportunities for disseminating such information through private sector, nonprofit organizations.

(2) Taking actions to assure that United States businesses are fully informed of bidding opportunities for projects for which loans have been made by the multilateral development bank involved.

(3) Taking actions to assure that United States businesses can focus on projects in which they have a particular interest or competitive advantage, and to permit them to compete and have an equal opportunity in submitting timely and conforming bidding documents.

(b) DEFINITION.—As used in this section, the term "multilateral development bank" has the meaning given that term in section 1701(c) of the International Financial Institutions Act (22 U.S.C. 262r(c)).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce $1,000,000 for each of the fiscal years 1993 and 1994 to carry out this section. Amounts appropriated pursuant to this subsection shall be available only for the purpose of making the appointment of additional procurement officers required by subsection (a).

* * * * * * *

TITLE VII—TRADE PROMOTION EXPANSION

SEC. 701. INCREASE IN COMMERCIAL SERVICE OFFICERS IN CERTAIN COUNTRIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise available, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1993 and 1994 for use by the Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service in accordance with subsection (b).

(b) USE OF FUNDS.—Amounts appropriated pursuant to subsection (a) shall be available only for placing and maintaining 20 additional Commercial Service Officers abroad. The Secretary of Commerce, acting through the Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service, may place such additional Commercial Service Officers—

(1) in countries with which the United States has the largest trade deficit, and

(2) in newly emerging market economy countries, with democratically elected governments, in Central and Eastern Europe and elsewhere.

(c) REPORT TO CONGRESS.—The Secretary of Commerce, acting through the Assistant Secretary of Commerce and the Director General of the United States and Foreign Commercial Service,

shall, not later than December 31, 1994, submit to the Committee on Foreign Affairs of the House of Representatives[9] and the Committee on Banking, Housing, and Urban Affairs of the Senate on the implementation of subsection (b). Each report shall specify—

(1) in what countries the additional Commercial Service Officers were placed, and the number of such officers placed in each such country; and

(2) the effectiveness of the presence of the additional Commercial Service Officers in increasing United States exports to the countries in which such officers were placed.

TITLE VIII—GENERAL PROVISIONS

SEC. 801.[14] IMPACT ON EMPLOYMENT IN THE UNITED STATES.

No funds made available to carry out any provision of this Act or the amendments made by this Act may be obligated or expended for any financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States, if such incentive or inducement is likely to reduce the number of employees in the United States because United States production is being replaced by such enterprise outside the United States.

SEC. 802.[15] INTERNATIONALLY RECOGNIZED WORKER RIGHTS.

No funds made available to carry out any provision of this Act or the amendments made by this Act may be obligated or expended for any project or activity that contributes to the violation of internationally recognized workers rights, as defined in section 502(a)(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone in that country.

[14] 22 U.S.C. 2151 note.
[15] 22 U.S.C. 2151 note.

(13) Omnibus Trade and Competitiveness Act of 1988

Partial text of Public Law 100–418 [H.R. 4848], 102 Stat. 1107, approved August 23, 1988; as amended by Public Law 100–647 [Technical and Miscellaneous Revenue Act of 1988; H.R. 4333], 102 Stat. 3342, approved November 10, 1988; Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989; Public Law 101–382 [Customs and Trade Act of 1990; H.R. 1594], 104 Stat. 629, approved August 20, 1990; Public Law 102–429 [Export Enhancement Act of 1992; H.R. 5739], 106 Stat. 2186, approved October 21, 1992; Public Law 102–549 [Jobs Through Exports Act of 1992; H.R. 4996], 106 Stat. 3651, approved October 28, 1992; Public Law 103–49 [H.R. 1876], 107 Stat. 239, approved July 2, 1993; Public Law 103–199 [FRIENDSHIP Act; H.R. 3000], 107 Stat. 2317, approved December 17, 1993; Public Law 103–236 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 108 Stat. 382, approved April 30, 1994; Public Law 103–382 [Improving America's Schools Act of 1994; H.R. 6], 108 Stat. 3518, approved October 20, 1994; Public Law 103–392 [Jobs Through Trade Expansion Act of 1994; H.R. 4950], 108 Stat. 4098, approved October 22, 1994; Public Law 103–465 [Uruguay Round Agreements Act; H.R. 5110], 108 Stat. 4809, approved December 8, 1994; Public Law 104–65 [Lobbying Disclosure Act of 1995; S. 1060], 109 Stat. 691, approved December 19, 1995; Public Law 104–66 [Federal Reports Elimination and Sunset Act of 1995; S. 790], 109 Stat. 707, approved December 21, 1995; Public Law 104–188 [Small Business Job Protection Act of 1996; H.R. 3448], 110 Stat. 1755, approved August 20, 1996; Public Law 104–288 [United States National Tourism Organization Act of 1996; H.R. 2579], 110 Stat. 3402, approved October 11, 1996; Public Law 104–295 [Miscellaneous Trade and Technical Corrections Act of 1996; H.R. 3815], 110 Stat. 3514, approved October 11, 1996; Public Law 105–258 [Ocean Shipping Reform Act of 1998; S. 414], 112 Stat. 1902, approved October 14, 1998; and Public Law 106–158 [Export Enhancement Act of 1999; H.R. 3381], 113 Stat. 1745, approved December 9, 1999

NOTE.—The Omnibus Trade and Competitiveness Act of 1988 consists of amendments to several Public Laws relating to tariff and trade. Amendments have been incorporated at the appropriate places. Freestanding provisions are presented here, or it is noted where such provisions appear elsewhere in this compilation.

AN ACT To enhance the competitiveness of American industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a)[1] SHORT TITLE.—This Act may be cited as the "Omnibus Trade and Competitiveness Act of 1988".

(b) TABLE OF CONTENTS.—

Page

Sec. 1. Short title and table of contents 686
Sec. 2. Legislative history of H.R. 3 applicable 690

TITLE I—TRADE, CUSTOMS, AND TARIFF LAWS

Sec. 1001. Findings and purposes 690

SUBTITLE A—UNITED STATES TRADE AGREEMENTS

PART 1—NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS

Sec. 1101. Overall and principal trade negotiating objectives of the United States 691
Sec. 1102. Trade agreement negotiating authority 696
Sec. 1103. Implementation of trade agreements 700
Sec. 1105. Termination and reservation authority; reciprocal nondiscriminatory treatment 704
Sec. 1106. Accession of state trading regimes to the General Agreement on Tariffs and Trade or the WTO 705
Sec. 1107. Definitions and conforming amendments 706

PART 3—OTHER TRADE AGREEMENT AND NEGOTIATION PROVISIONS

Sec. 1121. Implementation of Nairobi Protocol 707
Sec. 1122. Implementation of United States-EC Agreement on citrus and pasta 709
Sec. 1123. Extension of International Coffee Agreement Act of 1980 710
Sec. 1124. Negotiations on currency exchange rates 710
Sec. 1125. Reports on negotiations to eliminate wine trade barriers 710

SUBTITLE B—IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE

Sec. 1201. Purposes 711
Sec. 1202. Definitions 711
Sec. 1203. Congressional approval of United States accession to the Convention 712
Sec. 1204. Enactment of the Harmonized Tariff Schedule 712
Sec. 1205. Commission review of, and recommendations regarding, the Harmonized Tariff Schedule 714
Sec. 1206. Presidential action on Commission recommendations 715
Sec. 1207. Publication of the Harmonized Tariff Schedule 715
Sec. 1208. Import and export statistics 716
Sec. 1209. Coordination of trade policy and the Convention 716
Sec. 1210. United States participation on the Customs Cooperation Council regarding the Convention 716
Sec. 1211. Transition to the Harmonized Tariff Schedule 717
Sec. 1212. Reference to the Harmonized Tariff Schedule 720
Sec. 1216. Commission report on operation of subtitle 720
Sec. 1217. Effective dates 720

SUBTITLE C—RESPONSE TO UNFAIR INTERNATIONAL TRADE PRACTICES

PART 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

Sec. 1303. Identification of countries that deny adequate and effective protection of intellectual property rights 720
Sec. 1305. Investigation of barriers in Japan to certain United States services 721
Sec. 1306. Trade and economic relations with Japan 721

[1] 19 U.S.C. 2901 note.

Sec. 1307. Supercomputer trade dispute 722

PART 2—IMPROVEMENT IN THE ENFORCEMENT OF THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS

Sec. 1311. Reference to title VII of the Tariff Act of 1930 723
Sec. 1317. Third-country dumping 723
Sec. 1336. Studies 724

PART 3—PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Sec. 1341. Congressional findings and purposes 725
Sec. 1342. Protection under the Tariff Act of 1930 725

PART 4—TELECOMMUNICATIONS TRADE

Sec. 1371. Short title 726
Sec. 1372. Findings and purposes 726
Sec. 1373. Definitions 727
Sec. 1374. Investigation of foreign telecommunications trade barriers 728
Sec. 1375. Negotiations in response to investigation 728
Sec. 1376. Actions to be taken if no agreement obtained 730
Sec. 1377. Review of trade agreement implementation by Trade Representative 732
Sec. 1378. Compensation authority 733
Sec. 1379. Consultations 733
Sec. 1380. Submission of data; action to ensure compliance 734
Sec. 1381. Study on telecommunications competitiveness in the United States 735
Sec. 1382. International obligations 735

SUBTITLE D—ADJUSTMENT TO IMPORT COMPETITION

PART 3—TRADE ADJUSTMENT ASSISTANCE

Sec. 1428. Imposition of small uniform fee on all imports 736
Sec. 1429. Study of certification methods 737
Sec. 1430. Effective dates 737

SUBTITLE E—NATIONAL SECURITY

Sec. 1501. Imports that threaten national security 738

SUBTITLE H—MISCELLANEOUS CUSTOMS AND TRADE PROVISIONS

PART 1—CUSTOMS PROVISIONS

Sec. 1908. Duty-free sales enterprises 739
Sec. 1909. Caribbean Basin Initiative 740
Sec. 1910. Ethyl alcohol and mixtures for fuel use 740
Sec. 1911. Enforcement of restrictions on imports from Cuba 741

PART 2—MISCELLANEOUS TRADE PROVISIONS

Sec. 1933. Coal exports to Japan 741
Sec. 1934. Purchases of United States-made automotive parts by Japan 742
Sec. 1935. Effect of imports on crude oil production and refining capacity in the United States 742
Sec. 1936. Study of trade barriers established by auto producing countries to auto imports and the impact on the United States market 743
Sec. 1937. Lamb meat imports 743

TITLE II—EXPORT ENHANCEMENT

[Title II is found on page 1280]

TITLE III—INTERNATIONAL FINANCIAL POLICY

SUBTITLE A—EXCHANGE RATES AND INTERNATIONAL ECONOMIC POLICY COORDINATION

Sec. 3001. Short title 743
Sec. 3002. Findings 743
Sec. 3003. Statement of policy 744
Sec. 3004. International negotiations on exchange rate and economic policies 745
Sec. 3005. Reporting requirements 745
Sec. 3006. Definitions 746

SUBTITLE B—INTERNATIONAL DEBT

PART I—FINDINGS, PURPOSES, AND STATEMENT OF POLICY

Sec. 3101. Short title 746
Sec. 3102. Findings 747
Sec. 3103. Purposes 747
Sec. 3104. Statement of policy 748

PART II—THE INTERNATIONAL DEBT MANAGEMENT AUTHORITY

Sec. 3111. International initiative 748
Sec. 3112. Actions to facilitate creation of the authority 750
Sec. 3113. IMF-World Bank review 750

PART III—REGULATORY PROVISIONS AFFECTING INTERNATIONAL DEBT

Sec. 3121. Provisions relating to the regulation of depository institutions 751
Sec. 3122. Studies relating to the regulation of depository institutions 751
Sec. 3123. Limited purpose special drawing rights for the poorest heavily indebted countries 752

SUBTITLE C—MULTILATERAL DEVELOPMENT BANKS

[Subtitle C was transferred to the International Financial Institutions Act]

[Subtitle C is found on page 204]

SUBTITLE D—EXPORT-IMPORT BANK AND TIED AID CREDIT AMENDMENTS

[Subtitle D is found on page 1315]

SUBTITLE F—PRIMARY DEALERS

Sec. 3501. Short title 754
Sec. 3502. Requirement of national treatment in underwriting Government debt instruments 754

SUBTITLE G—FINANCIAL REPORTS

Sec. 3601. Short title 755
Sec. 3602. Quadrennial reports on foreign treatment of United States financial institutions 755
Sec. 3603. Fair trade in financial services 756
Sec. 3604. Banks loan loss reserves 756

TITLE IV—AGRICULTURAL TRADE

[See *Legislation on Foreign Relations Through 2005*, vol. I–B]

TITLE V—FOREIGN CORRUPT PRACTICES AMENDMENTS; INVESTMENT; AND TECHNOLOGY

SUBTITLE A—FOREIGN CORRUPT PRACTICES ACT AMENDMENTS; REVIEW OF CERTAIN ACQUISITIONS

PART I—FOREIGN CORRUPT PRACTICES ACT AMENDMENTS

[Part I amended the Foreign Corrupt Practices Act]

[See page 1741]

SUBTITLE C—COMPETITIVENESS POLICY COUNCIL ACT

Sec. 5201. Short title 757
Sec. 5202. Findings and purposes 757
Sec. 5203. Council established 758
Sec. 5204. Duties of the Council 758
Sec. 5205. Membership 759
Sec. 5206. Executive Director and staff 762
Sec. 5207. Powers of the Council 762
Sec. 5208. Annual report 764
Sec. 5209. Authorization of appropriations 765
Sec. 5210. Definitions 765

SUBTITLE E—TRADE DATA, IMPACT, AND STUDIES

PART I—NATIONAL TRADE DATA BANK

Sec. 5401. Definitions 765
Sec. 5402. Interagency Trade Data Advisory Committee 766
Sec. 5403. Functions of the Committee 766
Sec. 5404. Consultation with the private sector and Government officials 766
Sec. 5405. Cooperation among Executive agencies 766
Sec. 5406. Establishment of the Data Bank 767
Sec. 5407. Operation of the Data Bank 768
Sec. 5408. Information on the service sector 769
Sec. 5409. Exclusion of information 769
Sec. 5410. Nonduplication 769
Sec. 5411. Collection of data 770
Sec. 5412. Fees and access 770
Sec. 5413. Report to Congress 770

PART II—IMPACT STATEMENTS AND STUDIES

Sec. 5421. Competitiveness impact statements 771
Sec. 5422. Study and report by the Advisory Council on Federal Participation in Sematech 771
Sec. 5423. Impact of national defense expenditures on international competitiveness 772

TITLE VIII—SMALL BUSINESS

Sec. 8001. Short title 772
Sec. 8009. Globalization of production 772
Sec. 8010. Small business trade remedy assistance 773
Sec. 8011. National Seminar on Small Business Exports 774
Sec. 8012. Trade negotiations 774
Sec. 8013. Promulgation of regulations 774
Sec. 8014. Effective date 774

TITLE X—OCEAN AND AIR TRANSPORTATION

SUBTITLE A—FOREIGN SHIPPING PRACTICES

Sec. 10001. Short title 775
Sec. 10002. Foreign laws and practices 775

SEC. 2. LEGISLATIVE HISTORY OF H.R. 3 APPLICABLE.

(a) IN GENERAL.—Except as provided in subsection (b), the legislative history of a title, subtitle, part, subpart, chapter, subchapter, section, or other provision of the conference report to accompany H.R. 3 of the 100th Congress (H. Rept. 100–576) shall be treated (along with any other legislative history developed by reason of this Act) as being the legislative history of the provision of this Act that has the same numerical or alphabetical designation as the provision of the conference report.

(b) EXCEPTIONS.—

(1) Subsection (a) does not apply to section 2424(a) of this Act.

(2) The legislative history for subtitle F of title VI of the conference report to accompany H.R. 3 shall be treated as the legislative history for subtitle E of title VI of this Act.

TITLE I—TRADE, CUSTOMS, AND TARIFF LAWS

SEC. 1001.[2] FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) in the last 10 years there has arisen a new global economy in which trade, technological development, investment, and services form an integrated system; and in this system these activities affect each other and the health of the United States economy;

(2) the United States is confronted with a fundamental disequilibrium in its trade and current account balances and a rapid increase in its net external debt;

(3) such disequilibrium and increase are a result of numerous factors, including

(A) disparities between the macroeconomic policies of the major trading nations,

(B) the large United States budget deficit,

(C) instabilities and structural defects in the world monetary system,

(D) the growth of debt throughout the developing world,

(E) structural defects in the world trading system and inadequate enforcement of trade agreement obligations,

(F) governmental distortions and barriers,

(G) serious shortcomings in United States trade policy, and

(H) inadequate growth in the productivity and competitiveness of United States firms and industries relative to their overseas competition;

(4) it is essential, and should be the highest priority of the United States Government, to pursue a broad array of domestic and international policies—

(A) to prevent future declines in the United States economy and standards of living,

(B) to ensure future stability in external trade of the United States, and

[2] 19 U.S.C. 2901 note.

(C) to guarantee the continued vitality of the technological, industrial, and agricultural base of the United States;

(5) the President should be authorized and encouraged to negotiate trade agreements and related investment, financial, intellectual property, and services agreements that meet the standards set forth in this title; and

(6) while the United States is not in a position to dictate economic policy to the rest of the world, the United States is in a position to lead the world and it is in the national interest for the United States to do so.

(b) PURPOSES.—The purposes of this title are to—

(1) authorize the negotiation of reciprocal trade agreements;

(2) strengthen United States trade laws;

(3) improve the development and management of United States trade strategy; and

(4) through these actions, improve standards of living in the world.

SUBTITLE A—UNITED STATES TRADE AGREEMENTS

PART 1—NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS

SEC. 1101.[3] 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] 19 U.S.C. 2901.

(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 measure 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, con-

sumer 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-devel-

oped 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 licenses 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.

SEC. 1102.[4] 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—

[4] 19 U.S.C. 2902.

(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)[5] shall be computed in accordance with section 1103(e).[5]

(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—

[5] Sec. 139(b) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 653) struck out "paragraph (3)(B)" and inserted in lieu thereof "paragraph (3)(C)"; and struck out "1103(f)" and inserted in lieu thereof "1103(e)".

(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)[6] 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).

[6] Sec. 1 of Public Law 103–49 (107 Stat. 239) added subsec. (e).

SEC. 1103.[7] 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—

[7] 19 U.S.C. 2903. In a notice of September 18, 1992, the President notified Congress of his intention to enter into a North American Free Trade Agreement with the Government of Canada and the Government of Mexico (57 F.R. 43603). See also sec. 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (title XXI of Public Law 107–210; 116 Stat. 1013) regarding a more recent authority concerning implementation of trade agreements and Presidential notices to Congress regarding his intention to enter into several free trade agreements. Sec. 2105 of that Act may be found at page 639 of this volume.

(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.[8] 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 substantially 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

[8] 19 U.S.C. 2904.

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. 1106.[9] 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 to the WTO Agreement[10] 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,[11] between the United States and such major foreign country, and

(2) the GATT 1947 or the WTO Agreement[11] 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

[9] 19 U.S.C. 2905. Sec. 621(a)(4)(D) of Public Law 103–465 (108 Stat. 4993) added "**FOR THE WTO**" to the section heading. Subsequently, sec. 20(f)(3) of Public Law 104–295 (110 Stat. 3529) struck out "**FOR**" and inserted in lieu thereof "**OR**".

[10] Sec. 621(a)(4)(A) of Public Law 103–465 (108 Stat. 4993) struck out "the GATT" and inserted in lieu thereof "the GATT 1947, or to the WTO Agreement".

[11] Sec. 621(a)(4)(B) of Public Law 103–465 (108 Stat. 4993) inserted "1947 or the WTO Agreement" after "the GATT" throughout subsecs. (b) and (c).

(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[11] 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[11] 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)[12] 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).

SEC. 1107. DEFINITIONS AND CONFORMING AMENDMENTS.

(a)[13] DEFINITIONS.—For purposes of this part:

(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).[14]

(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

[12] Sec. 621(a)(4)(C) of Public Law 103–465 (108 Stat. 4993) added subsec. (e).

[13] 19 U.S.C. 2906.

[14] Sec. 621(a)(5) of Public Law 103–465 (108 Stat. 4993) struck out "General Agreement on Tariffs and Trade" and inserted in lieu thereof "GATT 1947 (as defined in section 2(1)(A) of the Uruguay Round Agreements Act)".

(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.

(b)[15] * * *

PART 2—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS[15]

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PART 3—OTHER TRADE AGREEMENT AND NEGOTIATION PROVISIONS

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SEC. 1121. IMPLEMENTATION OF NAIROBI PROTOCOL.

(a) PURPOSE AND REFERENCE.—

(1) The purpose of this section is—

(A) to provide for the implementation by the United States of the Protocol (S. Treaty Doc. 97–2, 9; hereafter referred to in this section as the "Nairobi Protocol") to the Agreement on the Importation of Educational, Scientific, and Cultural Materials (17 UST (pt. 2) 1835; commonly known as the "Florence Agreement");

(B) to clarify or modify the duty-free treatment accorded under the Educational, Scientific, and Cultural Materials Importation Act of 1982 (Public Law 97–446, 96 Stat. 2346–2349), the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–65, 80 Stat. 897 et seq.), and Public Law 89–634 (80 Stat. 879); and

(C) to continue the safeguard provisions concerning certain imported articles provided for in the Educational, Scientific, and Cultural Materials Importation Act of 1982.

(2) Whenever an amendment or repeal in this section is expressed in terms of an amendment to, or repeal of, an item, headnote, Appendix, or other provision, the reference shall be

[15] Sec. 1107(b) and Part 2 amended the Trade Act of 1974.

considered to be made to an item, headnote, Appendix, or other provision of the Tariff Schedules of the United States.

(b) REPEAL OF THE EDUCATIONAL, SCIENTIFIC, AND CULTURAL MATERIALS IMPORTATION ACT OF 1982.—The Educational, Scientific, and Cultural Materials Importation Act of 1982 is hereby repealed.

* * * * * * *

(g) AUTHORITY TO LIMIT CERTAIN DUTY-FREE TREATMENT.—

(1)(A) The President may proclaim changes in the Tariff Schedules of the United States to narrow the scope of, place conditions upon, or otherwise eliminate the duty-free treatment accorded by reason of the amendments made by subsection (e) or (f) with respect to any type of article the duty-free treatment of which has significant adverse impact on a domestic industry (or portion thereof) manufacturing or producing a like or directly competitive article, if the effect of such change is consistent with the provisions of the relevant annexes of the Florence Agreement or the Nairobi Protocol.

(B) If the President proclaims changes to the Tariff Schedules of the United States under subparagraph (A), the rate of duty thereafter applicable to any article which is—

(i) affected by such action, and

(ii) imported from any source,

shall be the rate determined and proclaimed by the President as the rate which would then be applicable to such article from such source if this section had not been enacted.

(2) If the President determines that any duty-free treatment which is no longer in effect because of action taken under paragraph (1) could be restored, in whole or in part, without a resumption of significant adverse impact on a domestic industry or portion thereof, the President may proclaim changes to the Tariff Schedules of the United States to resume such duty-free treatment.

(3) Before taking any action under paragraph (1) or (2), the President shall afford an opportunity for interested Government agencies and private persons to present their views concerning the proposed action.

(4) Any action in effect or any proceeding in progress under section 166 of the Educational, Scientific, and Cultural Materials Importation Act of 1982 on the day that Act is repealed shall be considered as an action or proceeding under this section and shall be continued or resumed under this section.

(h) AUTHORITY TO EXPAND CERTAIN DUTY-FREE TREATMENT ACCORDED BY REASON OF SUBSECTION (d).—

(1) If the President determines such action to be in the interest of the United States, the President may proclaim changes to the Tariff Schedules of the United States in order to remove or modify any condition or restriction imposed under headnote 1 to part 7 of schedule 8 (as amended by subsection (d) of this section) of such Schedules, on the importation of articles provided for in items 870.30 through 870.35, inclusive (except as to articles entered under the terms of headnote 1(a)(i) to part

7 of schedule 8) of such Schedules, in order to implement the provisions of annex C–1 of the Nairobi Protocol.

(2) Any change to the Tariff Schedules of the United States proclaimed under paragraph (1) shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date that is 15 days after the date on which the President proclaims such change.

(i) STATISTICAL INFORMATION.—In order to implement effectively the provisions of subsection (g), the Secretary of the Treasury, in conjunction with the Secretary of Commerce, shall take such actions as are necessary to obtain adequate statistical information with respect to articles to which amendments made by subsection (f)[16] apply, in such detail and for such period as the Secretaries consider necessary.

(j) EFFECTIVE DATE.—

(1) The provisions of this section, and the repeal and amendments made by this section, shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) October 1, 1988, or

(B) the date that is 15 days after the deposit of the United States ratification of the Nairobi Protocol.

(2) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon request filed with the appropriate customs officer on or before the date that is 180 days after the later of the dates described in subparagraphs (A) and (B) of paragraph (1), any entry, or withdrawal from warehouse, of any article—

(A) which was made on or after August 12, 1985, and before such later date, and

(B) with respect to which there would have been no duty if the provisions of this section, or any amendments made by this section, applied to such entry or withdrawal,

shall be liquidated or reliquidated as though such entry or withdrawal had been made on or after such later date.

SEC. 1122. IMPLEMENTATION OF UNITED STATES–EC AGREEMENT ON CITRUS AND PASTA.

(a) PURPOSE.—The purpose of this section is to provide for the implementation of tariff reductions agreed to by the United States in the Agreement between the European Communities and the United States, concluded February 24, 1987, with respect to citrus and pasta.

(b) PROCLAMATION AUTHORITY.—

(1) The amendments made by subsection (c) shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after a date occurring after September 30, 1988, that is proclaimed by the President as being appropriate to carry out the Agreement referred to in subsection (a).

(2) The President is authorized at any time to modify or terminate by proclamation any provision of law enacted by the amendments made by subsection (c).

[16] Sec. 9001(a)(15) of Public Law 100–647 (Technical and Miscellaneous Revenue Act of 1988; 102 Stat. 3342) struck out "(c)" and inserted in lieu thereof "(f)".

(3) The rates of duty in column numbered 1 of the Tariff Schedules of the United States that are enacted by the amendments made by subsection (c) shall be treated—

(A) as not having the status of statutory provisions enacted by the Congress; but

(B) 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.

(c) * * *

(d) REPORT.—The Trade Representative shall include in the semiannual report submitted under section 309(3) of the Trade Act of 1974 an assessment of whether the European Communities are in compliance with the agreement referred to in subsection (a).

SEC. 1123. EXTENSION OF INTERNATIONAL COFFEE AGREEMENT ACT OF 1980.

(a) EXTENSION.—Section 2 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356k) is amended by striking out "October 1, 1986" and inserting "October 1, 1989".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect January 1, 1987.

SEC. 1124.[17] 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. 1125.[18] REPORTS ON NEGOTIATIONS TO ELIMINATE WINE TRADE BARRIERS.

Before the close of the 13-month period beginning on the date of the enactment of this Act, the President shall update each report that the President submitted to the Committee on Ways and Means and the Committee on Finance under section 905(b) of the Wine Equity and Export Expansion Act of 1984 (19 U.S.C. 2804) and submit the updated report to both of such committees. Each updated report shall contain, with respect to the major wine trading country concerned—

(1) a description of each tariff or nontariff barrier to (or other distortion of) trade in United States wine of that country with respect to which the United States Trade Representative has carried out consultations since the report required under such section 905(b) was submitted;

[17] 22 U.S.C. 5304 note.
[18] 19 U.S.C. 2804 note.

(2) the status of the consultations described under paragraph (1); and

(3) information, explanations, and recommendations of the kind referred to in paragraph (1) (C), (D), and (E) of such section 905(b) that are based on developments (including the taking of relevant actions, if any, of a kind not contemplated at the time of the enactment of such 1984 Act) since the submission of the report required under such section.

SUBTITLE B—IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE

SEC. 1201.[19] 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.[20] 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.

[19] 19 U.S.C. 3001.
[20] 19 U.S.C. 3002.

SEC. 1203.[21] 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.[22] 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 Omnibus 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 converting the old Schedules into the format of the Convention, as

[21] 19 U.S.C. 3003.
[22] 19 U.S.C. 3004.

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.[23] 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.

[23] 19 U.S.C. 3005.

(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.[24] 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)[25] 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.[26] 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,

[24] 19 U.S.C. 3006.

[25] Reporting requirements vested in the President in subsec. (b) were delegated to the U.S. Trade Representative in a Presidential memorandum of December 12, 1991 (56 F.R. 65413; December 16, 1991).

[26] 19 U.S.C. 3007.

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(f) of the Tariff Act of 1930 (19 U.S.C. 1484(f)); and [27]

(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.[28] 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.[29] 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.[30] 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(f) of the

[27] Sec. 21(e)(10) of Public Law 104–295 (110 Stat. 3531) struck out "484(e)" and "1484(e)" and inserted in lieu thereof "484(f)" and "1484(f)", respectively.

[28] 19 U.S.C. 3008.

[29] 19 U.S.C. 3009.

[30] 19 U.S.C. 3010.

Tariff Act of 1930 (19 U.S.C. 1484(f))[27] 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.[31] 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.

[31] 19 U.S.C. 3011.

(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 (as in effect on July 31, 1995).[32]

(2) In applying section 504(c)(1) of the Trade Act of 1974 (as in effect on July 31, 1995)[33] 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.—

[32] Sec. 1954(a)(1)(A) of Public Law 104–188 (110 Stat. 1927) struck out "(19 U.S.C. 2463(a), 2464(c)(3))" and inserted in lieu thereof "(as in effect on July 31, 1995)".

[33] Sec. 1954(a)(1)(B) of Public Law 104–188 (110 Stat. 1927) struck out "(19 U.S.C. 2464(c)(1))" and inserted in lieu thereof "(as in effect on July 31, 1995)".

(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.[34] 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. 1216.[35] 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.[36] 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.

SUBTITLE C—RESPONSE TO UNFAIR INTERNATIONAL TRADE PRACTICES

PART 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

* * * * * * *

SEC. 1303. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE AND EFFECTIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS.

(a) FINDINGS AND PURPOSE.—

(1) The Congress finds that—

(A) international protection of intellectual property rights is vital to the international competitiveness of United States persons that rely on protection of intellectual property rights; and

(B) the absence of adequate and effective protection of United States intellectual property rights, and the denial of fair and equitable market access, seriously impede the ability of the United States persons that rely on protection

[34] 19 U.S.C. 3012.
[35] 19 U.S.C. 3005 note.
[36] 19 U.S.C. 3001 note.

of intellectual property rights to export and operate overseas, thereby harming the economic interests of the United States.

(2) The purpose of this section is to provide for the development of an overall strategy to ensure adequate and effective protection of intellectual property rights and fair and equitable market access for United States persons that rely on protection of intellectual property rights.

(b)[37] * * *

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SEC. 1305. INVESTIGATION OF BARRIERS IN JAPAN TO CERTAIN UNITED STATES SERVICES.

The United States Trade Representative shall, within 90 days after the date of enactment of this Act, initiate an investigation under section 302 of the Trade Act of 1974 regarding those acts, policies, and practices of the Government of Japan, and of entities owned, financed, or otherwise controlled by the Government of Japan, that are barriers in Japan to the offering or performance by United States persons of architectural, engineering, construction, and consulting services in Japan.

SEC. 1306. TRADE AND ECONOMIC RELATIONS WITH JAPAN.

(a) FINDINGS.—The Congress finds that—

(1) the United States is at a critical juncture in bilateral relations with Japan;

(2) the balance of trade between the United States and Japan has deteriorated steadily from an already large United States deficit of $10,400,000,000 in 1980 to an unprecedented United States deficit of $57,700,000,000 in 1987, a magnitude that is simply untenable;

(3) approximately 90 percent of the increase in total trade between the United States and Japan since 1980 has been in Japanese exports to the United States;

(4) United States exports to Japan have not significantly benefited from appreciation of the yen;

(5) the United States deficit in the balance of trade in manufactured goods is growing: in 1987 Japan exported $82,500,000,000 of manufactured goods to the United States, while the United States exported $14,600,000,000 in manufactured goods;

(6) Japan accounts for 49 percent of the worldwide deficit of the United States in the balance of trade in manufactured goods, calculated on a customs basis;

(7) our trade and economic relations with Japan are complex and cannot be effectively resolved through narrow sector-by-sector negotiations;

(8) a major problem between the United States and Japan is the absence of a political will in Japan to import; and

(9) meaningful negotiations must take place at the highest level, at a special summit of political leaders from both countries.

[37] Subsec. (b) added a new sec. 182 to ch. 8 of title I of the Trade Act of 1974 (Public Law 93–618; 19 U.S.C. 2242).

(b) SENSE OF THE CONGRESS.—

(1) It is the sense of the Congress that the President should propose to the Japanese Prime Minister that a special summit be held between the leaders of the United States and Japan for the purpose of—

(A) addressing trade and economic issues, and

(B) establishing—

(i) an agreement that provides objectives for improvement in trade and economic relations, and

(ii) targets for achieving these objectives.

(2) The delegation of the United States to the summit meeting described in subsection (a) should include—

(A) Members of Congress from both political parties, and

(B) appropriate officers of the executive branch of the United States Government.

(3) The delegation of Japan to the summit meeting described in subsection (a) should include—

(A) representatives of all political parties in Japan, and

(B) appropriate officers of the Government of Japan.

SEC. 1307. SUPERCOMPUTER TRADE DISPUTE.

(a) FINDINGS.—The Congress finds that—

(1) United States manufacturers of supercomputers have encountered significant obstacles in selling supercomputers in Japan, particularly to government agencies and universities;

(2) Japanese government procurement policies and pricing practices have denied United States manufacturers access to the Japanese supercomputer market;

(3) it has been reported that officials of the Ministry of International Trade and Industry of Japan have told United States Government officials that Japanese government agencies and universities do not intend to purchase supercomputers from United States manufacturers, or take steps to improve access for United States manufacturers;

(4) the United States Government in August 1987 signed an agreement with the Government of Japan establishing procedures for the procurement of United States supercomputers by the Government of Japan;

(5) concern remains as to implementation of the procurement agreement by the Government of Japan;

(6) there have been allegations that Japanese manufacturers of supercomputers have been offering supercomputers at drastically discounted prices in the markets of the United States, Japan, and other countries;

(7) deep price discounting raises the concern that Japan's large-scale vertically integrated manufacturers of supercomputers have targeted the supercomputer industry with the objective of eventual domination of the global computer market; and

(8) the supercomputer industry plays a central role in the technological competitiveness and national security of the United States.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the United States Trade Representative and other appropriate officials of the United States Government should—

(1) give the highest priority to concluding and enforcing agreements with the Government of Japan which achieve improved market access for United States manufacturers of supercomputers and end any predatory pricing activities of Japanese companies in the United States, Japan, and other countries; and

(2) continue to monitor the efforts of United States manufacturers of supercomputers to gain access to the Japanese market, recognizing that the Government of Japan may continue to manipulate the government procurement process to maintain the market dominance of Japanese manufacturers.

PART 2—IMPROVEMENT IN THE ENFORCEMENT OF THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS

SEC. 1311. REFERENCE TO TITLE VII OF THE TARIFF ACT OF 1930.

Unless otherwise provided, whenever in this part an amendment or repeal is expressed in terms of an amendment to, or repeal of, a subtitle, section, subsection, or other provision, the reference shall be considered to be made to a subtitle, section, subsection, or other provision of title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.).

* * * * * * *

SEC. 1317.[38] THIRD-COUNTRY DUMPING.

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

(1)(A)[39] The term "Agreement" means the Agreement on Implementation of Article VI of the GATT 1994 (relating to antidumping measures).

(B)[39] 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 re-

[38] 19 U.S.C. 1677k.

[39] Sec. 621(a)(1) of Public Law 103–465 (108 Stat. 4992) inserted "(A)" after "(1)", struck out "General Agreement of Tariffs and Trade" and inserted in lieu thereof "GATT 1994", and added subpara. (B).

quests 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 therefor 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.

* * * * * * *

SEC. 1336. STUDIES.

(a) STUDY OF MARKET ORIENTATION OF CHINA.—The Secretary of Commerce, in consultation with the heads of other appropriate Federal agencies, shall undertake a study regarding the new market orientation of the People's Republic of China. The study shall address, but not be limited to—

(1) the effect of the new orientation on Chinese market policies and price structure, and the relationship between domestic Chinese prices and world prices;

(2) the extent to which United States trade law practices can accommodate the increased market orientation of the Chinese economy; and

(3) the possible need for changes in United States antidumping laws as they apply to foreign countries, such as China, which are in transition to a more market-oriented economy.

The Secretary of Commerce shall submit to the Congress within 1 year after the date of the enactment of this Act a report on the study required under this subsection.

(b) SUBSIDIES CODE COMMITMENTS.—Within 90 days after the date of the enactment of this Act, the United States Trade Representative shall initiate a review of all bilateral subsidy commitments that have been entered into by foreign governments with the United States. The review shall include—

(1) an evaluation of the extent to which the commitments have been complied with;

(2) with respect to those commitments found under paragraph (1) not to have been complied with, an estimate regarding when compliance is likely; and

(3) recommendations regarding how compliance can be improved.

The United States Trade Representative shall complete the review required under this subsection and submit a report thereon to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate within 180 days after the date of the enactment of this Act.

* * * * * * *

PART 3—PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

SEC. 1341.[40] CONGRESSIONAL FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) United States persons that rely on protection of intellectual property rights are among the most advanced and competitive in the world; and

(2) the existing protection under section 337 of the Tariff Act of 1930 against unfair trade practices is cumbersome and costly and has not provided United States owners of intellectual property rights with adequate protection against foreign companies violating such rights.

(b) PURPOSE.—The purpose of this part is to amend section 337 of the Tariff Act of 1930 to make it a more effective remedy for the protection of United States intellectual property rights.

SEC. 1342. PROTECTION UNDER THE TARIFF ACT OF 1930.

(a) * * *

(b) * * *

(c) CONFORMING AMENDMENT.—The Act entitled "An Act to limit the importation of products made, produced, processed, or mined under process covered by unexpired valid United States patents, and for other purposes", approved July 2, 1940 (54 Stat. 724, 19 U.S.C. 1337a), is repealed.

(d) EFFECTIVE DATE.—

(1)(A) Subject to subparagraph (B), the amendments made by this section shall take effect on the date of the enactment of this Act.

(B) The United States International Trade Commission is not required to apply the provision in section 337(e)(2) of the

[40] 19 U.S.C. 1337 note.

Tariff Act of 1930 (as amended by subsection (a)(3) of this section) relating to the posting of bonds until the earlier of—

(i) the 90th day after such date of enactment; or

(ii) the day on which the Commission issues interim regulations setting forth the procedures relating to such posting.

(2) Notwithstanding any provision of section 337 of the Tariff Act of 1930, the United States International Trade Commission may extend, by not more than 90 days, the period within which the Commission is required to make a determination in an investigation conducted under such section 337 if—

(A) the Commission would, but for this paragraph, be required to make such determination before the 180th day after the date of enactment of this Act; and

(B) the Commission finds that the investigation is complicated.

PART 4—TELECOMMUNICATIONS TRADE

SEC. 1371.[41] SHORT TITLE.

This part may be cited as the "Telecommunications Trade Act of 1988".

SEC. 1372.[42] 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

[41] 19 U.S.C. 3101 note.
[42] 19 U.S.C. 3101.

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.[43] 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	685.39
684.58	684.80	685.30	685.48
684.59	685.16	685.31	688.17
684.65	685.24	685.33	688.41
684.66	685.25	685.34	707.90.

[43] 19 U.S.C. 3102.

SEC. 1374.[44] 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.[45] 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,

[44] 19 U.S.C. 3103.
[45] 19 U.S.C. 3104.

the President shall enter into negotiations with such priority foreign country for the purpose of entering into a bilateral or multilateral trade agreement under part 1 of subtitle A which meets the specific negotiating objectives established by the President under subsection (b) for such priority foreign country.

(b) ESTABLISHMENT OF SPECIFIC NEGOTIATING OBJECTIVES FOR EACH FOREIGN PRIORITY COUNTRY.—

(1) The President shall establish such relevant specific negotiating objectives on a country-by-country basis as are necessary to meet the general negotiating objectives of the United States under this section.

(2)(A) The President may refine or modify specific negotiating objectives for particular negotiations in order to respond to circumstances arising during the negotiating period, including—

(i) changed practices by the priority foreign country,

(ii) tangible substantive developments in multilateral negotiations,

(iii) changes in competitive positions, technological developments, or

(iv) other relevant factors.

(B) By no later than the date that is 30 days after the date on which the President makes any modifications or refinements to specific negotiating objectives under subparagraph (A), the President shall submit to appropriate committees of the Congress a statement describing such modifications or refinements and the reasons for such modifications or refinements.

(c) GENERAL NEGOTIATING OBJECTIVES.—The general negotiating objectives of the United States under this section are—

(1) to obtain multilateral or bilateral agreements (or the modification of existing agreements) that provide mutually advantageous market opportunities for trade in telecommunications products and services between the United States and foreign countries;

(2) to correct the imbalances in market opportunities accruing from reductions in barriers to the access of telecommunications products and services of foreign firms to the United States market; and

(3) to facilitate the increase in United States exports of telecommunications products and services to a level of exports that reflects the competitiveness of the United States telecommunications industry.

(d) SPECIFIC NEGOTIATING OBJECTIVES.—The specific negotiating objectives of the United States under this section regarding telecommunications products and services are to obtain—

(1) national treatment for telecommunications products and services that are provided by United States firms;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale

or lease by government-owned or controlled entities) of all telecommunications products and services;

(4) the reduction or elimination of customs duties on telecommunications products;

(5) the elimination of subsidies, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;

(6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services;

(7) assurances that any requirement for the registration of telecommunications products, which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommunications network in a foreign country, and

(B) the marketing of the products in a foreign country, be limited to the certification by the manufacturer that the products meet the standards established by the foreign country for preventing harm to the network or network personnel;

(8) transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products;

(9) the ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approvals;

(10) access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including nondiscriminatory prices) for the provision of value-added services by United States suppliers;

(11) the nondiscriminatory procurement of telecommunications products and services by foreign entities that provide local exchange telecommunications services which are owned, controlled, or, if appropriate, regulated by foreign governments; and

(12) monitoring and effective dispute settlement mechanisms to facilitate compliance with matters referred to in the preceding paragraphs of this subsection.

SEC. 1376.[46] 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.

[46] 19 U.S.C. 3105.

(2) In taking actions under paragraph (1), the President shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the President determines that actions against other economic sectors would be more effective in achieving the general negotiating objectives referred to in paragraph (1).

(b) ACTIONS AUTHORIZED.—

(1) The President is authorized to take any of the following actions under subsection (a) with respect to any priority foreign country:

(A) termination, withdrawal, or suspension of any portion of any trade agreement entered into with such country under—

(i) the Trade Act of 1974,

(ii) section 201 of the Trade Expansion Act of 1962, or

(iii) section 350 of the Tariff Act of 1930,

with respect to any duty or import restriction imposed by the United States on any telecommunications product;

(B) actions described in section 301 of the Trade Act of 1974;

(C) prohibition of purchases by the Federal Government of telecommunications products of such country;

(D) increases in domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) for purchases by the Federal Government of telecommunications products of such country;

(E) suspension of any waiver of domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) which may have been extended to such country pursuant to the Trade Agreements Act of 1979 with respect to telecommunications products or any other products;

(F) issuance of orders to appropriate officers and employees of the Federal Government to deny Federal funds or Federal credits for purchases of the telecommunications products of such country; and

(G) suspension, in whole or in part, of benefits accorded articles of such country under title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.).

(2) Notwithstanding section 125 of the Trade Act of 1974 and any other provision of law, if any portion of a trade agreement described in paragraph (1)(A) is terminated, withdrawn, or suspended under paragraph (1) with respect to any duty imposed by the United States on the products of a foreign country, the rate of such duty that shall apply to such products entered, or withdrawn from warehouse for consumption, after the date on which such termination, withdrawal, or suspension takes effect shall be a rate determined by the President.

(c) NEGOTIATING PERIOD.—

(1) For purposes of this section, the term "negotiating period" means—

(A) with respect to a priority foreign country identified in the investigation conducted under section 1374(a), the 18-month period beginning on the date of the enactment of this Act, and

(B) with respect to any foreign country identified as a priority foreign country after the conclusion of such investigation, the 1-year period beginning on the date on which such identification is made.

(2)(A) The negotiating period with respect to a priority foreign country may be extended for not more than two 1-year periods.

(B) By no later than the date that is 15 days after the date on which the President extends the negotiating period with respect to any priority foreign country, the President shall submit to appropriate committees of the Congress a report on the status of negotiations with such country that includes—

(i) a finding by the President that substantial progress is being made in negotiations with such country, and

(ii) a statement detailing the reasons why an extension of such negotiating period is necessary.

(d) MODIFICATION AND TERMINATION AUTHORITY.—The President may modify or terminate any action taken under subsection (a) if, after taking into consideration the factors described in section 1374(b), the President determines that changed circumstances warrant such modification or termination.

(e) REPORT.—The President shall promptly inform the appropriate committees of the Congress of any action taken under subsection (a) or of the modification or termination of any such action under subsection (d).

SEC. 1377.[47] 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.—

[47] 19 U.S.C. 3106.

(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.[48] 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 (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act),[49]

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.[50] 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—

[48] 19 U.S.C. 3107.

[49] Sec. 621(a)(6) of Public Law 103–465 (108 Stat. 4993) struck out "the General Agreement on Tariffs and Trade" and inserted in lieu thereof "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)".

[50] 19 U.S.C. 3108.

(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.[51] 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.

[51] 19 U.S.C. 3109.

(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.[52] 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.[53] 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).[54]

SUBTITLE D—ADJUSTMENT TO IMPORT COMPETITION

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PART 3—TRADE ADJUSTMENT ASSISTANCE

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[52] 19 U.S.C. 3110.

[53] 19 U.S.C. 3111.

[54] Sec. 621(a)(7) of Public Law 103–465 (108 Stat. 4993) struck out "the General Agreement on Tariffs and Trade" and inserted in lieu thereof "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)".

SEC. 1428.[55] IMPOSITION OF SMALL UNIFORM FEE ON ALL IMPORTS.

(a) NEGOTIATIONS.—

(1) The President shall—

(A) undertake negotiations necessary to achieve changes in the General Agreement on Tariffs and Trade that would allow any country to impose a small uniform fee of not more than 0.15 percent on all imports to such country for the purpose of using the revenue from such fee to fund programs which directly assist adjustment to import competition, and

(B) undertake negotiations with any foreign country that has entered into a free trade agreement with the United States under subtitle A or under section 102 of the Trade Act of 1974 to obtain the consent of such country to the imposition of such a fee by the United States.

(2) In the report that is submitted under section 163 of the Trade Act of 1974 for 1989 and 1990, the President shall include a statement on the progress of negotiations conducted under paragraph (1).

(3)(A) On the first day after the date of enactment of this Act on which the General Agreement on Tariffs and Trade allows any country to impose a fee described in paragraph (1), the President shall submit to the Congress, and publish in the Federal Register, a written statement certifying such allowance.

(B) On the first day after the date of enactment of this Act on which any foreign country described in paragraph (1)(B) consents to the imposition of such a fee by the United States, the President shall submit to the Congress, and publish in the Federal Register, a written statement certifying such consent.

(4) If—

(A) the President does not submit to the Congress the written statement described in paragraph (3)(A) before the date that is 2 years after the date of enactment of this Act, and

(B) the President determines on such date that the fee imposed by the amendment made by subsection (b) is not in the national economic interest,

the President shall submit to the Congress, and publish in the Federal Register, written notice of such determination on such date.[56]

(5)(A) Any disapproval resolution that is introduced in the Senate or House of Representatives within the 90-day period beginning on the date that is 2 years after the date of enactment of this Act shall, for purposes of section 152 of the Trade Act of 1974 (19 U.S.C. 2192), be treated as a joint resolution described in section 152(a)(1)(A) of such Act.

(B) For purposes of this part, the term "disapproval resolution" means a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as fol-

[55] 19 U.S.C. 2397 note.

[56] In Presidential Determination No. 90–34 of August 23, 1990 (55 F.R. 34889), directed to the U.S. Trade Representative, the President determined "that it is not in the national economic interest to impose the fee described under subsection (b)".

lows: "That the Congress disapproves of the determination made by the President under section 1428(a)(4)(A) of the Omnibus Trade and Competitiveness Act of 1988.".

(b) * * *

SEC. 1429. STUDY OF CERTIFICATION METHODS.

(a) IN GENERAL.—The Secretary of Labor, in consultation with the Secretary of Commerce, shall conduct a study of the methods (including, but not limited to, industry-wide certification) that could be used to expedite the certification of workers under subchapter A of chapter 2 of title II of the Trade Act of 1974.

(b) REPORT.—By no later than the date that is 6 months after the date of enactment of this Act, the Secretary of Labor shall submit to the Congress a report on the study conducted under subsection (a). The report shall include the recommendations of the Secretary of Labor regarding the methods that are the subject of the study conducted under subsection (a).

SEC. 1430.[57] EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided by this section, the amendments made by this part shall take effect on the date of enactment of this Act.

(b) ADDITIONAL FEE.—

(1) Except as otherwise provided in this subsection, the amendment made by section 1428(b) shall apply (if at all) to any article entered, or withdrawn from warehouse for consumption, after the date that is 30 days after the earlier of—

(A) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(A),

(B) the date that is 2 years after the date of enactment of this Act, or

(C) the date of the enactment of a disapproval resolution that passes both Houses of the Congress within the 90-day period beginning on the date that is 2 years after the date of enactment of this Act.

(2) If the President determines on the date that is 2 years after the date of enactment of this Act that the fee imposed by the amendment made by section 1428(b) is not in the national economic interest, subparagraph (B) of paragraph (1) shall not be taken into account in applying the provisions of paragraph (1).

(3) The amendment made by section 1428(b) shall apply (if at all) to the products of any foreign country described in section 1428(a)(1)(B) that are entered, or withdrawn from warehouse for consumption, after the later of—

(A) the first date on which the fee imposed by such amendment applies with respect to products of foreign countries that are not described in section 1428(a)(1)(B), or

(B) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(B) certifying the consent of such foreign country to the imposition of the fee.

[57] 19 U.S.C. 2397 note.

(c) TRUST FUND.—The amendments made by section 1427 shall take effect on the first date on which the amendment made by section 1428(b) applies with respect to any articles.

(d) ELIGIBILITY OF WORKERS AND FIRMS.—The amendments made by sections 1421(b) and 1424(b) shall take effect on the date that is 1 year after the first date on which the amendment made by section 1428(b) applies with respect to any articles.

(e) NOTIFICATION REQUIREMENTS.—The amendments made by section 1422 shall take effect on the date that is 30 days after the date of enactment of this Act.

(f) TRAINING REQUIREMENT.—The amendments made by subsections (a), (b)(2), and (c)(2) of section 1423 and by paragraphs (2) and (3) of section 1424(c) shall take effect on the date that is 90 days after the date of enactment of this Act.

(g) LIMITATION ON PERIOD FOR WHICH TRADE READJUSTMENT ALLOWANCES MAY BE MADE.—The amendment made by section 1425(a) shall not apply[58] with respect to any total separation of a worker from adversely affected employment (within the meaning of section 247 of such Act) that occurs before the date of enactment of this Act if the application of such amendment with respect to such total separation would reduce the period for which such worker would (but for such amendment) be allowed to receive trade readjustment allowances under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974.

SUBTITLE E—NATIONAL SECURITY

SEC. 1501. IMPORTS THAT THREATEN NATIONAL SECURITY.

(a) * * *

(b) * * *

(c) ENFORCEMENT OF MACHINE TOOL IMPORT ARRANGEMENTS.—

(1) The Secretary of Commerce is authorized to request the Secretary of the Treasury to carry out such actions as may be necessary or appropriate to ensure the attainment of the objectives of the machine tool decision of the President on May 20, 1986, and to enforce any quantitative limitation, restriction, or other terms contained in related bilateral arrangements. 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 assembled and unassembled machine tool products.

(2) For purposes of this subsection, the term "related bilateral arrangement" means any arrangement, agreement, or understanding entered into or undertaken, or previously entered into or undertaken, by the United States and any foreign country or customs union containing such quantitative limitations, restrictions, or other terms relating to the importation into, or exportation to, the United States of categories of assembled and unassembled machine tool products as may be necessary to implement such machine tool decision of May 20, 1986.

[58] Sec. 9001(a)(21) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3342) struck out "to" at this point.

(d)[59] APPLICATION OF AMENDMENTS.—

(1) Except as otherwise provided under this subsection, the amendments made by this section shall apply with respect to investigations initiated under section 232(b) of the Trade Expansion Act of 1962 on or after the date of enactment of this Act.

(2) The provisions of subsection (c) of section 232 of the Trade Expansion Act of 1962, as amended by this section, shall apply with respect to any report submitted by the Secretary of Commerce to the President under section 232(b) of such Act after the date of enactment of this Act.

(3) By no later than the date that is 90 days after the date of enactment of this Act, the President shall make the determinations described in section 232(c)(1)(A) of the Trade Expansion Act of 1962, as amended by this section, with respect to any report—

(A) which was submitted by the Secretary of Commerce to the President under section 232(b) of such Act before the date of enactment of this Act, and

(B) with respect to which no action has been taken by the President before the date of enactment of this Act.

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SUBTITLE H—MISCELLANEOUS CUSTOMS, TRADE, AND OTHER PROVISIONS

PART 1—CUSTOMS PROVISIONS

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SEC. 1906.[60] * * * [Repealed—1993]

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SEC. 1908.[61] **DUTY-FREE SALES ENTERPRISES.**

(a) FINDINGS.—The Congress finds that—

(1) duty-free sales enterprises play a significant role in attracting international passengers to the United States and thereby their operations favorably affect our balance of payments;

(2) concession fees derived from the operations of authorized duty-free sales enterprises constitute an important source of revenue for the State, local and other governmental authorities that collect such fees;

(3) there is inadequate statutory and regulatory recognition of, and guidelines for the operation of, duty-free sales enterprises; and

(4) there is a need to encourage uniformity and consistency of regulation of duty-free sales enterprises.

(b) * * *

(c) * * *

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[59] 19 U.S.C. 1862 note.

[60] Formerly at 19 U.S.C. 1307 note. Stated a sense of the Congress requesting the President to instruct the Secretary of the Treasury to enforce sec. 307 of the Tariff Act of 1930 (relating to the importation of goods produced by forced labor) without delay.

[61] 19 U.S.C. 1555 note.

SEC. 1909.[62] CARIBBEAN BASIN INITIATIVE.

(a) FINDINGS.—The Congress finds that—

(1) Caribbean and Central American countries historically have had close economic, political, and cultural ties to the United States;

(2) promoting economic and political stability in the Caribbean and Central America is in the national security interests of the United States;

(3) the economic and political stability of the nations of the Caribbean and Central America can be strengthened significantly by the attraction of foreign and domestic investment specifically devoted to employment generation; and

(4) the diversification of the economies and expansion of exports, particularly those of a non-traditional nature, of the nations of the Caribbean and Central America is linked directly to fair access to the markets of the United States.

(b) INTENT OF THE CONGRESS.—The Congress hereby expresses its intention to ensure that—

(1) the trade elements of the Caribbean Basin Initiative be strengthened in a manner consistent with the promotion of economic and political stability in the Caribbean and Central America;

(2) to the extent that Congress imposes changes that are intended to improve the competitive environment for United States industry and workers, such changes do not unduly affect the unilateral duty-free trade system available to the beneficiary countries designated under the Caribbean Basin Economic Recovery Act; and

(3) generic changes in the trade laws of the United States do not discriminate against imports from designated beneficiary countries in relation to imports from other United States trading partners.

(c) * * *

SEC. 1910. ETHYL ALCOHOL AND MIXTURES FOR FUEL USE.

(a) * * *

(b) STUDIES.—

(1) The United States International Trade Commission and the Comptroller General of the United States shall each immediately undertake a study regarding whether the definition of indigenous ethyl alcohol or mixtures thereof used in applying section 423 of the Tax Reform Act of 1986 is consistent with, and will contribute to the achievement of, the stated policy of Congress to encourage the economic development of the beneficiary countries under the Caribbean Basin Economic Recovery Act and the insular possessions of the United States through the maximum utilization of the natural resources of those countries and possessions. Each study shall specifically include—

(A) an assessment regarding whether the indigenous product percentage requirements set forth in subsection (c)(2)(B) of such section 423 are economically feasible for ethyl alcohol producers; and

[62] 19 U.S.C. 2702 note.

(B) if the assessment under subparagraph (A) is negative, recommended modifications to the indigenous product percentage requirements that—

(i) will ensure meaningful production and employment in the region,

(ii) will discourage pass-through operations, and

(iii) will not result in harm to producers of ethyl alcohol, or mixtures thereof, in the United States; and

(C) an assessment of the effects of imports of ethyl alcohol, and mixtures thereof, from such beneficiary countries and possessions on producers of ethyl alcohol, and mixtures thereof, in the United States.

(2) The United States International Trade Commission and the Comptroller General of the United States shall each submit a report containing the findings and conclusions of the study carried out under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate before the 180th day after the date of the enactment of this Act.

SEC. 1911. ENFORCEMENT OF RESTRICTIONS ON IMPORTS FROM CUBA.

The United States Trade Representative shall request that all relevant agencies prepare appropriate recommendations for improving the enforcement of restrictions on the importation of articles from Cuba. Such recommendations should include, but not be limited to, appropriate measures to prevent indirect shipments or other means of circumvention. The United States Trade Representative shall, after considering such recommendations, report to the Congress, within 90 days after the date of enactment of this Act, on any administrative measures or proposed legislation which the United States Trade Representative considers necessary and appropriate to enforce restrictions on imports from Cuba.

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PART 2—MISCELLANEOUS TRADE PROVISIONS

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SEC. 1933. COAL EXPORTS TO JAPAN.

It is the sense of the Congress that—

(1) the objectives of the November 1983 Joint Policy Statement on Energy Cooperation, as it relates to United States exports of coal to Japan, have not been achieved;

(2) the President should seek to establish reciprocity with Japan with respect to metallurgical coal exports and steel product imports and should encourage increased purchases by Japan of United States steam coal;

(3) the President should direct the United States Trade Representative, in negotiating a Steel Trade Arrangement with Japan, to take into consideration, consistent with the President's steel program, the amount of coal that Japan purchases from the United States in determining the level of steel, semifinished steel and fabricated structured steel products that can be imported into the United States; and

(4) the President should report to the Congress by November 1, 1988 regarding the results of the outcome of any negotiation undertaken in response to this section.

SEC. 1934. PURCHASES OF UNITED STATES-MADE AUTOMOTIVE PARTS BY JAPAN.

(a) FINDINGS.—The Congress finds that—

(1) the United States merchandise trade deficit reached the unprecedented level of $170,000,000,000 in 1986;

(2) the United States trade deficit with Japan, which reached $59,000,000,000 in 1986, accounted for approximately one-third of the total deficit;

(3) approximately one-half of the United States trade deficit with Japan was in motor vehicles and equipment;

(4) while Japanese automobile firms based in Japan produced 7,800,000 passenger cars in 1986 and exported 2,300,000 cars to the United States, United States exports of auto parts to Japan were only about $300,000,000 in 1986;

(5) United States automotive parts producers meet increasingly rigorous requirements for quality, just-in-time supply, and competitive pricing in the United States market; and

(6) the market-oriented sector specific (MOSS) talks on auto parts are aimed at overcoming substantial market access barriers and increasing the access of United States auto parts producers to the original and replacement parts market represented by Japanese automobiles produced in Japan, the United States, and third countries.

(b) SENSE OF CONGRESS.—The Congress—

(1) strongly supports efforts being made by United States negotiators to expand significantly the opportunities for United States automotive parts producers to supply original and replacement parts for Japanese automobiles, wherever those automobiles may be produced; and

(2) determines that success of the MOSS talks will be measured by a significant increase in sales by United States auto parts companies to Japanese vehicle companies and the initiation of long-term sourcing relationships between such companies.

(c) REPORT ON OUTCOME.—The United States Trade Representative and the Secretary of Commerce shall report to Congress at the conclusion of the MOSS talks on the outcome of the talks and on any agreements reached with Japan with respect to purchases by Japanese firms of United States automotive parts.

SEC. 1935. EFFECT OF IMPORTS ON CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES.

The Secretary of Energy shall send to the Secretary of Commerce the results of the study conducted under section 3102 of the Omnibus Budget Reconciliation Act of 1986. Within 180 days of the receipt of the results of such study, the Secretary of Commerce shall report to the President and the Congress recommendations for actions which may be appropriate to address any impact of imports of crude oil and petroleum products on domestic crude oil exploration and production and the domestic petroleum refining capacity.

SEC. 1936. STUDY OF TRADE BARRIERS ESTABLISHED BY AUTO PRODUCING COUNTRIES TO AUTO IMPORTS AND THE IMPACT ON THE UNITED STATES MARKET.

(a) STUDY.—The United States Trade Representative shall conduct a study of formal and informal barriers which auto producing countries have established toward automobile imports and the impact of such barriers on diverting automobile imports into the United States. The study shall consider the impact of such barriers on automobile imports into the United States in the presence of, and in the absence of, voluntary restraint agreements between the United States and Japan.

(b) REPORT.—The United States Trade Representative shall include the findings of the study conducted under subsection (a) in the first report that is submitted under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241) after the date of enactment of this Act.

SEC. 1937. LAMB MEAT IMPORTS.

Within 15 days after the date of the enactment of this Act, the United States International Trade Commission, pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), shall monitor and investigate for a period of 2 years the importation into the United States of articles provided for in item 106.30 of the Tariff Schedules of the United States (19 U.S.C. 1202) (relating to fresh, chilled, and frozen lamb meat). For purposes of any request made under subsection (d) of section 202 of the Trade Act of 1974 (as amended by section 1401 of this Act) within such 2-year period for provisional relief with respect to imports of such articles, the monitoring and investigation required under this section shall be treated as having been requested by the United States Trade Representative under paragraph (1)(B) of such subsection.

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TITLE II—EXPORT ENHANCEMENT[63]

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TITLE III—INTERNATIONAL FINANCIAL POLICY

SUBTITLE A—EXCHANGE RATES AND INTERNATIONAL ECONOMIC POLICY COORDINATION

SEC. 3001.[64] SHORT TITLE.

This subtitle may be cited as the "Exchange Rates and International Economic Policy Coordination Act of 1988".

SEC. 3002.[65] FINDINGS.

The Congress finds that—

(1) the macroeconomic policies, including the exchange rate policies, of the leading industrialized nations require improved coordination and are not consistent with long-term economic growth and financial stability;

[63] Title II, the Export Enhancement Act of 1988 (Public Law 100–418; 102 Stat. 1325), is found in this volume on page 1280.
[64] 22 U.S.C. 5301.
[65] 22 U.S.C. 5302.

(2) currency values have a major role in determining the patterns of production and trade in the world economy;

(3) the rise in the value of the dollar in the early 1980's contributed substantially to our current trade deficit;

(4) exchange rates among major trading nations have become increasingly volatile and a pattern of exchange rates has at times developed which contribute to substantial and persistent imbalances in the flow of goods and services between nations, imposing serious strains on the world trading system and frustrating both business and government planning;

(5) capital flows between nations have become very large compared to trade flows, respond at times quickly and dramatically to policy and economic changes, and, for these reasons, contribute significantly to uncertainty in financial markets, the volatility of exchange rates, and the development of exchange rates which produce imbalances in the flow of goods and services between nations;

(6) policy initiatives by some major trading nations that manipulate the value of their currencies in relation to the United States dollar to gain competitive advantage continue to create serious competitive problems for United States industries;

(7) a more stable exchange rate for the dollar at a level consistent with a more appropriate and sustainable balance in the United States current account should be a major focus of national economic policy;

(8) procedures for improving the coordination of macroeconomic policy need to be strengthened considerably; and

(9) under appropriate circumstances, intervention by the United States in foreign exchange markets as part of a coordinated international strategic intervention effort could produce more orderly adjustment of foreign exchange markets and, in combination with necessary macroeconomic policy changes, assist adjustment toward a more appropriate and sustainable balance in current accounts.

SEC. 3003.[66] STATEMENT OF POLICY.

It is the policy of the United States that—

(1) the United States and the other major industrialized countries should take steps to continue the process of coordinating monetary, fiscal, and structural policies initiated in the Plaza Agreement of September 1985;

(2) the goal of the United States in international economic negotiations should be to achieve macroeconomic policies and exchange rates consistent with more appropriate and sustainable balances in trade and capital flows and to foster price stability in conjunction with economic growth;

(3) the United States, in close coordination with the other major industrialized countries should, where appropriate, participate in international currency markets with the objective of producing more orderly adjustment of foreign exchange markets and, in combination with necessary macroeconomic policy changes, assisting adjustment toward a more appropriate and sustainable balance in current accounts; and

[66] 22 U.S.C. 5303.

(4) the accountability of the President for the impact of economic policies and exchange rates on trade competitiveness should be increased.

SEC. 3004.[67] 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[68] of the House of Representatives of his determination.

SEC. 3005.[69] REPORTING REQUIREMENTS.

(a) REPORTS REQUIRED.—In furtherance of the purpose of this title, the Secretary, after consultation with the Chairman of the Board, shall submit to the Committee on Banking, Finance and Urban Affairs[68] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, on or before October 15 of each year, a written report on international

[67] 22 U.S.C. 5304.

[68] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives should be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

[69] 22 U.S.C. 5305.

economic policy, including exchange rate policy. The Secretary shall provide a written update of developments six months after the initial report. In addition, the Secretary shall appear, if requested, before both committees to provide testimony on these reports.

(b) CONTENTS OF REPORT.—Each report submitted under subsection (a) shall contain—

(1) an analysis of currency market developments and the relationship between the United States dollar and the currencies of our major trade competitors;

(2) an evaluation of the factors in the United States and other economies that underlie conditions in the currency markets, including developments in bilateral trade and capital flows;

(3) a description of currency intervention or other actions undertaken to adjust the actual exchange rate of the dollar;

(4) an assessment of the impact of the exchange rate of the United States dollar on—

(A) the ability of the United States to maintain a more appropriate and sustainable balance in its current account and merchandise trade account;

(B) production, employment, and noninflationary growth in the United States;

(C) the international competitive performance of United States industries and the external indebtedness of the United States;

(5) recommendations for any changes necessary in United States economic policy to attain a more appropriate and sustainable balance in the current account;

(6) the results of negotiations conducted pursuant to section 3004;

(7) key issues in United States policies arising from the most recent consultation requested by the International Monetary Fund under article IV of the Fund's Articles of Agreement; and

(8) a report on the size and composition of international capital flows, and the factors contributing to such flows, including, where possible, an assessment of the impact of such flows on exchange rates and trade flows.

(c) * * *

SEC. 3006.[70] DEFINITIONS.

As used in this subtitle:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(2) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

SUBTITLE B—INTERNATIONAL DEBT

PART I—FINDINGS, PURPOSES, AND STATEMENT OF POLICY

SEC. 3101.[71] SHORT TITLE.

This subtitle may be cited as the "International Debt Management Act of 1988".

[70] 22 U.S.C. 5306.
[71] 22 U.S.C. 5321.

SEC. 3102.[72] FINDINGS.

The Congress finds that—

(1) the international debt problem threatens the safety and soundness of the international financial system, the stability of the international trading system, and the economic development of the debtor countries;

(2) orderly reduction of international trade imbalances requires very substantial growth in all parts of the world economy, particularly in the developing countries;

(3) growth in developing countries with substantial external debts has been significantly constrained over the last several years by a combination of high debt service obligations and insufficient new flows of financial resources to these countries;

(4) substantial interest payment outflows from debtor countries, combined with inadequate net new capital inflows, have produced a significant net transfer of financial resources from debtor to creditor countries;

(5) negative resource transfers at present levels severely depress both investment and growth in the debtor countries, and force debtor countries to reduce imports and expand exports in order to meet their debt service obligations;

(6) current adjustment policies in debtor countries, which depress domestic demand and increase production for export, help to depress world commodity prices and limit the growth of export markets for United States industries;

(7) the United States has borne a disproportionate share of the burden of absorbing increased exports from debtor countries, while other industrialized countries have increased their imports from developing countries only slightly;

(8) current approaches to the debt problem should not rely solely on new lending as a solution to the debt problem, and should focus on other financing alternatives including a reduction in current debt service obligations;

(9) new international mechanisms to improve the management of the debt problem and to expand the range of financing options available to developing countries should be explored; and

(10) industrial countries with strong current account surpluses have a disproportionate share of the world's capital resources, and bear an additional responsibility for contributing to a viable long-term solution to the debt problem.

SEC. 3103.[73] PURPOSES.

The purposes of this subtitle are—

(1) to expand the world trading system and raise the level of exports from the United States to the developing countries in order to reduce the United States trade deficit and foster economic expansion and an increase in the standard of living throughout the world;

(2) to alleviate the current international debt problem in order to make the debt situation of developing countries more

[72] 22 U.S.C. 5322.
[73] 22 U.S.C. 5323.

manageable and permit the resumption of sustained growth in those countries; and

(3) to increase the stability of the world financial system and ensure the safety and soundness of United States depository institutions.

SEC. 3104.[74] STATEMENT OF POLICY.

It is the policy of the United States that—

(1) increasing growth in the developing world is a major goal of international economic policy;

(2) it is necessary to broaden the range of options in dealing with the debt problem to include improved mechanisms to restructure existing debt;

(3) active consideration of a new multilateral authority to improve the management of the debt problem and to share the burdens of adjustment more equitably must be undertaken; and

(4) countries with strong current account surpluses bear a major responsibility for providing the financial resources needed for growth in the developing world.

PART II—THE INTERNATIONAL DEBT MANAGEMENT AUTHORITY

SEC. 3111.[75] INTERNATIONAL INITIATIVE.

(a) DIRECTIVE.—

(1) STUDY.—The Secretary of the Treasury shall study the feasibility and advisability of establishing the International Debt Management Authority described in this section.

(2) EXPLANATION OF DETERMINATIONS.—If the Secretary of the Treasury determines that initiation of international discussions with regard to such authority would (A) result in material increase in the discount at which sovereign debt is sold, (B) materially increase the probability of default on such debt, or (C) materially enhance the likelihood of debt service failure or disruption, the Secretary shall include in his interim reports to the Congress an explanation in detail of the reasons for such determination.

(3) INITIATION OF DISCUSSIONS.—Unless such a determination is made, the Secretary of the Treasury shall initiate discussions with such industrialized and developing countries as the Secretary may determine to be appropriate with the intent to negotiate the establishment of the International Debt Management Authority, which would undertake to—

(A) purchase sovereign debt of less developed countries from private creditors at an appropriate discount;

(B) enter into negotiations with the debtor countries for the purpose of restructuring the debt in order to—

(i) ease the current debt service burden on the debtor countries; and

[74] 22 U.S.C. 5324.
[75] 22 U.S.C. 5331.

(ii) provide additional opportunities for economic growth in both debtor and industrialized countries; and

(C) assist the creditor banks in the voluntary disposition of their Third World loan portfolio.

(b) OBJECTIVES.—In any discussions initiated under subsection (a), the Secretary should include the following specific proposals:

(1) That any loan restructuring assistance provided by such an authority to any debtor nation should involve substantial commitments by the debtor to (A) economic policies designed to improve resource utilization and minimize capital flight, and (B) preparation of an economic management plan calculated to provide sustained economic growth and to allow the debtor to meet its restructured debt obligations.

(2) That support for such an authority should come from industrialized countries, and that greater support should be expected from countries with strong current account surpluses.

(3) That such an authority should have a clearly defined close working relationship with the International Monetary Fund and the International Bank for Reconstruction and Development and the various regional development banks.

(4) That such an authority should be designed to operate as a self-supporting entity, requiring no routine appropriation of resources from any member government, and to function subject to the prohibitions contained in the first sentence of section 3112(a).

(5) That such an authority should have a defined termination date and a clear proposal for the restoration of creditworthiness to debtor countries within this timeframe.

(c) INTERIM REPORTS.—At the end of the 6-month period beginning on the date of enactment of this Act and at the end of the 12-month period beginning on such date of enactment, the Secretary of the Treasury shall submit a report on the progress being made on the study or in discussions described in subsection (a) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives [76] and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate, and shall consult with such committees after submitting each such report.

(d) FINAL REPORT.—On the conclusion of the study or of discussions described in subsection (a), the Secretary shall transmit a report containing a detailed description thereof to the Committee on Banking, Finance and Urban Affairs [76] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate, together with such recommendations for legislation which the Secretary may determine to be necessary or appropriate for the establishment of the International Debt Management Authority.

[76] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives should be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

SEC. 3112.[77] ACTIONS TO FACILITATE CREATION OF THE AUTHORITY.

(a) IN GENERAL.—No funds, appropriations, contributions, callable capital, financial guarantee, or any other financial support or obligation or contingent support or obligation on the part of the United States Government may be used for the creation, operation, or support of the International Debt Management Authority specified in section 3111, without the express approval of the Congress through subsequent law, nor shall any expenses associated with such authority, either directly or indirectly, accrue to any United States person without the consent of such person. Except as restricted in the preceding sentence, the Secretary of the Treasury shall review all potential resources available to the multilateral financial institutions which could be used to support the creation of the International Debt Management Authority. In the course of this review, the Secretary shall direct—

(1) the United States Executive Director of the International Monetary Fund to determine the amount of, and alternative methods by which, gold stock of the Fund which, subject to action by its Board of Governors, could be pledged as collateral to obtain financing for the activities of the authority specified in section 3111; and

(2) the United States Executive Director to the International Bank for Reconstruction and Development to determine the amount of, and alternative methods by which, liquid assets controlled by such Bank and not currently committed to any loan program which, subject to action by its Board of Governors, could be pledged as collateral for obtaining financing for the activities of the authority specified in section 3111.

The Secretary of the Treasury shall include a report on the results of the review in the first report submitted under section 3111(c).

(b) CONSTRUCTION OF SECTION.—Subsection (a) shall not be construed to affect any provision of the Articles of Agreement of the International Monetary Fund or of the International Bank for Reconstruction and Development or any agreement entered into under either of such Agreements.

SEC. 3113.[78] IMF-WORLD BANK REVIEW.

(a) IMF REVIEW.—The United States Executive Director of the International Monetary Fund shall request the management of the International Monetary Fund to prepare a review and analysis of the debt burden of the developing countries, with particular attention to alternatives for dealing with the debt problem including new lending instruments, rescheduling and refinancing of existing debt, securitization and debt conversion techniques, discounted debt repurchases, and the International Debt Management Authority described in section 3111 no later than 1 year after the date of the enactment of this Act.

(b) WORLD BANK REVIEW.—The United States Executive Director to the International Bank for Reconstruction and Development shall request the management of the International Bank for Reconstruction and Development to prepare a review and analysis of the debt burden of the developing countries, with particular attention

[77] 22 U.S.C. 5332.
[78] 22 U.S.C. 5333.

to alternatives for dealing with the debt problem including new lending instruments, rescheduling and refinancing of existing debt, securitization and debt conversion techniques, discounted debt repurchases, and the International Debt Management Authority described in section 3111 no later than 1 year after the date of the enactment of this Act.

PART III—REGULATORY PROVISIONS AFFECTING INTERNATIONAL DEBT

SEC. 3121. PROVISIONS RELATING TO THE REGULATION OF DEPOSITORY INSTITUTIONS.

(a) REGULATORY OBJECTIVES.—It is the sense of the Congress that regulations prescribed by Federal banking regulatory agencies which affect the international assets of United States commercial banks should grant the widest possible latitude to the banks for negotiating principal and interest reductions with respect to obligations of heavily indebted sovereign borrowers.

(b) FLEXIBILITY IN DEBT RESTRUCTURING.—It is the intent of the Congress that, in applying generally accepted accounting standards, Federal agencies which regulate and oversee the operations of depository institutions (within the meaning given to such term by clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act) apply to such institutions maximum flexibility in determining the asset value of restructured loans to heavily indebted sovereign borrowers and in accounting for the effects of such restructuring prospectively.

(c) RECAPITALIZATION.—It is the intent of the Congress that Federal agencies which regulate and oversee the operations of depository institutions (within the meaning given to such term by clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act) should require depository institutions with substantial amounts of loans to heavily indebted sovereign borrowers to seek, as appropriate, expanded recapitalization through equity financing to ensure that prudent institutional capital-to-total asset ratios are established and maintained.

(d) RESERVES FOR LOAN LOSSES.—It is the intent of the Congress that Federal agencies which regulate and oversee the operations of depository institutions (within the meaning given to such term by clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act) should seek to ensure that appropriate levels of reserves be established by depository institutions engaged in substantial lending to heavily indebted sovereign borrowers in accordance with both the credit and country risks associated with such lending.

(e)[79] * * *

SEC. 3122. STUDIES RELATING TO THE REGULATION OF DEPOSITORY INSTITUTIONS.

(a) REGULATORY STUDY REQUIRED.—The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall conduct a study to determine the extent of any regulatory obstacle to negotiated re-

[79] Subsec. (e) amended sec. 913 of the International Lending Supervision Act of 1983.

ductions in the debt service obligations associated with foreign debt.

(b) SPECIFIC FACTORS TO BE STUDIED.—The study required by subsection (a) shall include an analysis of regulatory and accounting obstacles to various forms of debt restructuring, including negotiated interest reduction, the amortization of loan losses, securitization and debt conversion techniques, and discounted debt repurchases, as well as an analysis of the profitability of commercial bank lending to developing countries during the 10-year period ending on December 31, 1986. The analysis should include an assessment of the impact of the various forms of debt restructuring on the development of a secondary market in developing country debt and on the safety and soundness of the United States banking system.

(c) REPORT REQUIRED.—Within 6 months after the date of the enactment of this Act, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall transmit to the Congress a report containing the findings and conclusions of such agencies with respect to the study required under subsection (a), together with any recommendations concerning legislation which such agencies determine to be necessary or appropriate to remove regulatory obstacles to negotiated reductions in the debt service obligations associated with sovereign debt.

SEC. 3123. LIMITED PURPOSE SPECIAL DRAWING RIGHTS FOR THE POOREST HEAVILY INDEBTED COUNTRIES.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Secretary of the Treasury, in consultation with the directors and staff of the International Monetary Fund and such other interested parties as the Secretary may determine to be appropriate, shall conduct a study of the feasibility and the efficacy of reducing the international debt of the poorest of the heavily indebted countries through a one-time allocation by the International Monetary Fund of limited purpose Special Drawing Rights to such countries in accordance with a plan which provides that—

(A) the allocation be made without regard to the quota established for any such country under the Articles of Agreement of the Fund;

(B) limited purpose Special Drawing Rights be used only to repay official debt of any such country;

(C) the allocation of limited purpose Special Drawing Rights to any such country not be treated as an allocation on which such country must pay interest to the Fund; and

(D) the use of limited purpose Special Drawing Rights by any such country to repay official debt shall be treated as an allocation of regular Special Drawing Rights to the creditor.

(2) ADDITIONAL FACTORS TO BE STUDIED.—The study required under paragraph (1) shall include the following:

(A) To the extent the creation and allocation of the limited purpose Special Drawing Rights described in paragraph (1) would require an amendment of the Articles of Agreement of the International Monetary Fund, an assess-

ment of the period of time within which such amendment could be ratified by the member nations, based on discussions with the major members of the Fund.

(B) An assessment of other means for achieving the objectives of principal and interest reduction on official debt of the poorest heavily indebted countries through the use of Special Drawing Rights.

(C) A comparative evaluation of proposals of other members of the International Monetary Fund, the directors and staff of the Fund, and other interested parties.

(D) An analysis of the effect the implementation of the provisions in paragraph (1) would have on bilateral and multilateral lenders, the international monetary system, and such other provisions of this Act as may be appropriate.

(E) A comparative analysis of the available alternatives identified under subparagraph (B) or (C).

(b) REPORT REQUIRED.—Within 3 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Banking, Finance and Urban Affairs [76] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate containing the findings and conclusions of the Secretary pursuant to the study required under subsection (a), together with—

(1) the recommendation of the Secretary as to which, of all the alternatives for providing relief for the poorest of the heavily indebted countries which were assessed in connection with such study, represents the best available option; and

(2) recommendations for such legislation and administrative action as the Secretary determines to be necessary and appropriate to implement such option.

SUBTITLE C—MULTILATERAL DEVELOPMENT BANKS [80]

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SUBTITLE D—EXPORT-IMPORT BANK AND TIED AID CREDIT AMENDMENTS [81]

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SUBTITLE E—EXPORT TRADING COMPANY ACT AMENDMENTS OF 1988

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[80] Subtitle C, "Multilateral Development Banks Procurement Act of 1988", was transferred to the International Financial Institutions Act by sec. 541(b)(1) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2517), redesignated as sec. 1801 and recodified as 22 U.S.C. 262q. See this volume, page 204.

SUBTITLE F—PRIMARY DEALERS

SEC. 3501.[82] SHORT TITLE.

This subtitle may be cited as the "Primary Dealers Act of 1988".

SEC. 3502.[83] REQUIREMENT OF NATIONAL TREATMENT IN UNDERWRITING GOVERNMENT DEBT INSTRUMENTS.

(a) FINDINGS.—The Congress finds that—

(1) United States companies can successfully compete in foreign markets if they are given fair access to such markets;

(2) a trade surplus in services could offset the deficit in manufactured goods and help lower the overall trade deficit significantly;

(3) in contrast to the barriers faced by United States firms in Japan, Japanese firms generally have enjoyed access to United States financial markets on the same terms as United States firms; and

(4) United States firms seeking to compete in Japan face or have faced a variety of discriminatory barriers effectively precluding such firms from fairly competing for Japanese business, including—

(A) limitations on membership on the Tokyo Stock Exchange;

(B) high fixed commission rates (ranging as high as 80 percent) which must be paid to members of the exchange by nonmembers for executing trades;

(C) unequal opportunities to participate in and act as lead manager for equity and bond underwritings;

(D) restrictions on access to automated teller machines;

(E) arbitrarily applied employment requirements for opening branch offices;

(F) long delays in processing applications and granting approvals for licenses to operate; and

(G) restrictions on foreign institutions' participation in Ministry of Finance policy advisory councils.

(b) DESIGNATION OF CERTAIN PERSONS AS PRIMARY DEALERS PROHIBITED.—

(1) GENERAL RULE.—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, any person of a foreign country as a primary dealer in government debt instruments if such foreign country does not accord to United States companies the same competitive opportunities in the underwriting and distribution of government debt instruments issued by such country as such country accords to domestic companies of such country.

(2) CERTAIN PRIOR ACQUISITIONS EXCEPTED.—Paragraph (1) shall not apply to the continuation of the prior designation of a company as a primary dealer in government debt instruments if—

(A) such designation occurred before July 31, 1987; and

[81] Subtitle D, cited as the "Export-Import Bank and Tied Aid Credit Amendments Act of 1988", can be found on page 1315.

[82] 22 U.S.C. 5341.

[83] 22 U.S.C. 5342.

(B) before July 31, 1987—

(i) control of such company was acquired from a person (other than a person of a foreign country) by a person of a foreign country; or

(ii) in conjunction with a person of a foreign country, such company informed the Federal Reserve Bank of New York of the intention of such person to acquire control of such company.

(c) EXCEPTION FOR COUNTRIES HAVING OR NEGOTIATING BILATERAL AGREEMENTS WITH THE UNITED STATES.—Subsection (b) shall not apply to any person of a foreign country if—

(1) that country, as of January 1, 1987, was negotiating a bilateral agreement with the United States under the authority of section 102(b)(4)(A) of the Trade Act of 1974 (19 U.S.C. 2112(b)(4)(A)); or

(2) that country has a bilateral free trade area agreement with the United States which entered into force before January 1, 1987.

(d) PERSON OF A FOREIGN COUNTRY DEFINED.—For purposes of this section, a person is a "person of a foreign country" if that person, or any other person which directly or indirectly owns or controls that person, is a resident of that country, is organized under the laws of that country, or has its principal place of business in that country.

(e) EFFECTIVE DATE.—This section shall take effect 12 months after the date of the enactment of this Act.

SUBTITLE G—FINANCIAL REPORTS

SEC. 3601.[84] SHORT TITLE.

This subtitle may be cited as the "Financial Reports Act of 1988".

SEC. 3602.[85] QUADRENNIAL REPORTS ON FOREIGN TREATMENT OF UNITED STATES FINANCIAL INSTITUTIONS.

Not less frequently than every 4 years, beginning December 1, 1990, the Secretary of the Treasury, in conjunction with the Secretary of State, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Department of Commerce, shall report to the Congress on (1) the foreign countries from which foreign financial services institutions have entered into the business of providing financial services in the United States, (2) the kinds of financial services which are being offered, (3) the extent to which foreign countries deny national treatment to United States banking organizations and securities companies, and (4) the efforts undertaken by the United States to eliminate such discrimination. The report shall focus on those countries in which there are significant denials of national treatment which impact United States financial firms. The report shall also describe the progress of discussions pursuant to section 3603.

[84] 22 U.S.C. 5351.
[85] 22 U.S.C. 5352.

SEC. 3603.[86] FAIR TRADE IN FINANCIAL SERVICES.

(a) DISCUSSIONS.—When advantageous the President or his designee shall conduct discussions with the governments of countries that are major financial centers, aimed at:

(1) ensuring that United States banking organizations and securities companies have access to foreign markets and receive national treatment in those markets;

(2) reducing or eliminating barriers to, and other distortions of, international trade in financial services;

(3) achieving reasonable comparability in the types of financial services permissible for financial service companies; and

(4) developing uniform supervisory standards for banking organizations and securities companies, including uniform capital standards.

(b) CONSULTATION BEFORE DISCUSSIONS.—Before entering into those discussions, the President or his designee shall consult with the committees of jurisdiction in the Senate and the House of Representatives.

(c) RECOMMENDATIONS.—After completing those discussions and after consultation with the committees of jurisdiction, the President shall transmit to the Congress any recommendations that have emerged from those discussions. Any recommendations for changes in United States financial laws or practices shall be accompanied by a description of the changes in foreign financial laws or practices that would accompany action by the Congress, and by an explanation of the benefits that would accrue to the United States from adoption of the recommendations.

(d) CONSTRUCTION OF SECTION.—Nothing in this section may be construed as prior approval of any legislation which may be necessary to implement any recommendations resulting from discussions under this section.

SEC. 3604.[87] BANKS LOAN LOSS RESERVES.

The Federal Reserve Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives[88] a report on the issues raised by including loan loss reserves as part of banks' primary capital for regulatory purposes by March 31, 1989. Such report shall include a review of the treatment of loan loss reserves and the composition of primary capital of banks in other major industrialized countries, and shall include an analysis as to whether loan loss reserves should continue to be counted as primary capital for regulatory purposes.

TITLE IV—AGRICULTURAL TRADE[89]

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[86] 22 U.S.C. 5353.

[87] 22 U.S.C. 5354.

[88] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives should be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

[89] Title IV, cited as the "Agricultural Competitiveness and Trade Act of 1988", may be found in *Legislation on Foreign Relations Through 2005*, vol. I–B.

SUBTITLE G—PESTICIDE MONITORING IMPROVEMENTS [90]

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TITLE V—FOREIGN CORRUPT PRACTICES AMENDMENTS; INVESTMENT; AND TECHNOLOGY

SUBTITLE A—FOREIGN CORRUPT PRACTICES ACT AMENDMENTS; REVIEW OF CERTAIN ACQUISITIONS

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PART I—FOREIGN CORRUPT PRACTICES ACT AMENDMENTS [91]

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SUBTITLE C—COMPETITIVENESS POLICY COUNCIL ACT

SEC. 5201.[92] SHORT TITLE.

This subtitle may be cited as the "Competitiveness Policy Council Act".

SEC. 5202.[93] FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) efforts to reverse the decline of United States industry has been hindered by—

(A) a serious erosion in the institutions and policies which foster United States competitiveness including a lack of high quality domestic and international economic and scientific data needed to—

(i) reveal sectoral strengths and weaknesses;

(ii) identify potential new markets and future technological and economic trends; and

(iii) provide necessary information regarding the competitive strategies of foreign competitors;

(B) the lack of a coherent and consistent government competitiveness policy, including policies with respect to—

(i) international trade, finance, and investment,

(ii) research, science, and technology,

(iii) education, labor retraining, and adjustment,

(iv) macroeconomic and budgetary issues,

(v) antitrust and regulation, and

(vi) government procurement;

(2) the United States economy benefits when business, labor, government, academia, and public interest groups work together cooperatively;

(3) the decline of United States economic competitiveness endangers the ability of the United States to maintain the defense industrial base which is necessary to the national security of the United States;

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[90] Subtitle G, the "Pesticide Monitoring Improvements Act of 1988", may be found in *Legislation on Foreign Relations Through 2005*, vol. I–B.

[91] Part I, the "Foreign Corrupt Practices Act Amendments of 1988", amended sec. 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2). The text of the amendment may be found at page 1741. The freestanding provisions in Part I may be found at page 1752.

[92] 15 U.S.C. 4801 note.

[93] 15 U.S.C. 4801.

(4) the world is moving rapidly toward the creation of an integrated and interdependent economy, a world economy in which the policies of one nation have a major impact on other nations;

(5) integrated solutions to such issues as trade and investment research, science, and technology, education, and labor retraining and adjustments help the United States compete more effectively in the world economy; and

(6) government, business, labor, academia, and public interest groups shall cooperate to develop and coordinate long-range strategies to help assure the international competitiveness of the United States economy.

(b) PURPOSE.—It is the purpose of this subtitle—

(1) to develop recommendations for long-range strategies for promoting the international competitiveness of the United States industries; and

(2) to establish the Competitiveness Policy Council which shall—

(A) analyze information regarding the competitiveness of United States industries and business and trade policy;

(B) create an institutional forum where national leaders with experience and background in business, labor, government, academia, and public interest activities shall—

(i) identify economic problems inhibiting the competitiveness of United States agriculture, business, and industry;

(ii) develop long-term strategies to address such problem; and

(C) make recommendations on issues crucial to the development of coordinated competitiveness strategies;

(D) publish analysis in the form of periodic reports and recommendations concerning the United States business and trade policy.

SEC. 5203.[94] COUNCIL ESTABLISHED.

There is established the Competitiveness Policy Council (hereafter in this subtitle referred to as the "Council"), an advisory committee under the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 5204.[95] DUTIES OF THE COUNCIL.

The Council shall—

(1) develop recommendations for national strategies and on specific policies intended to enhance the productivity and international competitiveness of United States industries;

(2) provide comments, when appropriate, and through any existing comment procedure, on—

(A) private sector requests for governmental assistance or relief, specifically as to whether the applicant is likely, by receiving the assistance or relief, to become internationally competitive; and

[94] 15 U.S.C. 4802.
[95] 15 U.S.C. 4803.

(B) what actions should be taken by the applicant as a condition of such assistance or relief to ensure that the applicant is likely to become internationally competitive;

(3) analyze information concerning current and future United States economic competitiveness useful to decision making in government and industry;

(4) create a forum where national leaders with experience and background in business, labor, academia, public interest activities, and government shall identify and develop recommendations to address problems affecting the economic competitiveness of the United States;

(5) evaluate Federal policies, regulations, and unclassified international agreement on trade, science, and technology to which the United States is a party with respect to the impact on United States competitiveness;

(6) provide policy recommendations to the Congress, the President, and the Federal departments and agencies regarding specific issues concerning competitiveness strategies;

(7) monitor the changing nature of research, science, and technology in the United States and the changing nature of the United States economy and its capacity—

(A) to provide marketable, high quality goods and services in domestic and international markets; and

(B) to respond to international competition;

(8) identify—

(A) Federal and private sector resources devoted to increased competitiveness; and

(B) State and local government programs devised to enhance competitiveness, including joint ventures between universities and corporations;

(9) establish, when appropriate, subcouncils of public and private leaders to develop recommendations on long-term strategies for sectors of the economy and for specific competitiveness issues;

(10) review policy recommendations developed by the subcouncils and transmit such recommendations to the Federal agencies responsible for the implementation of such recommendations;

(11) prepare, publish, and distribute reports containing the recommendations of the Council; and

(12) publish their analysis and recommendations in the form of an annual report to the President and the Congress which also comments on the overall competitiveness of the American economy.

SEC. 5205.[96] MEMBERSHIP.

(a) COMPOSITION AND REPRESENTATION.—

(1) The Council shall consist of 12 members, of whom—

(A) four members shall be appointed by the President, of whom—

(i) one shall be a national leader with experience and background in business;

[96] 15 U.S.C. 4804.

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader who has been active in public interest activities; and

(iv) one shall be a head of a Federal department or agency;

(B) four members shall be appointed by the majority leader and the minority leader of the Senate, acting jointly, of whom—

(i) one shall be a national leader with experience or background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader with experience and background in the academic community; and

(iv) one shall be a representative of State or local government; and

(C) four members shall be appointed by the Speaker, the minority leader of the House of Representatives, acting jointly, of whom—

(i) one shall be a national leader with experience and background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader with experience and background in the academic community; and

(iv) one shall be a representative of State or local government.

(2) In addition to the head of a Federal department or agency appointed in accordance with subsection (a)(1)(A)(iv), other Federal officials may participate on an ex-officio basis as requested by the Council.

(3) All members of the Council shall be individuals who have a broad understanding of the United States economy and the United States competitive position internationally.

(4) Not more than 6 members of the Council shall be members of the same political party.

(b) INITIAL APPOINTMENTS.—The initial members of the Council shall be appointed within 30 days after the date of the enactment of the Customs and Trade Act of 1990.[97]

(c) VACANCIES.—

(1) A vacancy on the Council shall be filled in the same manner in which the original appointment was made.

(2) Any member appointed to fill a vacancy on the Council occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term.

(3) A member of the Council may serve after the expiration of the term of such member until the successor of such member has taken office.

[97] Sec. 133(a)(1) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 648) struck out "January 21, 1989" and inserted in lieu thereof "the date of the enactment of the Customs and Trade Act of 1990" [Aug. 20, 1990].

(d) REMOVAL.—Members of the Council may be removed only for malfeasance in office.

(e)[98] CONFLICT OF INTEREST.—A member of the Council shall not serve as an agent for a foreign principal or a lobbyist for a foreign entity (as the terms "lobbyist" and "foreign entity" are defined under section 3 of the Lobbying Disclosure Act of 1995).[99]

(f)[98] EXPENSES.—Each member of the Council, while engaged in duties as a member of the Council, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(g) QUORUM.—

(1) IN GENERAL.—Seven members of the Council constitute a quorum, except that a lesser number may hold hearings if such action is approved by a two-thirds vote of the entire Council.

(2) INITIAL ORGANIZATION.—The Council shall not commence its duties until all the nongovernmental members have been appointed and have qualified.

(h) CHAIRPERSON.—The Council shall elect, by a two-thirds vote of the entire Council, a chairperson from among the nongovernmental members.

(i) MEETINGS.—The Council shall meet at the call of the chairperson or a majority of the members.

(j) POLICY ACTIONS.—Except as provided in subsection (g), no action establishing policy shall be taken by the Council unless approved by two-thirds of the entire membership of the Council.

(k)[100] ALTERNATE MEMBERS.—

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[98] Sec. 133(a)(2) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 648) struck out subsecs. (e) and (f) and inserted new subsecs. (e) and (f). These subsections previously read as follows:

"(e) CONFLICT OF INTEREST.—

"(1) A member of the Council may not serve as an agent for a foreign principal.

"(2) Members of the Council shall be required to file a financial disclosure report under title II of the Ethics in Government Act of 1978 (Public Law 95–521), except that such reports shall be held confidential and exempt from any law otherwise requiring their public disclosure.

"(3) Members of the Council shall be deemed to be special Government employees, as defined in section 202 of title 18, United States Code, for purposes of sections 201, 202, 203, 205, and 208 of such title.

"(f) COMPENSATION.—

"(1) Each member of the Council who is not employed by the Federal Government or any State or local government—

"(A) shall be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule pursuant to section 5332 of title 5, United States Code, for each day such member is engaged in duties as a member of the Council; and

"(B) shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with section 5703 of such title.

"(2) Each member of the Council who is employed by the Federal Government or any State or local government shall serve on the Council without additional compensation, but while engaged in duties as a member of the Council shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with subchapter I of chapter 57 of title 5, United States Code.".

[99] Sec. 12(a) of Public Law 104–65 (109 Stat. 701) inserted "or a lobbyist for a foreign entity (as the terms "lobbyist" and "foreign entity" are defined under section 3 of the Lobbying Disclosure Act of 1995)" after "an agent for a foreign principal". Public Law 104–65 amends sec. 5206(e) but also refers to 15 U.S.C. 4804(e) to be amended. It is interpreted that the amendment is to be applied to sec. 5205(e) (15 U.S.C. 4804(e)).

[100] Sec. 133(a)(3) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 648) struck out subsecs. (l) and (m), which previously read as follows:

"(l) EXPERTS AND CONSULTANTS.—The Council may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to ex-

Continued

(1) Each member of the Council shall designate one alternate representative to attend any meeting that such member is unable to attend.

(2) In the course of attending any such meeting, an alternate representative shall be considered a member of the Council for all purposes, except for voting.

SEC. 5206.[101] **EXECUTIVE DIRECTOR AND STAFF.**

(a) EXECUTIVE DIRECTOR.—

(1) The principal administrative officer of the Council shall be an Executive Director, who shall be appointed by the Council and who shall be paid at a rate not to exceed GS–18 of the General Schedule.

(2) The Executive Director shall serve on a full-time basis.

(b) STAFF.—(1) Within the limitations of appropriations to the Council, the Executive Director may appoint a staff for the Council in accordance with the Federal civil service and classification laws.

(2) The staff of the Council shall be deemed to be special government employees as defined in section 202 of title 18, United States Code, for purposes of title II of the Ethics in Government Act of 1978 and sections 201, 202, 203, 205, 207, and 208 of title 18, United States Code.

(c)[102] EXPERTS AND CONSULTANTS.—The council may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay for GS–16 of the General Schedule.

(d)[102] DETAILS.—Upon request of the Council, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this subtitle.

SEC. 5207.[103] **POWERS OF THE COUNCIL.**

(a) HEARINGS.—The Council may, for the purpose of carrying out the provisions of this subtitle, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Council considers appropriate. The Council may administer oaths or affirmations to witnesses appearing before the Council.

(b) INFORMATION.—

(1)(A) Except as provided in subparagraph (B), the Council may secure directly from any Federal agency information necessary to enable the Council to carry out the provisions of this subtitle. Upon request of the chairman of the Council, the head of such agency shall promptly furnish such information to the Council.

(B) Subparagraph (A) does not apply to matters that are specifically authorized under criteria established by an Executive

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ceed the daily equivalent of the maximum annual rate of basic pay for GS–16 of the General Schedule.

"(m) DETAILS.—Upon request of the Council, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this subtitle.".

[101] 15 U.S.C. 4805.

[102] Sec. 133(b) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 648) added subsecs. (c) and (d).

[103] 15 U.S.C. 4806.

order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(2) In any case in which the Council receives any information from a Federal agency, the Council shall not disclose such information to the public unless such agency is authorized to disclose such information pursuant to Federal law.

(c)[104] CONSULTATION WITH THE PRESIDENT AND THE CONGRESS.—No later than 120[105] days after the initial members are appointed to the Council, the Council shall submit a report to the President, the Senate Governmental Affairs Committee, and the appropriate committees of the House of Representatives and of the Senate, that proposes the type and scope of activities the Council shall undertake, including the extent to which the Council will coordinate activities with other advisory committees relating to trade and competitiveness in order to maximize the effectiveness of the Council.

(d)[104] GIFTS.—The Council may accept, use, and dispose of gifts or donations of services or property.

(e)[104] USE OF THE MAILS.—The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(f)[104] ADMINISTRATIVE AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Council, on a reimbursable basis, such administrative and support services as the Council may request.

(g)[104] SUBCOUNCILS.—

(1) The Council may establish, for such period of time as the Council determines appropriate, subcouncils of public and private leaders to analyze specific competitive issues.

(2) Any such subcouncil shall include representatives of business, labor, government, and other individuals or representatives of groups whose participation is considered by the Council to be important to developing a full understanding of the subject with which the subcouncil is concerned.

(3) Any such subcouncil shall include a representative of the Federal Government.

(4) Any such subcouncil shall assess the actual or potential competitiveness problems facing the industry or the specific policy issues with which the subcouncil is concerned and shall formulate specific recommendations for responses by business, government, and labor—

(A) to encourage adjustment and modernization of the industry involved;

(B) to monitor and facilitate industry responsiveness to opportunities identified under section 5208(b)(1)(B);

(C) to encourage the ability of the industry involved to compete in markets identified under section 5208(b)(1)(C); or

[104] Sec. 133(c)(1) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 649) redesignated subsecs. (d) through (i) as (c) through (h), respectively. The original legislation contained no subsec. (c).

[105] Sec. 133(c)(2) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 649) struck out "60" and inserted in lieu thereof "120".

(D) to alleviate the problems in a specific policy area facing more than one industry.

(5) Any discussion held by any subcouncil shall not be considered to violate any Federal or State antitrust law.

(6) Any discussion held by any subcouncil shall not be subject to the provisions of the Federal Advisory Committee Act, except that a Federal representative shall attend all subcouncil meetings.

(7) Any subcouncil shall terminate 30 days after making recommendations, unless the Council specifically requests that the subcouncil continue in operation.

(h)[104] APPLICABILITY OF ADVISORY COMMITTEE ACT.—The provisions of subsections (e) and (f) of section 10, of the Federal Advisory Committee Act shall not apply to the Council.

SEC. 5208.[106] ANNUAL REPORT.

(a) SUBMISSION OF REPORT.—The Council shall annually on March 1[107] submit to the President, the Senate Governmental Affairs Committee, and the appropriate Committees of the House of Representatives and the Senate a report setting forth—

(1) the goals to achieve a more competitive United States economy;

(2) the policies needed to meet such goals;

(3) a summary of existing policies of the Federal Government or State and local governments significantly affecting the competitiveness of the United States economy; and

(4) a summary of significant economic and technological developments, in the United States and abroad, affecting the competitive position of United States industries.

(b) CONTENTS OF REPORT.—The report submitted under subsection (a) shall—

(1) identify and describe actual or foreseeable developments, in the United States and abroad, which—

(A) create a significant likelihood of a competitive challenge to, or of substantial dislocation in, an established United States industry;

(B) present significant opportunities for United States industries to compete in new geographical markets or product markets, or to expand the position of such industries in established markets; or

(C) create a significant risk that United States industries shall be unable to compete successfully in significant markets;

(2) specify the industry sectors affected by the developments described in the report under paragraph (1); and

(3) contain a statement of the findings and recommendations of the Council during the previous fiscal year, including any recommendations of the Council for (a) such legislative or administrative actions as the Council considers appropriate, and (b) including the elimination, consolidation, reorganization of government agencies especially such agencies that specifically

[106] 15 U.S.C. 4807.

[107] Sec. 133(d) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 649) struck out "prepare and" and inserted in lieu thereof "on March 1".

deal with research, science, technology, and international trade.

(c) REPORT BY CONGRESSIONAL COMMITTEES.—The Council shall consult with each committee to which a report is submitted under this section and after such consultation, each such committee shall submit to its respective House a report setting forth the views and recommendations of such committee with respect to the report of the Council.

SEC. 5209.[108] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of the fiscal years 1991 and 1992 [109] such sums as may be necessary not to exceed $5,000,000 to carry out the provisions of this subtitle.

SEC. 5210.[110] DEFINITIONS.

For purposes of this subtitle—

(1) the term "Council" means the Competitiveness Policy Council established under section 5203;

(2) the term "member" means a member of the Competitiveness Policy Council;

(3) the term "United States" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and any other territory or possession of the United States; and

(4) the term "agent of a foreign principal" is defined as such term is defined under subsection (d) of the first section of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611) subject to the provisions of section 3 of such Act (22 U.S.C. 613).

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SUBTITLE E—TRADE DATA AND STUDIES

PART I—NATIONAL TRADE DATA BANK

SEC. 5401.[111] DEFINITIONS.

For purposes of this subtitle—

(1) the term "Committee" means the Interagency Trade Data Advisory Committee;

(2) the term "Data Bank" means the National Trade Data Bank;

(3) the term "Executive agency" has the same meaning as in section 105 of title 5, United States Code;

(4) the term "export promotion data system" means the data system known as the Commercial Information Management System which is maintained and operated by the United States and Foreign Commercial Service and is established as part of the Data Bank under section 3816;

(5) the term "international economic data system" means the data system established as part of the Data Bank under sec-

[108] 15 U.S.C. 4808.
[109] Sec. 133(e) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 649) struck out "1989 and 1990" and inserted in lieu thereof "1991 and 1992".
[110] 15 U.S.C. 4809.
[111] 15 U.S.C. 4901.

tion 5406 which contains data useful to policymakers and analysis concerned with international economics; and

(6) the term "Secretary" means the Secretary of Commerce.

SEC. 5402.[112] INTERAGENCY TRADE DATA ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established the Interagency Trade Data Advisory Committee.

(b) MEMBERSHIP.—The Committee shall consist of—

(1) the United States Trade Representative;
(2) the Secretary of Agriculture;
(3) the Secretary of Defense;
(4) the Secretary of Commerce;
(5) the Secretary of Labor;
(6) the Secretary of the Treasury;
(7) the Secretary of State;
(8) the Director of the Office of Management and Budget;
(9) the Director of Central Intelligence;
(10) the Chairman of the Federal Reserve Board;
(11) the Chairman of the International Trade Commission;
(12) the President of the Export-Import Bank;
(13) the President of the Overseas Private Investment Corporation; and
(14) such other members as may be appointed by the President from full-time officers or employees of the Federal Government.

(c) CHAIRMAN.—The Secretary of Commerce shall be Chairman of the Committee.

(d) DESIGNEES.—Any member of the Committee may appoint a designee to serve in place of such member on the Committee.

SEC. 5403.[113] FUNCTIONS OF THE COMMITTEE.

The Committee shall advise the Secretary of Commerce, as appropriate, on the establishment, structure, contents, and operation of a National Trade Data Bank in accordance with section 5406 in order to assure the timely collection of accurate data and to provide the private sector and government officials efficient access to economic and trade data collected by the Federal Government for purposes of policymaking and export promotion.

SEC. 5404.[114] CONSULTATION WITH THE PRIVATE SECTOR AND GOVERNMENT OFFICIALS.

The Secretary shall regularly consult with representatives of the private sector and officials of State and local governments to assess the adequacy of United States trade information. The Secretary shall seek recommendations on how trade information can be made more accessible, understandable, and relevant. The Secretary shall seek recommendations as to what data should be included in the export promotion data system in the Data Bank.

SEC. 5405.[115] COOPERATION AMONG EXECUTIVE AGENCIES.

Each executive agency shall furnish to the Secretary such information for inclusion in the National Trade Data Bank as the Sec-

[112] 15 U.S.C. 4902.
[113] 15 U.S.C. 4903.
[114] 15 U.S.C. 4904.
[115] 15 U.S.C. 4905.

retary, in consultation with the Advisory Committee, considers necessary to the operation of the Data Bank.

SEC. 5406.[116] ESTABLISHMENT OF THE DATA BANK.

(a) ESTABLISHMENT.—Within 2 years after the date of the enactment of this Act, the Secretary of Commerce shall establish the Data Bank. The Secretary shall manage the Data Bank. The Data Bank shall consist of two data systems, to be designated the International Economic Data System, as described in subsection (b) and the Export Promotion Data System, as described in subsection (c).

(b) INTERNATIONAL ECONOMIC DATA SYSTEM.—The International Economic Data System shall include current and historical information determined by the Secretary to be useful (after the consultation required by section 5404) to policymakers and analysts concerned with international economics and trade and which shall include data compiled or obtained by appropriate executive agencies. Such information shall not identify parties to transactions. Such information may include data for the United States and countries with which the United States has important economic relations including—

(1) data on imports and exports, including—

(A) aggregate import and export data for the United States and for each foreign country;

(B) industry-specific import and export data for each foreign country;

(C) product and service specific import and export data for the United States;

(D) market penetration information; and

(E) foreign destinations for exports of the United States;

(2) data on international service transactions;

(3) information on international capital markets, including—

(A) interest rates; and

(B) average exchange rates;

(4) information on foreign direct investment in the United States economy;

(5) international labor market information, including—

(A) wage rates for major industries;

(B) international unemployment rates; and

(C) trends in international labor productivity;

(6) information on foreign government policies affecting trade, including—

(A) trade barriers; and

(B) export financing policies;

(7) import and export data for the United States on a State-by-State basis aggregated at the product level including—

(A) data concerning the country shipping the import, the State of first destination, and the original part of entry for imports of goods and, to the extent possible, services; and

(B) data concerning the State of the exporter, the port of departure, and the country of first destination for export of goods and, to the extent possible, services; and

[116] 15 U.S.C. 4905.

(8) any other economic and trade data collected by the Federal Government that the Secretary determines to be useful in carrying out the purposes of this subtitle.

(c) EXPORT PROMOTION DATA SYSTEM.—The export promotion data system shall include data and information collected by the Federal Government on the industrial sectors and markets of foreign countries which are determined by the Secretary (after consultation required by section 5404) to be of the greatest interest to United States business firms that are engaged in export-related activities and to Federal and State agencies that promote exports, while providing for the confidentiality of proprietary business information, and shall be designed to use the most effective means of disseminating data and information electronically through the Department, or Department-designated offices, or through other available data bases in an accurate and timely manner. Such data system shall monitor, organize, and disseminate selected information on—

(1) specific business opportunities in foreign countries;

(2) specific industrial sectors within foreign countries with high export potential such as—

(A) size of the market;

(B) distribution of products;

(C) competition;

(D) significant applicable laws, regulations, specifications, and standards;

(E) appropriate government officials; and

(F) trade associations and other contact points; and

(3) foreign countries generally, such as—

(A) the general economic conditions;

(B) common business practices;

(C) significant tariff and trade barriers; and

(D) other significant laws and regulations regarding imports, licensing, and the protection of intellectual property;

(4) export financing information, including the availability, through public sources of funds for United States exporters and foreign competitors;

(5) transactions involving barter and countertrade; and

(6) any other similar information, that the Secretary determines to be useful in carrying out the purposes of this subtitle.

SEC. 5407.[117] OPERATION OF THE DATA BANK.

The Secretary shall manage the Data Bank to provide the most appropriate data retrieval system or systems possible. Such system or systems shall—

(1) be designed to utilize data processing and retrieval technology in monitoring, organizing, analyzing, and disseminating the data and information contained in the Data Bank;

(2) use the most effective and meaningful means of organizing and making such information available to—

(A) United States Government policymakers;

(B) United States business firms;

(C) United States workers;

(D) United States industry associations;

[117] 15 U.S.C. 4907.

(E) United States agricultural interests;

(F) State and local economic development agencies; and

(G) other interested United States persons who could benefit from such information;

(3) be of such quality and timeliness and in such form as to assist coordinated trade strategies for the United States; and

(4) facilitate dissemination of information through nonprofit organizations with significant outreach programs which complement the regional outreach programs of the United States and Foreign Commercial Service.

SEC. 5408.[118] INFORMATION ON THE SERVICE SECTOR.

(a) SERVICE SECTOR INFORMATION.—The Secretary shall ensure that, to the extent possible, there is included in the Data Bank information on service sector economic activity that is as complete and timely as information on economic activity in the merchandise sector.

(b) SURVEY.—The Secretary shall undertake a new benchmark survey of service transactions, including transactions with respect to—

(1) banking services;

(2) information services, including computer software services;

(3) brokerage services;

(4) transportation services;

(5) travel services;

(6) engineering services;

(7) construction services; and

(8) health services.

(c) GENERAL INFORMATION AND INDEX OF LEADING INDICATORS.—The Secretary shall provide—

(1) not less than once a year, comprehensive information on the service sector of the economy; and

(2) an index of leading indicators which includes the measurement of service sector activity in direct proportion to the contribution of the service sector to the gross national product of the United States.

SEC. 5409.[119] EXCLUSION OF INFORMATION.

The Data Bank shall not include any information—

(1) the disclosure of which to the public is prohibited under any other provision of law or otherwise authorized to be withheld under other provision of law; or

(2) that is specifically authorized under criteria established by statute or an Executive order not to be disclosed in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

SEC. 5410.[120] NONDUPLICATION.

The Secretary shall ensure that information systems created or developed pursuant to this subtitle do not unnecessarily duplicate

[118] 15 U.S.C. 4908.
[119] 15 U.S.C. 4909.
[120] 15 U.S.C. 4910.

information systems available from other Federal agencies or from the private sector.

SEC. 5411.[121] COLLECTION OF DATA.

Except as provided in section 5408, nothing in this subtitle shall be considered to grant independent authority to the Federal Government to collect any data or information from individuals or entities outside of the Federal Government.

SEC. 5412.[122] FEES AND ACCESS.

The Secretary shall provide reasonable public services and access (including electronic access) to any information maintained as part of the Data Bank and may charge reasonable fees consistent with section 552 of title 5, United States Code.

SEC. 5413.[123] REPORT TO CONGRESS.

(a) INTERIM REPORT.—Not more than 1 year after the date of enactment of this Act, the Secretary after consultation with the Advisory Committee shall submit a report to the Governmental Affairs Committee and the Banking, Housing, and Urban Affairs Committee of the Senate, other appropriate committees of the Senate, and the House of Representatives describing actions taken pursuant to this subtitle, particularly—

(1) actions taken to provide the information on services described in section 5408; and

(2) actions taken to provide State-by-State information as described in section 5406(b)(7).

(b) FINAL REPORT.—Not more than 3 years after the date of enactment of this Act, the Secretary after consultation with the Advisory Committee shall submit a report to the Governmental Affairs Committee and the Banking, Housing, and Urban Affairs Committee of the Senate, other appropriate committees of the Senate, and the House of Representatives—

(1) assessing the current quality and comprehensiveness of, and the ability of the public and of private entities to obtain access to trade data;

(2) describing all other actions taken and planned to be taken pursuant to this subtitle;

(3) including comments by the private sector and by State agencies that promote exports on the implementation of the Data Bank;

(4) describing the extent to which the systems within the Data Bank are being used and any recommendations with regard to the operation of the system; and

(5) describing the extent to which United States citizens and firms have access to the data banks of foreign countries that is similar to the access provided to foreign citizens and firms.

[121] 15 U.S.C. 4911.
[122] 15 U.S.C. 4912.
[123] 15 U.S.C. 4913.

PART II—STUDIES

SEC. 5421.[124] COMPETITIVENESS IMPACT STATEMENTS.

(a) The President or the head of the appropriate department or agency of the Federal Government shall include in every recommendation or report made to the Congress on legislation which may affect the ability of United States firms to compete in domestic and international commerce a statement of the impact of such legislation on—

(1) the international trade and public interest of the United States, and

(2) the ability of United States firms engaged in the manufacture, sale, distribution, or provision of goods or services to compete in foreign or domestic markets.

(b) This section provides no private right of action as to the need for or adequacy of the statement required by subsection (a).

(c) This section shall cease to be effective six years from the date of enactment.

SEC. 5422.[125] STUDY AND REPORT BY THE ADVISORY COUNCIL ON FEDERAL PARTICIPATION IN SEMATECH.

(a) STUDY AND REPORT.—Not later than February 1, 1989, and annually thereafter for each fiscal year in which appropriated funds are expended for Sematech the Advisory Council on Federal Participation in Sematech established under section 273(a) of the National Defense Authorization Act for fiscal years 1988 and 1989 (15 U.S.C. 4603(a); Public Law 100–180) shall conduct a study and submit a report to the Governmental Affairs Committee and the Armed Services Committee of the Senate and to appropriate committees of the House of Representatives concerning Federal participation in Sematech. The study and report shall be conducted under the direction of the Under Secretary of Commerce for Economic Affairs.

(b) COUNCIL RECOMMENDATIONS AND REPORT.—The Council shall include in the report submitted under subsection (a) the following:

(1) identification of potential sources of Federal funding from department and agency budgets for Sematech and recommendations concerning methods and terms of Federal financial participation in Sematech, including grants, loans, loan guarantees, and contributions in kind. The feasibility of methods of Federal recoupment shall also be considered;

(2) definition and assessment of continued Federal participation in Sematech including, but not limited to, issues of technology research and development, civilian and defense industrial base objectives and initiatives, and commercialization. The report shall include a summary of the most recent plans, milestones, and cost estimates for Sematech, including any changes and alterations, and shall comment on Sematech's accomplishments and shortfalls in the preceding fiscal year;

(3) coordination of inter-agency participation, including all matters pertaining to Federal funding and decisionmaking,

[124] 2 U.S.C. 194b.
[125] 15 U.S.C. 4603a.

and other issues regarding Federal participation in Sematech; and

(4) any other issues and questions the Council deems appropriate shall be considered.

SEC. 5423. IMPACT OF NATIONAL DEFENSE EXPENDITURES ON INTERNATIONAL COMPETITIVENESS.

(a) FINDINGS.—The Congress finds that the ability of United States industries to compete in world markets may be adversely affected by the following factors:

(1) The allocation of intellectual resources between the private and public sectors.

(2) The distribution of innovative research and development between commercial and noncommercial applications.

(3) The number of scientific advances which are ultimately commercialized.

(4) The cost of capital which is affected by many factors including the budget deficit and defense spending.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President should evaluate the impact on United States competitiveness of—

(1) the defense spending by foreign countries, particularly Japan's expenditure of 1 percent of its gross national product for defense compared to the expenditure of the United States of 6 percent of its gross national product, and

(2) the other factors listed in subsection (a).

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TITLE VI—[Repealed—1994] [126]

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TITLE VII—BUY AMERICAN ACT OF 1988 [127]

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TITLE VIII—SMALL BUSINESS [128]

SEC. 8001.[129] SHORT TITLE.

This title may be cited as the "Small Business International Trade and Competitiveness Act".

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SEC. 8009.[129] GLOBALIZATION OF PRODUCTION.

Within one year after the date of enactment of this Act, the Administrator of the Small Business Administration shall submit a written report to the Committees on Small Business of the House of Representatives and the Senate, prepared by the Administration in conjunction with the Bureau of Census and in cooperation with other relevant agencies, that would—

[126] Sec. 391(i) of Public Law 103–382 (108 Stat. 4023) repealed Title VI, the "Education and Training for a Competitive America Act of 1988".

[127] Title VII amended the Buy American Act (41 U.S.C. 10A–10d).

[128] Title VIII, the "Small Business International Trade and Competitiveness Act", amended the Small Business Act (15 U.S.C. 631). The freestanding provisions are reproduced here.

[129] 15 U.S.C. 631 note.

(1) analyze to the extent possible the effect of increased outsourcing and other shifts in production arrangements on small firms, particularly manufacturing firms, within the United States subcontractor tier and to the extent that such data is not available determine methods by which such data may be collected;

(2) assess the impact of specific economic policies, including, but not limited to, procurement, tax and trade policies, in facilitating outsourcing and other international production arrangements; and

(3) make recommendations as to changes in Government policy that would improve the competitive position of smaller United States subcontractors, including recommendations as to incentives which could be provided to larger corporations to maximize their use of United States subcontractors and assist these subcontractors in changing production and marketing strategies and in obtaining new business in domestic and foreign markets.

SEC. 8010.[129] SMALL BUSINESS TRADE REMEDY ASSISTANCE.

Not later than December 1, 1988, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Governmental Affairs and the Committee on Small Business of the Senate, as well as to other appropriate committees of the Senate, and to the Committee on Small Business and the Committee on Ways and Means of the House of Representatives on the costs incurred by small businesses in pursuing rights and remedies under the trade laws. Such report shall include an analysis of—

(1) the costs incurred by small businesses (and trade associations whose membership is primarily small business) in pursuing investigations under the trade remedy laws, including—

(A) antidumping investigations and proceedings under title VII of the Tariff Act of 1930;

(B) countervailing duty investigations and proceedings under section 303 or title VII of the Tariff Act of 1930;

(C) unfair trade practice investigations under section 337 of the Tariff Act of 1930;

(D) investigations under chapter 1 of title III of the Tariff Act of 1974;

(E) import relief investigations under chapter 1 of title II of the Trade Act of 1974;

(F) market disruption investigations under section 406 of the Trade Act of 1974; and

(G) national security relief investigations under section 232 of the Trade Expansion Act of 1962;

(2) the extent of assistance and information provided by the Trade Remedy Assistance Office of the United States International Trade Commission;

(3) the ability of small businesses to generate the information and resources needed for such investigations; and

(4) the costs and benefits to the Federal Government of either—

(A) providing reimbursement to small businesses for legal expenses incurred in pursuing trade remedies; or

(B) providing direct legal assistance to small businesses.

SEC. 8011.[129] NATIONAL SEMINAR ON SMALL BUSINESS EXPORTS.

(a) SEMINAR.—The Administration shall conduct a National Seminar on Small Business Exports within one year following enactment of this Act in order to develop recommendations designed to stimulate exports from small companies. The Seminar shall build upon the information collected by the Administration through previously conducted regional small business trade conferences.

(b) ASSISTANCE BY EXPERTS.—For the purpose of ascertaining facts and developing policy recommendations concerning the expansion of United States exports from small companies the Seminar shall bring together individuals who are experts in the fields of international trade and small business development and representatives of small businesses, associations, the labor community, academic institutions, and Federal, State and local governments.

(c) RECOMMENDATIONS CONCERNING UTILITY OF INTERNATIONAL CONFERENCE.—The Seminar shall specifically consider the utility of, and make recommendations regarding, a subsequent International Conference on Small Business and Trade that would—

(1) help establish linkages between United States small business owners and small business owners in foreign countries;

(2) enable United States small business owners to learn how others organize themselves for exporting; and

(3) foster greater consideration of small business concerns in the GATT.

SEC. 8012.[129] TRADE NEGOTIATIONS.

It is the sense of the Congress that the interests of the small business community have not been adequately represented in trade policy formulation and in trade negotiations. Therefore, it is the sense of the Congress that the Administrator of the Small Business Administration should be appointed as a member of the Trade Policy Committee and that the United States Trade Representative should consult with the Small Business Administration and its Office of Advocacy in trade policy formulation and in trade negotiations.

Further, it is the sense of the Congress that the United States Trade Representative would better serve the needs of the small business community with full-time staff assistance with responsibilities for small business trade issues.

Further, it is the sense of the Congress that the United States Trade Representative should appoint a special trade assistant for small business.

SEC. 8013.[129] PROMULGATION OF REGULATIONS.

Notwithstanding any law, rule, or regulation, the Small Business Administration shall promulgate final regulations to carry out the provisions of this title within six months after the date of enactment of this title.

SEC. 8014.[129] EFFECTIVE DATE.

This title shall become effective on the date of its enactment.

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TITLE X—OCEAN AND AIR TRANSPORTATION

SUBTITLE A—FOREIGN SHIPPING PRACTICES

SEC. 10001.[130] **SHORT TITLE.**

This subtitle may be cited as the "Foreign Shipping Practices Act of 1988".

SEC. 10002.[131] **FOREIGN LAWS AND PRACTICES.**

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

(1) "common carrier", "marine terminal operator", "ocean transportation intermediary",[132] "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,[133] agency services, ocean transportation intermediary[134] services and 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 transportation inter-

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[130] 46 U.S.C. app. 1701 note.

[131] 46 U.S.C. app. 1710a.

[132] Sec. 111(1) of the Ocean Shipping Reform Act of 1998 (Public Law 105–258; 112 Stat 1911) struck out "non-vessel-operating-common-carrier" and inserted in lieu thereof "ocean transportation intermediary".

[133] Sec. 111(2) of Public Law 105–258 (112 Stat. 1911) struck out "forwarding and".

[134] Sec. 111(3) of Public Law 105–258 (112 Stat. 1911) struck out "non-vessel-operating common carrier" and inserted in lieu thereof "ocean transportation intermediary".

mediary,[135] 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 determines 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 and service contracts,[136] including the right of an ocean common carrier to use any or all tariffs and service contracts[136] 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

[135] Sec. 111(4) of the Ocean Shipping Reform Act of 1998 (Public Law 105–258; 112 Stat. 1911) struck out "freight forwarder" and inserted in lieu thereof "transportation intermediary".

[136] Sec. 111(6) of the Ocean Shipping Reform Act of 1998 (Public Law 105–258; 112 Stat. 1911) struck out "filed with the Commission" and inserted in lieu thereof "and service contracts".

(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)(6)[137] 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

[137] Sec. 111(7) of the Ocean Shipping Reform Act of 1998 (Public Law 105–258; 112 Stat. 1911) struck out "(b)(5)" and inserted in lieu thereof "(b)(6)".

forum and in the same manner as provided in section 2342(3)(B) of title 28, United States Code.

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(14) Federal Triangle Development Act

Partial text of Public Law 100–113 [S. 1550], 101 Stat. 735, approved August 21, 1987; as amended by Public Law 105–277 [Omnibus Consolidated and Emergency Appropriations Act, 1999; H.R. 4328], 112 Stat. 2681, approved October 21, 1998

AN ACT To complete the Federal Triangle in the District of Columbia, to construct a public building to provide Federal office space and space for an international cultural and trade center, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 7.[1] INTERNATIONAL CULTURAL AND TRADE CENTER COMMISSION

(a) ESTABLISHMENT.—There is established a commission to be known as the International Cultural and Trade Center Commission.

(b) DUTIES OF COMMISSION.—The duties of the Commission are as follows:

(1) To participate in accordance with section 4 in the planning of the building to be constructed under section 5.

(2) To enter into an agreement with the Administrator under section 8 for the lease of space in the building constructed under section 5 for establishment, operation, and maintenance of an international cultural and trade center.

(3) To operate and manage any space leased under section 8 in accordance with the objectives of this Act.

(4) To prepare under section 8 an annual report on the operation and management of such space.

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 14 members[2] as follows:

(A) The Secretary of State or his delegate.

(B) The Secretary of Commerce or his delegate

(C) The Secretary of Agriculture or his delegate.

(D) The United States Trade Representative or his delegate.

(E) The Administrator or his delegate.

(F)[3] The Chairman of the Corporation or his delegate.

(G)[3] The Mayor of the District of Columbia or his delegate.

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[1] 40 U.S.C. 1106.

[2] Sec. 1335(h)(1)(A) of the Foreign Affairs Reform and Restructuring Act of 1998 (Division G of Public Law 105–277; 112 Stat. 2681–788) struck out "15 members" and inserted in lieu thereof "14 members".

[3] Sec. 1335(h)(1)(B) and (C) of the Foreign Affairs Reform and Restructuring Act of 1998 (Division G of Public Law 105–277; 112 Stat. 2681–788) struck out subpara. (F) and redesignated subparas. (G) through (J) as subparas. (F) through (I), respectively. Subpara. (F) originally read "The Director of the United States Information Agency or his delegate.".

(H)[3] The Chairman of the National Endowment for the Arts or his delegate.

(I)[3] 6 individuals appointed by the President one of whom shall be a resident and registered voter of the District of Columbia and all of whom shall be specially qualified to serve on the Commission by virtue of their education, training, or experience in international trade, commerce, cultural exchange, finance, business, or management of facilities similar to the international cultural and trade center described in section 8.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(2) TERMS.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the terms of office of the private sector Members first taking office shall begin on the date of the enactment of this Act and shall expire as designated at the time of appointment, two at the end of two years, two at the end of four years, and two at the end of six years.

(B) FILLING VACANCY.—Any member of the Commission appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(3) PAY.—Members of the Commission shall serve without pay; except that any member of the Commission appointed under paragraph (1)(I)[4] shall while attending meetings of and attending hearing held by the Commission be entitled to travel or transportation expenses in accordance with section 5703 of title 5, United States Code.

(4) QUORUM.—8 members of the Commission shall constitute a quorum but lesser number may hold hearings.

(5) DESIGNATION OF CHAIRMAN.—The Chairman and Vice Chairman of the Commission shall be designated by the President; except that the Chairman may only be designated from individuals appointed under paragraph (1)(I).[4]

(6) MEETINGS.—The Commission shall meet at the call of the Chairman but no less often than every 4 months.

(d) STAFF OF COMMISSION.—

(1) GENERAL RULE.—The Commission shall have a staff, including an executive director. Such staff shall be composed of individuals who may either be appointed under paragraph (2) or detailed under paragraph (3); except that the staff of the Commission may not at any time be composed of more than 15 individuals.

(2) AUTHORITY TO APPOINT.—The Commission may appoint and fix the pay of not to exceed 10 individuals, including an individual to serve as the executive director of the Commission. Staff appointed under this paragraph shall be appointed subject to the provisions of title 5, United States Code, governing

[4] Sec. 1335(h)(2) of the Foreign Affairs Reform and Restructuring Act of 1998 (Division G of Public Law 105–277; 112 Stat. 2681–788) struck out "paragraph (1)(J)" each place it appeared in paras. (3) and (5) in subsec. (c) and inserted in lieu thereof "paragraph (1)(I)".

appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; except that—

(A) the individual appointed to serve as the executive director and one other individuals appoint to the staff of the Commission may be appointed and compensated without regard to such provisions; and

(B) the pay of any individual (other than the 2 individuals referred to in subparagraph (A)) appointed under this paragraph shall be at a rate not to exceed the maximum rate of basic pay payable to GS–17 of the General Schedule.

(3) DETAIL.—Subject to paragraph (1), upon request of the Commission, the Secretary of State, the Secretary of Commerce, the Secretary of Agriculture, the Special Trade Representative, and the Administrator[5] may detail, on a reimbursable basis, such of the personnel of the department or agency such person heads as may be necessary to assist the Commission in carrying out it duties under this Act.

(e) OFFICE SPACE AND SUPPLIES.—Upon request of the Commission, the Secretary of State, the Secretary of Commerce, the Secretary of Agriculture, The Special Trade Representative, the Administrator, and the Director of the United States Information Agency may provide, on a reimbursable basis, such office space, supplies, equipment, and other support services as may be necessary for the Commission to carry out it duties under this Act.

(f) POWERS OF COMMISSION.—

(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out it duties under this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this subsection.

(3) OBTAINING OFFICIAL DATA.—The Commission may obtain from any department or agency of the United States information necessary to enable it to carry out its duties under this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(4) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(5) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(6) AUTHORITY TO CONTRACT OUT.—Subject to applicable provisions of law, the Commission may enter into such contracts

[5] Sec. 1335(h)(3) the Foreign Affairs Reform and Restructuring Act of 1998 (Division G of Public Law 105–277; 112 Stat. 2681–788) struck out "the Administrator and the Director of the United States Information Agency" and inserted in lieu thereof "and the Administrator".

or agreements as the Commission considers appropriate to carry out any of its duties under this Act.

(7) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code.

(g) LIMITATION ON EXPENSES.—

(1) MAXIMUM AMOUNT.—The maximum amount of expenses (including salaries, travel expenses, expenses for temporary and intermittent services, expenses under contracts or agreements entered into under subsection (f)(7), and supply expenses) which the Commission may incur in any fiscal year may not exceed $1,000,000 in any fiscal year.

(2) ADJUSTMENT FOR INFLATION.—Any dollar amount referred to in this subsection, subsection (h)(3), and section 8(d) may be adjusted by the Commission annually to reflect a percentage increase or decrease in the Consumer Price Index for All Urban Consumers for the preceding calendar year, as determined by the United States Department of Labor, Bureau of Labor Statistics.

(h) FUNDING.—

(1) REQUESTS FOR TRANSFERS.—If the Commission incurs any expenses in carrying out its duties under this Act, the Commission may request the Secretary of State, the Administrator, or any other Federal official referred to in subsection (c)(1) to transfer to the Commission an amount equal to such expenses from funds appropriated to such official.

(2) AUTHORITY FOR TRANSFERS.—Subject to paragraphs (3) and (5), any official referred to in paragraph (1) may transfer such amounts from funds appropriated to such official as may be necessary to enable the Commission to carry out its duties under this Act.

(3) MAXIMUM AMOUNT OF REQUESTS AND TRANSFERS.—The aggregate amount of requests for transfers, and the aggregate amount of transfers, under this subsection may not exceed $1,000,000 in any fiscal year.

(4) DEPOSIT OF RECEIPTS.—The Commission shall deposit all amounts it receives under this subsection into the account established by section 8(d).

(5) LIMITATION ON EFFECT.—This subsection shall not be effective with respect to any fiscal year beginning after the last day of the 2-year period beginning on the first day the Commission deposits under section 8(c) funds into the account established by section 8(d).

SEC. 8.[6] OPERATION AND MANAGEMENT OF INTERNATIONAL CULTURAL AND TRADE CENTER

(a) LEASE OF SPACE.—

(1) AGREEMENT.—The Administrator and the Commission shall enter into an agreement for the Commission to lease from the Administrator not to exceed 500,000 square feet of occupiable space in the building to be constructed under section 5 to serve as an international cultural and trade center.

[6] 40 U.S.C. 1107.

(2) SIZE.—The Commission shall determine the amount of space necessary for operation of the international cultural and trade center based upon demand, except that such space may not exceed 500,000 square feet of occupiable space. Upon certification of such demand by the Commission, the Administrator shall lease such amount of space to the Commission.

(3) TERMS.—The agreement entered into under this subsection shall include at a minimum the following terms:

(A) The Commission will be permitted to sublease its space in such building to foreign missions, commercial establishments sponsored by foreign governments, and international cultural and trade organizations, including domestic organizations and State and local governments.

(B) All space leased by the Commission from the Administrator will be at such rate as the Administrator and the Commission may agree but not less than the rate established under section 6(b)(2) plus such amount as the Administrator determines is necessary to pay on an annual basis for the costs of administering such building (including operation, maintenance, and rehabilitation costs) which are attributable to such space.

(C) Such terms relating to default and nonperformance as the Administrator considers appropriate to protect the interests of the United States.

(b) ESTABLISHMENT OF CENTER.—

(1) BY COMMISSION.—The Commission shall establish, operate, and maintain an international cultural and trade center in the space leased from the Administrator under subsection (a).

(2) CONTENTS.—The international cultural and trade center may include the following:

(A) Office space for foreign missions and domestic and international organizations involved in international trade or cultural activities.

(B) A world exhibition center providing space for exhibits from foreign nations.

(C) An international bazaar providing space for commercial establishments sponsored by foreign governments.

(D) An international center providing a centralized foreign trade reference facility, conference and meeting facilities, and audio-visual facilities for translating foreign languages.

(E) Such other facilities as are consistent with the objectives of this section.

(3) SUBLEASING OF SPACE.—

(A) AGREEMENTS.—The Commission may enter into agreements with foreign missions and international cultural and trade organizations (including domestic organizations and State and local governments) to sublease any or all of the space it leased from the Administrator under subsection (a). Space subleased to such missions and organizations may only be used for establishment of trade centers and exhibitions, offices, and commercial establishments described in paragraph (2) and such other facilities

as the Commission determines are consistent with an international cultural and trade center.

(B) TERMS AND CONDITIONS.—An agreement entered into under this subsection shall be subject to such terms and conditions as the Commission determines are appropriate to carry out the objectives of this Act. The rental rate per square foot of occupiable space for space subleased under this subsection shall be determined in accordance with subsection (c); except that the Commission may adjust such rate with respect to any space subleased to a foreign mission in accordance with the recommendations of the Secretary of State acting in accordance with section 204(b) of the State Department Basic Authorities Act of 1956 (22 U.S. C. 4304(b)). The Secretary of State may reimburse the Commission for any expenses which are incurred by the Commission as a result of making adjustments in the rental rate for space under this subparagraph.

(4) REFERENCE FACILITY AND CULTURAL EVENTS.—The Commission may establish in a portion of the space leased from the Administrator under this section a centralized foreign trade reference facility and conference and meeting facilities and audio-visual facilities for translating foreign languages. The Commission may permit cultural events and other activities to be held in a portion of such space. The Commission shall establish in accordance with subsection (c) fees and charges for—

(A) the use of such facilities and auditorium, and

(B) the holding of such events and activities.

(c) RENTS AND FEES.—

(1) ESTABLISHMENT OF AMOUNT.—The Commission shall establish the amounts of fees under subsection (b)(4), and establish a rental rate for space subleased under subsection (b)(3), taking into account the objectives of this section and the best interests of the United States. In any fiscal year beginning after the last day of the 2-year period beginning on the first day the Commission deposits under this subsection funds into the account established under subsection (d), the aggregate amount of such fees and rent shall not be less than the cost to the Commission of subleasing space from the Administrator under subsection (a) in such fiscal year plus the expenses (including salaries, travel expenses, expenses for temporary and intermittent services, expenses under contracts or agreements entered into under subsection 7(f)(7), supply expenses and any reimbursable expenses) incurred by the Commission in carrying out its duties under this Act in such fiscal year.

(2) COLLECTION.—The Commission shall collect—

(A) rent for space subleased under subsection (b); and

(B) fees and charges under subsection (b).

(3) DEPOSIT.—The Commission shall deposit all amounts collected under this subsection and all amounts transferred by the Secretary of State to the Commission under subsection (b)(3)(B) into the account established under subsection (d).

(d) SEPARATE ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate account.

(2) CONTENTS.—The account shall include all amounts deposited by the Commission under subsection (c) and section 7(h).

(3) AVAILABILITY.—Amounts in the account established under this subsection shall be available to the Commission to pay—

(A) all rents owed to the Administrator for lease of space under subsection (a); and

(B) all expenses (including salaries, travel expenses, expenses for temporary and intermittent services, expenses under contracts or agreements entered into under section 7(f)(7), and supply expenses) incurred by the Commission in carrying out its duties under this Act but not exceeding $1,000,000 in any fiscal year.

(4) PAYMENTS.—The Commission shall pay, from amounts in the account established by this subsection—

(A) for lease of space under subsection (a) on an annual basis amounts owed to the Administrator for deposit into the fund established by section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490 (f)); and

(B) all expenses incurred by it in carrying out its duties under this Act but not exceeding $1,000,000 in any fiscal year.

(5) TRANSFER OF EXCESS FUNDS.—Periodically, but not less often than once per fiscal year, funds which the Commission determines are in excess of those needed to make the payments described in paragraph (4) shall be transferred by the Commission from the account established under this subsection to the fund established under section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490 (f)).

(h)[7] ANNUAL REPORT AND BUDGET.—The Commission shall prepare and transmit to the Committee on Environment and Public Works of the Senate and the Committee of Public Works and Transportation[8] of the House of Representatives (1) an annual report in January of each calendar year on the operation and management of the space leased by the Commission under subsection (a) and the international cultural and trade center, and (2) a budget for such fiscal year for operation, maintenance, and alteration of such center, including amounts received and projected to be received by the Commission in such fiscal year and expenses incurred and projected to be incurred by the Commission in such fiscal year.

* * * * * * *

[7] As enrolled. There are no subsecs. (e), (f), or (g).

[8] Sec. 1(a)(9) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Public Works and Transportation of the House of Representatives shall be treated as referring to the Committee on Transportation and Infrastructure of the House of Representatives.

(15) Customs and Miscellaneous Amendments

Partial text of Title II of Public Law 98–573 [Trade and Tariff Act of 1984; H.R. 3398], 98 Stat. 2948 at 2973, approved October 30, 1984; as amended by Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988

AN ACT To amend the trade laws, authorize the negotiation of trade agreements, extend trade preferences, change the tariff treatment with respect to certain articles, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act with the following table of contents may be cited as the "Trade and Tariff Act of 1984".

* * * * * * *

TITLE II—CUSTOMS AND MISCELLANEOUS AMENDMENTS

Subtitle A—Amendments to the Tariff Act of 1930

* * * * * * *

Subtitle B—Small Business Trade Assistance

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Subtitle C—Miscellaneous Provisions

SEC. 231. FOREIGN TRADE ZONE PROVISIONS.

(a)(1) The Congress finds that a delicate balance of the interests of the bicycle industry and the bicycle component parts industry has been reached through repeated revision of the Harmonized Tariff Schedule of the United States [1] so as to allow duty-free import of those categories of bicycle component parts which are not manufactured domestically. The Congress further finds that this balance would be destroyed by exempting otherwise dutiable bicycle component parts from the customs laws of the United States through granting foreign trade zone status to bicycle manufacturing and assembly plants in the United States and that the preservation of such balance is in the public interest and in the interest of the domestic bicycle industry.

(2) [2] * * *

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[1] Sec. 1214(s)(1) of Public Law 100–418 (102 Stat. 1160) struck out "Tariff Schedules of the United States" and inserted in lieu thereof "Harmonized Tariff Schedule of the United States".

[2] Para. (2) amended sec. 3 of the Act of June 18, 1934 (Foreign Trade Zones Act; 19 U.S.C. 81c), effective on the fifteenth day after the date of the enactment of this Act. Para. (2) also amended sec. 15 of that Act, effective January 1, 1983.

SEC. 235.[3] PRODUCTS OF CARIBBEAN BASIN COUNTRIES ENTERED IN PUERTO RICO.

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SEC. 245. SENSE OF CONGRESS REGARDING POSSIBLE EEC ACTION ON CORN GLUTEN.

Whereas—

(1) the European Council of Ministers has directed the Commission of the European Community (EC) to initiate consultations with the United States and other interested parties under article XXVIII of the General Agreement on Tariffs and Trade (GATT) for the purpose of imposing tariff or tariff quota restrictions on imports of nongrain feed ingredients, including corn gluten feed;

(2) the EC has considered proposals to impose a domestic consumption tax on vegetable fats and oils, which would undermine the intention of the duty-free binding on certain corn and soybean products imported from the United States;

(3) the EC has bound in the GATT that it will impose no import duties on soybeans, soybean meal, corn gluten feed, and other corn by-products, and such zero-tariff bindings were agreed to in return for United States trade concessions to the EC during previous rounds of trade negotiations;

(4) the EC has not demonstrated sound economic justification for restrictions on the import of nongrain feed ingredients and such restrictions would only shift the financial burden of EC Common Agricultural Policy (CAP) reform from the EC to other countries, with negligible improvement in the current EC budget situation;

(5) action by the EC to breach a negotiated concession would severely erode the basic GATT principle of comparative advantage and set a dangerous precedent which could threaten other previously negotiated concessions and serve as a precursor to restrictions on the import of soybeans and soybean products; and

(6) the official position of the United States, as stated by the Secretary of Agriculture, is that there is strong support for the EC efforts to balance the agricultural budget, but that the United States will oppose any efforts to limit its exports of corn gluten feed to the EC;

it is the sense of Congress that—

(A) the President should continue to firmly oppose the imposition of any restriction on European Community imports of nongrain feed ingredients, including corn gluten, and should support the current duty-free binding on such products;

(B) the President should continue to rigorously oppose any European Community proposals which would violate the intent of the existing duty-free binding in the General Agreement on Tariffs and Trade on soybeans and soybean products and reaffirm the United States conviction that the imposition of a consumption tax on vegetable fats and

[3] Sec. 235 amended the Caribbean Basin Economic Recovery Act.

oils by the European Community would represent a restraint of trade; and

(C) if unilateral action is taken by the European Community to restrict or inhibit the importation of either nongrain feed ingredients, including corn gluten feed, or vegetable fats and oils, including soybean products, the United States should act immediately to restrict European Community imports of at least the aggregate value of the reduced and potentially reduced United States export products.

SEC. 246. STUDY ON HONEY IMPORTS.

(a) The Senate finds that—

(1) in 1976 the International Trade Commission found that honey imports threatened serious injury to the domestic honey industry and recommended action to control honey imports.

(2) the domestic honey industry is essential for production of many agricultural crops.

(3) a significant part of our total diet is dependent directly or indirectly on insect pollination, and

(4) it is imperative that the domestic honey bee industry be maintained at a level sufficient to provide crop pollination.

(b) It is the sense of the Senate that the Secretary of Agriculture should promptly request the President to call for an International Trade Commission investigation of honey imports, under section 22 of the Agriculture Adjustment Act.

SEC. 247. COPPER IMPORTS.

(a) The Congress finds that—

(1) The United States International Trade Commission unanimously found that the United States copper producing industry is being seriously injured by copper imports;

(2) worldwide copper prices are at record low levels;

(3) foreign copper producers have increased their copper production in spite of depressed world prices in an effort to meet their external debt obligations;

(4) United State copper production has been reduced by over forty percent and over half of the work force has been laid off;

(5) continuation of the current depressed world price for copper threatens severe economic distress for less developed countries which are dependent on copper exports as their major source of foreign exchange;

(6) the competitiveness of United States copper producers could be enhanced through the investment which could be generated if worldwide copper prices returned to more historically representative levels; and

(7) a balanced reduction in foreign copper production which raises marginally the world price for copper would not disadvantage domestic fabricators by creating a two-tier pricing system.

(b) It is the sense of Congress that the President should negotiate with the principal foreign copper-producing countries to conclude voluntary restraint agreements with those governments for the purpose of effecting a balanced reduction of total annual foreign

copper production for a period of between three and five years in order to—

(1) allow the price of copper on international markets to rise modestly to levels which will permit the remaining copper operations located in the United States to attract needed capital, and

(2) achieve a secure domestic supply of copper.

(c) It is the further sense of the Congress that the President should submit a report to Congress, within twelve months of the date of enactment of this Act, explaining—

(1) the results of his negotiations; or

(2) why he felt it was inappropriate or unnecessary to undertake such negotiations.

* * * * * * *

SEC. 250. HOGS AND PORK PRODUCTS FROM CANADA.

The pork industry contributes $9,000,000,000 annually to the United States economy;

Over four hundred and fifty thousand United States farmers produce pork for domestic and foreign markets;

United States imports of live hogs from Canada averaged one hundred thousand animals each year between 1970 and 1974, yet since 1981, such imports have increased yearly from one hundred and forty-six thousand head to an estimated more than one million head in 1984;

The adverse economic effect of the recent surge in imports of Canadian hogs and pork products on United States pork producers has been estimated to be in excess of $500,000,000 in 1982 and 1983, and approximately $300,000,000 during the first five months of 1984;

The Canadian Government provides price support for hogs at a level equal to 90 per centum of the previous five-year average market price, indexed for changes in cash costs of production of hogs, which represented a payment of $6.54 per head to Canadian pork producers last year, and all but one provincial government of Canada also provide direct production assistance to support Canadian pork producers; and

It is essential that the administration act immediately to address the threat to the United States pork production industry caused by the dramatic increase in imports of hogs and pork products from Canada.

It is the sense of the Senate that the President should direct appropriate members of the administration, including the United States Trade Representative, the Secretary of Agriculture, and the Secretary of Commerce, to aggressively pursue discussions with the Canadian Government directed toward resolving this situation and use all available authorities in an effort to protect the economic viability of the United States pork industry and to promote free and fair trade.

SEC. 251. COPYRIGHT PROTECTION OF COMPUTER SOFTWARE.

Since the development of computer software and other information technologies is increasingly important to economic growth and productivity in the United States and other nations;

Since the United States is the world leader in the technological development of computer software and in the production and sale of computer software;

Since the United States has since 1964 considered computer software a work of authorship protected by copyright and this form of intellectual property right protection has served to encourage continuing research, development, and innovation of computer software;

Since copyright protection is afforded computer software by most industrialized nations including Japan, the Netherlands, France, the Federal Republic of Germany, the United Kingdom, South Africa, Hungary, Taiwan, and Australia;

Since Japan is reviewing a proposal to abandon copyright protection of software and to adopt a system that rejects the principle that software is a work of authorship;

Since Japan is reviewing a proposal that also provides broadly for the compulsory licensing of software; and

Since the enactment by Japan of such a proposal could prompt the adoption of similar proposals by other nations currently considering this question, with serious adverse effects on the existing international order for the protection of intellectual property rights: Now, therefore, be it

Declared that it is the sense of the Congress that—

(1) copyright protection is an essential form of intellectual property right protection for computer software;

(2) any proposal to abandon copyright protection of software or to provide a new system of legal protection that incorporates compulsory licensing of software would (A) disserve the goal of promoting continuing development and innovation in computer software; (B) undermine the international consensus that computer software is a work of authorship protected by copyright; (C) result in economic harm to the computer software industry of the United States, and also of Japan and of other nations; and (D) contribute to increasing trade tensions among the nations of the world; and

(3) if a nation withdraws copyright protection of software or provides for broad compulsory licensing of software, it would be in the interests of the United States and other nations to seek appropriate relief, including that provided under the Universal Copyright Convention, to ensure the just protection of intellectual property rights and the promotion of free and fair trade.

(16) International Trade and Investment Act

Partial text of Title III of Public Law 98–573 [Trade and Tariff Act of 1984; H.R. 3398], 98 Stat. 2948 at 3000, approved October 30, 1984; as amended by sec. 101(h) of Division A of Public Law 105–277 [Treasury and General Government Appropriations Act, 1999; H.R. 4328], 112 Stat. 2681–524, approved October 21, 1998

AN ACT To amend the trade laws, authorize the negotiation of trade agreements, extend trade preferences, change the tariff treatment with respect to certain articles, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act with the following table of contents may be cited as the "Trade and Tariff Act of 1984".

* * * * * * *

TITLE III—INTERNATIONAL TRADE AND INVESTMENT

SEC. 301.[1] SHORT TITLE; AMENDMENT OF TRADE ACT OF 1974.

(a) This title may be cited as the "International Trade and Investment Act".

(b) Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision the Trade Act of 1974.

SEC. 302.[2] STATEMENT OF PURPOSES.

The purposes of this title are—

(1) To foster the economic growth of, and full employment in, the United States by expanding competitive United States exports through the achievement of commercial opportunities in foreign markets substantially equivalent to those accorded by the United States;

(2) to improve the ability of the President—

(A) To identify and to analyze barriers to (and restrictions on) United States Trade and investment, and

(B) to achieve the elimination of such barriers and restrictions;

(3) to encourage the expansion of—

(A) international trade in services through the negotiation of agreements (both bilateral and multilateral) which reduce or eliminate barriers to international trade in services, and

(B) United States service industries in foreign commerce; and

[1] 19 U.S.C. 2101 note.
[2] 19 U.S.C. 2102 note.

(4) to enhance the free flow of foreign direct investment through the negotiation of agreements (both bilateral and multilateral) which reduce or eliminate the trade distortive effects of certain investment-related measures.

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SEC. 306.[3] PROVISIONS RELATING TO INTERNATIONAL TRADE IN SERVICES.

(a)(1) The Secretary of Commerce shall establish a service industries development program designated 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 operations 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 services-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

[3] 19 U.S.C. 2114b.

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 make available to him which may be used for such purposes.

(5) For purposes of this section, the term "services" economic activities whose outputs are other than tangible goods. Such term includes, but not is limited to, banking, insurance, transportation, postal and delivery services,[4] communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education health care, and tourism.

(b)[5] * * *

(c)[6] (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.

(B) In order to encourage effective development, coordination, and implementation of United States policies on trade in services—

(i) each department or agency of the United States responsible for the regulation of any service sector industry shall, as appropriate, advise and work with the United States Trade Representative concerning matters that have come to the department's or agency's attention with respect to—

(I) the treatment afforded United States service sector interest in foreign markets; or

(II) allegations of unfair practices by foreign governments or companies in a service sector; and

(ii) the Department of Commerce, together with other appropriate agencies as requested by the United States Trade Representatives, shall provide staff support and other assistance for negotiations on service-related issues by the United States Trade Representatives and the domestic implementation of service-related agreements.

(C) Nothing in this paragraph shall be construed to alter any existing authority or responsibility with respect to any specific service sector.

(2)(A) The President shall, as he deems appropriate—

(i) consult with State governments on issues of trade policy, including negotiating objectives an 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

[4] Sec. 633(c) of the Treasury and General Government Appropriations Act, 1999 (sec. 101(h) of Division A of Public Law 105–277; 112 Stat. 2681–524), inserted "postal and delivery services".

[5] Subsec. (b) redesignated the International Investment Survey Act of 1976 as the International Investment and Trade in Services Survey Act and made a number of amendments to such Act.

[6] 19 U.S.C. 2114c.

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.

(B)[7] * * *

(C)[7] * * *

SEC. 307.[8] NEGOTIATING AUTHORITY WITH RESPECT TO FOREIGN DIRECT INVESTMENT.

(a)[9] * * *

(b)(1) If the United States Trade Representative, with the advice of the committee established by section 242 of the Trade Expansion 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 subsection (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)[10] 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.

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[7] Subparas. (B) and (C) amended the Trade Act of 1974.

[8] 19 U.S.C. 2114d.

[9] Subsec. (a) amended the Trade Act of 1974.

[10] Sec. 1889 of Public Law 99–514 (100 Stat. 2926) struck out "or paragraph (3)" at this point.

SEC. 308.[11] NEGOTIATION OF AGREEMENTS CONCERNING HIGH TECHNOLOGY INDUSTRIES.

(a) The President may enter into such bilateral or multilateral agreements as may be necessary or appropriate to achieve the objectives of this section and the negotiating objectives under section 104A(c) of the Trade Act of 1974.

(b)[12] * * *

[11] 19 U.S.C. 2114e.

[12] Subsec. (b) added a new sec. 128, titled "Modification and Continuance of Treatment with Respect to Duties on High Technology Products" to the Trade Act of 1974.

(17) Trade Law Reform

Partial text of Title VI of Public Law 98–573 [Trade and Tariff Act of 1984; H.R. 3398], 98 Stat. 2948 at 3024, approved October 30, 1984

AN ACT To amend trade laws, authorize the negotiation of trade agreements, extend trade preferences, change the tariff treatment with respect to certain articles, and for other purposes.

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TITLE VI—TRADE LAW REFORM

NOTE.—Except for the sections set out below, Title VI consists of amendments to the Trade Agreements Act of 1979, the Tariff Act of 1930, and to title 28, United States Code. The amendments to the Trade Agreements Act of 1979, and the Tariff Act of 1930 have been incorporated into those Acts.

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SEC. 624. ADJUSTMENTS STUDY.

The Secretary of Commerce shall undertake a study of the current practices that are applied in the making of adjustments to purchase prices and exporter's sales prices under section 772 (d) and (e) (19 U.S.C. 1677a (d) and (e)) and foreign market value and constructed value under section 773 (19 U.S.C. 1677b) in determining antidumping duties. The study shall include, but not be limited to—

(1) a review of the types of adjustments currently being made;

(2) a review of private sector comments and recommendations regarding the subject that were made at congressional hearings during the first session of the ninety-eighth Congress; and

(3) the manner and extent to which such adjustments led to inequitable results.

Within one year after the date of the enactment of this Act, the Secretary of Commerce shall complete the study required under this section and shall submit to Congress a written report regarding the study and containing such recommendations as the Secretary deems appropriate regarding the need, and the means, for simplifying and modifying current practices in the making of such adjustments.

SEC. 625. INDUSTRIAL TARGETING STUDIES.

The Secretary of Commerce, the Secretary of Labor, the United States Trade Representative, and the Comptroller General of the United States shall each undertake, and submit to the Congress not later than June 1, 1985, a comprehensive study of the problem of foreign industrial targeting, whereby foreign governments adopt plans or schemes of coordinated activities to foster and benefit specific industries, and of the desirability or need to amend the United States trade laws in order to provide effective remedies for domestic industries against the adverse effects of such targeting. To the extent consistent with agency jurisdiction, such studies shall include, but are not limited to—

(1) an analysis of—

(A) whether foreign industrial targeting should be considered as an unfair trade practice under United States law;

(B) whether current law, including the remedies under title VII of the Tariff Act of 1930, adequately address the subsidy element of foreign industrial policy measures; and

(C) the extent to which foreign industrial targeting practices are significantly affecting United States commerce; and

(2) any recommended legislation considered necessary based on the study results.

SEC. 626. EFFECTIVE DATES.

(a) Except as provided in subsections (b) and (c), this Act, and the amendments made by it, shall take effect on the date of the enactment of this Act.

(b)(1) The amendments made by sections 602, 609, 611, 612, and 620 shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 on or after such effective date.

(2) The amendments made by section 623 shall apply with respect to civil actions pending on, or filed on or after, the date of the enactment of this Act.

(c)(1) No provision of title VII of the Tariff Act of 1930 shall be interpreted to prevent the refiling of a petition under section 702 or 732 of that title that was filed before the date of the enactment of this title, if the purpose of such refiling is to avail the petitioner of the amendment made by section 612(a)(1).

(2) The amendment made by section 612(a)(1) shall not apply with respect to petitions filed (or refiled under paragraph (1)) under section 702 or 732 of the Tariff Act of 1930 after September 30, 1986.

(18) Steel Import Stabilization Act

Title VIII of Public Law 98–573 [Trade and Tariff Act of 1984; H.R. 3398], 98 Stat. 2948 at 3043, approved October 30, 1984; as amended by Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; and Public Law 101–221 [Steel Trade Liberalization Program Implementation Act; H.R. 3275], 103 Stat. 1886, approved December 12, 1989

AN ACT To amend trade laws, authorize the negotiation of trade agreements, extend trade preferences, change the tariff treatment with respect to certain articles, and for other purposes.

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TITLE VIII—ENFORCEMENT AUTHORITY FOR THE NATIONAL POLICY FOR THE STEEL INDUSTRY

SEC. 801.[1] SHORT TITLE.

This title may be cited as the "Steel Import Stabilization Act".

SEC. 802.[1,2] FINDINGS AND PURPOSES.

(a) The Congress finds that—

(1) since 1984, the United States steel industry has made significant progress toward adjustment, through modernization of production facilities, elimination of excess capacity, reduction of production costs, and improvement of productivity;

(2) an extension of import relief, through transitional bilateral arrangements, for a period of two and one-half years will facilitate the steel industry's continued modernization and worker retraining;

(3) liberalization of market access during the period of transitional bilateral arrangements, with preferential treatment for countries who support fair and open trade, will held ensure an orderly return to an open market;

(4) the negotiation of an international consensus through the Uruguay Round of trade negotiations and through bilateral agreements to address subsidies and tariff and nontariff barriers will strengthen the international trading system and conditions of global steel trade; and

(5) the termination of transitional bilateral arrangements by March 31, 1992, and the full and forceful application of the United States unfair trade laws, will protect the United States national interest in preserving conditions of fair and open trade in the United States market.

(b) The purposes of this title are—

[1] 19 U.S.C. 2253 note.
[2] Sec. 2(a) of Public Law 101–221 (103 Stat. 1886) amended and restated sec. 802.

(1) to endorse the principles and goals of the steel trade liberalization program as announced by the President on July 25, 1989,[3] and provided for its implementation;

(2) to grant specific enforcement powers to the President to carry out the terms and conditions of bilateral arrangements entered into for purposes of implementing that program; and

(3) to make the continuation of those powers subject to the condition that the steel industry continue to modernize its plant and equipment and provide for appropriate worker retraining.

SEC. 803.[1,4] SENSE OF CONGRESS REGARDING THE STEEL TRADE LIBERALIZATION PROGRAM.

(a) The Congress support the full and effective implementation of the steel trade liberalization program.

(b) It is the sense of the Congress that the steel trade liberalization program should be implemented in a manner which provides for liberalized market access for steel products during the period in which bilateral arrangements remain authorized in order to prepare for the eventual termination of such arrangements in 1992 and reliance thereafter on market forces and the full enforcement of United States trade laws. In particular, liberalized market access should be provided to those foreign countries that work with the United States to achieve the goals referred to in subsection (c).

(c) It is further the sense of the Congress that the United States Trade Representative should promptly conduct negotiations,

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[3] On July 25, 1989, the President issued a memorandum for the United States Trade Representative (reprinted in *Weekly Compilation of Presidential Documents,* July 31, 1989, vol. 25, number 30, p. 1155), which stated:

"I have decided to establish a two and one-half year Steel Trade Liberalization Program and hereby direct the United States Trade Representative (USTR) to begin immediately its implementation. The program is designed to phase out in a responsible and orderly manner the voluntary restraint arrangements (VRAs) that currently limit steel imports into the U.S. market, and to negotiate an international consensus to remove unfair trade practices.

"1. *Transitional Voluntary Restraint Arrangements.* The USTR shall negotiate extensions of VRAs for a transitional period of two and one-half years. During this period, the overall ceiling on imports from VRA countries will be increased at an annual rate of one percentage point. This increase will be allocated to countries that undertake and abide by acceptable multilateral or bilateral disciplines with respect to unfair trade practices and market access. The allocation of this one-percentage-point annual increase may be delayed, if necessary, as leverage to achieve acceptable disciplines.

"2. *International Consensus.* The United States Trade Representative shall seek to negotiate an international consensus to provide for both fair and open trade in steel. This consensus, which should be pursued through the Uruguay Round of Multilateral Trade Negotiations and complementary bilateral agreements, will provide effective disciplines over trade-distorting subsidies, as well as reductions in tariff and non-tariff barriers to international steel trade.

"3. *Expiration Date.* The voluntary restraint arrangements will be terminated no later than March 31, 1992. Thereafter, U.S. steel producers will rely on domestic trade laws to remedy foreign trade-distorting practices.

"4. *Legislation.* The Administration will support the extension of existing legislation to make such transitional voluntary restraint arrangements enforceable at our borders, as well as to encourage continued industry modernization and worker retraining.

"5. *Impact on Steel Users.* The USTR shall implement the program in a way that recognizes the legitimate concerns of U.S. steel consumers. In particular, the existing short supply mechanism will be liberalized and streamlined.

"6. *Enforcement.* The Department of Commerce shall continue to enforce rigorously our unfair trade laws to prevent injurious dumping and subsidization.

"7. *Monitoring.* The United State International Trade Commission will be asked to continue to monitor the efforts of the steel industry to adjust and modernize, and to prepare an annual report for the President on those efforts.

"The Steel Trade Liberalization Program described above is designed to establish the conditions for fair and open steel trade throughout the world, so that steel can be produced and traded on the basis of market forces, rather than governmental aid and intervention.

"The USTR shall coordinate and implement this program in consultation with the appropriate Economic Policy Council agencies.".

[4] Sec. 2(b) of Public Law 101–221 (103 Stat. 1887) amended and restated sec. 803.

through the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade and through complementary bilateral arrangements, to seek an international consensus regarding steel trade that provides for—

(1) strong disciplines over trade-distorting government subsidies;

(2) the lowering of trade barriers so as to ensure market access; and

(3) enforcement measures to deal with violations of consensus obligations.

(d) The President shall provide to the Congress an annual assessment of the progress of the negotiations referred to in subsection (c). The President may include the assessment in the annual report required under section 163(a) of the Trade Act of 1974 (19 U.S.C. 2139a)) regarding the trade agreements program.

SEC. 804.[1] DEFINITIONS.

As used in this title—

(1) The term "bilateral arrangement" means any arrangement, agreement, or understanding (including, but not limited to, any surge control understanding or suspension agreement) entered into or undertaken, or previously entered into or undertaken, by the United States and any foreign country or customs union containing such quantitative limitations, restrictions, or other terms relating to the importation into, or exportation to, the United States of categories of steel products as may be necessary to implement the national policy for the steel industry or the steel trade liberalization program.[5]

(2) The term "national policy for the steel industry" means those actions and elements described in Executive Communication 4046, dated September 18, 1984 (printed as House Document 98–263).

(3) The term "steel industry" means producers in the United States of steel products.

(4) The term "steel trade liberalization program" means the program, announced by the President on July 25, 1989,[3] designed to achieve an orderly transition to open markets, the continued modernization and adjustment of the steel industry, and the negotiation of an international consensus to restore fair and open steel trade.

SEC. 805.[1] ENFORCEMENT AUTHORITY.

(a) Subject to section 806, the President is authorized to carry out such actions as may be necessary or appropriate to enforce the quantitative limitations, restrictions, and other terms agreed to between the United States and steel-exporting nations as contained in bilateral arrangements. 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 steel products. The President is further authorized to carry out, between October 1, 1989, and the date of the concluding of any bilateral agreement,

[5] Sec. 5(1) of Public Law 101–221 (103 Stat. 1889) inserted "or the steel trade liberalization program".

such actions as may be necessary or appropriate to ensure an orderly transition to that arrangement.[6]

(b)[7] (1) If—

(A) a bilateral arrangement includes a provision relating to short supply situations; and

(B) the Secretary of Commerce (hereinafter in this subsection referred to as the "Secretary") determines, in accordance with this subsection, that a short supply situation exists in the United States with respect to a steel product that is subject to a quantitative limitation under such arrangement;

the Secretary shall authorize the importation of additional quantities of that product without regard to any aggregate quantitative import limitation in effect under such arrangement.

(2) In determining under this subsection whether a short supply situation exists in the United States with respect to a steel product, the Secretary shall take into account all relevant factors, including—

(A) (to the extent information is available) the recent levels of capacity utilization for domestic facilities producing the product;

(B) the quantity of the steel product requested in a short supply petition and the ability of domestic producers to supply the product in such quantity;

(C) the willingness of a domestic producer to supply the steel product at a price which is not an aberration from prevailing domestic market prices;

(D) reasonable specification requested by the purchased or any end user; and

(E) delivery times to the purchaser and any end user of the steel product.

(3)(A) A petition requesting a determination under this subsection may be filed with the Secretary. The petition must be in such form and contain such relevant information as the Secretary requires.

(B) If the Secretary considers that a petition filed under subparagraph (A) is adequate,the Secretary shall promptly cause to be published in the Federal Register a notice that a determination under this subsection with respect to the steel product concerned is under consideration.

(C) The Secretary shall provide opportunity for comment by interested persons regarding the issues raised in a petition.

(D)(i) The petitioner shall certify that the factual information contained in the petition and any additional submission is accurate and complete to the best of the petitioner's knowledge.

(ii) An interested person shall certify that the factual information submitted by that person to the Secretary is accurate and complete to the best of the person's knowledge.

(4)(A) If an adequate petition is filed under paragraph (3)(A), the Secretary shall determine, not later than the day specified in subparagraph (B)—

[6] Sec. 4(a) of Public Law 101–221 (103 Stat. 1888) added this sentence.
[7] Sec. 4(b) of Public Law 101–221 (103 Stat. 1888) amended and restated subsec. (b).

(i) whether a short supply situation exists in the United States with respect to the steel product; and

(ii) if the determination under clause (i) is affirmative, the quantity of the steel product that the secretary will authorize for importation.

(B) The Secretary must make a determination with respect to a petition not later than—

(i) the 15th day after the day on which the petition is filed if—

(I) the raw steel making capacity utilization in the United states equals or exceeds 90 percent,

(II) the importation of additional quantities of the steel product was authorized by the Secretary during each of the 2 immediately preceding years, or

(III) the Secretary finds, on the basis of available information (and whether or not in the context of a determination under this subsection), that the steel product is not produced in the United States; or

(ii) the 30th day after the day on which the petition was filed if neither subclause (I), (II), or (III) of clause (i) applies.

(C) In making a determination with respect to which subparagraph (B)(i) applies, the Secretary shall apply a rebuttable presumption that the short supply situation alleged in the petition exists.

(D) The Secretary shall cause to be published in the Federal Register notice of each determination made under this subsection setting forth the reasons for the determination.

(5) If under this subsection the Secretary authorized the importation of a specified quantity of a steel product, the Secretary shall notify a representative of the appropriate foreign government and issue to the petitioner the necessary documentation to permit the importation of that quantity.

(6) The Secretary shall prescribe regulations to carry out this subsection. The interim text of such regulations shall be issued on or before the 30th day after the date of enactment of the Steel Trade Liberalization Program Implementation Act. The regulations shall provide for transparency and fairness in the process of making short supply determinations, and shall be consistent with the President's announcement on July 25, 1989,[3] establishing the steel trade liberalization program.

(c) For purposes of carrying out this title, the Secretary of the Treasury, in consultation with the Secretary of Commerce, shall provide[8] by regulation for the terms and conditions under which steel products may be denied entry into the United States.

(d)[9] (1) Any steel product that is manufactured in a country that is not party to a bilateral arrangement from steel which was melted and poured in a country that is party to a bilateral arrangement (hereafter in this subsection referred to as an "arrangement country") may be treated for purposes of the quantitative restrictions

[8] Sec. 5(c)(1) of Public Law 101–221 (103 Stat. 1889) struck out "may provide" and inserted in lieu thereof ", the Secretary of the Treasury, in consultation with the Secretary of Commerce, shall provide".

[9] Sec. 1322 of Public Law 100–418 (102 Stat. 1195) added subsec. (d).

and related terms under that arrangement as if it were a product of the arrangement country.

(2) The President may implement such procedures as may be necessary or appropriate to carry out the purpose of paragraph (1).

(3) The United States Trade Representative may, in a manner consistent with the purpose of any so-called 'third country equity provision' of an arrangement entered into under the steel trade liberalization program,[10] take such actions as he deems necessary with respect to steel imports of any other country or countries so as to ensure the effectiveness of any portion of such arrangement.

SEC. 806.[1] EFFECTIVE PERIOD OF TITLE.

(a) IN GENERAL.—Section 805 shall terminate—

(1) at the close of March 31, 1992;[11] or

(2)[12] at the close of the first, second, third, fourth, fifth, sixth, or seventh[13] anniversary of the effective date of this title, unless the President, before each such anniversary, submits to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (in writing and together with the reasons therefor) an affirmative annual determination described in subsection (b).

(b)(1) An affirmative annual determination is a determination by the President that—

(A) the major companies of the steel industry, taken as a whole, have, during the 12-month period ending at the close of an anniversary referred to in subsection (a)(2)—

(i) committed substantially all of their net cash flow from steel product operations for purposes of reinvestment in, and modernization of, that industry through investment in modern plant and equipment, research and development, and other appropriate projects, such as working capital for steel operations and programs for the retraining of workers; and

(ii) taken sufficient action to maintain their international competitiveness, including action to produce price-competitive and quality-competitive products, to control costs of production, including employment costs, and to improve productivity; and

(B) each of the major companies committed for the applicable 12-month period not less than 1 percent of net cash flow to the retraining of workers; except that this requirement may be waived by the President with respect to a major company in noncompliance, if he finds unusual economic circumstances exist with respect to that company; and

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[10] Sec. 5(c)(2) of Public Law 101–221 (103 Stat. 1889) struck out "President's Steel Policy" and inserted in lieu thereof "steel trade liberalization program". See also note 3.

[11] Sec. 3(a)(1) of Public Law 101–221 (103 Stat. 1887) struck out "the fifth anniversary of the effective date of this title" and inserted in lieu thereof "March 31, 1992".

[12] Sec. 3(b) of Public Law 101–221 (103 Stat. 1887; 19 U.S.C. 2253) provided the following: "(b) SPECIAL PROVISION.—If the Steel Trade Liberalization Program Implementation Act is not enacted on or before October 1, 1989, then section 806(a)(2) of the Steel Import Stabilization Act (as amended by subsection (a)) shall be applied by treating the reference therein to the close of the fifth anniversary of the effective date of the Steel Import stabilization Act as a reference to the close of the 30th day after the date of the enactment of the Steel Trade Liberalization Program Implementation Act.". [Public Law 101–221; enacted December 12, 1989.]

[13] Sec. 3(a)(2) of Public Law 101–221 (103 Stat. 1887) struck out "or fourth" and inserted in lieu thereof "fourth, fifth, sixth, or seventh".

(C) the enforcement authority provided under section 905 remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

(2) For purposes of this subsection—

(A)[14] The term "major company" means an enterprise that produces iron and steel and whose raw steel production in the United States during 1988 exceeded 2,000,000 net tons.

(B) The term "net cash flow" means annual net (after-tax) income plus depreciation, depletion allowances, amortization, and changes in reserves minus dividends and payments on short-term and long-term debts and liabilities.

(3) For purposes of carrying out this subsection, the President shall take into account such information as may be available from the United States International Trade Commission and other appropriate sources relating to the modernization efforts of the steel industry.

SEC. 807.[1] DEPARTMENT OF LABOR WORKER ASSISTANCE PLAN.

Within 6 months after the effective date of this title, the Secretary of Labor shall prepare (in consultation with the Steel Advisory Committee established on November 3, 1983, by the Secretary of Commerce and the Secretary of Labor (48 F.R. 51165)) and submit to the Congress a proposed plan of action for assisting workers in communities that are adversely affected by imports of steel products; which assistance shall include retraining and relocation for former workers in the steel industry who will likely be unable to return to employment in that industry. The plan required under this section shall be based upon existing authorities for providing such assistance, but shall be accompanied by such recommendations for additional statutory authority as the Secretary of Labor considers necessary to carry out the purposes of the plan.

SEC. 808.[1] EFFECTIVE DATE.

This title shall take effect on October 1, 1984.

[14] Sec. 6(a)(1) of Public Law 101–221 (103 Stat. 1890) amended and restated clause (A). Sec. 6(b) of Public Law 101–221 also provided the following:

"(b) SPECIAL RULE.—The amendment made by subsection (a)(1) shall not affect the definition of 'qualified corporation' contained in section 212(g)(1)(A) of the Tax Reform Act of 1986.".

(19) Wine Equity and Export Expansion Act of 1984

Title IX of Public Law 98–573 [Trade and Tariff Act of 1984; H.R. 3398], 98 Stat. 2948 at 3047, approved October 30, 1984

AN ACT To amend trade laws, authorize the negotiation of trade agreements, extend trade preferences, change the tariff treatment with respect to certain articles, and for other purposes.

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TITLE IX—WINE TRADE

SEC. 901. SHORT TITLE.

This title may be cited as the "Wine Equity and Export Expansion Act of 1984".

SEC. 902.[1] CONGRESSIONAL FINDINGS AND PURPOSES.

(a) Congress finds that—

(1) there is a substantial imbalance in international wine trade resulting, in part, from the relative accessibility enjoyed by foreign wines to the United States market while the United States wine industry faces restrictive tariff and nontariff barriers in virtually every existing or potential foreign market;

(2) the restricted access to foreign markets and the continued low prices for United States wine and grape products adversely affect the economic position of our Nation's winemakers and grape growers, as well as all other domestic sectors that depend upon wine production;

(3) the competitive position of United States wine in international trade has been weakened by foreign trade practices, high domestic interest rates, and unfavorable foreign exchange rates;

(4) wine consumption per capita is very low in many major non-wine producing markets and the demand potential for United States wine is significant; and

(5) The United States winemaking industry has the capacity and the ability to export substantial volumes of wine and an increase in United States wine export will create new jobs, improve this Nation's balance of trade, and otherwise strengthen the national economy.

(b) The purposes of this title are—

(1) to provide wine consumers with the greatest possible choice of wines from wine-producing countries;

(2) to encourage the initiation of an export promotion program to develop, maintain, and expand foreign markets for United States wine; and

[1] 19 U.S.C. 2801.

(3) to achieve greater access to foreign markets for United States wine and grape products through the reduction or elimination of tariff barriers and nontariff barriers to (or other distortions of) trade in wine.

SEC. 903.[2] DEFINITIONS.

For purposes of this title—

(1) The term "Committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(2) The term "grape product" means grapes and any product (other than wine) made from grapes, including, but not limited to, raisins and grape juice, whether or not concentrated.

(3) The term "major wine trading country" means any foreign country, or group of foreign countries, designated as such under section 904.

(4) The phrase "nontariff barrier to (or other distortion of)", in the context of trade in United States wine, includes any measure implemented by the government of a major wine trading country that either gives a competitive advantage to the wine industry of that country or restricts the importation of United States wine into that country.

(5) The term "Trade Representative" means the United States Trade Representative.

(6) The term "United States wine" means wine produced within the customs territory of the United States.

(7) The term "wine" means any fermented alcoholic beverage that—

(A) is made from grapes or other fruit;

(B) contains not less than 0.5 percent alcohol by volume and not more than 24 percent alcohol by volume, including all dilutions and mixtures thereof by whatever process produced; and

(C) is for nonindustrial use.

SEC. 904.[3] DESIGNATION OF MAJOR WINE TRADING COUNTRIES.

(a) The Trade Representative shall designate as a major wine trading country each foreign country, or group of foreign countries represented as an economic union, that, in the judgment of the Trade Representative—

(1) is a potential significant market for United States wine; and

(2) maintains tariff or nontariff barriers to (or other distortions of) trade in United States wine.

(b) In deciding, for purposes of subsection (a)(2), whether a foreign country or group of countries maintains nontariff barriers to (or other distortions of) trade in United States wine, the Trade Representative shall take into account—

(1) the review and report required under section 854(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2135 note);

(2) such relevant actions that may have been taken by that country or group since that review was conducted; and

[2] 19 U.S.C. 2802.
[3] 19 U.S.C. 2803.

(3) such information as may be submitted under section 906 by representatives of the wine and grape products industries in the United States, as well as other sources.

SEC. 905.[4] ACTIONS TO REDUCE OR ELIMINATE TARIFF AND NONTARIFF BARRIERS AFFECTING UNITED STATES WINE.

(a) The President shall direct the Trade Representative to enter into consultations with each major wine trading country to seek a reduction or elimination of that country's tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine.

(b)(1) the President shall notify each of the Committees regarding the extent and effect of the efforts undertaken since the submission of the report required under section 854(a) of the Trade Agreements Act of 1979, and during the 12-month period beginning on the date of the enactment of this Act, to expand opportunities in each major wine trading country for exports of United States wine. Such notification, which shall be in the form of a separate written report (that must be submitted within 30 days after the close of that 12-month period) for each major wine trading country, shall include—

(A) a description of each act, policy, and practice (and of its legal basis and operation) in that country that constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine (and that description shall be based upon an updating of the report that was submitted to the Congress under section 854(a) of the Trade Agreements Act of 1979);

(B) an assessment of the extent to which each such act, policy, or practice is subject to international agreements to which the United States is a party;

(C) information with respect to any action taken, or proposed to be taken, under existing authority to eliminate or reduce each such act, policy, or practice, including, but not limited to—

(i) any action under the Trade Act of 1974, and

(ii) any negotiation or consultation with any foreign government;

(D) if action referred to in subparagraph (C) was not taken, an explanation of the reasons therefore; and

(E) recommendations to the Congress of any additional legislative authority or other action which the President believes is necessary and appropriate to obtain in elimination or reduction of foreign tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(2) The reports required under paragraph (1) shall be developed and coordinated by the Trade Representative through the interagency trade organization established by section 242(a) of the Trade Expansion Act of 1962.

(c) If the President, after taking into account information and advice received under subsections (a) and (b), section 906 or from other sources, determines that action is appropriate to respond to

[4] 19 U.S.C. 2804.

any act, policy or practice of a major wine trading country constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine and—

(1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement; or

(2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President, shall take all appropriate and feasible action under the Trade Act of 1974 to enforce the rights of the United States under any such trade agreement or to obtain the elimination of such act, policy, or practice.

SEC. 906.[5] REQUIRED CONSULTATIONS.

The Trade Representative shall consult with the Committees and with representatives of the wine and grape products industries in the United States—

(1) before identifying tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine and designating major wine trading countries under section 904;

(2) in developing the reports required under section 905(b); and

(3) for purposes of determining whether action by the President is appropriate under any provision of the Trade Act of 1974 with respect to any act, policy, or practice referred to in section 905(b)(1).

SEC. 907.[6] UNITED STATES WINE EXPORT PROMOTION.

In order to develop, maintain, and expand foreign markets for United States wine, the President is encouraged to—

(1) utilize, for the fiscal year ending September 30, 1985, the authority provided under section 135 of the Omnibus Budget Reconciliation Act of 1982 to make available sufficient funds to initiate, in cooperation with nongovernmental trade associations representative of United States wineries, an export promotion program for United States; and

(2) request, for each subsequent fiscal year, an appropriation for such a wine export promotion program that will not be at the expense of any appropriations requested for export promotion programs involving other agriculture commodities.

[5] 19 U.S.C. 2805.
[6] 19 U.S.C. 2806.

(20) Export Trading Company Act of 1982

Public Law 97–290 [S. 734], 96 Stat. 1233, approved October 8, 1982; as amended by Public Law 98–181 [Export-Import Bank Act Amendments of 1983; H.R. 3959], 97 Stat. 1153 at 1257, approved November 30, 1983

AN ACT To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL PROVISIONS

SHORT TITLE

SECTION 101. This title may be cited as the "Export Trading Company Act of 1982".

FINDINGS; DECLARATION OF PURPOSE

SEC. 102.[1] (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through export trading companies;

(6) export trades services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

[1] 15 U.S.C. 4001.

(7) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(8) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(9) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(10) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(11) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by permitting bank holding companies, bankers' banks, and Edge Act corporations and agreement corporations that are subsidiaries of bank holding companies to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade.

DEFINITIONS

SEC. 103.[2] (a) For purposes of this title—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes, but is not limited to, accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services;

(3) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to

[2] 15 U.S.C. 4002.

goods, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means a person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "antitrust laws" means the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition, and any State antitrust or unfair competition law.

(b) The Secretary of Commerce may by regulation further define any term defined in subsection (a), in order to carry out this title.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 104.[3] The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

TITLE II—BANK EXPORT SERVICES

SHORT TITLE

SEC. 201. This title may be cited as the "Bank Export Services Act".

SEC. 202.[4] The Congress hereby declares that it is the purpose of this title to provide for meaningful and effective participation by bank holding companies, bankers' banks, and Edge Act corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section

[3] 15 U.S.C. 4003.
[4] 12 U.S.C. 1843 note.

4(c)(14) of the Bank Holding Company Act of 1956, the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with similar foreign-owned institutions in the United States and abroad;

(2) afford to United States commerce, industry, and agriculture, especially small- and medium-size firms, a means of exporting at all times;

(3) foster the participation by regional and smaller banks in the development of export trading companies; and

(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs.

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 203.[5] * * *

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SEC. 205.[4] On or before two years after the date of the enactment of this Act, the Federal Reserve Board shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs[6] of the House of Representatives the Board's recommendations with respect to the implementation of this section, the Board's recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-size and minority business concerns, and the Board's recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 206.[7] The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 4(c)(14)(F)(i) of the Bank Holding Company Act of 1956, or to other exporters, when such loans are secured by export accounts receivable, inventories of exportable goods, accounts, receivable from leases, performance contracts, grant commitments, participation

[5] Sec. 203 amended sec. 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)).

[6] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

[7] 12 U.S.C. 635a–4.

fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate,[8] and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

BANKERS' ACCEPTANCES

SEC. 207.[9] * * *

TITLE III—EXPORT TRADE CERTIFICATES OF REVIEW

EXPORT TRADE PROMOTION DUTIES OF SECRETARY OF COMMERCE

SEC. 301.[10] To promote and encourage export trade, the Secretary may issue certificates of review and advise and assist any person with respect to applying for certificates of review.

APPLICATION FOR ISSUANCE OF CERTIFICATE OF REVIEW

SEC. 302.[11,12] (a) To apply for a certificate of review, a person shall submit to the Secretary a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule or regulation promulgated under section 310.

(b)(1) Within ten days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall publish in the Federal Register a notice that announces that an application for a certificate of review has been submitted, identifies each person submitting the application, and describes the conduct for which the application is submitted.

(2) Not later than seven days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall transmit to the Attorney General—

(A) a copy of the application,

(B) any information submitted to the Secretary in connection with the application, and

[8] Sec. 616(b) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1257) added the words to this point beginning with "accounts, receivable from leases, performance contracts, * * *".

[9] Sec. 207 amended the seventh paragraph of sec. 13 of the Federal Reserve Act (12 U.S.C. 372).

[10] 15 U.S.C. 4011.

[11] 15 U.S.C. 4012.

[12] Secs. 302 and 303 did not become effective until 90 days after the effective date of the rules and regulations first promulgated under sec. 310.

(C) any other relevant information (as determined by the Secretary) in the possession of the Secretary, including information regarding the market share of the applicant in the line of commerce to which the conduct specified in the application relates.

ISSUANCE OF CERTIFICATE

SEC. 303.[12,13] (a) A certificate of review shall be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will—

(1) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

(2) not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

(3) not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

(4) not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(b) Within ninety days after the Secretary receives an application for a certificate of review, the Secretary shall determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of subsection (a). If the Secretary, with the concurrence of the Attorney General, determines that such standards are met, the Secretary shall issue to the applicant a certificate of review. The certificate of review shall specify—

(1) the export trade, export trade activities, and methods of operation to which the certificate applies,

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions the Secretary or the Attorney General deems necessary to assure compliance with the standards of subsection (a).

(c) If the applicant indicates a special need for prompt disposition, the Secretary and the Attorney General may expedite action on the application, except that no certificate of review may be issued within thirty days of publication of notice in the Federal Register under section 302(b)(1).

(d)(1) If the Secretary denies in whole or in part an application for a certificate, he shall notify the applicant of his determination and the reasons for it.

(2) An applicant may, within thirty days of receipt of notification that the application has been denied in whole or in part, request the Secretary to reconsider the determination. The Secretary, with the concurrence of the Attorney General, shall notify the applicant of the determination upon reconsideration within thirty days of receipt of the request.

[13] 15 U.S.C. 4013.

(e) If the Secretary denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of documents submitted by the applicant in connection with the application for the certificate, the Secretary and the Attorney General shall return to the applicant, not later than thirty days after receipt of the request, the documents and all copies of the documents available to the Secretary and the Attorney General, except to the extent that the information contained in a document has been made available to the public

(f) A certificate shall be void ab initio with respect to any export trade, export trade activities, or methods of operation for which a certificate was procured by fraud.

REPORTING REQUIREMENT; AMENDMENT OF CERTIFICATE; REVOCATION OF CERTIFICATE

SEC. 304.[14] (a)(1) Any applicant who receives a certificate of review—

(A) shall promptly report to the Secretary any change relevant to the matters specified in the certificate, and

(B) may submit to the Secretary an application to amend the certificate to reflect the effect of the change on the conduct specified in the certificate.

(2) An application for an amendment to a certificate of review shall be treated as an application for the issuance of a certificate. The effective date of an amendment shall be the date on which the application for the amendment is submitted to the Secretary.

(b)(1) If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person holding a certificate of review no longer comply with the standards of section 303(a), the Secretary shall request such information from such person as the Secretary or the Attorney General deem necessary to resolve the matter of compliance. Failure to comply with such request shall be grounds for revocation of the certificate under paragraph (2).

(2) If the Secretary or the Attorney General determines that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the standards of section 303(a), or that such person has failed to comply with a request made under paragraph (1), the Secretary shall give written notice of the determination to such person. The notice shall include a statement of the circumstances underlying, and the reasons in support of, the determination. In the 60-day period beginning 30 days after the notice is given, the Secretary shall revoke the certificate or modify it as the Secretary or the Attorney General deem necessary to cause the certificate to apply only to the export trade, export trade activities, or methods of operation which are in compliance with the standards of section 303(a).

(3) For purposes of carrying out this subsection, the Attorney General, and the Assistant Attorney General in charge of the antitrust division of the Department of Justice, may conduct investigations in the same manner as the Attorney General and the Assistant Attorney General conduct investigations under section 3 of the

[14] 15 U.S.C. 4014.

Antitrust Civil Process Act, except that no civil investigative demand may be issued to a person to whom a certificate of review is issued if such person is the target of such investigation.

JUDICIAL REVIEW; ADMISSIBILITY

SEC. 305.[15] (a) If the Secretary grants or denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or modifies a certificate pursuant to section 304(b), any person aggrieved by such determination may, within 30 days of the determination, bring an action in any appropriate district court of the United States to set aside the determination on the ground that such determination is erroneous.

(b) Except as provided in subsection (a), no action by the Secretary or the Attorney General pursuant to this title shall be subject to judicial review.

(c) If the Secretary denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement or reasons therefor shall be admissible in evidence, in any administrative or judicial proceeding, in support of any claim under the antitrust laws.

PROTECTION CONFERRED BY CERTIFICATE OF REVIEW

SEC. 306.[16] (a) Except as provided in subsection (b), no criminal or civil action may be brought under the antitrust laws against a person to whom a certificate of review is issued which is based on conduct which is specified in, and complies with the terms of, a certificate issued under section 303 which certificate was in effect when the conduct occurred.

(b)(1) Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for the failure to comply with the standards of section 303(a). Any action commenced under this title shall proceed as if it were an action commenced under section 4 or section 16 of the Clayton Act, except that the standards of section 303(a) of this title and the remedies provided in this paragraph shall be the exclusive standards and remedies applicable to such action.

(2) Any action brought under paragraph (1) shall be filed within two years of the date the plaintiff has notice of the failure to comply with the standards of section 303(a) but in any event within four years after the cause of action accrues.

(3) In any action brought under paragraph (1), there shall be a presumption that conduct which is specified in and complies with a certificate of review does not comply with the standards of section 303(a).

(4) In any action brought under paragraph (1), if the court finds that the conduct does comply with the standards of section 303(a), the court shall award to the person against whom the claim is

[15] 15 U.S.C. 4015.
[16] 15 U.S.C. 4016.

brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(5) The Attorney General may file suit pursuant to section 15 of the Clayton Act (15 U.S.C. 25) to enjoin conduct threatening clear and irreparable harm to the national interest.

GUIDELINES

SEC. 307.[17] (a) To promote greater certainty regarding the application of the antitrust laws to export trade, the Secretary, with the concurrence of the Attorney General, may issue guidelines—

(1) describing specific types of conduct with respect to which the Secretary, with the concurrence of the Attorney General, has made or would make, determinations under sections 303 and 304, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Section 553 of title 5, United States Code, shall not apply to the issuance of guidelines under subsection (a).

ANNUAL REPORTS

SEC. 308.[18] Every person to whom a certificate of review is issued shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, that updates where necessary the information required by section 302(a).

DISCLOSURE OF INFORMATION

SEC. 309.[19] (a) Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5, United States Code.

(b)(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding, subject to appropriate protective orders,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Secretary deems disclosure of the information to be necessary in connection with making the determination,

[17] 15 U.S.C. 4017.
[18] 15 U.S.C. 4018.
[19] 15 U.S.C. 4019.

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule or regulation promulgated under section 310 permitting the disclosure of the information to an agency of the United States or of a State on the condition that an agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

RULES AND REGULATIONS

SEC. 310.[20] The Secretary, with the concurrence of the Attorney General, shall promulgate such rules and regulations as are necessary to carry out the purposes of this Act.

DEFINITIONS

SEC. 311.[21] As used in this title—

(1) the term "export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation,

(2) the term "service" means intangible economic output, including, but not limited to—

(A) business, repair, and amusement services,

(B) management, legal, engineering, architectural, and other professional services, and

(C) financial, insurance, transportation, informational and any other data-based services, and communication services,

(3) the term "export trade activities" means activities or agreements in the course of export trade,

(4) the term "methods of operation" means any method by which a person conducts or proposes to conduct export trade,

(5) the term "person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons,

(6) the term "antitrust laws" means the antitrust laws, as such term is defined in the first section of the Clayton Act (15 U.S.C. 12), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law,

(7) the term "Secretary" means the Secretary of Commerce or his designee, and

(8) the term "Attorney General" means the Attorney General of the United States or his designee.

[20] 15 U.S.C. 4020.
[21] 15 U.S.C. 4021.

EFFECTIVE DATES

SEC. 312.[22] (a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) Section 302 and section 303 shall take effect 90 days after the effective date of the rules and regulations first promulgated under section 310.

TITLE IV—FOREIGN TRADE ANTITRUST IMPROVEMENTS

SHORT TITLE

SEC. 401. This title may be cited as the "Foreign Trade Antitrust Improvements Act of 1982".

AMENDMENT TO SHERMAN ACT

SEC. 402.[23] * * *

AMENDMENT TO FEDERAL TRADE COMMISSION ACT

SEC. 403.[24] * * *

[22] 15 U.S.C. 4011 note.
[23] Sec. 402 amended the Sherman Act (15 U.S.C. 1 *et seq.*) by inserting a new sec. 7.
[24] Sec. 403 amended sec. 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)).

(21) Trade Agreements Act of 1979

Partial text of Public Law 96–39 [H.R. 4537], 93 Stat. 144 approved July 26, 1979; as amended by the Reorganization Plan No. 3 of 1979 (44 F.R. 69273); Public Law 98–67 [Caribbean Basin Economic Recovery Act; H.R. 2973], 97 Stat. 369 at 393, approved August 5, 1983; Public Law 98–573 [Trade and Tariff Act of 1984; H.R. 3398], 98 Stat. 2948 at 3033, approved October 30, 1984; Public Law 99–47 [United States-Israel Free Trade Area Implementation Act of 1985; H.R. 2268], 99 Stat. 82 at 84, approved June 11, 1985; Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 100–449 [United States-Canada Free-Trade Agreement Implementation Act of 1988; H.R. 5090], 102 Stat. 1851, approved September 28, 1988; Public Law 100–690 [Anti-Drug Abuse Act of 1988; H.R. 5210], 102 Stat. 4181, approved November 18, 1988; Public Law 103–182 [North American Free Trade Agreement Implementation Act; H.R. 3450], 107 Stat. 2057, approved December 8, 1993; Public Law 103–355 [Federal Acquisition Streamlining Act of 1994; S. 1587], 108 Stat. 3243, approved October 13, 1994; Public Law 103–465 [Uruguay Round Agreements Act; H.R. 5110], 108 Stat. 4809, approved December 8, 1994; Public Law 104–295 [Miscellaneous Trade and Technical Corrections Act of 1996; H.R. 3815], 110 Stat. 3514, approved October 11, 1996; Public Law 108–286 [United States-Australia Free Trade Agreement Implementation Act; H.R. 4759], 118 Stat. 919, approved August 3, 2004; Public Law 109–53 [Dominican Republic-Central America-United States Free Trade Agreement Implementation Act; H.R. 3045], 119 Stat. 462, approved August 2, 2005; and Public Law 109–169 [United States-Bahrain Free Trade Agreement Implementation Act; H.R. 4340], 119 Stat. 3581, approved January 11, 2006

AN ACT To approve and implement the trade agreements negotiated under the Trade Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; PURPOSES.

(a) SHORT TITLE.—This Act may be cited as the "Trade Agreements Act of 1979".

(b) TABLE OF CONTENTS.—* * *

(c)[1] PURPOSES.—The purposes of this Act are—

(1) to approve and implement the trade agreements negotiated under the Trade Act of 1974;

(2) to foster the growth and maintenance of an open world trading system;

(3) to expand opportunities for the commerce of the United States in international trade; and

(4) to improve the rules of international trade and to provide for the enforcement of such rules, and for other purposes.

SEC. 2.[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

[1] 19 U.S.C. 2502.
[2] 19 U.S.C. 2503.

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.

(b) ACCEPTANCE OF AGREEMENTS BY THE PRESIDENT.—

(1) IN GENERAL.—The President may accept for the United States the final legal instruments or texts embodying each of the trade agreements approved by the Congress under subsection (a). The President shall submit a copy of each final instrument or text to the Congress on the date such text or instrument is available, together with a notification of any changes in the instruments or texts, including their annexes, if any, as accepted and the texts of such agreements as submitted to the Congress under subsection (a). Such final legal instruments or texts shall be deemed to be the agreements submitted to and approved by the Congress under subsection (a) if such changes are—

(A) only recertifications of a formal character or minor technical or clerical changes which do not affect the substance or meaning of the texts as submitted to the Congress on June 19, 1979, or

(B) changes in annexes to such agreements, and the President determines that the balance of United States rights and obligations under such agreements is maintained.

(2) APPLICATION OF AGREEMENT BETWEEN THE UNITED STATES AND OTHER COUNTRIES.—No agreement accepted by the President under paragraph (1) shall apply between the United States and any other country unless the President determines that such country—

(A) has accepted the obligations of the agreement with respect to the United States, and

(B) should not otherwise be denied the benefits of the agreement with respect to the United States because such country has not accorded adequate benefits, including substantially equal competitive opportunities for the commerce of the United States to the extent required under section 126(c) of the Trade Act of 1974 (19 U.S.C. 2136(c)), to the United States.

(3) LIMITATION ON ACCEPTANCE CONCERNING MAJOR INDUSTRIAL COUNTRIES.—The President may not accept an agreement described in paragraph (1), (2), (3), (4), (5), (6), (7), (9), (10), or (11) of subsection (c), unless he determines that each major industrial country (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d)) is also accepting the agreement. Notwithstanding the preceding sentence, the President may accept such an agreement, if he determines that only one major industrial country is not accepting that agreement and the acceptance of that agreement by that country is not essential to the effective operation of the agreement, and if—

(A) that country is not a major factor in trade in the products covered by that agreement,

(B) the President has authority to deny the benefits of the agreement to that country and has taken steps to deny the benefits of the agreement to that country, or

(C) a significant portion of United States trade would benefit from the agreement, notwithstanding such non-acceptance, and the President determines and reports to the Congress that it is in the national interest of the United States to accept the agreement.

For purposes of this paragraph, the acceptance of an agreement by the European Communities on behalf of its member countries shall also be treated as acceptance of that agreement by each member country, and acceptance of an agreement by all the member countries of the European Communities shall also be treated as acceptance of that agreement by the European Communities.

(c) TRADE AGREEMENTS TO WHICH THIS ACT APPLIES.—The trade agreements to which subsection (a) applies are the following:

(1) The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (relating to customs valuation).

(2) The Agreement on Government Procurement.

(3) The Agreement on Import Licensing Procedures.

(4) The Agreement on Technical Barriers to Trade (relating to product standards).

(5) The Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures).

(6) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to anti-dumping measures).

(7) The International Dairy Arrangement.

(8) Certain bilateral agreements on cheese, other dairy products, and meat.

(9) The Arrangement Regarding Bovine Meat.

(10) The Agreement on Trade in Civil Aircraft.

(11) Texts Concerning a Framework for the Conduct of World Trade.

(12) Certain Bilateral Agreements to Eliminate the Wine-Gallon Method of Tax and Duty Assessment.

(13) Certain other agreements to be reflected in Schedule XX of the United States to the General Agreement on Tariffs and Trade, including Agreements—

(A) to Modify United States Watch Marking Requirements, and to Modify United States Tariff Nomenclature and Rates of Duty for Watches,

(B) to Provide Duty-Free Treatment for Agricultural and Horticultural Machinery, Equipment, Implements, and Parts Thereof, and

(C) to Modify United States Tariff Nomenclature and Rates of Duty for Ceramic Tableware.

(14) The Agreement with the Hungarian People's Republic.

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

(a) UNITED STATES STATUTES TO PREVAIL IN CONFLICT.—No provision of any trade agreement approved by the Congress under section 2(a), nor the application of any such provision to any person or circumstances, which is in conflict with any statute of the United States shall be given effect under the laws of the United States.

(b)[3] IMPLEMENTING REGULATIONS.—Regulations 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 to implement each agreement approved under section 2(a) shall be issued within 1 year after the date of the entry into force of such agreement with respect to the United States.

(c)[3] 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

[3] 19 U.S.C. 2504. As enacted, sec. 3 consisted of subsecs. (a) through (c) and (e) and (f), with no provision designated as subsec. (d).

(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 purposes 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.

(e)[3] * * *

(f)[3] UNSPECIFIED PRIVATE REMEDIES NOT CREATED.—Neither the entry into force with respect to the United States of any agreement approved under section 2(a), 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.

TITLE I—COUNTERVAILING AND ANTIDUMPING DUTIES

SEC. 101.[5] * * *

SEC. 102. PENDING INVESTIGATIONS.

(a) PENDING INVESTIGATIONS OF BOUNTIES OR GRANTS.—If, on the effective date of the application of title VII of the Tariff Act of 1930 to imports from a country, there is an investigation in progress under section 303 of that Act as to whether a bounty or grant is being paid or bestowed on imports from such country, then:

(1) If the Secretary of the Treasury has not yet made a preliminary determination under section 303 of that Act as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under section 303 and the matter previously under investigation shall be subject to this title as if the affirmative determination called for in section 702 of that

[4] Sec. 101 of title I added a new title VII to the Tariff Act of 1930.

Act were made with respect to that matter on the effective date of the application of title VII of that Act to such country.

(2) If the Secretary has made a preliminary determination under such section 303, but not a final determination, as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under such section 303 and the matter previously under investigation shall be subject to the provisions of title VII of that Act as if the preliminary determination under section 303 were a preliminary determination under section 703 of that title made on the effective date of the application of that title to such country.

(b) PENDING INVESTIGATIONS OF LESS-THAN-FAIR-VALUES SALES.—If, on the effective date of title VII of the Tariff Act of 1930, there is an investigation in progress under the Antidumping Act, 1921, as to whether imports from a country are being, or are likely to be, sold in the United States or elsewhere at less than fair value, then:

(1) If the Secretary has not yet made a preliminary determination under the Antidumping Act, 1921, as to the question of less-than-fair-value sales, he shall terminate the investigation and the United States International Trade Commission shall terminate any investigation under section 201(c)(2) of the Antidumping Act, 1921, and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 as if the affirmative determination called for in section 732 were made with respect to such matter on the effective date of title VII of the Tariff Act of 1930.

(2) If the Secretary has made under the Antidumping Act, 1921, a preliminary determination, but not a final determination, that imports from such country are being or are likely to be sold in the United States or elsewhere at less than fair value, the investigation shall be terminated and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 as if the preliminary determination under the Antidumping Act, 1921, were a preliminary determination under section 733 of that title made on the effective date of title VII of the Tariff Act of 1930.

(c) PENDING INVESTIGATIONS OF INJURY.—If, on the effective date of the application of title VII of the Tariff Act of 1930 to imports from a country, the United States International Trade Commission is conducting an investigation under section 303 of the Tariff Act of 1930 or section 201(a) of the Antidumping Act, 1921, as to whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation, under subtitle A or B of title VII of the Tariff Act of 1930, which shall be completed within 75 days, and—

(1) treat any final determination of the Secretary of the Treasury under section 303 as a final determination under section 705(a) of the Tariff Act of 1930 and consider the net amount of the bounty or grant estimated or determined under section 303 as the net subsidy amount under subtitle A of that title; and

(2) treat any final determination of the Secretary of the Treasury under the Antidumping Act of 1921, as a final determination under section 735(a) of the Tariff Act of 1930.

SEC. 103.[5] * * *

SEC. 104. TRANSITION RULES FOR COUNTERVAILING DUTY ORDERS.

(a) WAIVED COUNTERVAILING DUTY ORDERS.—

(1) NOTIFICATION OF COMMISSION.—The administering authority shall notify the United States International Trade Commission by January 7, 1980, of any countervailing duty order in effect on January 1, 1980—

(A)(i) for which the Secretary of the Treasury has waived the imposition of countervailing duties under section 303(d) of the Tariff Act of 1930 (19 U.S.C. 1303(d)), and

(ii) which applies to merchandise other than quota cheese (as defined in section 701(c)(1) of this Act), which is a product of a country under the Agreement.

(B) published on or after the date of the enactment of this Act, and before January 1, 1980, with respect to products of a country under the Agreement (as defined in section 701(b) of the Tariff Act of 1930), or

(C) applicable to frozen, boneless beef from the European Communities under Treasury Decision 76–109,

and shall furnish to the Commission the most current information it has with respect to the net subsidy benefiting the merchandise subject to the countervailing duty order.

(2) DETERMINATION BY THE COMMISSION.—Within 180 days after the date on which it receives the information from the administering authority under paragraph (1), the Commission shall make a 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 of the merchandise subject to the order.

(3) EFFECT OF DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified by the Commission of an affirmative determination under paragraph (2), the administering authority shall terminate the waiver of imposition of countervailing duties for merchandise subject to the order, if any. The countervailing duty order under section 303 of the Tariff Act of 1930 which applies to that merchandise shall remain in effect until revoked, in whole or in part, under section 751(d) of such Act.

(B) NEGATIVE DETERMINATION.—Upon being notified by the Commission of a negative determination under paragraph (2), the administering authority shall revoke the countervailing duty order, and publish notice in the Federal Register of the revocation.

(b) OTHER COUNTERVAILING DUTY ORDERS.—

[5] Sec. 103 amended sec. 303 of the Tariff Act of 1930.

(1) REVIEW BY COMMISSION UPON REQUEST.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

(A) which is not a countervailing duty order to which subsection (a) applies,

(B) which applies to merchandise which is the product of a country under the Agreement, and

(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States or merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 shall make a determination under paragraph (2) of this subsection.

(2) DETERMINATION BY THE COMMISSION.—In a case described in paragraph (1) with respect to which it has received a request for review the Commission shall commence an investigation to determine whether—

(A) an industry in the United States—

(i) would be materially injured, or

(ii) would be threatened with material injury, or

(B) the establishment of an industry in the United States would be materially retarded,

by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked. A negative determination by the Commission under this paragraph shall not be based, in whole or in part, on any export taxes, duties, or other changes levied on the export of merchandise to the United States specifically intended to offset the subsidy received.[6]

(3) SUSPENSION OF LIQUIDATION; INVESTIGATION TIME LIMITS.—Whenever the Commission receives a request under paragraph (1) it shall promptly notify the administering authority and the administering authority shall suspend liquidation of entries of the affected merchandise made on or after the date of receipt of the Commission's notification, or in the case of butter from Australia, entries of merchandise subject to the assessment of countervailing duties under Treaty Decision 42937, as amended, and collect estimated countervailing duties pending the determination of the Commission. The Commission shall issue its determination in any investigation under this subsection not later than 3 years after the date of commencement of such investigation.

(4) EFFECT OF DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified of an affirmative determination under paragraph (2) by the Commission the administering authority shall liquidate entries of merchandise the liquidation of which was suspended under paragraph (3) of this subsection and impose countervailing duties in the amount of the estimated

[6] Sec. 611(c) of Public Law 98–573 (98 Stat. 3033) inserted this sentence.

duties required to be deposited. The countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(c) of the Tariff Act of 1930.

(B) NEGATIVE DETERMINATION.—Upon being notified of a negative determination under paragraph (2) by the Commission, the administering authority shall revoke the countervailing duty order then in effect, publish notice thereof in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation.

(c) ALL OUTSTANDING COUNTERVAILING DUTY ORDERS.—Subject to the provisions of subsections (a) and (b), any countervailing duty order issued under section 303 of the Tariff Act of 1930 which is—

(1) in effect on the effective date of title VII of the Tariff Act of 1930 (as added by section 101 of this Act), or

(2) issued pursuant to court order in a proceeding brought before that date under section 516(d) of the Tariff Act of 1930

shall remain in effect after that date and shall be subject to review under section 751 of the Tariff Act of 1930.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the Commission makes a determination under subsection (a) or (b) it shall publish notice of that determination in the Federal Register and notify the administering authority of its determination.

(e) DEFINITIONS.—Whenever any term which is defined in section 771 of the Tariff Act of 1930 is used in this section, it has the same meaning as when it is used in title VII of that Act.

SEC. 105.[7] * * *

SEC. 106. CONFORMING CHANGES.

(a) REPEAL OF OLD LAW.—The Antidumping Act, 1921 (19 U.S.C. 160 et seq.) is hereby repealed but findings in effect on the effective date of this Act, or issued pursuant to court order in an action brought before that date, shall remain in effect, subject to review under section 751 of the Tariff Act of 1920.

(b)[8] * * *

SEC. 107. EFFECTIVE DATE.

Except as otherwise provided in this title, this title and the amendments made by it shall take effect on January 1, 1980, if—

(1) the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures), and

(2) the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures),

approved by the Congress under section 2(a) of this Act have entered into force with respect to the United States as of that date.[9]

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[7] Sec. 105 amended sec. 304(d)(4) of the Tariff Act of 1930 concerning the continuation of certain waivers.

[8] Subsec. (b) consisted of conforming amendments to several statutes.

[9] The President in his determination of December 14, 1979 (44 F.R. 74781), authorized the U.S. Special Representative for Trade Negotiations (United States Trade Representative) to sign both of these agreements.

TITLE II—CUSTOMS VALUATION

SUBTITLE A—VALUATION STANDARDS AMENDMENTS

SEC. 201.[10] * * *

SEC. 202.[10] * * *

SEC. 203. PRESIDENTIAL REPORT ON OPERATION OF THE AGREEMENT.

As soon as practicable after the close of the 2-year period beginning on the date on which the amendments made by this title (other than section 223(b), relating to certain rubber footwear) take effect, the President shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade approved under section 2(a) (hereinafter in this subtitle referred to as the "Agreement"), both domestically and internationally, during that period.

SEC. 204. TRANSITION TO VALUATION STANDARDS UNDER THIS TITLE.

(a) EFFECTIVE DATE OF AMENDMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this title (except the amendments made by section 223(b)) shall take effect on—

(A) January 1, 1981, if the Agreement enters into force with respect to the United States by that date; or

(B) if subparagraph (A) does not apply, that date after January 1, 1981, on which the Agreement enters into such force;

and shall apply with respect to merchandise that is exported to the United States on or after whichever of such dates applies.

(2) EARLIER EFFECTIVE DATE UNDER CERTAIN CIRCUMSTANCES.—If the President determines before January 1, 1981, that—

(A) the European Economic Community has accepted the obligations of the Agreement with respect to the United States; and

(B) each of the member states of the European Economic Community has implemented the Agreement under its laws;

the President shall by proclamation announce such determination and the amendments made by this title (except the amendments made by section 223(b)) shall take effect on the date specified in the proclamation (but not before July 1, 1980) and shall apply with respect to merchandise that is exported to the United States on or after such date; except that unless the Agreement enters into force with respect to the United States by January 1, 1981, all provisions of law that were amended by such amendments are revised (as in effect on the day before such amendments took effect) on January 1, 1981, and such provisions—

[10] Sec. 201 amended sec. 402 of the Tariff Act of 1930 to reflect changes brought about by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (relating to customs valuation). Sec. 202 consisted of conforming amendments to several other laws.

(i) shall remain in effect until the date on which the Agreement enters into force with respect to the United States (and on such date the amendments made by this title (except the amendments made by section 223(b)) are revived and shall apply with respect to merchandise exported to the United States on or after such date); and

(ii) shall apply with respect to merchandise exported to the United States on or after January 1, 1981, and before the date on which the Agreement enters into such force.

(b) APPLICATION OF OLD LAW VALUATION STANDARDS.—For purposes of the administration of the customs laws, all merchandise (other than merchandise to which subsections (a) and (c) apply) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

(c) SPECIAL TREATMENT FOR CERTAIN RUBBER FOOTWEAR.—The amendments made by section 223(b) shall take effect July 1, 1981, or, if later, the date on which the Agreement enters into force with respect to the United States, and shall apply, together with the other amendments made by this title, to rubber footwear exported to the United States on or after such date. For purposes of the administration of the customs laws, all rubber footwear (other than rubber footwear to which the preceding sentence applies) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

(d) DEFINITION.—For purposes of this section, the term "rubber footwear" means articles described in item 700.60 of the Tariff Schedules of the United States (as in effect on the day before the day on which the amendments made by section 223(b) take effect).

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TITLE III—GOVERNMENT PROCUREMENT [11]

SEC. 301.[12] GENERAL AUTHORITY TO MODIFY DISCRIMINATION PURCHASING REQUIREMENTS.

(a) PRESIDENTIAL WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS.—Subject to subsection (f) of this section, the President [13] 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

[11] See also Executive Order 12849 of May 25, 1993 (58 F.R. 30931) relating to the implementation of a Memorandum of Understanding with the European Community on government procurement.

[12] 19 U.S.C. 2511.

[13] Sec. 381(a)(1) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2128) struck out "The President" and inserted in lieu thereof "Subject to subsection (f) of this section, the President".

(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,[14] 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)[15] LIMITATIONS ON WAIVER AUTHORITY NOT EFFECTIVE UNLESS PROVISION AMENDED.—The authority of the President under subsection (a) to waive any laws, regulation, 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)[16] 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)[16] 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.[17] AUTHORITY TO ENCOURAGE RECIPROCAL COMPETITIVE PROCUREMENT PRACTICES.

(a)[18] AUTHORITY TO BAR PROCUREMENT FROM NON-DESIGNATED COUNTRIES.—

[14] Sec. 381(a)(2) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2128) inserted "or the North American Free Trade Agreement" after "the Agreement".

[15] Sec. 7005(e) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1152) added subsec. (d).

[16] Sec. 381(a)(3) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2128) added subsecs. (e) and (f).

[17] 19 U.S.C. 2512.

[18] Sec. 343(a) of Public Law 103–465 (108 Stat. 4954) amended and restated subsec. (a).

(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)[19] 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

[19] Sec. 343(b)(1) of Public Law 103–465 (108 Stat. 4955) amended and restated para. (1).

committees established under section 135 of the Trade Act of 1974 and with the appropriate committees of the Congress.[20]

(c) REPORT ON IMPACT OF RESTRICTIONS.—

(1) IMPACT ON 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[21] 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 procedures 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

[20] Sec. 343(b)(2) of Public Law 103–465 (108 Stat. 4955) inserted this sentence.

[21] Sec. 1(a)(6) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Government Operations of the House of Representatives should be treated as referring to the Committee on Government Reform and Oversight of the House of Representatives.

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.[22] 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).[23] The President may modify or withdraw any waiver granted pursuant to this section.

SEC. 304.[24] EXPANSION OF THE COVERAGE OF THE AGREEMENT.

(a) OVERALL NEGOTIATING OBJECTIVE.—The President shall seek in the renegotiations provided for in article XXIV(7)[25] 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.

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[22] 19 U.S.C. 2513.

[23] Sec. 342(a) of Public Law 103–465 (108 Stat. 4953) inserted "referred to in section 2(c) and approved under section 2(a)" after "Civil Aircraft".

[24] 19 U.S.C. 2514.

[25] Sec. 342(b)(1) of Public Law 103–465 (108 Stat. 4953) struck out "part IX, paragraph 6" and inserted in lieu thereof "article XXIV(7)" in subsecs. (a) and (c). In both subsecs. (a) and (c), sec. 20(c)(11) of Public Law 104–295 (110 Stat. 3528) struck out the comma after "article XXIV(7)".

(c) INDEPENDENT VERIFICATION OBJECTIVE.—The President shall seek to establish in the renegotiation provided for in article XXIV(7)[25] 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)[26] of the Agreement.

(d) REPORTS OF 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,[27] 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.[28] MONITORING AND ENFORCEMENT.

(a) MONITORING AND ENFORCEMENT STRUCTURE RECOMMENDATIONS.—In the preparation of the recommendations for the reorganization of trade functions, the President shall insure 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

[26] Sec. 342(b)(2) of Public Law 103–465 (108 Stat. 4953) struck out "part VI, paragraph 9" and inserted in lieu thereof "article XIX(5)". Sec. 20(c)(11)(B)(ii) of Public Law 104–295 (110 Stat. 3528) struck out a comma after "article XIX(5)".

[27] Sec. 342(b)(3) of Public Law 103–465 (108 Stat. 4953) struck out "date of enactment of this Act" and inserted in lieu thereof "date it enters into force with respect to the United States".

[28] 19 U.S.C. 2515.

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, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 308(4)(B), an article is or would be a product of a foreign country or instrumentality designated pursuant to section 301(b).[29]

(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)[30] ANNUAL REPORT ON FOREIGN DISCRIMINATION.—

(1) ANNUAL REPORT REQUIRED.—The President shall, no later than April 30 of each year,[31] 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

[29] This responsibility of the Secretary of the Treasury was transferred to the Secretary of Commerce, pursuant to sec. 5(a)(1) of Reorganization Plan No. 3 of 1979 (International Trade). However, the Secretary of Commerce shall consult the Secretary of the Treasury in exercising this function.

[30] Sec. 7003 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1548) added subsecs. (d) through (k).

[31] Sec. 342(c) of Public Law 103–465 (108 Stat. 4953) struck out "April 30, 1990, and annually on April 30 thereafter," and inserted in lieu thereof "April 30 of each year,".

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;[32]

(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;[32]

(D)[33] (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)[33] (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

[32] Sec. 20(c)(10) of Public Law 104–295 (110 Stat. 3528) struck out "or" at the end of subpara. (B), and struck out a period at the end of subpara. (C) and replaced it with a semicolon.

[33] Sec. 341(c) of Public Law 103–465 (108 Stat. 4953) added subparas. (D) and (E).

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.[34]

(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.

[34] Sec. 341(c)(2) of Public Law 103–465 (108 Stat. 4953) added text to the end of the sentence beginning with ", including the failure".

(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)[30] 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)[30] 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[35] 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,[36]

(C)[36] 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)[36] 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)[37] 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

[35] Sec. 341(a)(1) of Public Law 103–465 (108 Stat. 4952) struck out "a year" and inserted in lieu thereof "the 18 months".

[36] Secs. 341(a)(2), (3), and (4) of Public Law 103–465 (108 Stat. 4952) struck out "or" at the end of subpara. (B), redesignated subpara. (C) as subpara. (D), and added a new subpara. (C).

[37] Sec. 341(b)(1) of Public Law 103–465 (108 Stat. 4952) amended and restated para. (3).

(ii) the period of time provided for pursuant to paragraph (2)(C) has expired and procedures for suspending 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)[38] 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 the 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;

[38] Sec. 341(b)(2) of Public Law 103–465 (108 Stat. 4952) struck out "subparagraph (A) or (B) of paragraph (3)" and inserted in lieu thereof "subclause (I) or (II) of paragraph (3)(B)(i)".

(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)[30] 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)[39] of subsection (d)(2)[40] 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)[41] of subsection (d)(2),[42] then, on the day after the end of such 60-day period—

(A)[43] 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)[44].

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[39] Sec. 343(c)(1)(A) of Public Law 103–465 (108 Stat. 4955) struck out "(B) or (C)" and inserted in lieu thereof "(B), (C), (D), or (E)".

[40] Sec. 20(c)(13)(A)(i) of Public Law 104–295 (110 Stat. 3528) struck out "of such subsection" and inserted in lieu thereof "of subsection (d)(2)".

[41] Sec. 343(c)(1)(B) of Public Law 103–465 (108 Stat. 4955) struck out "their discriminatory procurement practices" and inserted in lieu thereof "the practices regarding government procurement identified under subparagraph (B)(ii), (C)(ii), (D)(ii), or (E)(ii) (as the case may be)".

[42] Sec. 20(c)(13)(A)(ii) of Public Law 104–295 (110 Stat. 3528) inserted "of subsection (d)(2)" after "(as the case may be)".

[43] On June 29, 1993, the President issued a determination which delegated authority to the USTR to "formally identify Japan as a country that discriminates against U.S. products or services in government procurement of construction, architectural, and engineering services", and furthermore, "to impose, modify, or restrict sanctions in response to the discrimination so identified." (58 F.R. 35357). This authority was continued several times, most recently through October 7, 1994 (59 F.R. 50477).

[44] Sec. 343(c)(2) of Public Law 103–465 (108 Stat. 4955) struck out "discrimination identified pursuant to subsection (d)(2) (B) or (C)" and inserted in lieu thereof "the practices regarding government procurement identified under subparagraph (B)(ii), (C)(ii), (D)(ii), or (E)(ii) (as the case may be)", resulting in a double "the". Sec. 20(c)(13)(B) of Public Law 104–295 (110 Stat.

Continued

(h)[30] 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)[30] 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 competition consistent with the requirements imposed by the amendments made by the Competition in Contracting Act (Public Law 98–369; 98 Stat. 1175).

(j)[30] 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)[30] 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

3529) struck out "the the" and inserted in lieu thereof "the", and inserted "of subsection (d)(2)" after "(as the case may be)".

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.

SEC. 306.[45] **LABOR SURPLUS AREA STUDIES** * * * [Repealed—1994]

SEC. 307.[46] **AVAILABILITY OF INFORMATION TO CONGRESSIONAL ADVISERS.**

The United States Trade Representative[47] 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),[48] of the Agreement.

SEC. 308.[49] **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,[50] 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 and 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.—

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[45] Formerly at 19 U.S.C. 2516. Repealed by sec. 7206(c) of Public Law 103–355 (108 Stat. 3382). Repealed again by sec. 342(d) of Public Law 103–465 (108 Stat. 4953).

[46] 19 U.S.C. 2517.

[47] Sec. 1(1)(b) of the Reorganization Plan No. 3 of 1979 (44 F.R. 69273) struck out "Special Representative for Trade Negotiations" and inserted in lieu thereof "United States Trade Representative".

[48] Sec. 342(e) of Public Law 103–465 (108 Stat. 4953) struck out "part VI, paragraph 9" and inserted in lieu thereof "article XIX(5)".

[49] 19 U.S.C. 2518.

[50] Sec. 342(f)(1) of Public Law 103–465 (108 Stat. 4953) struck out "section 2(c) of this Act" and inserted in lieu thereof "section 101(d)(17) of the Uruguay Round Agreements Act".

(A)[51] 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;[52]

(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;[52, 53]

(iii)[52] a party to a free trade agreement that entered into force with respect to the United States after December 31, 2003, and before January 2, 2005, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States;[53, 54]

(iv)[53] a party to the Dominican Republic-Central America-United States Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States; or[54]

(v)[54] a party to a free trade agreement that entered into force with respect to the United States after December 31, 2005, and before July 2, 2006, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States.

(B) RULE OF ORIGIN.—An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C)[55] LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-ISRAEL FREE TRADE AREA

[51] Sec. 381(c) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2129) amended and restated subpara. (A). It formerly read as follows:

"(A) IN GENERAL.—The term 'eligible product' means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.".

[52] Sec. 401 of the United States-Australia Free Trade Agreement Implementation Act (Public Law 108–286; 118 Stat. 950) struck out "or" at the end of clause (i), struck out a period at the end of clause (ii) and inserted in lieu thereof "; or", and added clause (iii).

[53] Sec. 401 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53; 119 Stat. 495) struck out "or" at the end of clause (ii), struck out a period at the end of clause (iii) and inserted in lieu thereof "; or", and added clause (iv).

[54] Sec. 401 of the United States-Bahrain Free Trade Agreement Implementation Act (Public Law 109–169; 119 Stat. 3599) struck out "or" at the end of clause (iii), struck out a period at the end of clause (iv) and inserted in lieu thereof "; or", and added clause (v).

[55] Sec. 7 of the United States-Israel Free Trade Area Implementation Act of 1985 (Public Law 99–47; 99 Stat. 84) added subpara. (C).

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.[56]

(D)[57] 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.[58]

(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 such country as defined in section 126 of the Trade Act of 1974 and any instrumentality of such a country.[59]

SEC. 309.[60] 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.

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[56] Sec. 342(f)(2)(A) of Public Law 103–465 (108 Stat. 4953) struck out "having a contract value of $50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurements as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in article I(1)(b) of the Agreement on Government Procurement." and added text beginning "for which the United States is obligated".

[57] Sec. 306 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449; 102 Stat. 1876) added subpara. (D).

[58] Sec. 342(f)(2)(B) of Public Law 103–465 (108 Stat. 4954) struck out "GATT Agreement on Government Procurement, but for the SDR threshold provided for in article I(1)(b) of the GATT Agreement on Government Procurement." and inserted in lieu thereof "the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.", resulting in a double "the". Sec. 20(c)(12) of Public Law 104–295 (110 Stat. 3528) struck out "the the" and inserted in lieu thereof "the".

[59] Such definition in sec. 126 of the Trade Act of 1974 includes "Canada, the European Economic Community, the individual member countries of such Community, Japan, and any other foreign country designated by the President".

[60] 19 U.S.C. 2511 note.

TITLE IV—TECHNICAL BARRIERS TO TRADE (STANDARDS)

SUBTITLE A—OBLIGATIONS OF THE UNITED STATES

SEC. 401.[61] CERTAIN STANDARDS-RELATED ACTIVITIES.

(a)[62] 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)[62] 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.[63] 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

[61] 19 U.S.C. 2531.

[62] Sec. 351(b) of Public Law 103–465 (108 Stat. 4955) added a new subsec. (a), and redesignated the previous language as subsec. (b), by striking "Nothing" and inserting in lieu thereof "(b) UNNECESSARY OBSTACLES.—Nothing".

[63] 19 U.S.C. 2532.

(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[64] FOR FOREIGN SUPPLIERS.—Each Federal agency shall, with respect to any conformity assessment procedure[65] used by it, permit access for obtaining an assessment of conformity and the mark of the system, if any,[66] to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products whether of domestic or foreign origin.

SEC. 403.[67] 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

[64] Sec. 351(c)(1) of Public Law 103–465 (108 Stat. 4956) struck out "CERTIFICATION ACCESS" and inserted in lieu thereof "ACCESS".

[65] Sec. 351(c)(2) of Public Law 103–465 (108 Stat. 4956) struck out "certification system" and inserted in lieu thereof "conformity assessment procedure".

[66] Sec. 351(c)(3) of Public Law 103–465 (108 Stat. 4956) struck out "certification under that system" and inserted in lieu thereof "an assessment of conformity and the mark of the system, if any". Sec. 20(c)(14) of Public Law 104–295 (110 Stat. 3529) inserted a comma after "if any".

[67] 19 U.S.C. 2533.

State agencies and private persons, in carrying out standards-related activities, or 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.[68] FUNCTIONS OF TRADE REPRESENTATIVE.

(a) IN GENERAL.—The Trade Representative[69] 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[69] 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[69] 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[69] with respect to trade agreements, see section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

SEC. 412.[70] 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.[71] REPRESENTATION OF UNITED STATES INTERESTS BEFORE INTERNATIONAL STANDARDS ORGANIZATIONS.

(a) OVERSIGHT AND CONSULTATION.—The Secretary concerned shall—

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[68] 19 U.S.C. 2541. Sec. 351(b)(2)(B) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2122) struck out "**SPECIAL REPRESENTATIVE**" in the section catchline and inserted in lieu thereof "**TRADE REPRESENTATIVE**". Sec. 1(1)(b) of the Reorganization Plan No. 3 of 1979 (44 F.R. 69273), however, had made the same amendment.

[69] Sec. 1(b)(1) of the Reorganization Plan No. 3 of 1979 (44 F.R. 69273) redesignated the Special Representative for Trade Negotiations as the United States Trade Representative. Subsequently, sec. 351(b)(2)(A) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2122) struck out "Special Representative" each place it appeared in title IV and inserted in lieu thereof "Trade Representative". Sec. 21(b)(2) of Public Law 104–295 (110 Stat. 3530) also struck out "Special Representative" and inserted in lieu thereof "Trade Representative" in subsec. (c).

[70] 19 U.S.C. 2542.

[71] 19 U.S.C. 2543.

(1) inform, and consult and coordinate with, the Trade Representative[69] with respect to international standards-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 purpose.

(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 purpose, 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.[72] 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)[73] standards, technical regulations, conformity assessment procedures,[74] and standards-related activities, whether such standards, technical regulations, conformity assessment procedures,[75] 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.[76]

(2) make available to the public at such reasonable fee as the Secretary shall prescribe, copies of information required to be

[72] 19 U.S.C. 2544.

[73] Sec. 351(d)(1) of Public Law 103–465 (108 Stat. 4956) inserted "(A)" after "relating to".

[74] Sec. 351(d)(2) of Public Law 103–465 (108 Stat. 4956) struck out "certification systems" and inserted in lieu thereof "technical regulations, conformity assessment procedures,".

[75] Sec. 351(d)(3) of Public Law 103–465 (108 Stat. 4956) struck out "such standards, systems" and inserted in lieu thereof "such standards, technical regulations, conformity assessment procedures,", resulting in a double comma. Sec. 20(c)(15) of Public Law 104–295 (110 Stat. 3529) struck out the second comma.

[76] Sec. 351(d)(4) of Public Law 103–465 (108 Stat. 4956) inserted "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" after "local".

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)[77] 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.

[77] Sec. 431(a) of Public Law 103–465 (108 Stat. 4966) added subsec. (c).

SEC. 415.[78] CONTRACTS AND GRANTS.

(a) IN GENERAL.—For purposes of carrying out this title, and otherwise encouraging compliance with the Agreement, the Trade Representative[69] 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[69] 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[69] 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[69] 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, or record that is pertinent to the funds received under such grant or contract.

SEC. 416.[79] TECHNICAL ASSISTANCE.

The Trade Representative[69] 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.

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[78] 19 U.S.C. 2545.
[79] 19 U.S.C. 2546.

SEC. 417.[80] CONSULTATIONS WITH REPRESENTATIVES OF DOMESTIC INTERESTS.

In carrying out the functions for which responsible under this title, the Trade Representative[69] 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.[81] 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.[82] 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[69] 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[69] 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[69] shall by regulation prescribe and must provide a reasonable indication that the standard-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.[83] ACTION AFTER RECEIPT OF REPRESENTATIONS.

(a) REVIEW.—Upon receipt of any representations made under section 422, the Trade Representative[69] shall review the issues concerned in consultation with—

(1) the agency of persons 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.

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[80] 19 U.S.C. 2547.
[81] 19 U.S.C. 2551.
[82] 19 U.S.C. 2552.
[83] 19 U.S.C. 2553.

(b) RESOLUTION.—The Trade Representative[69] shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

SEC. 424.[84] 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.[85] 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[69] 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 repeal of a rule.

SEC. 442.[86] 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.

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[84] 19 U.S.C. 2554.
[85] 19 U.S.C. 2561.
[86] 19 U.S.C. 2562.

SUBTITLE D—DEFINITIONS AND MISCELLANEOUS PROVISIONS

SEC. 451.[87] **DEFINITIONS.**

As used in this title—

(1)[88] 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)[89] 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 1 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)[90] 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)[91] the membership of which is open to representatives, whether public or private, of the United States and at least all Members; and[92]

(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,[93] or both.

(8)[94] 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

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[87] 19 U.S.C. 2571.

[88] Sec. 351(e)(1) of Public Law 103–465 (108 Stat. 4956) amended and restated para. (1).

[89] Sec. 351(e)(2) of Public Law 103–465 (108 Stat. 4956) amended and restated para. (2).

[90] Sec. 351(e)(3) of Public Law 103–465 (108 Stat. 4956) struck out "certification system" each place it appeared in para. (4), and inserted in lieu thereof "conformity assessment procedure".

[91] Sec. 351(e)(4) of Public Law 103–465 (108 Stat. 4956) amended and restated subpara. (A).

[92] Sec. 20(c)(16) of Public Law 104–295 (110 Stat. 3529) struck out "Members." at the end of subpara. (A) and inserted in lieu thereof "Members; and".

[93] Sec. 351(e)(5) of Public Law 103–465 (108 Stat. 4956) struck out "certification system" and inserted in lieu thereof "conformity assessment procedure".

[94] Sec. 351(e)(6) of Public Law 103–465 (108 Stat. 4956) amended and restated para. (8).

(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)[95] TRADE REPRESENTATIVE.—The term "Trade Representative" means the United States Trade Representative.

(13)[96] 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.[97]

(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)[98] 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)[98] UNITED STATES.—The term "United States", when used in a geographical context, means all States.

SEC. 452.[99] EXEMPTIONS UNDER TITLE.

This title does not apply to—

[95] Sec. 351(b)(1) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2122) amended and restated para. (12). The same amendment was made however, when "United States Trade Representative" was substituted for "Special Representative for Trade Negotiations" by sec. 1(1)(b) of the Reorganization Plan No. 3 of 1979 (44 F.R. 69273).

[96] Sec. 351(e)(7) of Public Law 103–465 (108 Stat. 4956) amended and restated para. (13).

[97] Sec. 351(e)(7) of Public Law 103–465 (108 Stat. 4956) struck out "or any certification system" and inserted in lieu thereof ", technical regulation, or conformity assessment procedure".

[98] Sec. 351(e)(9) of Public Law 103–465 (108 Stat. 4957) redesignated para. (17) as para. (18), and added a new para. (17).

[99] 19 U.S.C. 2572.

(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.[100] **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,[101] the Trade Representative[69] shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

SEC. 454.[102] * * * [Repealed—1994]

SUBTITLE E—STANDARDS AND MEASURES UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT[103]

CHAPTER 1—SANITARY AND PHYTOSANITARY MEASURES

SEC. 461.[104] **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.[105] **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;

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[100] 19 U.S.C. 2573.

[101] Sec. 351(f) of Public Law 103–465 (108 Stat. 4957) inserted "through 2001" after "3-year period".

[102] Sec. 351(g) of Public Law 103–465 (108 Stat. 4957) repealed sec. 454, which had provided that: "This title shall take effect on January 1, 1980, if the Agreement enters into force with respect to the United States by that date.". The President, in a determination of December 14, 1979 (44 FR 74781), authorized the U.S. Special Representative for Trade Negotiations (U.S. Trade Representative) to sign the Agreement on behalf of the United States.

[103] Sec. 351(a) of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2118) added subtitle E.

[104] 19 U.S.C. 2575.

[105] 19 U.S.C. 2575a.

(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.[106] 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;

[106] 19 U.S.C. 2575b.

(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.[107] 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.[108] 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—

[107] 19 U.S.C. 2576.
[108] 19 U.S.C. 2576a.

(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.[109] 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.

[109] 19 U.S.C. 2576b.

(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 method, 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.[110] 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.[111] 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.

[110] 19 U.S.C. 2577.
[111] 19 U.S.C. 2578. Sec. 432 of Public Law 103–465 (108 Stat. 4970) added sec. 491.

(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.[112] 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[113] 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

[112] 19 U.S.C. 2578a. Sec. 432 of Public Law 103–465 (108 Stat. 4970) added sec. 492.

[113] Sec. 20(d)(1) of Public Law 104–295 (110 Stat. 3529) struck out "phystosanitary" and inserted in lieu thereof "phytosanitary".

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.[114] **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

[114] 19 U.S.C. 2578b. Added by sec. 432 of Public Law 103–465 (108 Stat. 4970).

the United States shall be deemed to be a reference to that foreign country.

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TITLE XI—MISCELLANEOUS PROVISIONS

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SEC. 1102.[115] AUCTION OF IMPORT LICENSES.

(a) IN GENERAL.—Nothwithstanding 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,[116] but not including any quantitative restriction imposed under section 22 of the Agricultural 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 Agriculture 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 an 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.

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SEC. 1109.[117] REORGANIZING AND RESTRUCTURING OF INTERNATIONAL TRADE FUNCTIONS OF THE UNITED STATES GOVERNMENT.

(a) IN GENERAL.—The President shall submit to the Congress, not later than July 10, 1979, a proposal to restructure the international trade functions of the Executive Branch of the United States Government.[118] In developing his proposal, the President shall consider, among other possibilities, strengthening the coordination and functional responsibilities of the Office of the United States Trade Representative[69] to include, among other things, representation of the United States in all matters before the General

[115] 19 U.S.C. 2581.

[116] Sec. 1214(k) of Public Law 100–418 (102 Stat. 1158) struck out "headnotes of the Tariff Schedules of the United States," and inserted in lieu thereof "notes of the Harmonized Tariff Schedule of the United States,".

[117] 19 U.S.C. 2111 note.

[118] Such a proposal was submitted to the Congress on September 25, 1979, as Reorganization Plan No. 3 of 1979 (Reorganization of Functions Relating to International Trade).

Agreement on Tariffs and Trade, the establishment of a board of trade with a coordinating mechanism in the Executive Office of the President, and the establishment of a Department of International Trade and Investment. The recommendations of the President, as embodied in such proposal, should include a monitoring and enforcement structure which would insure protection of United States rights under agreements negotiated pursuant to the Tokyo Round of the Multilateral Trade Negotiations and all other elements of multilateral and bilateral international trade agreements. The proposal should result in an upgrading of commercial programs and commercial attachés overseas to assure that the United States trading partners are meeting their trade agreement obligations, particularly those entered into under such agreements, including the tendering procedures of the Agreement on Government Procurement.

(b) CONGRESSIONAL ACTION.—In order to ensure that the 96th Congress takes final action on a comprehensive reorganization of trade functions as soon as possible, the appropriate committee of each House of the Congress shall give the proposal by the President immediate consideration and shall make its best efforts to take final committee action to reorganize and restructure the international trade functions of the United States Government by November 10, 1979.

SEC. 1110.[117] STUDY OF EXPORT TRADE POLICY.

(a) REVIEW OF EXPORT PROMOTION AND DISINCENTIVES.—The President shall review all export promotion functions of the executive branch and potential programmatic and regulatory disincentives to exports, and shall submit to the Congress a report of that review not later than July 15, 1980. The report should make particular reference to those activities which enhance the role of small- and medium-sized businesses in export trade.

(b) CONDITIONS OF COMPETITION STUDY.—Not later than July 15, 1980, the President shall submit to the Congress a study of the factors bearing on the competitive posture of United States producers and the policies and programs required to strengthen the relative competitive position of the United States in world markets.

SEC. 1111.[119] * * *

SEC. 1112.[120] CONCESSION-RELATED REVENUE LOSSES TO UNITED STATES POSSESSIONS. * * * [Repealed—1983]

SEC. 1113. NO BUDGET AUTHORITY FOR ANY FISCAL YEAR BEFORE FISCAL YEAR 1981.

Nothing in this Act shall be construed as authorizing the enactment of new budget authority for any fiscal year beginning before October 1, 1980.

SEC. 1114.[121] EFFECTIVE DATE.

Except as otherwise provided in this title, this title shall take effect on the date of enactment of this Act.

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[119] Sec. 1111, entitled "Generalized System of Preferences", amended title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*).

[120] Sec. 214(d) of the Caribbean Basin Economic Recovery Act (Public Law 98–67; 97 Stat. 393) repealed sec. 1112.

[121] 19 U.S.C. 2581 note.

(22) Trade Expansion Act of 1962, as amended

Partial text of Public Law 87–794 [H.R. 11970], 76 Stat. 872, approved October 11, 1962, as amended by Public Law 88–205 [H.R. 7885], 77 Stat. 379, approved December 16, 1963; Public Law 93–618 [H.R. 10710], 88 Stat. 1978, approved January 3, 1975; Public Law 96–39 [H.R. 4537], 93 Stat. 144 at 300, approved July 26, 1979; Public Law 96–223 [H.R. 3919], 94 Stat. 229 at 301, approved April 2, 1980; Public Law 99–64 [S. 883], 99 Stat. 155, approved July 12, 1985; Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; and by Public Law 105–206 [H.R. 2676], 112 Stat. 685, approved July 22, 1998

TITLE I—SHORT TITLE AND PURPOSES

SEC. 101. SHORT TITLE.

This Act may be cited as the "Trade Expansion Act of 1962".

SEC. 102.[1] STATEMENT OF PURPOSES.

The purposes of this Act are, through trade agreements affording mutual trade benefits—

(1) to stimulate the economic growth of the United States and maintain and enlarge foreign markets for the products of United States agriculture, industry, mining, and commerce;

(2) to strengthen economic relations with foreign countries through the development of open and nondiscriminatory trading in the free world; and

(3) to prevent Communist economic penetration.

TITLE II—TRADE AGREEMENTS

CHAPTER 1—GENERAL AUTHORITY[2]

SEC. 201.[3] BASIC AUTHORITY FOR TRADE AGREEMENTS.

(a) Whenever the President determines that any 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 any of the purposes stated in section 102 will be promoted thereby, the President may—

(1) after June 30, 1962, and before July 1, 1967, enter into trade agreements with foreign countries or instrumentalities thereof; and

(2) proclaim such modification or continuance of any existing duty or other import restriction, such continuance of existing duty-free or excise treatment, or such additional import restrictions, as he determines to be required or appropriate to carry out any such trade agreement.

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[1] 19 U.S.C. 1801.

[2] Sec. 602(d) of the Trade Act of 1974 (Public Law 93–618; 88 Stat. 1978) repealed secs. 202, 211 through 213, 221 through 226, and 231.

[3] 19 U.S.C. 1821.

(b) Except as otherwise provided in this title, no proclamation pursuant to subsection (a) shall be made—

(1) decreasing any rate of duty to a rate below 50 percent of the rate existing on July 1, 1962; or

(2) increasing any rate of duty to (or imposing) a rate more than 50 percent above the rate existing on July 1, 1934.

* * * * * * *

CHAPTER 4—NATIONAL SECURITY

SEC. 232.[4] **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)[5] (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 this section referred to as the 'Secretary') shall immediately initiate an appropriate investigation to determine the effects on 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

[4] 19 U.S.C. 1862.

[5] Sec. 1501(a)(3) of Public Law 100–418 (102 Stat. 1257) struck out former subsec. (b), which had been previously amended by sec. 127(d) of Public Law 93–618 (88 Stat. 1978 at 1993), which added new subsecs. (b) and (c).

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)[5] (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)[6] 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 of 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.

(d)[7] (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)[8] (1) An action taken by the President under subsection (c)[8] 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

[6] Sec. 1501(a) of Public Law 100–418 (102 Stat. 1257) redesignated the original subsec. (c) as subsec. (d).

[7] This second subsec. (d) was redesignated as subsec. (e) by sec. 1501(a)(2) of Public Law 100–418 (102 Stat. 1257). Subsequently, sec. 1501(b)(1) of that Act amended subsec. "(e)" to read as subsec. "(d)". This subsection should probably read "(e)". The subsection previously read as follows:

"(d) A report shall be made and published upon the disposition of each request, application, or motion under subsection (b). The Secretary shall publish procedural regulations to give effect to the authority conferred on him by subsection (b).".

[8] Subsec. (f), previously added as subsec. (e) by sec. 402 of the Windfall Profit Tax Act (Public Law 96–223; 94 Stat. 301), was amended by sec. 1501(a)(2) of Public Law 100–418 (102 Stat. 1257) which substituted "subsection (c)" in lieu of "subsection (b)" each place it appeared, and redesignated subsec. (e) as subsec. (f).

(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 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)[8] 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 disapproved 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.[9] 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.

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[9] 19 U.S.C. 1864. Sec. 121 of the Export Administration Amendments Act of 1985 (Public Law 99–43; 99 Stat. 154) added sec. 233. Sec. 2447(a) of Public Law 100–418 (102 Stat. 1370) subsequently amended sec. 233 by striking "(a)" preceding "Any person" and deleting subsec. (b). Subsec. (b) previously read as follows:

"(b) Except as provided in subsection (a) of this section, any person who violates any regulation issued under a multilateral agreement, formal or informal, to control exports for national security purposes, to which the United States is a party, may be subject to such controls on the importing of goods or technology into the United States as the President may prescribe, but only if—

"(1) negotiations with the government or governments, party to the multilateral agreement, with jurisdiction over the violation have been conducted and been unsuccessful in restoring compliance with the regulation involved;

"(2) the President, after the failure of such negotiations, has notified the government or governments described in paragraph (1) and the other parties to the multilateral agreement that the United States proposes to subject the person committing the violation to specific controls on the importing of goods or technology into the United States upon the expiration of 60 days from the date of such notification; and

"(3) a majority of the parties to the multilateral agreement (other than the United States), before the end of that 60-day period, have expressed to the President concurrence in the proposed import controls or have abstained from stating a position with respect to the proposed controls.".

CHAPTER 5—ADMINISTRATIVE PROVISIONS [10]

SEC. 242.[11] INTERAGENCY TRADE ORGANIZATION.

(a)(1) The President shall establish an interagency organization.[12]

(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

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[10] Sec. 602(d) of the Trade Act of 1974 (Public Law 93–618; 88 Stat. 2402) repealed secs. 241 and 243.

[11] 19 U.S.C. 1872. Sec. 1621 of Public Law 100–418 (102 Stat. 1263) amended and restated subsec. (a) which previously read as follows:

"(a) The President shall establish an interagency organization to assist him in carrying out the functions vested in him by this title and sections 201, 202, and 203 of the Trade Act of 1974. Such organization shall, in addition to the Special Representative for Trade Negotiations, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the organization shall direct. The organization may invite the participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration.".

[12] Sec. 1621(b) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1264) further provided:

"(b) SENSE OF CONGRESS.—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.".

United States International Trade Commission [13] 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 section 301 of the Trade Act of 1974 [14] 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.[15]

(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.[13] 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 section 301 of the Trade Act of 1974,[14] and for the carrying out of other functions assigned to the organization pursuant to this section.

CHAPTER 6—GENERAL PROVISIONS [16]

SEC. 251.[17] NORMAL TRADE RELATIONS.

Except as otherwise provided in this title, in section 350(b) of the Tariff Act of 1930, or in section 401(a) of the Tariff Classification Act of 1962, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title or section 350 of the Tariff Act of 1930 shall apply to products of all foreign countries, whether imported directly or indirectly.

SEC. 255.[18] TERMINATION.

(b) The President may at any time terminate, in whole or in part, any proclamation made under this title.

SEC. 257. RELATION TO OTHER LAWS.

(a) [19] * * *

(b) [19] * * *

(c) For purposes only of entering into trade agreements pursuant to the notices of intention to negotiate published in the Federal Register of May 28, 1960, and the Federal Register of November

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[13] Sec. 171(a) of Public Law 93–618 renamed the "United States Tariff Commission" the "United States International Trade Commission".

[14] Sec. 902(c) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 300) struck out references to subsecs. (c) and (d) of the Trade Act of 1974, and inserted in lieu thereof the reference to sec. 302(b)(2). The amendment made by sec. 902(c) should probably have also struck out the words "of section 301".

[15] Sec. 1621(a)(2) of Public Law 100–418 (102 Stat. 1264) added this sentence.

[16] Sec. 602(d) of the Trade Act of 1974 (Public Law 93–618; 88 Stat. 2402) repealed secs. 252, 253, 254, 255(a), and 256.

[17] 19 U.S.C. 1881. Sec. 5003(b)(1) of Public Law 105–206 (112 Stat. 789) amended the heading of sec. 251 to read "**NORMAL TRADE RELATIONS.**" The heading previously read "**MOST-FAVORED-NATION TREATMENT.**".

[18] 19 U.S.C. 1885.

[19] Subsecs. (a) and (b) amended sec. 350 of the Tariff Act of 1930.

23, 1960, the period during which the President is authorized to enter into foreign trade agreements under section 350 of the Tariff Act of 1930 is hereby extended from the close of June 30, 1962, until close of December 31, 1962.

(d) * * *

(e)(1) Sections 5, 6, 7, and 8(a) of the Trade Agreements Extension Act of 1951 are repealed.

(2) Action taken by the President under section 5 of such Act and in effect on the date of the enactment of this Act shall be considered as having been taken by the President under section 231.

(3) Any investigation by the United States International Trade Commission [12] under section 7 of such Act which is in progress on the date of the enactment of this Act shall be continued under section 301 as if the application by the interested party were a petition under such section for tariff adjustment under section 351. For purposes of section 301(f), such petition shall be treated as having been filed on the date of the enactment of this Act.

(f) Section 2 of the Act entitled "An Act to extend the authority of the President to enter into trade agreements under section 350 of the Tariff Act of 1930, as amended", approved July 1, 1954, is repealed. Any action (including any investigation begun) under such section 2 before the date of the enactment of this Act shall be considered as having been taken or begun under section 232.

(g) * * *

(h) [20] Nothing contained in this Act shall be construed to affect in any way the provisions of section 22 of the Agricultural Adjustment Act, or to apply to any import restriction heretofore or hereafter imposed under such section.

(i) [21] * * *

SEC. 258.[22] REFERENCES.

All provisions of law (other than this Act and the Trade Agreements Extension Act of 1951) in effect after June 30, 1962, referring to section 350 of the Tariff Act of 1930, to that section as amended to the Act entitled "An Act to amend the Tariff Act of 1930", approved June 12, 1934, to that Act as amended, or to agreements entered into, or proclamations issued, under any such provisions, shall be construed, unless clearly precluded by the context, to refer also to this Act, or to agreements entered into or proclamations issued, pursuant to this Act.

TITLE III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE [23]

* * * * * * *

[20] 19 U.S.C. 1887.
[21] Subsec. (i) amended the Tariff Act of 1930 by adding a new sec. 323.
[22] 19 U.S.C. 1888.
[23] Public Law 93–618 (88 Stat. 1978) repealed secs. 301 and 302.

CHAPTER 2—ASSISTANCE TO FIRMS [24]

SEC. 316.[25] ADMINISTRATION OF FINANCIAL ASSISTANCE.

(a) In making and administering guarantees, agreements for deferred participation, and loans under section 314, the Secretary of Commerce may—

(1) require security for any such guarantee, agreement, 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, agreements, 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, agreements, 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, agreements, 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 314.

(b) Any mortgage acquired as security under subsection (a) shall be recorded under applicable State law.

* * * * * * *

SEC. 318.[26] PROTECTIVE PROVISIONS.

(a) Each recipient of adjustment assistance under section 313, 314, or 317 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 of Commerce may prescribe.

(b) The Secretary of Commerce and the Comptroller General of the United States shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient pertaining to adjustment assistance under sections 313, 314, and 317.

(c) No adjustment assistance shall be extended under section 313, 314, or 317 to any firm unless the owners, partners, or officers certify to the Secretary of Commerce—

[24] Public Law 93–618 (88 Stat. 1978) repealed secs. 311 through 315 and sec. 317.
[25] 19 U.S.C. 1916.
[26] 19 U.S.C. 1918.

(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 section 314 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 professional services any person, who, on the date such assistance or any part thereof was provided, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which the Secretary of Commerce shall have determined involve discretion with respect to the provision of such financial assistance.

SEC. 319.[27] 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 the action of the Secretary of Commerce 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 two years, or both.

SEC. 320.[28] SUITS.

In providing technical and financial assistance under sections 313 and 314, the Secretary of Commerce may sue and be sued in any court of record of a State having general jurisdiction 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 313 and 314 from the application of sections 507(b) and 2679 of title 28 of the United States Code, and of section 367 of the Revised Statutes (5 U.S.C. sec. 316).[29]

CHAPTER 4—TARIFF ADJUSTMENT

SEC. 351.[30] AUTHORITY.

(a)(1) After receiving an affirmative finding of the United States International Trade Commission[13] under section 301(b) with respect to an industry, the President may proclaim such increase in, or imposition of, any duty or other import restriction on the article causing or threatening to cause serious injury to such industry as he determines to be necessary to prevent or remedy serious injury to such industry.

(2) If the President does not, within 60 days after the date on which he receives such affirmative finding, proclaim the increase

[27] 19 U.S.C. 1919.
[28] 19 U.S.C. 1920.
[29] Public Law 93–618 (88 Stat. 1978) repealed secs. 321 through 338, relating to assistance to workers.
[30] 19 U.S.C. 1981.

in, or imposition of, any duty or other import restriction on such article found and reported by the United States International Trade Commission pursuant to section 301(e)—

(A) he shall immediately submit a report to the House of Representatives and to the Senate stating why he has not proclaimed such increase or imposition, and

(B) such increase or imposition shall take effect (as provided in paragraph (3)) upon the adoption by both Houses of the Congress (within the 60-day period following the date on which the report referred to in subparagraph (A) is submitted to the House of Representatives and the Senate), by the yeas and nays by the affirmative vote of a majority of the authorized membership of each House, of a concurrent resolution stating in effect that the Senate and House of Representatives approve the increase in, or imposition of, any duty or other import restriction on the article found and reported by the United States International Trade Commission.[13]

For purposes of subparagraph (B), 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. The report referred to in subparagraph (A) shall be delivered to both Houses of the Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House of Representatives is not in session and to the Secretary of the Senate if the Senate is not in session.

(3) In any case in which the contingency set forth in paragraph (2)(B) occurs, the President shall (within 15 days after the adoption of such resolution) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was found and reported by the United States International Trade Commission[13] pursuant to section 301(e).

(4) The President may, within 60 days after the date on which he receives an affirmative finding of the United States International Trade Commission[13] under section 301(b) with respect to an industry, request additional information from the United States International Trade Commission.[13] The United States International Trade Commission[13] shall, as soon as practicable but in no event more than 120 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report. For purposes of paragraph (2), the date on which the President receives such supplemental report shall be treated as the date on which the President received the affirmative finding of the United States International Trade Commission[13] with respect to such industry.

(b) No proclamation pursuant to subsection (a) shall be made—

(1) increasing any rate of duty to a rate more than 50 percent above the rate existing on July 1, 1934, or, if the article is dutiable but no rate existed on July 1, 1934, the rate existing at the time of the proclamation,

(2) in the case of an article not subject to duty, imposing a duty in excess of 50 percent ad valorem.

For purposes of paragraph (1), the term "existing on July 1, 1934" has the meaning assigned to such term by paragraph (5) of section 256.

(c)(1) Any increase in, or imposition of, any duty or other import restriction proclaimed pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951—

(A) may be reduced or terminated by the President when he determines, after taking into account the advice received from the United States International Trade Commission[13] under subsection (d)(2) and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest, and

(B) unless extended under section 203[31] of the Trade Act of 1974, shall terminate not later than the close of the date which is 4 years (or in the case of any such increase or imposition proclaimed pursuant to such section 7, 5 years) after the effective date of the initial proclamation or the date of the enactment of this Act, whichever date is the later.

(2)[32] * * * [Repealed—1975]

(d)(1) So long as any increase in, or imposition of, any duty or other import restriction pursuant to this section or pursuant to section 7 of the Trade Expansion Act of 1951 remains in effect, the United States International Trade Commission[13] shall keep under review developments with respect to the industry concerned, and shall make annual reports to the President concerning such developments.

(2) Upon request of the President or upon its own motion, the United States International Trade Commission[13] shall advise the President of its judgment as to the probable economic effect on the industry concerned of the reduction or termination of the increase in, or imposition of, any duty or other import restriction pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951.

(3)[32] * * *

(4) In advising the President under this subsection as to probable economic effect on the industry concerned, the United States International Trade Commission[13] shall take into account all economic factors which it considers relevant including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment.

(5) Advice by the United States International Trade Commission[13] under this subsection shall be given on the basis of an investigation during the course of which the United States International Trade Commission[13] shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(e) The President, as soon as practicable, shall take such action as he determines to be necessary to bring trade agreements entered into under section 350 of the Tariff Act of 1930 into conformity with the provisions of this section. No trade agreement shall be en-

[31] Sec. 602(c) of Public Law 93–608 (88 Stat. 2072) struck out a reference to subsec. (c)(2) and inserted in lieu thereof a reference to sec. 203.

[32] Repealed by Public Law 93–618 (88 Stat. 1978). See sec. 232 of Public Law 93–618 for similar text.

tered into under section 201(a) unless such agreement permits action in conformity with the provisions of this section.

SEC. 352.[33] ORDERLY MARKETING AGREEMENTS.

(a) After receiving an affirmative finding of the United States International Trade Commission[13] under section 301(b) with respect to an industry, the President may, in lieu of exercising the authority contained in section 351(a)(1) but subject to the provisions of section 351(a) (2), (3), and (4), negotiate international agreements with foreign countries limiting the export from such countries and the import into the United States of the article causing or threatening to cause serious injury to such industry, whenever he determines that such action would be more appropriate to prevent or remedy serious injury to such industry than action under section 351(a)(1).

(b) In order to carry out an agreement concluded under subsection (a), the President is authorized to issue regulations governing the entry or withdrawal from warehouse of the article covered by such agreement. In addition, in order to carry out a multilateral agreement concluded under subsection (a) among countries accounting for significant part of world trade in the article covered by such agreement, the President is also authorized to issue regulations governing the entry or withdrawal from warehouse of the like article which is the product of countries not parties to such agreement.[34]

TITLE IV—GENERAL PROVISIONS[35]

SEC. 405.[36] DEFINITIONS.

For purposes of this Act—

* * * * * * *

(2) The term "duty or other import restriction" includes (A) the rate and form of an import duty, and (B) a limitation prohibition, charge, and exaction other than duty, imposed on importation or imposed for the regulation of imports.

* * * * * * *

(6) The term "modification", as applied to any duty or other import restriction, includes the elimination of any duty.

[33] 19 U.S.C. 1982.
[34] Public Law 93–618 (88 Stat. 1978) repealed sec. 361 relating to the advisory board.
[35] Secs. 401, 402, 403, and 405 (1), (3), (4), and (5) were repealed by Public Law 93–618 (88 Stat. 1978).
[36] 19 U.S.C. 1806.

(23) Designated Beneficiary Developing Countries for Purposes of the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, and the Andean Trade Preference Act

Partial text of Harmonized Tariff Schedule of the United States, as reported by the United States International Trade Commission, pursuant to sec. 1207 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 19 U.S.C. 3007)

GENERAL NOTES

NOTE.—The general notes to the Harmonized Tariff Schedule of the United States (HTS), listing those countries whose products are eligible for benefits with respect to the Generalized System of Preferences (GSP), the Caribbean Basin Economic Recovery Act (CBERA), and the Andean Trade Preference Act (ATPA), and the articles of those countries that are eligible for benefits, are modified and amended throughout the year by Executive Order or by Presidential Proclamation. Information on the latest changes in country and product designations may be obtained by consulting the *Code of Federal Regulations* (CFR, Title 3—The President), the *Federal Register Index*, the *U.S. Code Congressional and Administrative News*, or the current version of the Tariff Schedules that is maintained and published periodically by the United States International Trade Commission (USITC Publication 3833, available at http://hotdocs.usitc.gov/docs/tata/hts/bychapter/0600HTSA1.pdf). The lists of countries reproduced below are current as of the date of publication of this volume.

* * * * * * *

3. *Rates of Duty.*—The rates of duty in the "Rate of Duty" columns designated 1 ("General" and "Special") and 2 of the tariff schedule apply to goods imported into the customs territory of the United States as hereinafter provided in this note:

(a) *Rate of Duty Column 1.*

(i) Except as provided in subparagraphs (iv) of this paragraph, the rates of duty in column 1 are rates which are applicable to all products other than those of countries enumerated in paragraph (b) of this note. Column 1 is divided into two subcolumns, "General" and "Special", which are applicable as provided below.

(ii) The "General" subcolumn sets forth the general or normal trade relations (NTR)[1] rates which are applicable to products of those countries described in subparagraph (i) above which are not entitled to special tariff treatment as set forth below.

(iii) The "Special" subcolumn reflects rates of duty under one or more special tariff treatment programs described in paragraph (c) of this note and identified in parentheses immediately following the duty rate specified in such subcolumn. These rates apply to those products which are properly classified under a provision for which a special rate is indicated and for which all of the legal requirements for eligibility for such program or programs have been met. Where a product is eligible for special treatment under more than one program, the lowest rate of duty provided for any applicable program shall be imposed. Where no special rate of duty is provided for a provision, or where the country from which a product otherwise eligible for special treatment was imported is not designated as a beneficiary country under a program appearing with the appropriate provision, the rates of duty in the "General" subcolumn of column 1 shall apply.

(iv) *Products of Insular Possessions.* * * *

(v)[2] *Products of the West Bank, the Gaza Strip or a Qualifying Industrial Zone.*

(A) Subject to the provisions of this paragraph, articles which are imported directly from the West Bank, the Gaza Strip, a qualifying industrial zone as defined in subdivision (G) of this subparagraph or Israel and are—

(1) wholly the growth, product or manufacture of the West Bank, the Gaza Strip or a qualifying industrial zone; or

(2) new or different articles of commerce that have been grown, produced or manufactured in the West Bank, the Gaza Strip or a qualifying industrial zone, and the sum of—

(I) the cost or value of the materials produced in the West Bank, the Gaza Strip or a qualifying industrial zone or Israel, plus

(II) the direct costs of processing operations (not including simple combining or packaging operations, and not including mere dilution with water or with another substance that does not materially alter the characteristics of such articles) performed in the West Bank, the Gaza Strip or a qualifying industrial zone or Israel,

is not less than 35 percent of the appraised value of such articles;

shall be eligible for duty-free entry into the customs territory of the United States. For purposes of subdivi-

[1] Sec. 5003 of Public Law 105–206 (112 Stat. 789) struck all references to "most-favored-nation" or "MFN" and inserted in lieu thereof "normal trade relations" or "NTR".

[2] Subpara. (v) was added by Presidential Proclamation 6955 of November 13, 1996 (61 F.R. 58761), as authorized by sec. 906 of the United States-Israel Free Trade Area Implementation Act of 1985 (Public Law 99–47, 99 Stat. 82, as amended).

sion (A)(2), materials which are used in the production of articles in the West Bank, the Gaza Strip or a qualifying industrial zone, and which are the product of the United States, may be counted in an amount up to 15 percent of the appraised value of such articles.

(B) Articles are *"imported directly"* for the purposes of this paragraph if—

(1) they 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

(2) they are shipped through the territory of an intermediate country, and 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

(3) they are shipped through an intermediate country and the invoices and other documents do not specify the United States as the final destination, and the articles—

(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 articles in good condition.

(C) The term *"new or different articles of commerce"* means that articles must have been substantially transformed in the West Bank, the Gaza Strip or a qualifying industrial zone into articles with a new name, character or use.

(D)(1) For the purposes of subdivision (A)(2)(I), 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 are not remitted on exportation.

(2) 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 manufacturer 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.

(3) 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.

(E)(1) For purposes of this paragraph, the *"direct costs of processing operations performed in the West Bank, the 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 such articles;

(III) Research, development, design, engineering and blueprint costs insofar as they are allocable to such articles; and

(IV) Costs of inspecting and testing such articles.

(2) 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.

(F) Whenever articles are entered with a claim for the duty exemption provided in this paragraph—

(1) the importer shall be deemed to certify that such articles meet all of the conditions for duty exemption; and

(2) when requested by the Customs Service, the importer, manufacturer or exporter submits a declaration setting forth all pertinent information with respect to such articles, including the following:

(I) A description of such articles, quantities, numbers and marks of packages, invoice numbers and bills of lading;

(II) A description of the operations performed in the production of such articles in the West Bank, the Gaza Strip, a qualifying industrial zone or Israel and an identification of the direct costs of processing operations;

(III) A description of the materials used in the production of such articles which are wholly the growth, product, or manufacture of the West Bank, the Gaza Strip, a qualifying industrial zone, Israel or the 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 such articles 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; and

(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.

(G) For the purposes of this paragraph, 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 designated by the United States Trade Representative in a notice published in the *Federal Register* as a qualifying industrial zone.

(b)[3] *Rate of Duty Column 2.*—Notwithstanding any of the foregoing provisions of this note, the rates of duty shown in column 2

[3] The duty rate in column 2 applies to countries to which normal trade relations (NTR) status is currently denied.

Albania was removed from the list by Presidential Proclamation 6445 of June 15, 1992 (57 F.R. 26921), effective on the date of exchange of written notice of acceptance in accordance with article XVII of the Agreement on Trade Relations Between the United States of America and the Republic of Albania (Nov. 2, 1992).

The term "Union of Soviet Socialist Republics" was deleted by Presidential Proclamation 6544 of April 13, 1993 (58 F.R. 19547) and para. (7) of that proclamation instead inserted in alphabetical sequence "Azerbaijan", "Georgia", "Tajikistan", "Turkmenistan", and "Uzbekistan". That proclamation further provided: "Upon notice by the USTR in the *Federal Register* that a trade agreement has been concluded between the United States and a republic listed in paragraph (7) of this proclamation and general note 3(b) to the HTS, such republic shall be deleted from general note 3(b) as of the date announced by the USTR as the effective date of such trade agreement.".

Romania was removed from the list by Presidential Proclamation 6577 of July 2, 1993 (58 F.R. 36301), upon the signing of an Agreement on Trade Relations Between the United States of America and Romania. See also note 6.

Kampuchea (Cambodia) was struck from the list pursuant to sec. 2(a) of Public Law 104–203 (110 Stat. 2872), upon the entry into force of a trade agreement obligating reciprocal normal

Continued

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:

Cuba	North Korea

* * * * * * *

4. *Products of Countries Designated Beneficiary Developing Countries for Purposes of the Generalized System of Preferences (GSP).*[4]

(a) The following countries, territories, and associations of countries eligible for treatment as one country (pursuant to section 507(2) of the Trade Act of 1974 (19 U.S.C. 2467(2)) 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[5]

Afghanistan	Antigua and Barbuda
Albania	Argentina
Angola	Algeria

trade relations treatment between Cambodia and the United States. Such an agreement entered into force on October 25, 1996 (USTR notice, 61 F.R. 56256).

Vietnam was struck from the list pursuant to Executive Order No. 13079 of April 7, 1998 (63 F.R. 17309).

Yugoslavia (Serbia and Montenegro) were restricted pursuant to Public Law 102–420 (106 Stat. 2149). In Presidential Determination No. 96–7 of December 27, 1995 (61 F.R. 2887), the President suspended the application of sanctions imposed on Serbia and Montenegro.

Afghanistan was struck from the list pursuant to Presidential Proclamation 7553 of May 3, 2002 (67 F.R. 30535).

Laos was struck from the list pursuant to sec. 2005 of Public Law 108–429 (118 Stat. 2596) upon the entry into force of a trade agreement obligating reciprocal normal trade relations treatment between Laos and the United States. Such an agreement entered into force on February 4, 2005 (USTR notice, 70 F.R. 7319).

[4] Presidential Proclamation 6030 of September 28, 1989 (54 F.R. 40839) struck the Marshall Islands and Federated States of Micronesia from this list, pursuant to secs. 101 and 401 of the Compact of Free Association Act of 1985 (99 Stat. 1773 and 1838). See general note 10.

[5] Deletions from the list of independent countries include:

Sudan (Presidential Proclamation 6282 of April 25, 1991 (56 F.R. 19525)); Yugoslavia (Presidential Proclamation 6389 of December 5, 1991 (56 F.R. 64467)); Syria (Presidential Proclamation 6447 of June 15, 1992 (57 F.R. 26981)); Mauritania (Presidential Proclamation 6575 of June 25, 1993 (58 F.R. 34855)); Mexico (as part of implementing NAFTA; Presidential Proclamation 6641 of December 15, 1993 (58 F.R. 66867)); The Bahamas and Israel (Presidential Proclamation 6767 of February 3, 1995 (60 F.R. 7427)); Maldives (Presidential Proclamation 6813 of July 28, 1995 (60 F.R. 39095)); Cyprus and Malaysia (Presidential Proclamation 6942 of October 17, 1996 (61 F.R. 54719)); That proclamation also corrected how Guinea-Bissau and the Republic of Yemen were listed; Belarus, Malta and Slovenia, effective January 1, 2002 (Presidential Proclamation 7328 of July 6, 2000 (65 F.R. 42595); Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, and Slovakia were terminated on the date when each country became a European Union member state (Presidential Proclamation 7758 of March 1, 2004 (69 F.R. 10131)).

Additions to the list of independent countries:

Czechoslovakia (Presidential Proclamation 6282 of April 25, 1991 (56 F.R. 19525); Czechoslovakia redesignated as the Czech Republic and Slovakia (Presidential Proclamation 6544 of April 13, 1993 (58 F.R. 19547)); Bulgaria (Presidential Proclamation 6388 of December 4, 1991 (56 F.R. 63863)); Estonia, Latvia, and Lithuania (Presidential Proclamation 6402 of February 5, 1992 (57 F.R. 4833)); "Each of the former republics of the Socialist Federal Republic of Yugoslavia other than Serbia and Montenegro" (Presidential Proclamation 6465 of August 25, 1992 (57 F.R. 39095)) (subsequently changed to separately listed: Bosnia and Hercegovina, Croatia, Macedonia, and Slovenia by Presidential Proclamation 6804 of May 22, 1995 (60 F.R. 27657)); Ethiopia (Presidential Proclamation 6517 of December 23, 1992 (57 F.R. 61757)); Albania (Presidential Proclamation 6575 of June 25, 1993 (58 F.R. 34855)); Russia (Presidential Proclamation 6599 of September 30, 1993 (58 F.R. 51561)); Kyrgyzstan (Presidential Proclamation 6635 of December 9, 1993 (58 F.R. 65279)); Kazakhstan and Ro-

Armenia
Bahrain[6]
Bangladesh
Barbados
Belize
Benin
Bhutan
Bolivia
Bosnia and Hercegovina
Botswana
Brazil
Bulgaria
Burkina Faso
Burundi
Cambodia
Cameroon
Cape Verde
Central African Republic
Chad
Chile
Colombia
Comoros
Congo (Brazzaville)[7]
Congo (Kinshasa)[7]
Costa Rica
Cote d'Ivoire
Croatia
Djibouti
Dominica
Dominican Republic[8]
Ecuador
Egypt
El Salvador[6]
Equatorial Guinea
Eritrea
Ethiopia
Fiji[6]
Gabon
Gambia, The
Georgia
Ghana
Grenada
Guatemala[6, 8]
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras[8]
India
Indonesia[6]
Iraq
Jamaica
Jordan
Kazakhstan
Kenya
Kiribati
Kyrgyzstan
Lebanon
Lesotho
Macedonia, Former Yugoslav Republic of
Madagascar
Malawi[6]
Mali
Mauritania[6]
Mauritius
Moldova
Mongolia
Mozambique
Namibia
Nepal

mania (Presidential Proclamation 6650 of February 16, 1994 (59 F.R. 8115)); Ukraine (Presidential Proclamation 6655 of March 3, 1994 (59 F.R. 10725)); South Africa (Presidential Proclamation 6676 of April 21, 1994; (59 F.R. 19629)); Belarus and Uzbekistan (Presidential Proclamation 6714 of August 17, 1994 (59 F.R. 43023)); Armenia (Presidential Proclamation 6767 of February 3, 1995 (60 F.R. 7427)); Moldova (Presidential Proclamation 6813 of July 28, 1996 (60 F.R. 39095)); Cambodia (Presidential Proclamation 7007 of May 30, 1997 (62 F.R. 30415)); Gabon, Mauritania (suspension pursuant to Presidential Proclamation of 6575 of June 25,1993 ended); Mongolia (Presidential Proclamation 7206 of June 30, 1999 (64 F.R. 36229)); Nigeria (Presidential Proclamation 7335 of August 27, 2000 (65 F.R. 52903)); Eritrea (Presidential Proclamation 7350 of October 2, 2000 (65 F.R. 59321)); Samoa (designation of Western Samoa modified to apply to Samoa, and Samoa designated a least-developed beneficiary country by Presidential Proclamation 7383 of December 1, 2000 (65 F.R. 76551)); Georgia (Presidential Proclamation 7454 of June 29, 2001 (66 F.R. 35365)); Afghanistan (Presidential Proclamation 7637 of January 10, 2003 (68 F.R. 1949)); Algeria (Presidential Proclamation 7758 of March 1, 2004 (69 F.R. 10131)); Iraq (Presidential Proclamation 7808 of September 7, 2004 (69 F.R. 54739)); Serbia and Montenegro (Presidential Proclamation 7912 of June 30, 2005 (70 F.R. 37957)).

[6] In a memorandum of June 25, 1993, to the U.S. Trade Representative (58 F.R. 34861), the President determined "that Panama has taken or is taking steps to afford international recognized worker rights, and I have determined that Mauritania has not taken and is not taking steps to afford such internationally recognized rights. Therefore, I am notifying the Congress of my intention to suspend the GSP eligibility of Mauritania. Finally, I have determined to continue to review the status of such worker rights in Bahrain, El Salvador, Fiji, Guatemala, Indonesia, Malawi, Oman, and Thailand.". Mauritania subsequently was deleted from the list of independent countries and from the list of least-developed beneficiary countries; see note 5. The suspension pursuant to this Presidential Proclamation was lifted by Presidential Proclamation 7206 of June 30, 1999 (64 F.R. 36229).

[7] In Presidential Proclamation 7206 of June 30, 1999, the President deleted "Congo" and "Zaire" from the list of independent countries, and inserted in lieu thereof "Congo (Brazzaville)" and "Congo (Kinshasa)" respectively.

[8] In a memorandum of June 25, 1993, to the U.S. Trade Representative (58 F.R. 34861), the President determined that, "after considered various private sector requests for a review of whether or not certain beneficiary developing countries are providing adequate and effective

Continued

Niger
Nigeria
Oman [6]
Pakistan [8]
Panama [6]
Papua New Guinea
Paraguay
Peru [9]
Philippines
Poland
Romania
Russia
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa [5]
Sao Tome and Principe
Senegal
Serbia and Montenegro
Seychelles
Sierra Leone
Solomon Islands
Somalia
South Africa
Sri Lanka
Suriname
Swaziland
Tanzania
Thailand [6]
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
Uganda
Uruguay
Uzbekistan
Vanuatu
Venezuela
Republic of Yemen
Zambia
Zimbabwe

Non-Independent Countries and Territories [10]

Anguilla
British Indian Ocean Territory
Christmas Island (Australia)
Cocos (Keeling) Islands
Cook Islands
Falkland Islands (Islas Malvinas)
Gibraltar
Heard Island and McDonald Islands
Montserrat
Niue
Norfolk Island
Pitcairn Island
Saint Helena
Tokelau
Turks and Caicos Islands
Virgin Islands, British
Wallis and Futuna
West Bank and Gaza Strip
Western Sahara

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means under their laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights, I have determined to continue the review of the Dominican Republic, Guatemala, and Honduras.".

On June 14, 1996, the Office of the U.S. Trade Representative issued a notice to retroactively suspend certain GSP benefits for Pakistan (61 F.R. 30646).

On May 27, 1997, the Office of the U.S. Trade Representative issued a notice of intention to recommend withdrawal of certain benefits with respect to Honduras, stating that, "in light of a determination that Honduras fails to provide adequate and effective means under its laws for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, the Trade Policy Staff Committee (TPSC) will recommend to the President that he partially withdraw duty-free treatment accorded Honduras under the Generalized System of Preferences (GSP) program and the Caribbean Basin Initiative (CBI)." (62 F.R. 28915).

[9] In a memorandum of June 25, 1993, to the United States Trade Representative (58 F.R. 34861), the President continued a review of alleged expropriation without compensation of property of a U.S. citizen in Peru. See also note 20.

[10] Presidential Proclamation 6763 of December 23, 1994 (60 F.R. 1007) deleted Palau from this list and added it under general note 10. Presidential Proclamation No. 7328 of July 6, 2000 (65 F.R. 42595) deleted French Polynesia and New Caledonia from the list, effective January 1, 2002.

Presidential Proclamation 6778 of March 17, 1995 (60 F.R. 15455, as amended at 60 F.R. 25266) added the West Bank and Gaza Strip. That proclamation further provided that:

> "(3) The extension of the Generalized System of Preferences program to the West Bank and Gaza Strip pursuant to this proclamation applies only to goods produced in the areas for which arrangements are being established for Palestinian Interim Self-Government, as set forth in Articles I, III, and IV of the Declaration of Principles on Interim Self-Government Arrangements.".

Presidential Proclamation 6942 of October 17, 1996 (61 F.R. 54719) deleted Aruba, Cayman Islands, Greenland, Macau, and Netherlands Antilles.

Associations of Countries (treated as one country)

Member Countries of the Cartagena Agreement (Andean Group)

Consisting of:

Bolivia	Peru [9]
Colombia	Venezuela
Ecuador	

Members of the Association of South East Asian Nations (ASEAN) [11]

Consisting of:

Cambodia [12]	Philippines
Indonesia [6]	Thailand

Member Countries of the Caribbean Common Market (CARICOM), except The Bahamas [13]

Consisting of:

Antigua and Barbuda	Jamaica
Barbados	Montserrat
Belize	Saint Kitts and Nevis
Dominica	Saint Lucia
Grenada	Saint Vincent and the Grenadines
Guyana	Trinidad and Tobago

Member Countries of the West African Economic and Monetary Union (WAEMU) [14]

Consisting of:

Benin	Mali
Burkina Faso	Niger
Cote d'Ivoire	Senegal
Guinea-Bissau	Togo

Member Countries of the Southern Africa Development Community (SADC)

Currently qualifying:

Botswana	Tanzania
Mauritius	

Member Countries of the South Asian Association for Regional Cooperation (SAARC)

Currently qualifying:

Bangladesh	Nepal
Bhutan	Pakistan
India	Sri Lanka

(b)(1) The following beneficiary countries are designated as least-developed beneficiary developing countries pursuant to section 502(a)(2) of the Trade Act of 1974, as amended: [15]

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[11] Presidential Proclamation 6942 of October 17, 1996 (61 F.R. 54719) struck Malaysia from this list and restated the title to reflect the change.

[12] Presidential Proclamation 7206 of June 30, 1999 (64 F.R. 36229) added Cambodia to the list of countries identified as members of ASEAN. The same proclamation deleted "Members of the Association of South East Asian Nations (ASEAN) Eligible for GSP except Brunei Darussalam, Malaysia, and Singapore" and inserted in lieu thereof the title heading and countries listed above.

[13] Presidential Proclamation 6767 of February 3, 1995 (60 F.R. 7427) deleted the Bahamas from this list.

[14] In Presidential Proclamation 7107 of June 30, 1998 (63 F.R. 36532) the President determined that members of the West African Economic and Monetary Union (WAEMU) should be treated as one country pursuant to sec. 507(2) of the Trade Act of 1974 for the purposes of title V of the Act.

[15] Presidential Proclamation 6813 of July 28, 1995 (60 F.R. 39095) struck Maldives from general note 4(b). Presidential Proclamation 6942 of October 17, 1996 (61 F.R. 54719) struck Botswana and Western Samoa from general note 4(b), and added Angola, Ethiopia, Madagascar, Zaire, and Zambia. That proclamation also corrected how the Republic of Yemen is listed. Presidential Proclamation 7007 of May 30, 1997 (62 F.R. 30415) added Cambodia. In Presidential Proclamation 7206 of June 30, 1999 (64 F.R. 36229), general note 4(b)(1) was modified by delet-

Continued

Afghanistan [15]
Angola
Bangladesh
Benin
Bhutan
Burkina Faso
Burundi
Cambodia
Cape Verde
Central African Republic
Chad
Comoros
Congo (Kinshasa) [15]
Djibouti
Equatorial Guinea
Ethiopia
Gambia, The
Guinea
Guinea-Bissau
Haiti
Kiribati
Lesotho
Madagascar
Malawi [6]
Mali
Mauritania[6]
Mozambique
Nepal
Niger
Rwanda
Samoa
Sao Tome and Principe
Sierra Leone
Somalia
Tanzania
Togo
Tuvalu
Uganda
Vanuatu
Republic of Yemen
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 503(c)(2)(A) of the Trade Act, as amended (19 U.S.C. 2464(c)(2)(A)).

* * * * * * *

7. *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 [8]
El Salvador [6]
Grenada
Guatemala [6, 8]
Guyana
Haiti
Honduras [8]
Jamaica
Montserrat
Netherlands Antilles
Nicaragua [16]
Panama [6]
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago
Virgin Islands, British

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8. *United States-Israel Free Trade Implementation Act of 1985.*

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ing "Zaire" and inserting in lieu thereof in alphabetical order "Congo (Kinshasa)". Also in Presidential Proclamation 7206, Mauritania was restored as a least-developed beneficiary developing country under the GSP. In Presidential Proclamation 7383 of December 1, 2000 (65 F.R. 76551), the President determined, "the designation of Western Samoa as a beneficiary developing country under the GSP should be modified so that the designation applies to Samoa. Furthermore, pursuant to section 502 of the 1974 Act, and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Samoa as a least-developed beneficiary developing country for purposes of the GSP.". Presidential Proclamation 7637 of January 10, 2003 (68 F.R. 1949) added Afghanistan.

[16] Presidential Proclamation 6223 of November 8, 1990 (55 F.R. 47447) designated Nicaragua as a beneficiary country for purposes of the CBERA.

(a) The products of Israel described in Annex 1 of the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, entered into on April 22, 1985, are subject to duty as provided herein. Products of Israel, as defined in subdivision (b) of this note, imported into the customs territory of the United States and entered under a provision for which a rate of duty appears in the "Special" subcolumn followed by the symbol "IL" in parentheses are eligible for the tariff treatment set for in the "Special" subcolumn, in accordance with section 4(a) of the United States-Israel Free Trade Area Implementation Act of 1985 (99 Stat. 82).

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10. *Products of the Freely Associated States.*

(a) Pursuant to sections 101 and 401 of the Compact of Free Association Act of 1985 (99 Stat. 1773 and 1838), the following countries shall be eligible for treatment as freely associated states:

Marshall Islands
Micronesia, Federated States of
Republic of Palau [17]

* * * * * * *

11.[18] *Products of Countries Designated as Beneficiary Countries for Purposes of the Andean Trade Preference Act (ATPA).*

(a) The following countries or successor political entities are designated beneficiary countries for the purposes of the ATPA, pursuant to section 203 of the Act (19 U.S.C. 3202):

Bolivia [19]
Colombia
Ecuador [20]
Peru [21]

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12. *North American Free Trade Agreement.* * * * [22]

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16. *Products of Countries Designated as Beneficiary Countries Under the African Growth and Opportunity Act (AGOA).*

(a) The following sub-Saharan African countries, having been designated as beneficiary sub-Saharan African countries [23] for pur-

[17] Sec. 9 of Presidential Proclamation 6763 of December 23, 1994 (60 F.R. 1007) added the Republic of Palau.

[18] Presidential Proclamation 6455 of July 2, 1992 (57 F.R. 30069) added general note 11.

[19] Presidential Proclamation 6456 of July 2, 1992 (57 F.R. 30097) designated Bolivia as a beneficiary country for the purposes of the Andean Trade Preference Act.

[20] Presidential Proclamation 6544 of April 13, 1993 (58 F.R. 19547) designated Ecuador as a beneficiary country for the purposes of the Andean Trade Preference Act.

[21] Presidential Proclamation 6585 of August 11, 1993 (58 F.R. 43239) designated Peru as a beneficiary country for the purposes of the Andean Trade Preference Act.

[22] For text, see Presidential Proclamation 6641 of December 15, 1993 (58 F.R. 66867).

[23] Sec. 111(a) of Public Law 106–200 (112 Stat. 257) amended Title V of the Trade Act of 1974 to provide in new sec. 506A "that the President is authorized to designate countries listed in section 107 of the AGOA as 'beneficiary sub-Saharan African countries.'". The AGOA was implemented by Presidential Proclamation 7350 of October 4, 2000 (65 F.R. 59319). Also designated as "lesser developed beneficiary sub-Saharan African countries" were: Republic of Benin, Republic of Cape Verde, Republic of Cameroon, Central African Republic, Republic of Chad, Republic of Congo, Republic of Djibouti, State of Eritrea, Ethiopia, Republic of Ghana, Republic of Guinea, Republic of Guinea-Bissau, Republic of Kenya, Kingdom of Lesotho, Republic of Madagascar, Republic of Malawi, Republic of Mali, Islamic Republic of Mauritania, Republic of Mozambique, Republic of Niger, Federal Republic of Nigeria, Republic of Rwanda, Democratic Republic of Sao Tome and Principe, Republic of Senegal, Republic of Sierra Leone, United Republic of Tanzania, Republic of Uganda, and Republic of Zambia.

Presidential Proclamation 7657 of March 28, 2003 (68 F.R. 15921) designated the Democratic Republic of Congo and Republic of The Gambia as eligible sub-Saharan African countries and

Continued

poses of the African Growth and Opportunity Act (AGOA), have met the requirements of the AGOA and, therefore, are to be afforded the tariff treatment provided in this note, shall be treated as beneficiary sub-Saharan African countries for purposes of this note:

Republic of Angola
Republic of Benin
Republic of Botswana
Burkina Faso
Republic of Burundi
Republic of Cape Verde
Republic of Cameroon
Republic of Chad
Democratic Republic of Congo
Republic of Congo
Republic of Djibouti
Ethiopia
Gabonese Republic
Republic of The Gambia
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Madagascar
Republic of Malawi
Republic of Mali
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Democratic Republic of Sao Tome and Principe
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Uganda
Republic of Zambia

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17. *Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.*[24]

(a) The Caribbean countries that will be enumerated in this note in a Federal Register notice by the United States Trade Representative, having previously been designated by the President pursuant to section 211 of the United States-Caribbean Basin Trade Partnership Act (CBTPA), shall be treated as beneficiary countries for purposes of this note on and after the effective date announced in such notice. The following countries have been determined by the USTR to have satisfied the customs requirements of the CBTPA and, therefore, to be afforded the tariff treatment provided for in this note:

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as beneficiary sub-Saharan African countries. Presidential Proclamation 7748 of December 30, 2003 (69 F.R. 225) designated the Republic of Angola as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country. Presidential Proclamation 7853 of December 10, 2004 (69 F.R. 74943) designated Burkina Faso as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country. Presidential Proclamation 7970 of December 22, 2005 (70 F.R. 76645) designated the Republic of Burundi as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

Presidential Proclamation 7748 of December 30, 2003 (69 F.R. 225) terminated the designation of the Central African Republic and Eritrea as eligible sub-Saharan African countries and as beneficiary sub-Saharan African countries. Presidential Proclamation 7858 of December 21, 2004 (69 F.R. 77601) terminated the designation of Cote d'Ivoire as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country. Presidential Proclamation 7970 of December 22, 2005 (70 F.R. 76645) terminated the designation of the Islamic Republic of Mauritania as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

[24] The United States-Caribbean Trade Partnership Act, (title II of Public Law 106–200; 114 Stat. 275), provided that certain preferential tariff treatment may be provided to eligible articles that are the product of any country that the President designates as a "CBTPA beneficiary country." In Presidential Proclamation 7351 of October 2, 2000 (65 F.R. 59329), the President designated the countries above as "CBTPA beneficiary countries".

Barbados, Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Trinidad and Tobago.

* * * * * * *

18. *United States-Jordan Free Trade Area Implementation Act.*

(a) The products of Jordan described in Annex 2.1 of the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, entered into on October 24, 2000, are subject to duty as provided herein. Products of Jordan, as defined in subdivisions (b) through (d) of this note, that are imported into the customs territory of the United States and entered under a provision for which a rate of duty appears in the "Special" subcolumn followed by the symbol "JO" in parentheses are eligible for the tariff treatment set forth in the "Special" subcolumn, in accordance with sections 101 and 102 of the United States-Jordan Free Trade Area Implementation Act (Public Law 107–43, 115 Stat. 243).

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25. *United States-Singapore Free Trade Agreement.*

(a) Originating goods under the terms of the United States-Singapore Free Trade Agreement (SFTA) are subject to duty as provided herein. For the purposes of this note, goods of Singapore, as defined in subdivisions (b) through (o) of this note, that are imported into the customs territory of the United States and entered under a provision for which a rate of duty appears in the "Special" subcolumn of column 1 followed by the symbol "SG" in parentheses are eligible for the tariff treatment and quantitative limitations set forth in the "Special" subcolumn, in accordance with sections 201 and 202 of the United States-Singapore Free Trade Agreement Implementation Act (Public Law 108–78; 117 Stat. 948).

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26. *United States-Chile Free Trade Agreement.*

(a) Originating goods under the terms of the United States-Chile Free Trade Agreement (UCFTA) are subject to duty as provided herein. For the purposes of this note, goods of Chile, as defined in subdivisions (b) through (n) of this note, that are imported into the customs territory of the United States and entered under a provision for which a rate of duty appears in the "Special" subcolumn of column 1 followed by the symbol "CL" in parentheses are eligible for the tariff treatment and quantitative limitations set forth in the "Special" subcolumn, in accordance with sections 201 and 202 of the United States-Chile Free Trade Agreement Implementation Act (Public Law 108–78; 117 Stat. 948).

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27. *United States-Morocco Free Trade Agreement Implementation Act.*

(a) Originating goods under the terms of the United States-Morocco Free Trade Agreement (UMFTA) are subject to duty as provided for herein. For the purposes of this note, goods of Morocco, as defined in subdivisions (b) through (h) of this note, that are imported into the customs territory of the United States and entered under a provision for which a rate of duty appears in the "Special"

subcolumn of column 1 followed by the symbol "MA" in parentheses are eligible for the tariff treatment and quantitative limitations set forth in the "Special" subcolumn, in accordance with sections 201 through 203, inclusive, of the United States-Morocco Free Trade Agreement Implementation Act (Public Law 108–302; 118 Stat. 1103). For the purposes of this note, the term "UMFTA country" refers only to Morocco or to the United States.

* * * * * * *

28. *United States-Australia Free Trade Agreement Implementation Act.*

(a) Originating goods under the terms of the United States-Australia Free Trade Agreement (UAFTA) are subject to duty as provided for herein. For the purposes of this note, goods of Australia, as defined in subdivisions (b) through (n) of this note, that are imported into the customs territory of the United States and entered under a provision for which a rate of duty appears in the "Special" subcolumn of column 1 followed by the symbol "AU" in parentheses are eligible for the tariff treatment and quantitative limitations set forth in the "Special" subcolumn, in accordance with sections 201 through 203, inclusive, of the United States-Australia Free Trade Agreement Implementation Act (Public Law 108–286; 118 Stat. 919). For the purposes of this note, the term "UAFTA country" refers only to Australia or to the United States.

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(24) International Trade Functions in Reorganization Plan No. 3 of 1979 [1]

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

REORGANIZATION OF FUNCTIONS RELATING TO INTERNATIONAL TRADE

Section 1.[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

[1] 5 U.S.C. Appendix. With the exception of secs. 2(b)(1) and 5(b)(1), this Reorganization Plan became effective January 2, 1980.

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)[2] 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

[2] Pursuant to Executive Order 12175 (December 7, 1979; 44 F.R. 70703), sec. 2(b)(1) of this plan became effective on that date.

consent of the Senate. Each such Assistant Secretary[3] shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(e)[4] 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 Chairman 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. 2515(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 771(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 protest, 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

[3] Public Law 97–195 (96 Stat. 115) struck out the words "shall receive compensation at the rate payable for Level IV of the Executive Schedule, and" previously appearing at this point.
[4] Public Law 97–377 (96 Stat. 1913) added subsec. 2(e).

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)[5] 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)).

[5] This section became effective April 1, 1980.

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.

(25) Administration of the Trade Agreements Program

Executive Order 11846, March 27, 1975, 40 F.R. 14291, 19 U.S.C. 2111 note; as amended by Executive Order 11894, January 6, 1976, 41 F.R. 1041; Executive Order 11947, November 8, 1976, 41 F.R. 49799; Executive Order 12102, November 17, 1978, 43 F.R. 54197; Executive Order 12163, September 29, 1979, 44 F.R. 56673; Executive Order 12188, January 2, 1980, 45 F.R. 989; and Executive Order 13277, November 19, 2002, 67 F.R. 70305

By virtue of the authority vested in me by the Trade Act of 1974, hereinafter referred to as the Act (Public Law 93–618, 88 Stat. 1978), the Trade Expansion Act of 1962, as amended (19 U.S.C. 1801), Section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), and Section 301 of Title 3 of the United States Code, and as President of the United States it is hereby ordered as follows:

Section 1. The Trade Agreements Program.

The "trade agreements program" includes all activities consisting of, or related to, the negotiation or administration of international agreements which primarily concern trade and which are concluded pursuant to the authority vested in the President by the Constitution, Section 350 of the Tariff Act of 1930, as amended, the Trade Expansion Act of 1962, as amended, Divisions B and C of the Trade Act of 2002 [1], or the Act.

Sec. 2. The Special Representative for Trade Negotiations.

(a) The Special Representative for Trade Negotiations, hereinafter referred to as the Special Representative, in addition to the functions conferred upon him by the Act, including Section 141 thereof, and in addition to the functions and responsibilities set forth in this Order, shall be responsible for such other functions as the President may direct.

(b) [2] * * * [Revoked—1980]

(c) The Special Representative shall prepare, for the President's transmission to Congress, the annual report on the trade agreements program required by Section 163(a) of the Act. At the request of the Special Representative, other agencies shall assist in the preparation of that report.

(d) The Special Representative, except where expressly otherwise provided or prohibited by statute, Executive order, or instructions of the President, shall be responsible for the proper administration of the trade agreements program, and may, as he deems necessary,

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[1] Sec. 4 of Executive Order 13277 (67 F.R. 70305) inserted ", Divisions B and C of the Trade Act of 2002".

[2] Sec. 1–105(e) of Executive Order 12188 revoked subsec. (b), which stipulated that the Special Representative would be the chief representative of the United States for each negotiation under the trade agreements program. This responsibility is now vested in the United States Trade Representative.

assign to the head of any Executive agency or body the performance of his duties which are incidental to the administration of the trade agreements program.

(e) The Special Representative shall consult with the Trade Policy Committee in connection with the performance of his functions, including those established or delegated by this Order, and shall, as appropriate, consult with other Federal agencies or bodies. with respect to the performance of his functions under Title IV of the Act, including those established or delegated by this Order, the Special Representative shall also consult with the East-West Foreign Trade Board.

(f) The Special Representative shall be responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program. Any such Proclamation shall be subject to all the provisions of Executive Order No. 11030, as amended, except that such Proclamation need not be submitted to the Director of the Office of Management and Budget.

(g) The Secretary of State shall advise the Special Representative, and the Committee, on the foreign policy implications of any action under the trade agreements program. The Special Representative shall invite appropriate departments to participate in trade negotiations of particular interest to such departments, and the Department of State shall participate in trade negotiations which have a direct and significant impact on foreign policy.

Sec. 3. The Trade Policy Committee.

(a)[3] * * * [Revoked—1980]

(b) The Committee shall have the functions conferred by the Trade Expansion Act of 1962, as amended, upon the inter-agency organization referred to in Section 242 thereof, as amended, the functions delegated to it by the provisions of this Order, and such other functions as the President may from time to time direct. Recommendations and advice of the Committee shall be submitted to the President by the Chairman.

(c)[4] The Special Representative or any other officer who is chief representative of the United States in a negotiation in connection with the trade agreements program shall keep the Committee informed with respect to the status and conduct of negotiations and shall consult with the Committee regarding the basic policy issues arising in the course of negotiations.

(d) Before making recommendations to the President under Section 242(b)(2) of the Trade Expansion Act of 1962, as amended, the Committee shall, through the Special Representative, request the advice of the Adjustment Assistance Coordinating Committee, established by Section 281 of the Act.

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[3] Sec. 1–105(e) of Executive Order 12188 revoked subsec. (a), which established the Trade Policy Committee and listed the members of the Committee. See sec. 1–102 of Executive Order 12188 for the current listing of Committee members and other pertinent information concerning the Committee.

[4] Sec. 1–105(e) of Executive Order 12188 revoked the first sentence of subsec. (c), which stated that the Committee's recommendations under sec. 242(b)(1) of the Trade Expansion Act of 1962 would guide the administration of the trade agreements program.

(e)[5] * * * [Revoked—1980]
(f)[5] * * * [Revoked—1980]

Sec. 4. Trade Negotiations Under Title I of the Act.

(a) The functions of the President under Section 102 of the Act concerning notice to, and consultation with, Congress, in connection with agreements on nontariff barriers to, and other distortions of, trade, are hereby delegated to the Special Representative.

(b) The Special Representative, after consultation with the Committee, shall prepare, for the President's transmission to Congress, all proposed legislation and other documents necessary or appropriate for the implementation of, or otherwise required in connection with, trade agreements; provided, however, that where implementation of an agreement on nontariff barriers to, and other distortions of, trade requires a change in a domestic law, the department or agency having the primary interest in the administration of such domestic law shall prepare and transmit to the Special Representative the proposed legislation necessary or appropriate for such implementation.

(c) The functions of the President under Section 131(c) of the Act with respect to advice of the International Trade Commission and under Section 132 of the Act with respect to advice of the departments of the Federal Government and other sources, are delegated to the Special Representative. The functions of the President under Section 133 of the Act with respect to public hearings in connection with certain trade negotiations are delegated to the Special Representative, who shall designate an interagency committee to hold and conduct any such hearings.

(d) The functions of the President under Section 135 of the Act with respect to advisory committees and, notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. I), except that of reporting annually to Congress, which are applicable to advisory committees under the Act are delegated to the Special Representative. In establishing and organizing general policy advisory committees or sector advisory committees under Section 135(c) of the Act, the Special Representative shall act through the Secretaries of Commerce, Labor and Agriculture, as appropriate.

(e) The functions of the President with respect to determining ad valorem amounts and equivalents pursuant to Sections 601 (3) and (4) of the Act are hereby delegated to the Special Representative. The International Trade Commission is requested to advise the Special Representative with respect to determining such ad valorem amounts and equivalents. The Special Representative shall seek the advice of the Commission and consult with the Committee with respect to the determination of such ad valorem amounts and equivalents.

(f) Advice of the International Trade Commission under Section 131 of the Act, and other advice or reports by the International Trade Commission to the President or the Special Representative,

[5] Sec. 1–105(e) of Executive Order 12188 revoked subsecs. (e) (directing the Committee to advise the President as to what action he should take regarding unfair practices in import trade) and (f) (abolishing the Trade Expansion Act Advisory Committee).

the release or disclosure of which is not specifically authorized or required by law, shall not be released or disclosed in any manner or to any extent not specifically authorized by the President or by the Special Representative.

Sec. 5. Import Relief and Market Disruption.

(a) The Special Representative is authorized to request from the International Trade Commission the information specified in Sections 202(d) and 203(i) (1) and (2) of the Act.

(b) The Secretary of the Treasury, in consultation with the Secretary of Commerce or the Secretary of Agriculture, as appropriate, is authorized to issue, under Section 203(g) of the Act, regulations governing the administration of any quantitative restrictions proclaimed in order to provide import relief and is authorized to issue, under Section 203(g) of the Act or 352(b) of the Trade Expansion Act of 1962, regulations governing the entry, or withdrawal from warehouses for consumption, of articles pursuant to any orderly marketing agreement.

(c) The Secretary of Commerce shall exercise primary responsibility for monitoring imports under any orderly marketing agreement.

Sec. 6.[6] Unfair Trade Practices. * * * [Revoked—1980]

Sec. 7.[7] East-West Foreign Trade Board.

(a) In accordance with Section 411 of the Act, there is hereby established the East-West Foreign Trade Board, hereinafter referred to as the Board. The Board shall be composed of the following members and such additional members of the Executive branch as the President may designate:

(1) The Secretary of State.
(2) The Secretary of the Treasury.
(3) The Secretary of Defense.[8]
(4) The Secretary of Agriculture.
(5) The Secretary of Commerce.
(6) The Special Representative for Trade Negotiations.
(7) The Director of the Office of Management and Budget.
(8) The Chairman of the Council of Economic Advisors.[9]
(9) The President of the Export-Import Bank of the United States.

The President shall designate the Chairman and the Deputy Chairman of the Board. The President may designate an Executive Secretary, who shall be Chairman of a working group which will include membership from the agencies represented on the Board.

(b) The Board shall perform such functions as are required by Section 411 of the Act and such other functions as the President may direct.

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[6] Sec. 1–105(e) of Executive Order 12188 revoked sec. 6, relating to unfair trade practices.

[7] Sec. 6 of Reorganization Plan No. 3 of 1979 (International Trade) abolished the East-West Foreign Trade Board.

[8] Executive Order 11894 (January 6, 1976; 41 F.R. 1041) added the Secretary of Defense and renumbered those listed below.

[9] Executive Order 12102 (43 F.R. 54197) struck out "(8) The Executive Director of the Council on International Economic Policy" and "(9) The Assistant to the President for Economic Affairs" as members of the East-West Foreign Trade Board, inserted in lieu thereof "(8) The Chairman of the Council of Economic Advisors", and redesignated para. (10) as para. (9).

(c) The Board is authorized to promulgate such rules and regulations as are necessary or appropriate to carry out its responsibilities under the Act and this Order.

(d) The Secretary of State shall advise the President with respect to determinations required to be made in connection with Sections 402 and 409 of the Act (dealing with freedom of emigration) and Section 403 (dealing with United States personnel missing in action in Southeast Asia), and shall prepare, for the President's transmission to Congress, the reports and other documents required by Sections 402 and 409 of the Act.

(e) The President's Committee on East-West Trade Policy, established by Executive Order No. 11789 of June 25, 1974, as amended by Section 6(d) of Executive Order No. 11808 of September 30, 1974, is abolished and all of its records are transferred to the Board.

Sec. 8. Generalized System of Preferences.

(a) The Special Representative, in consultation with the Secretary of State, shall be responsible for the administration of the generalized system of preferences under Title V of the Act.

(b) The Committee, through the Special Representative, shall advise the President as to which countries should be designated as beneficiary developing countries, and as to which articles should be designated as eligible articles for the purposes of the system of generalized preferences.

Sec. 9. Prior Executive Orders.

(a) Executive Order No. 11789 of June 25, 1974, and Section 6(d) of Executive Order No. 11808 of September 30, 1974, relating to the President's Committee on East-West Trade Policy are hereby revoked.

(b)(1) Sections 5(b), 7, and 8 of Executive Order No. 11075 of January 15, 1963, are hereby revoked effective April 3, 1975; (2) the remainder of Executive Order No. 11075, and Executive Order No. 11106 of April 18, 1963 and Executive Order No. 11113 of June 13, 1963, are hereby revoked.

(26) International Trade Functions

Executive Order 12188, January 2, 1980, 45 F.R. 989, 19 U.S.C. 2171 note; as amended by Executive Order 12292, February 23, 1981, 46 F.R. 13967; as amended by Executive Order 13118, March 31, 1999, 64 F.R. 16595; and Executive Order 13286, February 28, 2003, 68 F.R. 10619

By the authority vested in me by the Trade Agreements Act of 1979, the Trade Act of 1974, the Trade Expansion Act of 1962, section 350 of the Tariff Act of 1930, Reorganization Plan No. 3 of 1979, and section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

Sec. 1–101. *The United States Trade Representative.*

(a) Except as may be otherwise expressly provided by law, the United States Trade Representative (hereinafter referred to as the "Trade Representative") shall be chief representative of the United States for:

(1) all activities of, or under the auspices of the General Agreement on Tariffs and Trade;

(2) discussions, meetings, and negotiations in the Organization for Economic Cooperation and Development when trade or commodity issues are the primary issues under consideration;

(3) negotiations in the United Nations Conference on Trade and Development and other multilateral institutions when trade or commodity issues are the primary issues under consideration;

(4) other bilateral or multilateral negotiations when trade, including East-West trade, or commodities is the primary issue under consideration;

(5) negotiations under sections 704 and 734 of the Tariff Act of 1930 (19 U.S.C. 1671c and 1673c); and

(6) negotiations concerning direct investment incentives and disincentives and bilateral investment issues concerning barriers to investment.

For purposes of this subsection, the term "negotiations" includes discussions and meetings with foreign governments and instrumentalities primarily concerning preparations for formal negotiations and policies regarding implementation of agreements resulting from such negotiations.

(b) The Trade Representative, in consultation with the Trade Negotiating Committee, shall invite such members of the Trade Negotiating Committee and representatives of other departments or agencies as may be appropriate to participate in the negotiations and other activities listed in subsection (a).

(c) The Trade Representative, in consultation with the Trade Negotiating Committee, may delegate to any member of the Trade Negotiating Committee, or to any other appropriate department or agency, primary responsibility for representing the United States

in any of the negotiations and other activities set forth in subsection (a).

(d) The Trade Representative, or any department or agency to which responsibility for representing the United States in a negotiation or other activity has been delegated pursuant to subsection (c), shall consult with the Trade Policy Committee and with any affected regulatory agencies on the policy issues arising in connection with the negotiations and other activities listed in subsection (a).

Sec. 1–102. *The Trade Policy Committee.*[1]

(a) As provided by section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872), the Trade Policy Committee (hereinafter referred to as the "Committee") is continued. The Committee shall have the functions specified by law or by the President, including those specified in section 1(b)(3) of Reorganization Plan No. of 1979.

(b) The Committee shall be composed of the following:

(1) The Trade Representative, who shall be Chairman
(2) The Secretary of Commerce, who shall be Vice Chairman
(3) The Secretary of State
(4) The Secretary of the Treasury
(5) The Secretary of Defense
(6) The Attorney General
(7) The Secretary of the Interior
(8) The Secretary of Agriculture
(9) The Secretary of Labor
(10) The Secretary of Transportation
(11) The Secretary of Energy
(12)[2] The Secretary of Homeland Security
(13)[2] The Director of the Office of Management and Budget
(14)[2] The Chairman of the Council of Economic Advisers
(15)[2] The Assistant to the President for National Security Affairs
(16)[2] Administrator of the United States Agency for International Development[3]

The Chairman and any member of the Committee may designate a subordinate officer whose status is not below that of an Assistant Secretary to serve in his stead when he is unable to attend any meetings of the Committee. The Chairman may invite representatives from other agencies to attend the meetings of the Committee.

(c)(1) There is established, as a subcommittee of the Committee, a Trade Negotiating Committee which shall advise the Trade Representative on the management of negotiations referred to in section 1–101(a) of this order. The members of such subcommittee shall be the Trade Representative (Chair), the Secretary of State, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Labor.

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[1] For other material concerning the Trade Policy Committee, see the remaining text of sec. 3 of Executive Order 11846.

[2] Sec. 50 of Executive Order 13286 (February 28, 2003; 68 F.R. 10619) inserted "(12) The Secretary of Homeland Security" and renumbered paras. (12)–(15) as (13)–(16).

[3] Executive Order 13118 (March 31, 1999; 64 F.R. 13118) struck out "The Director of the United States International Development Cooperation Agency" and inserted in lieu thereof "Administrator of the United States Agency for International Development".

(2) The Trade Representative, with the advice of the Committee, may create additional subcommittees thereof.

(d) In advising the President on international trade and related matters, the Trade Representative shall take into account and reflect the views of the members of the Committee and of other interested agencies.

Sec. 1–103. *Delegation of Functions.*

(a) The function vested in the President by section 412(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2542(b)) is delegated to the Secretary of Commerce with regard to the technical office established under section 412(a)(1) of such Act and to the Secretary of Agriculture with regard to the technical office established under section 412(a)(2) of such Act. In prescribing the functions of each technical office, the Secretary concerned shall consult with the Trade Representative and with all affected regulatory agencies. The functions delegated by this section shall be exercised in coordination with the Trade Representative.

(b) The functions of the President under sections 2(b) and 303 of the Trade Agreements Act of 1979 (19 U.S.C. 2503(b) and 2513) and section 701(b) of the Tariff Act of 1930 (19 U.S.C. 1871(b)) are delegated to the Trade Representative, who shall exercise such authority with the advice of the Trade Policy Committee.

Sec. 1–104. *Authority Under the Foreign Service Act and Related Laws.*

(a) The Secretary of Commerce (hereinafter referred to as the "Secretary") is authorized to establish a Foreign Commercial Service in the Department of Commerce, and a category of career officers of the Foreign Commercial Service to be known as Foreign Commercial Officers. For purposes of the utilization by the Secretary of the authorities granted to the Secretary under this section, the terms "Foreign Service" and "Foreign Service Officer" shall be construed to mean "Foreign Commercial Service" and "Foreign Commercial Officer," respectively.

(b)[4] * * * [Revoked—1981]

(c) The Board of the Foreign Service and the Board of Examiners for the Foreign Service established by Executive Order 11264 of December 31, 1965, as amended shall exercise with respect to Foreign Service personnel of the Department of Commerce the functions delegated to them by that order with respect to Foreign Service personnel of the Department of State. The Boards shall perform such additional functions with respect to Foreign Service personnel of the Department of Commerce as the Secretary may from time to time delegate or otherwise assign, consistent with the functions of such boards.

Sec. 1–105. *Prior Executive Orders and Determination.*

(a) Section 1(b) of Executive Order 11269 of February 14, 1966, as amended by adding "the United States Trade Representative," after "the Secretary of State,".

[4] Sec. 9(m) of Executive Order 12292 revoked sec. 1–104(b), which had delegated functions under the Foreign Service Act of 1946 (repealed in 1980).

(b)(1) Section 1 of Executive Order 11539 of June 30, 1970, is amended to read as follows:

"Section 1. The United States Trade Representative, with the concurrence of the Secretary of Agriculture and the Secretary of State, is authorized to negotiate bilateral agreements with representatives of governments of foreign countries limiting the export from the respective countries and the importation into the United States of—

"(1) fresh, chilled, or frozen cattle meat,

"(2) fresh, chilled, or frozen meat of goats and sheep (except lambs), and

"(3) prepared and preserved beef and veal (except sausage) if articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved, that are the products of such countries.".

(2) Section 4 of such order is amended by striking out "the Secretary of State" and inserting in lieu thereof "the United States Trade Representative".

(c) The last sentence of section 1(a) of Executive Order 11651 of March 3, 1972, as amended, is amended to read as follows: "The United States Trade Representative, or his designee, also shall be a member of the Committee.".

(d) The first sentence of section 3 of Executive Order 11703 of February 7, 1973, is amended to read as follows: "The Oil Policy Committee shall henceforth consist of the United States Trade Representative, chair, and the Secretaries of State, Treasury, Defense, the Interior, Commerce and Energy, the Attorney General, and the Chairman of the Council of Economic Advisers as members.".

(e) Sections 2(b) and 3(a), the first sentence of section 3(c), and sections 3(e), 3(f), and 6 of Executive Order 11846 of March 27, 1975, as amended, are revoked.

(f)(1) Section 1(a)(5) of Executive Order 11858 of May 7, 1975, is amended to read: "(5) The United States Trade Representative".

(2) Section 1(a)(6) of such order is amended to read: "(6) The Chairman of the Council of Economic Advisers".

(g) Executive Order 12096 of November 2, 1978, is revoked.

(h) The last paragraph of the Presidential Determination Regarding the Acceptance and Application of Certain International Trade Agreements (dated December 14, 1979) (44 FR 74781, at 74784; December 18, 1979), delegating functions under section 2(b) of the Trade Agreements Act of 1979 and section 701(b) of the Tariff Act of 1930, is revoked.

(i) Any reference to the Office of the Special Representative for Trade Negotiations or to the Special Representative for Trade Negotiations in any Executive order, proclamation, or other document shall be deemed to refer to the Office of the United States Trade Representative or to the United States Trade Representative, respectively.

Sec. 1–106. *Incidental Transfers and Reassignments.*

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 functions transferred or reassigned by the provisions of this order

as the Director of the Office of Management and Budget shall determine shall be transferred or reassigned for use in connection with such functions.

Sec. 1–107. *Effective Dates.*

(a) Sections 1, 2(a), 2(b)(2), 2(c), 3, 4, 5(a), 5(b)(2), 5 (c) through (e), and 6 through 8 of Reorganization Plan No. 3 of 1979, and the provisions of this order, shall take effect as of January 2, 1980.

(b) Section 5(b)(1) of such plan shall take effect as of April 1, 1980.

(27) Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters

Executive Order 12661, December 27, 1988, 54 F.R. 779, 19 U.S.C. 2901 note; as amended by Executive Order 12697, December 22, 1989, 54 F.R. 53037; Executive Order 12716, May 24, 1990, 55 F.R. 21831; and Executive Order 12774, September 27, 1991, 56 F.R. 49835

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418, 102 Stat. 1107) ("Omnibus Trade Act"), the Tariff Act of 1930 (Chapter 497, 46 Stat. 590, June 17, 1930), as amended ("Tariff Act"), the National Defense Authorization Act, Fiscal Year 1989 (P.L. 100–456, 102 Stat. 1918) ("Defense Authorization Act"), section 301 of Title 3 of the United States Code, and, in general, to ensure that the international trade policy of the United States shall be conducted and administered in a way that achieves the economic, foreign policy, and national security objectives of the United States and in a coordinated manner under the direction of the President, it is hereby ordered as follows:

PART I—TRADE, CUSTOMS, AND TARIFF LAWS

Section 1–101. *Accession of State Trading Regimes to the General Agreement on Tariffs and Trade.* The functions vested in the President by sections 1106(a), (b) and (d) of the Omnibus Trade Act, regarding the accession of state trading regimes to the General Agreement on Tariffs and Trade, are delegated to the United States Trade Representative.

Sec. 1–201. *Wine Barriers.* The functions vested in the President by section 1125 of the Omnibus Trade Act, regarding the updated report on barriers to wine trade, are delegated to the United States Trade Representative.

Sec. 1–301. *Steel Imports.* The functions vested in the President by section 805(d)(1) and (2) of the Trade and Tariff Act of 1984 (19 U.S.C. 2253, note), as amended by section 1322 of the Omnibus Trade Act, are delegated to the United States Trade Representative.

Sec. 1–401. *Telecommunications Trade.* The functions vested in the President by sections 1375 and 1376(e) of the Omnibus Trade Act, regarding certain telecommunications negotiations as may be ordered by the President and reports thereon to Congressional Committees, are delegated to the United States Trade Representative.

Sec. 1–501. *Uniform Fee on Imports.* The functions vested in the President by section 1428 of the Omnibus Trade Act, regarding

negotiations to obtain authority under the General Agreement on Tariffs and Trade to impose a small uniform fee on imports, are delegated to the United States Trade Representative.

PART II—EXPORT ENHANCEMENT

Sec. 2–101. *Countertrade and Barter.*

(1) *Establishment.* There is established an Interagency Group on Countertrade, which shall be composed of the Secretaries of Commerce, State, Defense, Treasury, Labor, Agriculture, and Energy, the Attorney General, the Administrator of the Agency for International Development, the Director of the Federal Emergency Management Agency, the United States Trade Representative and the Director of the Office of Management and Budget, or their respective representatives. The Secretary of Commerce or his representative shall be the Chairman of the interagency group.

(2) *Functions.* The interagency group shall carry out the functions and duties set out in section 2205(a) of the Omnibus Trade Act.

Sec. 2–201. *Sanctions Against Toshiba and Kongsberg.*[1]

(1) *Procurement Sanctions.* Pursuant to section 2443 of the Omnibus Trade Act and subject to the exceptions referred to in paragraph (3), departments, agencies and instrumentalities of the United States Government shall not for the three-year period beginning on the date this Order takes effect, contract with or procure products and services from Toshiba Machine Company, Kongsberg Trading Company, Toshiba Corporation or Kongsberg Vaapenfabrikk. The head of each department, agency or instrumentality is hereby directed and authorized to implement this procurement sanction in accordance with paragraph (3).

(2) *Import Sanctions.* Pursuant to section 2443 of the Omnibus Trade Act and subject to the exceptions referred to in paragraph (3), importation into the United States, its territories and possessions, of products produced by Toshiba Machine Company or Kongsberg Trading Company is prohibited for three years from the effective date of this Order. The Secretary of the Treasury is hereby directed and authorized to implement this import sanction in accordance with paragraph (3).

(3) *Exceptions.* Authority to make determinations as to exceptions to sanctions and to implement exceptions by regulation or otherwise is delegated (i) to the Secretary of Defense with respect to determinations under section 2443(c)(1) regarding the procurement of defense articles or defense services, (ii) to the Secretary of the Treasury with respect to exceptions under section 2443(c)(2) regarding importation prohibited by section 2443(a)(2), and (iii) to the head of each Federal department, agency or instrumentality with respect to exceptions under section 2443(c)(2) affecting their respective contracting and procurement. All regulations implementing these exceptions provisions shall be consistent with any

[1] Sanctions expired on December 28, 1991 (Department of Defense; FAC 90–10; FAR Case 91–66; Item II; 56 F.R. 67415).

guidelines provided by the Office of Federal Procurement Policy, Office of Management and Budget.

(4) *Annual Report.* The annual report required by section 2445, concerning estimated increases in defense expenditures arising from illegal technology transfers, shall be prepared by the Secretary of Defense, in consultation with the Secretaries of State and Commerce, for submission to the Congress by the President.

PART III—FOREIGN CORRUPT PRACTICES AMENDMENTS; INVESTMENT; AND TECHNOLOGY

Sec. 3–101. *Foreign Corrupt Practices Act Amendments.*

The functions conferred upon the President by section 5003(d)(1) ("International Agreement") of the Omnibus Trade Act are delegated to the secretary of State, who in performing such functions shall act in consultation with the Attorney General, the United States Trade Representative, the Chairman of the Securities and Exchange Commission, the Secretary of Commerce, the Secretary of the Treasury and the Director of the Office of Management and Budget.

Sec. 3–201.[2] *Authority to Review Certain Mergers, Acquisitions, and Takeovers.* * * *

Sec. 3–301. *Reporting Requirement on Semiconductors, Fiber Optics and Superconducting Materials.* * * *

Sec. 3–401. *A National Commission on Superconductivity.* * * * [Revoked by Executive Order 12774, September 27, 1991]

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PART V—MISCELLANEOUS

Sec. 5–101. *Executive Oversight.* Any actions or determinations taken or made by an officer or agency under the Omnibus Trade Act or this Order shall be subject to the Executive oversight and direction of the President, and such actions or determinations shall be undertaken after appropriate inter-agency consultation as established by the President.

Sec. 5–102. *Regulatory Review.* Notwithstanding the provisions of section 1(a)(2) of Executive Order 12291 of February 17, 1981, the Director of the Office of Management and Budget shall, with regard to regulations, rules, or agency statements of general applicability and future effect designed to implement, interpret, or prescribe law of policy or describing the procedure or practice requirements of an agency relative to the administration of the Export Administration Act, determine whether such regulations, rules, or agency statements are exempted from review under that Order, pursuant to the provisions of section 8(b) thereof.

Sec. 5–201. *Offsets.* The negotiating functions under section 825(c) of the Defense Authorization Act, as may be ordered by the

[2] Sec. 3–201 added new secs. 7 and 8 and made other amendments to Executive Order 11858.

President, are hereby jointly delegated to the Secretary of Defense and the United States Trade Representative. These functions shall be coordinated with the Secretary of State and conducted in consultation with the Secretaries of Commerce, Labor, and the Treasury.

Sec. 5–202. *Reporting Functions.* The reporting functions of the President under section 825(d) of the Defense Authorization Act are delegated to the Director of the Office of Management and Budget. The Director may further delegate to the heads of Executive departments and agencies responsibility for preparing particular sections of such reports. The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Director with such information as may be necessary for the effective performance of these functions.

Sec. 5–301. *International Trade Commission Report.* The functions vested in the President by section 332(g) of the Tariff Act, regarding reports by the United States International Trade Commission to the President, are delegated to the United States Trade Representative.

Sec. 5–401. *Strengthening International Institutions.* To the extent possible, actions undertaken under this Order shall be conducted in a manner that strengthens international institutions that further United States objectives, such as opening foreign markets and preventing the export of strategic goods and technologies to proscribed destinations.

Sec. 5–501. *Effective Date.* This Order shall take effect at 12:01 a.m. on Wednesday, December 28, 1988.

(28) Identification of Trade Expansion Priorities

Executive Order 12901, March 3, 1994, 59 F.R. 10727, 19 U.S.C. 2420 note; as amended by Executive Order 12973, September 27, 1995, 60 F.R. 51665

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 141 and 301–310 of the Trade Act of 1974, as amended (the "Act") (19 U.S.C. 2171, 2411–2420), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

Section 1. *Identification.* (a) Within 6 months of the submission of the National Trade Estimate Report (required by section 181(b) of the Act (19 U.S.C. 2241)) for 1996 and 1997,[1] the United States Trade Representative ("Trade Representative") shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. 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, and shall publish in the Federal Register, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

(1) the major barriers and trade distorting practices described in the National Trade Estimate Report;

(2) the trade agreements to which a foreign country is a party and its compliance with those agreements;

(3) the medium-term and long-term implications of foreign government procurement plans; and

(4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the report, if appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

[1] Executive Order 12973 (September 27, 1995; 60 F.R. 51665) struck out "1994 and 1995" and inserted in lieu thereof "1996 and 1997".

Sec. 2. *Initiation of Investigation.* Within 21 days of the submission of the report required by paragraph (a) of section 1, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations under title III, chapter 1, of the Act with respect to all of the priority foreign country practices identified.

Sec. 3. *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) of the Act (19 U.S.C. 2413(a)) with respect to an investigation initiated by reason of section 2 of this order, 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 that is not feasible, provides for compensatory trade benefits. The Trade Representative shall monitor any agreement entered into under this section pursuant to the provisions of section 306 of the Act (19 U.S.C. 2416).

Sec. 4. *Reports.* The Trade Representative shall include in the semiannual report required by section 309 of the Act (19 U.S.C. 2419) a report on the status of any investigation initiated pursuant to section 2 of this order 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.

Sec. 5. *Presidential Direction.* The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

(29) Trade and Environment Policy Advisory Committee

Executive Order 12905, March 25, 1994, 59 F.R. 14733, 19 U.S.C. 2155 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and section 135(c)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)(1)) ("Act"), it is hereby ordered as follows:

Section 1. *Establishment.* There is established in the Office of the United States Trade Representative ("Trade Representative") the "Trade and Environment Policy Advisory Committee" ("Committee").

Sec. 2. *Membership.* (a) The Committee shall consist of not more than 35 members, including, but not limited to, representatives from environmental interest groups, industry (including the environmental technology and environmental services industries), agriculture, services, non-Federal government, and consumer interests. The Committee should be broadly representative of the key sectors and groups of the economy with an interest in trade and environmental policy issues.

(b) The Chairman of the Committee shall be elected by the Committee from among its members. Members of the Committee shall be appointed by the Trade Representative, in consultation with the Cabinet secretaries described in section 2155(c)(1) of title 19, United States Code, for a term of 2 years and may be reappointed for any number of terms. Appointments to the Committee shall be made without regard to political affiliation. Any member may be removed at the discretion of the Trade Representative.

Sec. 3. *Functions.* (a) The Committee shall provide the Trade Representative with policy advice on issues involving trade and the environment.

(b) The Committee shall submit a report to the President, to the Congress, and to the Trade Representative at the conclusion of negotiations for each trade agreement referred to in section 102 of the Act. The report shall include an advisory opinion on whether and to what extent the agreement promotes the interests of the United States.

(c) The Committee may establish such subcommittees of its members as it deems necessary, subject to the provisions of the Federal Advisory Committee Act and the approval of the Trade Representative, or his designee.

(d) The Committee shall report its activities to the Trade Representative, or his designee.

Sec. 4. *Administration.* (a) The Trade Representative, or his designee, with the advice of the Chairman, shall be responsible for prior approval of the agendas for all Committee meetings.

(b) The Trade Representative, or his designee, shall be responsible for determinations, filings, and other administrative requirements of the Federal Advisory Committee Act.

(c)(1) The Trade Representative shall provide funding and administrative and staff support for the Committee.

(2) The Committee shall have an Executive Director who shall be a Federal officer or employee designated by the Trade Representative.

(d) Members of the Committee shall serve without either compensation or reimbursement of expenses.

(e) The Committee shall meet as needed at the call of the Trade Representative or his designee, depending on various factors such as the level of activity of trade negotiations and the needs of the Trade Representative, or at the call of two-thirds of the members of the Committee.

Sec. 5. *General.* The Committee shall function for such period as may be necessary. In accordance with the Federal Advisory Committee Act, the Committee shall terminate after 2 years from the date of this order unless otherwise extended.[1]

[1] Sec. 1(o) of Executive Order 12974 (September 29, 1995; 60 F.R. 51875) extended this Committee until September 30, 1997. The Committee was further extended until September 30, 1999, by sec. 1(o) of Executive Order 13062 (Sept. 29, 1997; 62 F.R. 51755); until September 30, 2003 by Executive Order 13225 (September 28, 2001; 66 F.R. 50291; until September 30, 2005 by Executive Order 13316 (September 17, 2003; 68 F.R. 55255); and until September 30, 2007 by Executive Order 13385 (September 29, 2005; 70 F.R. 57989).

(30) Identification of Trade Expansion Priorities and Discriminatory Procurement Practices

Executive Order 13116, March 31, 1999, 64 F.R. 16333, 19 U.S.C. 2420 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title III of the Act of March 3, 1993, as amended (41 U.S.C. 10d), sections 141 and 301–310 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2171, 2411–2420), title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

PART I: IDENTIFICATION OF TRADE EXPANSION PRIORITIES

Section 1. *Identification and Annual Report.* (a) Within 30 days of the submission of the National Trade Estimate Report required by section 181(b) of the Act (19 U.S.C. 2241(b)) for 1999, 2000, and 2001, the United States Trade Representative (Trade Representative) shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. 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, and shall publish in the Federal Register, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

(1) the major barriers and trade distorting practices described in the National Trade Estimate Report;

(2) the trade agreements to which a foreign country is a party and its compliance with those agreements;

(3) the medium-term and long-term implications of foreign government procurement plans; and

(4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the report, if appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United

States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

Sec. 2. *Resolution.* Upon submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall, with respect to any priority foreign country practice identified therein, engage the country concerned for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with a trade agreement or the elimination of the practice as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

Sec. 3. *Initiation of Investigations.* Within 90 days of the submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to all of the priority foreign country practices identified, unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

PART II: IDENTIFICATION OF DISCRIMINATORY GOVERNMENT PROCUREMENT PRACTICES

Section 1. *Identification and Annual Report.* (a) Within 30 days of the submission of the National Trade Estimate Report for 1999, 2000, and 2001, the Trade Representative shall submit to the Committees on Finance and on Governmental Affairs of the Senate and the Committees on Ways and Means and Government Reform and Oversight of the House of Representatives, and shall publish in the Federal Register, a report on the extent to which foreign countries discriminate against U.S. products or services in making government procurements.

(b) In the report, the Trade Representative shall identify countries that:

(1) are not in compliance with their obligations under the World Trade Organization Agreement on Government Procurement (the GPA), Chapter 10 of the North American Free Trade Agreement (NAFTA), or other agreements relating to government procurement (procurement agreements) to which that country and the United States are parties; or

(2) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses and whose products or services are acquired in significant amounts by the United States Government.

Sec. 2. *Considerations in Making Identifications.* In making the identifications required by section 1 of this part, the Trade Representative shall: (a) consider the requirements of the GPA, NAFTA, or other procurement agreements, government procurement practices, and the effects of such practices on U.S. businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for U.S. products or services;

(b) take into account, among other factors, whether and to what extent countries that are parties to the GPA, NAFTA, or other procurement agreements, and other countries described in section 1 of this part:

(1) use sole-sourcing or otherwise noncompetitive procedures for procurement that could have been conducted using competitive procedures;

(2) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the value threshold of the GPA, NAFTA, or other procurement agreements, or to make the procurement less attractive to U.S. businesses;

(3) announce procurement opportunities with inadequate time intervals for U.S. businesses to submit bids; and

(4) use specifications in such a way as to limit the ability of U.S. suppliers to participate in procurements; and

(c) consider information included in the National Trade Estimate Report, and any other additional criteria deemed appropriate, including, to the extent such information is available, the failure to apply transparent and competitive procedures or maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

Sec. 3. *Impact of Noncompliance and Denial of Comparable Treatment.* The Trade Representative shall take into account, in identifying countries in the annual report and in any action required by this part, the relative impact of any noncompliance with the GPA, NAFTA, or other procurement agreements, or of other discrimination on U.S. commerce, and the extent to which such noncompliance or discrimination has impeded the ability of U.S. 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.

Sec. 4. *Resolution.* Upon submission of the report required by section 1 of this part, the Trade Representative shall engage any country identified therein for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with the GPA, NAFTA, or other procurement agreements or the elimination of the discriminatory procurement practices as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

Sec. 5. *Initiation of Investigations.* (a) Within 90 days of the submission of the report required by section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to any practice that:

(1) was the basis for the identification of a country under section 1; and

(2) is not at that time the subject of any other investigation or action under title III, chapter 1, of the Act, unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

(b) For investigations initiated under paragraph (a) of this section (other than an investigation involving the GPA or NAFTA), the Trade Representative shall apply the time limits and procedures in section 304(a)(3) of the Act (19 U.S.C. 2414(a)(3)). The

time limits in subsection 304(a)(3)(B) of the Act (19 U.S.C. 2414(a)(3)(B)) shall apply if the Trade Representative determines that:

(1) complex or complicated issues are involved in the investigation that require additional time;

(2) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will end the discriminatory procurement practice; or

(3) such foreign country is undertaking enforcement measures to end the discriminatory procurement practice.

PART III: DIRECTION

Section 1. *Presidential Direction.* The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

Sec. 2. *Consultations and Advice.* In developing the annual reports required by part I and part II of this order, the Trade Representative shall consult with executive agencies and seek information and advice from U.S. businesses in the United States and in the countries involved in the practices under consideration.

(31) Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

Executive Order 13126, June 12, 1999, 64 F.R. 32383, 19 U.S.C. 1307 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to continue the executive branch's commitment to fighting abusive child labor practices, it is hereby ordered as follows:

Section. 1. *Policy.* It shall be the policy of the United States Government, consistent with the Tariff Act of 1930, 19 U.S.C. 1307, the Fair Labor Standards Act, 29 U.S.C. 201 et. seq., and the Walsh-Healey Public Contracts Act, 41 U.S.C. 35 et seq., the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.

Sec. 2. *Publication of List.* Within 120 days after the date of this order, the Department of Labor, in consultation and cooperation with the Department of the Treasury and the Department of State, shall publish in the Federal Register a list of products, identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor. The Department of Labor may conduct hearings to assist in the identification of those products.

Sec. 3. *Procurement Regulations.* Within 120 days after the date of this order, the Federal Acquisition Regulatory Council shall issue proposed rules to implement the following:

(a) *Required Solicitation Provisions.* Each solicitation of offers for a contract for the procurement of a product included on the list published under section 2 of this order shall include the following provisions:

(1) A provision that requires the contractor to certify to the contracting officer that the contractor or, in the case of an incorporated contractor, a responsible official of the contractor has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor; and

(2) A provision that obligates the contractor to cooperate fully in providing reasonable access to the contractor's records, documents, persons, or premises if reasonably requested by authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice, for the purpose of determining whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract.

(b) *Investigations.* Whenever a contracting officer of an executive agency has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture a product furnished pursuant to a contract subject to the requirements of subsection 3(a) of this order, the head of the executive agency shall refer the matter for investigation to the Inspector General of the executive agency and, as the head of the executive agency or the Inspector General determines appropriate, to the Attorney General and the Secretary of the Treasury.

(c) *Remedies.*

(1) The head of an executive agency may impose remedies as provided in this subsection in the case of a contractor under a contract of the executive agency if the head of the executive agency finds that the contractor:

(i) Has furnished under the contract products that have been mined, produced, or manufactured by forced or indentured child labor or uses forced or indentured child labor in the mining, production, or manufacturing operations of the contractor;

(ii) Has submitted a false certification under subsection 3(a)(1) of this order; or

(iii) Has failed to cooperate in accordance with the obligation imposed pursuant to subsection 3(a)(2) of this order.

(2) The head of an executive agency, in his or her sole discretion, may terminate a contract on the basis of any finding described in subsection 3(c)(1) of this order for any contract entered into after the date the regulation called for in section 3 of this order is published in final.

(3) The head of an executive agency may debar or suspend a contractor from eligibility for Federal contracts on the basis of a finding that the contractor has engaged in an act described in subsection 3(c)(1) of this order. The provision for debarment may not exceed 3 years.

(4) The Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (maintained by the Administrator as described in the Federal Acquisition Regulation) each party that is debarred, suspended, proposed for debarment or suspension, or declared ineligible by the head of an agency on the basis that the person has engaged in an act described in subsection 3(c)(1) of this order.

(5) This section shall not be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a finding described in subsection 3(c)(1) of this order.

Sec. 4. *Report.* Within 2 years after implementation of any final rule under this order, the Administrator of General Services, with the assistance of other executive agencies, shall submit to the Office of Management and Budget a report on the actions taken pursuant to this order.

Sec. 5. *Scope.* (a) Any proposed rules issued pursuant to section 3 of this order shall apply only to acquisitions for a total amount in excess of the micro-purchase threshold as defined in section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f)).

(b) This order does not apply to a contract that is for the procurement of any product, or any article, material, or supply contained in a product that is mined, produced, or manufactured in any foreign country if:

(1) the foreign country is a party to the Agreement on Government Procurement annexed to the WTO Agreement or a party to the North American Free Trade Agreement ("NAFTA"); and

(2) the contract is of a value that is equal to or greater than the United States threshold specified in the Agreement on Government Procurement annexed to the WTO Agreement or NAFTA, whichever is applicable.

Sec. 6. *Definitions.* (a) "Executive agency" and "agency" have the meaning given to "executive agency" in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(b) "WTO Agreement" means the Agreement Establishing the World Trade Organization, entered into on April 15, 1994.

(c) "Forced or indentured child labor" means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Sec. 7. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and does not create any rights or benefits, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

(32) Environmental Review of Trade Agreements

Executive Order 13141, November 15, 1999, 64 F.R. 63167, 19 U.S.C. 2112 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further the environmental and trade policy goals of the United States, it is hereby ordered as follows:

Section 1. *Policy.* The United States is committed to a policy of careful assessment and consideration of the environmental impacts of trade agreements. The United States will factor environmental considerations into the development of its trade negotiating objectives. Responsible agencies will accomplish these goals through a process of ongoing assessment and evaluation, and, in certain instances, written environmental reviews.

Sec. 2. *Purpose and Need.* Trade agreements should contribute to the broader goal of sustainable development. Environmental reviews are an important tool to help identify potential environmental effects of trade agreements, both positive and negative, and to help facilitate consideration of appropriate responses to those effects whether in the course of negotiations, through other means, or both.

Sec. 3. (a) *Implementation.* The United States Trade Representative (Trade Representative) and the Chair of the Council on Environmental Quality shall oversee the implementation of this order, including the development of procedures pursuant to this order, in consultation with appropriate foreign policy, environmental, and economic agencies.

(b) *Conduct of Environmental Reviews.* The Trade Representative, through the interagency Trade Policy Staff Committee (TPSC), shall conduct the environmental reviews of the agreements under section 4 of this order.

Sec. 4. *Trade Agreements.*

(a) Certain agreements that the United States may negotiate shall require an environmental review. These include:

(i) comprehensive multilateral trade rounds;

(ii) bilateral or plurilateral free trade agreements; and major new trade liberalization agreements in natural resource sectors.

(b) Agreements reached in connection with enforcement and dispute resolution actions are not covered by this order.

(c) For trade agreements not covered under subsections 4(a) and (b), environmental reviews will generally not be required. Most sectoral liberalization agreements will not require an environmental review the Trade Representative, through the TPSC, shall determine whether an environmental review of an agreement or category of agreements is warranted based on

such factors as the significance of reasonably foreseeable environmental impacts.

Sec. 5. *Environmental Reviews.*

(a) Environmental reviews shall be:

(i) written;

(ii) initiated through a Federal Register notice, outlining the proposed agreement and soliciting public comment and information on the scope of the environmental review of the agreement;

(iii) undertaken sufficiently early in the process to inform the development of negotiating positions, but shall not be a condition for the timely tabling of particular negotiating proposals;

(iv) made available in draft form for public comment, where practicable; and

(v) made available to the public in final form.

(b) As a general matter, the focus of environmental reviews will be impacts in the United States. As appropriate and prudent, reviews may also examine global and transboundary impacts.

Sec. 6. *Resources.* Upon request by the Trade Representative, with the concurrence of the Deputy Director for Management of the Office of Management and Budget, Federal agencies shall, to the extent permitted by law and subject to the availability of appropriations, provide analytical and financial resources and support, including the detail of appropriate personnel, to the Office of the United States Trade Representative to carry out the provisions of this order.

Sec. 7. *General Provisions.* This order is intended only to improve the internal management of the executive branch and does not create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

(33) Access to HIV/AIDS Pharmaceuticals and Medical Technologies

Executive Order 13155, May 10, 2000, 64 F.R. 30521, 19 U.S.C. 2411 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 141 and chapter 1 of title III of the Trade Act of 1974, as amended (19 U.S.C. 2171, 241–2420), section 307 of the Public Health Service Act (42 U.S.C. 2421), and section 104 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151b), and in accordance with executive branch policy on health-related intellectual property matters to promote access to essential medicines, it is hereby ordered as follows:

Section 1. *Policy.* (a) In administering sections 301–310 of the Trade Act of 1974, the United States shall not seek, through negotiation or otherwise, the revocation or revision of any intellectual property law or policy of a beneficiary sub-Saharan African country, as determined by the President, that regulates HIV/AIDS pharmaceuticals or medical technologies if the law or policy of the country:

(1) promotes access to HIV/AIDS pharmaceuticals or medical technologies for affected populations in that country; and

(2) provides adequate and effective intellectual property protection consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)).

(b) The United States shall encourage all beneficiary sub-Saharan African countries to implement policies designed to address the underlying causes of the HIV/AIDS crisis by, among other things, making efforts to encourage practices that will prevent further transmission and infection and to stimulate development of the infrastructure necessary to deliver adequate health services, and by encouraging policies that provide an incentive for public and private research on, and development of, vaccines and other medical innovations that will combat the HIV/AIDS epidemic in Africa.

Sec. 2. *Rationale:* (a) This order finds that:

(1) since the onset of the worldwide HIV/AIDS epidemic, approximately 34 million people living in sub-Saharan Africa have been infected with the disease;

(2) of those infected, approximately 11.5 million have died;

(3) the deaths represent 83 percent of the total HIV/AIDS-related deaths worldwide; and

(4) access to effective therapeutics for HIV/AIDS is determined by issues of price, health system infrastructure for delivery, and sustainable financing.

(b) In light of these findings, this order recognizes that:

(1) it is in the interest of the United States to take all reasonable steps to prevent further spread of infectious disease, particularly HIV/AIDS;

(2) there is critical need for effective incentives to develop new pharmaceuticals, vaccines, and therapies to combat the HIV/AIDS crisis, including effective global intellectual property standards designed to foster pharmaceutical and medical innovation;

(3) the overriding priority for responding to the crisis of HIV/AIDS in sub-Saharan Africa should be to improve public education and to encourage practices that will prevent further transmission and infection, and to stimulate development of the infrastructure necessary to deliver adequate health care services;

(4) the United States should work with individual countries in sub-Saharan Africa to assist them in development of effective public education campaigns aimed at the prevention of HIV/AIDS transmission and infection, and to improve their health care infrastructure to promote improved access to quality health care for their citizens in general, and particularly with respect to the HIV/AIDS epidemic;

(5) an effective United States response to the crisis in sub-Saharan Africa must focus in the short term on preventive programs designed to reduce the frequency of new infections and remove the stigma of the disease, and should place a priority on basic health services that can be used to treat opportunistic infections, sexually transmitted infections, and complications associated with HIV/AIDS so as to prolong the duration and improve the quality of life of those with the disease;

(6) an effective United States response to the crisis must also focus on the development of HIV/AIDS vaccines to prevent the spread of the disease;

(7) the innovative capacity of the United States in the commercial and public pharmaceutical research sectors is unmatched in the world, and the participation of both these sectors will be a critical element in any successful program to respond to the HIV/AIDS crisis in sub-Saharan Africa;

(8) the TRIPS Agreement recognizes the importance of promoting effective and adequate protection of intellectual property rights and the right of countries to adopt measures necessary to protect public health;

(9) individual countries should have the ability to take measures to address the HIV/AIDS epidemic, provided that such measures are consistent with their international obligations; and

(10) successful initiatives will require effective partnerships and cooperation among governments, international organizations, nongovernmental organizations, and the private sector, and greater consideration should be given to financial, legal, and other incentives that will promote improved prevention and treatment actions.

Sec. 3. *Scope.* (a) This order prohibits the United States Government from taking action pursuant to section 301(b) of the Trade Act of 1974 with respect to any law or policy in beneficiary sub-

Saharan African countries that promotes access to HIV/AIDS pharmaceuticals or medical technologies and that provides adequate and effective intellectual property protection consistent with the TRIPS Agreement. However, this order does not prohibit United States Government officials from evaluating, determining, or expressing concern about whether such a law or policy promotes access to HIV/AIDS pharmaceuticals or medical technologies or provides adequate and effective intellectual property protection consistent with the TRIPS Agreement. In addition, this order does not prohibit United States Government officials from consulting with or otherwise discussing with sub-Saharan African governments whether such law or policy meets the conditions set forth in section 1(a) of this order. Moreover, this order does not prohibit the United States Government from invoking the dispute settlement procedures of the World Trade Organization to examine whether any such law or policy is consistent with the Uruguay Round Agreements, referred to in section 101(d) of the Uruguay Round Agreements Act.

(b) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not create, any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(34) Federal Leadership on Global Tobacco Control and Prevention

Executive Order 13193, January 18, 2001, 66 F.R. 7387, 22 U.S.C. 2101 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It shall be the policy of the executive branch to take strong action to address the potential global epidemic of diseases caused by tobacco use. The executive branch shall undertake activities to increase its capacity to address global tobacco prevention and control issues through coordinated domestic action, limited bilateral assistance to individual nations, and support to multilateral organizations. International activities shall be directed towards deterring children from tobacco use, protecting nonsmokers, and providing information about the adverse health effects of tobacco use and the health benefits of cessation.

Sec. 2. *Responsibilities of Federal Departments and Agencies.* (a) Tobacco Trade Policy. In the implementation of international trade policy, executive departments and agencies shall not promote the sale or export of tobacco or tobacco products, or seek the reduction or removal of foreign government restrictions on the marketing and advertising of such products, provided that such restrictions are applied equally to all tobacco or tobacco products of the same type. Departments and agencies are not precluded from taking necessary actions in accordance with the requirements and remedies available under applicable United States trade laws and international agreements to ensure nondiscriminatory treatment of United States products. Nothing in this Executive Order shall be construed (1) to modify the annual executive branch guidance to United States diplomatic posts on health, trade, and commercial aspects of tobacco, or (2) to affect any negotiating position of the United States on the Framework Convention on Tobacco Control.

(b) The Department of Health and Human Services' (HHS) Role in Tobacco Trade Policy Deliberations. The HHS shall be included in all deliberations of interagency working groups, chaired by the United States Trade Representative (USTR), that address issues relating to trade in tobacco and tobacco products. Through such participation, HHS shall advise the USTR, and other interested Federal agencies, of the potential public health impact of any tobacco-related trade action that is under consideration. Upon conclusion of a trade agreement that includes provisions specifically addressing tobacco or tobacco products, the USTR shall produce and make publicly available a summary describing those provisions.

(c) International Tobacco Control Needs Assessment. The HHS, with the cooperation of the Departments of State, Commerce, and Agriculture, and in consultation with the appropriate national Ministry of Health, shall conduct a pilot assessment of tobacco use in

a country other than the United States. Such assessment will be carried out through a compilation and review of surveys and other needs assessments already available and include:

(1) initial estimates of the burden of disease and other public health consequences of tobacco use;

(2) the status of tobacco control regulatory measures in place to curtail tobacco consumption and tobacco related disease; and

(3) an analysis of the marketing, distribution, and manufacturing practices of tobacco companies in given regions, and the impact of those practices on smoking rates, particularly among women and children. Such assessment shall be prepared and provided to interested agencies and other parties not later than December 31, 2001, and be updated as practicable.

(d) Research and Training in Tobacco Control. The HHS will develop a research and training program linking institutions in the United States and certain other countries in the field of tobacco control. Emphasis will be placed on the collection of standardized and comparable surveillance data; networks for communication, information and best practices; and the development and evaluation of culturally-targeted approaches to preventing tobacco use and increasing quit rates, especially among women and children.

Sec. 3. *General.* (a) Executive departments and agencies shall carry out the provisions of this order to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

(b) This order clarifies and strengthens Administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.

b. U.S. Trade With Canada, Latin America, and the Caribbean

(1) Dominican Republic-Central America-United States Free Trade Agreement Implementation Act

Partial text of Public Law 109–53 [H.R. 3045], 119 Stat. 462, approved August 2, 2005

AN ACT To implement the Dominican Republic-Central America-United States Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.[1]—This Act may be cited as the "Dominican Republic-Central America-United States Free Trade Agreement Implementation Act".

(b) TABLE OF CONTENTS.—* * *

SEC. 2.[2] PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua for their mutual benefit;

(3) to establish free trade between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua 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 the Agreement.

SEC. 3.[3] DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the Dominican Republic-Central America-United States Free Trade Agreement approved by the Congress under section 101(a)(1).

(2) CAFTA–DR COUNTRY.—Except as provided in section 203, the term "CAFTA–DR country" means—

(A) Costa Rica, for such time as the Agreement is in force between the United States and Costa Rica;

[1] 19 U.S.C. 4001 note.
[2] 19 U.S.C. 4001.
[3] 19 U.S.C. 4002.

(B) the Dominican Republic, for such time as the Agreement is in force between the United States and the Dominican Republic;

(C) El Salvador, for such time as the Agreement is in force between the United States and El Salvador;

(D) Guatemala, for such time as the Agreement is in force between the United States and Guatemala;

(E) Honduras, for such time as the Agreement is in force between the United States and Honduras; and

(F) Nicaragua, for such time as the Agreement is in force between the United States and Nicaragua.

(3) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(4) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

(5) TEXTILE OR APPAREL GOOD.—The term "textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)), other than a good listed in Annex 3.29 of the Agreement.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101.[4] APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the Congress approves—

(1) the Dominican Republic-Central America-United States Free Trade Agreement entered into on August 5, 2004, with the Governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, and submitted to the Congress on June 23, 2005; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on June 23, 2005.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that countries listed in subsection (a)(1) have taken measures necessary to comply with the provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to provide for the Agreement to enter into force with respect to those countries that provide for the Agreement to enter into force for them.

SEC. 102.[5] 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.

[4] 19 U.S.C. 4011.
[5] 19 U.S.C. 4012.

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

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

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term "State law" includes—

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

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

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

SEC. 103.[6] IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction contained in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

[6] 19 U.S.C. 4013.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104.[7] CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

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

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

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

(B) the Commission;

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

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

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

SEC. 105.[8] ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2005 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office established or designated under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

[7] 19 U.S.C. 4014.
[8] 19 U.S.C. 4015.

SEC. 106.[9] ARBITRATION OF CLAIMS.

The United States is authorized to resolve any claim against the United States covered by article 10.16.1(a)(i)(C) or article 10.16.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

SEC. 107.[10] EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF CAFTA–DR STATUS.—During any period in which a country ceases to be a CAFTA–DR country, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to have effect with respect to that country.

(d) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement ceases to be in force with respect to the United States, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to have effect.

TITLE II—CUSTOMS PROVISIONS [11]

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TITLE III—RELIEF FROM IMPORTS [12]

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TITLE IV—MISCELLANEOUS [13]

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SEC. 403.[14] PERIODIC REPORTS AND MEETINGS ON LABOR OBLIGATIONS AND LABOR CAPACITY-BUILDING PROVISIONS.

(a) REPORTS TO CONGRESS.—

(1) IN GENERAL.—Not later than the end of the 2-year period beginning on the date the Agreement enters into force, and not later than the end of each 2-year period thereafter during the succeeding 14-year period, the President shall report to the Congress on the progress made by the CAFTA–DR countries in—

(A) implementing Chapter Sixteen and Annex 16.5 of the Agreement; and

(B) implementing the White Paper.

(2) WHITE PAPER.—In this section, the term "White Paper" means the report of April 2005 of the Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic entitled "The Labor Dimension in Central America and the Dominican

[9] 19 U.S.C. 4016.
[10] 19 U.S.C. 4001 note.
[11] Freestanding provisions in this title are codified at 19 U.S.C. 4031–4036.
[12] Freestanding provisions in this title are codified at 19 U.S.C. 4061–4101 (subtitle A—relief from imports benefiting from the agreement; subtitle B—textile and apparel safeguard measures; subtitle C—cases under title II of the Trade Act of 1974).
[12] Except for sec. 403, title IV consists of amendments to other trade legislation.
[14] 19 U.S.C. 4111.

Republic—Building on Progress: Strengthening Compliance and Enhancing Capacity".

(3) CONTENTS OF REPORTS.—Each report under paragraph (1) shall include the following:

(A) A description of the progress made by the Labor Cooperation and Capacity Building Mechanism established by article 16.5 and Annex 16.5 of the Agreement, and the Labor Affairs Council established by article 16.4 of the Agreement, in achieving their stated goals, including a description of the capacity-building projects undertaken, funds received, and results achieved, in each CAFTA–DR country.

(B) Recommendations on how the United States can facilitate full implementation of the recommendations contained in the White Paper.

(C) A description of the work done by the CAFTA–DR countries with the International Labor Organization to implement the recommendations contained in the White Paper, and the efforts of the CAFTA–DR countries with international organizations, through the Labor Cooperation and Capacity Building Mechanism referred to in subparagraph (A), to advance common commitments regarding labor matters.

(D) A summary of public comments received on—

(i) capacity-building efforts by the United States envisaged by article 16.5 and Annex 16.5 of the Agreement;

(ii) efforts by the United States to facilitate full implementation of the White Paper recommendations; and

(iii) the efforts made by the CAFTA–DR countries to comply with article 16.5 and Annex 16.5 of the Agreement and to fully implement the White Paper recommendations, including the progress made by the CAFTA–DR countries in affording to workers internationally-recognized worker rights through improved capacity.

(4) SOLICITATION OF PUBLIC COMMENTS.—The President shall establish a mechanism to solicit public comments for purposes of paragraph (3)(D).

(b) PERIODIC MEETINGS OF SECRETARY OF LABOR WITH LABOR MINISTERS OF CAFTA–DR COUNTRIES.—

(1) PERIODIC MEETINGS.—The Secretary of Labor should take the necessary steps to meet periodically with the labor ministers of the CAFTA–DR countries to discuss—

(A) the operation of the labor provisions of the Agreement;

(B) progress on the commitments made by the CAFTA–DR countries to implement the recommendations contained in the White Paper;

(C) the work of the International Labor Organization in the CAFTA–DR countries, and other cooperative efforts, to afford to workers internationally-recognized worker rights; and

(D) such other matters as the Secretary of Labor and the labor ministers consider appropriate.

(2) INCLUSION IN BIENNIAL REPORTS.—The President shall include in each report under subsection (a), as the President deems appropriate, summaries of the meetings held pursuant to paragraph (1).

(2) United States-Chile Free Trade Agreement Implementation Act

Partial text of Public Law 108–77 [H.R. 2738], 117 Stat. 909, approved September 3, 2003

AN ACT To implement the United States-Chile Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.[1]—This Act may be cited as the "United States-Chile Free Trade Agreement Implementation Act".

(b) TABLE OF CONTENTS.—* * *

SEC. 2.[1] PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and the Republic of Chile entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002;

(2) to strengthen and develop economic relations between the United States and Chile for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

SEC. 3.[1] DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the United States-Chile Free Trade Agreement approved by the Congress under section 101(a)(1).

(2) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

(3) TEXTILE OR APPAREL GOOD.—The term "textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101.[1] APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the Congress approves—

[1] 19 U.S.C. 3805 note.

(1) the United States-Chile Free Trade Agreement entered into on June 6, 2003, with the Government of Chile and submitted to the Congress on July 15, 2003; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on July 15, 2003.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Chile has taken measures necessary to bring it into compliance with the provisions of the Agreement that take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Chile providing for the entry into force, on or after January 1, 2004, of the Agreement for the United States.

SEC. 102.[1] RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP TO UNITED STATES LAW.—

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

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

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

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term "State law" includes—

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

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of Congressional approval thereof; or

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

SEC. 103.[1] CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

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

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

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

(B) the United States International Trade Commission;

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

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

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

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

SEC. 104.[1] IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

(2) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction contained in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action referred to in section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 105.[1] ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 22 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2003 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 22 of the Agreement.

SEC. 106.[1] ARBITRATION OF CLAIMS.

(a) SUBMISSION OF CERTAIN CLAIMS.—The United States is authorized to resolve any claim against the United States covered by article 10.15(1)(a)(i)(C) or 10.15(1)(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

(b) CONTRACT CLAUSES.—All contracts executed by any agency of the United States on or after the date of entry into force of the Agreement shall contain a clause specifying the law that will apply to resolve any breach of contract claim.

SEC. 107.[1] EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS[2]

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TITLE III—RELIEF FROM IMPORTS[3]

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TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS[4]

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[2] Freestanding provisions in this title are codified at 19 U.S.C. 3805 note.

[3] Freestanding provisions in this title are codified at 19 U.S.C. 3805 note (subtitle A—relief from imports benefiting from the agreement; subtitle B—textile and apparel safeguard measures).

[4] For the most part, title IV amends other legislation.

(3) Andean Trade Promotion and Drug Eradication Act

Partial text of Public Law 107–210 [H.R. 3009], 116 Stat. 933, approved May 6, 2002; as amended by Public Law 108–429 [Miscellaneous Trade and Technical Corrections Act of 2004; H.R. 1047], 118 Stat. 2434, approved December 3, 2004

AN ACT To extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

DIVISION C—ANDEAN TRADE PREFERENCE ACT

TITLE XXXI—ANDEAN TRADE PREFERENCE

SEC. 3101.[1] SHORT TITLE.

This title may be cited as the "Andean Trade Promotion and Drug Eradication Act".

SEC. 3102.[1] FINDINGS.

Congress makes the following findings:

(1) Since the Andean Trade Preference Act was enacted in 1991, it has had a positive impact on United States trade with Bolivia, Colombia, Ecuador, and Peru. Two-way trade has doubled, with the United States serving as the leading source of imports and leading export market for each of the Andean beneficiary countries. This has resulted in increased jobs and expanded export opportunities in both the United States and the Andean region.

(2) The Andean Trade Preference Act has been a key element in the United States counternarcotics strategy in the Andean region, promoting export diversification and broad-based economic development that provides sustainable economic alternatives to drug-crop production, strengthening the legitimate economies of Andean countries and creating viable alternatives to illicit trade in coca.

(3) Notwithstanding the success of the Andean Trade Preference Act, the Andean region remains threatened by political and economic instability and fragility, vulnerable to the consequences of the drug war and fierce global competition for its legitimate trade.

(4) The continuing instability in the Andean region poses a threat to the security interests of the United States and the world. This problem has been partially addressed through foreign aid, such as Plan Colombia, enacted by Congress in 2000.

[1] 19 U.S.C. 3201 note.

However, foreign aid alone is not sufficient. Enhancement of legitimate trade with the United States provides an alternative means for reviving and stabilizing the economies in the Andean region.

(5) The Andean Trade Preference Act constitutes a tangible commitment by the United States to the promotion of prosperity, stability, and democracy in the beneficiary countries.

(6) Renewal and enhancement of the Andean Trade Preference Act will bolster the confidence of domestic private enterprise and foreign investors in the economic prospects of the region, ensuring that legitimate private enterprise can be the engine of economic development and political stability in the region.

(7) Each of the Andean beneficiary countries is committed to conclude negotiation of a Free Trade Area of the Americas by the year 2005, as a means of enhancing the economic security of the region.

(8) Temporarily enhancing trade benefits for Andean beneficiary countries will promote the growth of free enterprise and economic opportunity in these countries and serve the security interests of the United States, the region, and the world.

SEC. 3103.[2] ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT.

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(d)[3] PETITIONS FOR REVIEW.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall promulgate regulations regarding the review of eligibility of articles and countries under the Andean Trade Preference Act, consistent with section 203(e) of such Act, as amended by this title.

(2) CONTENT OF REGULATIONS.—The regulations shall be similar to the regulations regarding eligibility under the generalized system of preferences under title V of the Trade Act of 1974 with respect to the timetable for reviews and content, and shall include procedures for requesting withdrawal, suspension, or limitations of preferential duty treatment under the Andean Trade Preference Act, conducting reviews of such requests, and implementing the results of the reviews.

SEC. 3104. TERMINATION.

(a)[4] * * *

(b)[5] RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to paragraph (3), the entry—

(A) of any article to which duty-free treatment (or preferential treatment) under the Andean Trade Preference

[2] Except for subsec. (d), sec. 3103 consists of amendments to the Andean Trade Preference Act (Public Law 102–182), which have been incorporated into that Act.

[3] 19 U.S.C. 3202 note.

[4] Subsec. (a) amended sec. 208 of the Andean Trade Preference Act (Public Law 102–182) by terminating duty-free treatment or other preferential treatment extended under title II of that Act on December 31, 2006.

[5] 19 U.S.C. 3206 note.

Act (19 U.S.C. 3201 et seq.) would have applied if the entry had been made on December 4, 2001, and

(B) that was made after December 4, 2001, and before the date of the enactment of this Act,

shall be liquidated or reliquidated as if such duty-free treatment (or preferential treatment) applied, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

(2) ENTRY.—As used in this subsection, the term "entry" includes a withdrawal from warehouse for consumption.

(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.

SEC. 3105.[6] REPORT ON FREE TRADE AGREEMENT WITH ISRAEL.

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SEC. 3106.[7] MODIFICATION OF DUTY TREATMENT FOR TUNA.

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SEC. 3107.[8] TRADE BENEFITS UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT.

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SEC. 3108.[9] TRADE BENEFITS UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT.

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[6] For text of sec. 3105, see page 1127.

[7] Sec. 3106 amended subheading 1604.14.20 of the Harmonized Tariff Schedule of the United States.

[8] Sec. 3107 amended the Caribbean Basin Economic Recovery Act (Public Law 98–67).

[9] Sec. 3108 amended the African Growth and Opportunity Act (Public Law 106–200).

(4) United States-Caribbean Basin Trade Partnership Act

Partial text of Public Law 106–200 [Trade and Development Act of 2000; H.R. 434], 114 Stat. 251, approved May 18, 2000

AN ACT To authorize a new trade and investment policy for sub-Saharan Africa, expand trade benefits to the countries in the Caribbean Basin, renew the generalized system of preferences, and reauthorize the trade adjustment assistance programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE II—TRADE BENEFITS FOR CARIBBEAN BASIN

SUBTITLE A—TRADE POLICY FOR CARIBBEAN BASIN COUNTRIES

SEC. 201.[2] SHORT TITLE.

This title may be cited as the "United States-Caribbean Basin Trade Partnership Act".

SEC. 202.[3] FINDINGS AND POLICY.

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

(1) The Caribbean Basin Economic Recovery Act (in this title referred to as "CBERA") represents a permanent commitment by the United States to encourage the development of strong democratic governments and revitalized economies in neighboring countries in the Caribbean Basin.

(2) In 1998, Hurricane Mitch and Hurricane Georges devastated areas in the Caribbean Basin region, killing more than 10,000 people and leaving 3,000,000 homeless.

(3) The total direct impact of Hurricanes Mitch and Georges on Honduras, Nicaragua, the Dominican Republic, El Salvador, and Guatemala amounts to $4,200,000,000, representing a severe loss to income levels in this underdeveloped region.

(4) In addition to short term disaster assistance, United States policy toward the region should focus on expanding international trade with the Caribbean Basin region as an enduring solution for successful economic growth and recovery.

(5) Thirty-four democratically elected leaders agreed at the 1994 Summit of the Americas to conclude negotiation of a Free Trade Area of the Americas (in this title referred to as "FTAA") by the year 2005.

(6) The economic security of the countries in the Caribbean Basin will be enhanced by the completion of the FTAA.

(7) Offering temporary benefits to Caribbean Basin countries will preserve the United States commitment to Caribbean

[2] 19 U.S.C. 2701 note.
[3] 19 U.S.C. 2701 note.

Basin beneficiary countries, promote the growth of free enterprise and economic opportunity in these neighboring countries, and thereby enhance the national security interests of the United States.

(8) Given the greater propensity of countries located in the Western Hemisphere to use United States components and to purchase United States products compared to other countries, increased trade and economic activity between the United States and countries in the Western Hemisphere will create new jobs in the United States as a result of expanding export opportunities.

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

(1) to offer Caribbean Basin beneficiary countries willing to prepare to become a party to the FTAA or another free trade agreement, tariff treatment essentially equivalent to that accorded to products of NAFTA countries for certain products not currently eligible for duty-free treatment under the CBERA; and

(2) to seek the participation of Caribbean Basin beneficiary countries in the FTAA or another free trade agreement at the earliest possible date, with the goal of achieving full participation in such agreement not later than 2005.

SEC. 203.[4] DEFINITIONS.

In this title:

(1) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(2) NAFTA COUNTRY.—The term "NAFTA country" means any country with respect to which the NAFTA is in force.

(3) WTO AND WTO MEMBER.—The terms "WTO" and "WTO member" have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

SUBTITLE B—TRADE BENEFITS FOR CARIBBEAN BASIN COUNTRIES

SEC. 211. TEMPORARY PROVISIONS TO PROVIDE ADDITIONAL TRADE BENEFITS TO CERTAIN BENEFICIARY COUNTRIES.

(a) TEMPORARY PROVISIONS.—* * *[5]

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SEC. 212.[6] DUTY-FREE TREATMENT FOR CERTAIN BEVERAGES MADE WITH CARIBBEAN RUM.—* * *

SEC. 213.[7] MEETINGS OF TRADE MINISTERS AND USTR.

(a) SCHEDULE OF MEETINGS.—The President shall take the necessary steps to convene a meeting with the trade ministers of the CBTPA beneficiary countries in order to establish a schedule of regular meetings, to commence as soon as is practicable, of the trade ministers and the Trade Representative, for the purpose set forth in subsection (b).

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[4] 19 U.S.C. 2701 note.

[5] Sec. 211 amended sec. 213(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)), as found on page 1031.

[6] Sec. 212 amended sec. 213(a) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)) as found on page 1029.

[7] 19 U.S.C. 2701 note.

(b) PURPOSE.—The purpose of the meetings scheduled under subsection (a) is to reach agreement between the United States and CBTPA beneficiary countries on the likely timing and procedures for initiating negotiations for CBTPA beneficiary countries to enter into mutually advantageous free trade agreements with the United States that contain provisions comparable to those in the NAFTA and would make substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of Public Law 103–182 (19 U.S.C. 3317(b)(5)).

(c) DEFINITION.—In this section, the term "CBTPA beneficiary country" has the meaning given that term in section 213(b)(5)(B) of the Caribbean Basin Economic Recovery Act.

* * * * * * *

(5) North American Free Trade Agreement Implementation Act

Partial text of Public Law 103–182 [H.R. 3450], 107 Stat. 2057, approved December 8, 1993; as amended by Public Law 105–206 [Internal Revenue Service Reform and Restructuring Act of 1986; H.R. 2676], 112 Stat. 685, approved July 22, 1998

AN ACT To implement the North American Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[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.[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

[1] 19 U.S.C. 3301 note.
[2] 19 U.S.C. 3301.

SEC. 101.[3] 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.[4] 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—

[3] 19 U.S.C. 3311.
[4] 19 U.S.C. 3312.

(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 in 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.[5] 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);

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[5] 19 U.S.C. 3313. In a memorandum of September 29, 1995 (60 F.R. 52061), the President delegated to the U.S. Trade Representative certain authority set forth in sec. 103(a) of this Act and sec. 115 of the Uruguay Round Agreements Act, as follows:

"(1) obtaining advice from the appropriate advisory committees and the U.S. International Trade Commission on the proposed implementation of an action by Presidential proclamation;

"(2) submitting a report on such action to the House Ways and Means and Senate Finance Committees; and

"(3) consulting with such committees during the 60-day period following the date on which the requirements under (1) and (2) have been met.

"The President retains the sole authority under the NAFTA Act and Uruguay Round Act to implement an action by proclamation after the consultation and layover requirements set forth in section 103(a)(1) through (4) and section 115 of such Acts, respectively, have been met.".

(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.[6] 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.[7] UNITED STATES SECTION OF THE NAFTA SECRETARIAT.

(a) ESTABLISHMENT OF THE UNITED STATES SECTION.—The President is authorized to establish within any department or agency of the United States Government a United States Section of the Secretariat established under chapter 20 of the Agreement. The United States Section, subject to the oversight of the interagency group established under section 402, shall carry out its functions within the Secretariat to facilitate the operation of the Agreement, including the operation of chapters 19 and 20 of the Agreement and the work of the panels, extraordinary challenge committees, special

[6] 19 U.S.C. 3314.
[7] 19 U.S.C. 3315.

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.[8] 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.[9] TERMINATION OR SUSPENSION OF UNITED STATES-CANADA FREE-TRADE AGREEMENT. * * *

SEC. 108.[10] 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.

[8] 19 U.S.C. 3316.

[9] Sec. 107 amended sec. 501(c) of the United States-Canada Free-Trade Implementation Act of 1988 (19 U.S.C. 2112 note).

[10] 19 U.S.C. 3317.

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

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

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

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

(A) that—

(i) currently provide fair and equitable market access for United States exports of goods and services and opportunities for export-related investment by United States persons, beyond what is required by existing multilateral trade agreements or obligations; or

(ii) have made significant progress in opening their markets to United States exports of goods and services and export-related investment by United States persons; and

(B) the further opening of whose markets has the greatest potential to increase United States exports of goods and services and export-related investment by United States persons, either directly or through the establishment of a beneficial precedent.

(3) PRESIDENTIAL DETERMINATION.—The President, on the basis of the report submitted by the Trade Representative under paragraph (2), shall determine with which foreign country or countries, if any, the United States should seek to negotiate a free trade area agreement or agreements.

(4) RECOMMENDATIONS ON FUTURE FREE TRADE AREA NEGOTIATIONS.—No later than July 1, 1994, and July 1, 1997, the President shall submit to the appropriate Congressional committees a written report that contains—

(A) recommendations for free trade area negotiations with each foreign country selected under paragraph (3);

(B) with respect to each country selected, the specific negotiating objectives that are necessary to meet the objectives of the United States under this section; and

(C) legislative proposals to ensure adequate consultation with the Congress and the private sector during the negotiations, advance Congressional approval of the negotiations recommended by the President, and Congressional

approval of any trade agreement entered into by the President as a result of the negotiations.

(5) GENERAL NEGOTIATING OBJECTIVES.—The general negotiating objectives of the United States under this section are to obtain—

(A) preferential treatment for United States goods;

(B) national treatment and, where appropriate, equivalent competitive opportunity for United States services and foreign direct investment by United States persons;

(C) the elimination of barriers to trade in goods and services by United States persons through standards, testing, labeling, and certification requirements;

(D) nondiscriminatory government procurement policies and practices with respect to United States goods and services;

(E) the elimination of other barriers to market access for United States goods and services, and the elimination of barriers to foreign direct investment by United States persons;

(F) the elimination of acts, policies, and practices which deny fair and equitable market opportunities, including foreign government toleration of anticompetitive business practices by private firms or among private firms that have the effect of restricting, on a basis that is inconsistent with commercial considerations, purchasing by such firms of United States goods and services;

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

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

(I) the elimination of all export taxes;

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

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

SEC. 109.[11] 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.

[11] 19 U.S.C. 3311 note.

TITLE II—CUSTOMS PROVISIONS [12]

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TITLE III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES [13]

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TITLE IV—DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES [14]

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TITLE V—NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE AND OTHER PROVISIONS

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SUBTITLE B—PROVISIONS RELATING TO PERFORMANCE UNDER THE AGREEMENT

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SEC. 512.[15] 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.

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[12] Freestanding provisions in this title are codified at 19 U.S.C. 3331–3335.

[13] Freestanding provisions in this title are codified at: 19 U.S.C. 3351–3382 (subtitle A—safeguards); 19 U.S.C. 3391 (subtitle B—agriculture); 19 U.S.C. 3401 (subtitle D—temporary entry of business persons); and 19 U.S.C. 3421 (subtitle E, part 2—agricultural standards). Other subtitles (subtitle C—intellectual property; subtitle E, part 1—standards and measures; subtitle F—corporate average fuel economy; and subtitle G—government procurement) consist mostly of amendments to other legislation.

[14] Freestanding provisions in this title are codified at 19 U.S.C. 3431–3438, and 3451.

[15] 19 U.S.C. 3462.

(5) The extent to which the Agreement has contributed to—

(A) improvement in real wages and working conditions in Mexico,

(B) effective enforcement of labor and environmental laws in Mexico, and

(C) the reduction or abatement of pollution in the region of the United States-Mexico border.

(b) SCOPE.—In assessing the factors listed in subsection (a), to the extent possible, the study shall distinguish between the consequences of the Agreement and events that likely would have occurred without the Agreement. In addition, the study shall evaluate the effects of the Agreement relative to aggregate economic changes and, to the extent possible, relative to the effects of other factors, including—

(1) international competition,

(2) reductions in defense spending,

(3) the shift from traditional manufacturing to knowledge and information based economic activity, and

(4) the Federal debt burden.

(c) RECOMMENDATIONS OF THE PRESIDENT.—The study shall include any appropriate recommendations by the President with respect to the operation and effects of the Agreement, including recommendations with respect to the specific factors listed in subsection (a).

(d) RECOMMENDATIONS OF CERTAIN COMMITTEES.—The President shall provide the study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and any other committee that has jurisdiction over any provision of United States law that was either enacted or amended by the North American Free Trade Agreement Implementation Act. Each such committee may hold hearings and make recommendations to the President with respect to the operation and effects of the Agreement.

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SEC. 515. CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE.

(a)[16] AMENDMENT TO THE CBI.—* * *

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized 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)).

SEC. 516. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this subtitle shall take effect on the date the Agreement enters into force with respect to the United States.

(b) EXCEPTION.—Section 515 shall take effect on the date of the enactment of this Act.

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[16] Sec. 515(a) added a new sec. 219 to the Caribbean Basin Economic Recovery Act, to establish the Center for the Study of Western Hemispheric Trade.

SUBTITLE D—IMPLEMENTATION OF NAFTA SUPPLEMENTAL AGREEMENTS

PART 1—AGREEMENTS RELATING TO LABOR AND ENVIRONMENT

SEC. 531.[17] 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.[18] AGREEMENT ON ENVIRONMENTAL COOPERATION.

(a) COMMISSION FOR ENVIRONMENTAL COOPERATION.—

(1) MEMBERSHIP.—The United States is authorized to participate in the Commission for Environmental Cooperation in accordance with the North American Agreement on Environmental Cooperation.

(2) CONTRIBUTIONS TO BUDGET.—There are authorized to be appropriated to the President (or such agency as the President may designate) $5,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Environmental Cooperation pursuant to Article 43 of the North American Agreement on Environmental Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) DEFINITIONS.—As used in this section—

[17] 19 U.S.C. 3471.
[18] 19 U.S.C. 3472.

(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.[19] 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 Commission in accordance with the Border Environment Cooperation Agreement (including an action brought to enforce an arbitral award against the Commission), the Commission shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States, or its agent appointed for the purpose of accepting service or notice of service, is located. Any such action to which the Commission is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States (including the courts enumerated in section 460 of title 28, United States Code) shall have original jurisdiction of any such action. When the Commission is a defendant in any action in a State court, it may at any time before trial remove the action into the appropriate district court of the United States by following the procedure for removal provided in section 1446 of title 28, United States Code.

(c) DEFINITIONS.—As used in this section—

(1) the term "Border Environment Cooperation Agreement" means the November 1993 Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank;

[19] 19 U.S.C. 3473.

(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 [20]

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TITLE VI—CUSTOMS MODERNIZATION [21]

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[20] Part 2 authorized U.S. participation in the North American Development Bank. For text of part 2, see page 113.

[21] Title VI amended various sections of the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*) and other legislation relating to customs.

(6) Andean Trade Preference Act

Title II of Public Law 102–182 [H.R. 1724], 105 Stat. 1233 at 1236, approved December 4, 1991; as amended by Public Law 102–583 [International Narcotics Control Act of 1992; H.R. 6187], 106 Stat. 4914, approved November 2, 1992; Public Law 103–465 [Uruguay Round Agreements Act; H.R. 5110], 108 Stat. 4809, approved December 8, 1994; Public Law 104–188 [Small Job Business Protection Act of 1996; H.R. 3448], 110 Stat. 1755, approved August 20, 1996; Public Law 106–200 [Trade and Development Act of 2000; H.R. 434], 114 Stat. 251, approved May 18, 2000; Public Law 107–210 [Andean Trade Promotion Drug Eradication Act; H.R. 3009], 116 Stat. 933, approved August 6, 2002; and Public Law 108–429 [Miscellaneous Trade and Technical Corrections Act of 2004; H.R. 1047], 118 Stat. 2434, approved December 3, 2004

AN ACT To provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE II—TRADE PREFERENCE FOR THE ANDEAN REGION

SEC. 201.[1] SHORT TITLE.

This title may be cited as the "Andean Trade Preference Act".

SEC. 202.[2] AUTHORITY TO GRANT DUTY-FREE TREATMENT.

The President may proclaim duty-free treatment (or other preferential treatment)[3] for all eligible articles from any beneficiary country in accordance with the provisions of this title.

SEC. 203.[4] 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:

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[1] 19 U.S.C. 3201 note.
[2] 19 U.S.C. 3201.
[3] Sec. 3103(c) of the Andean Trade Promotion and Drug Eradication Act (title XXXI of Public Law 107–210; 116 Stat. 1033) inserted "(or other preferential treatment)".
[4] 19 U.S.C. 3202.

Bolivia[5]
Ecuador[6]
Colombia[7]
Peru.[8]

(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

[5] Presidential Proclamation 6456 of July 2, 1992 (57 F.R. 30097) designated Bolivia as a beneficiary country for the purposes of the Andean Trade Preference Act.

[6] Presidential Proclamation 6544 of April 13, 1993 (58 F.R. 19547) designated Ecuador as a beneficiary country for the purposes of the Andean Trade Preference Act.

[7] Presidential Proclamation 6455 of July 2, 1992 (57 F.R. 30069) designated Colombia as a beneficiary country for the purposes of the Andean Trade Preference Act (ATPA).

[8] Presidential Proclamation 6585 of August 11, 1993 (58 F.R. 43239) designated Peru as a beneficiary country for the purposes of the Andean Trade Preference Act. In a memorandum to the United States Trade Representative of June 25, 1993 (58 F.R. 34861), however, the President continued a review of alleged expropriation without compensation of property of a U.S. citizen in Peru.

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)[9] 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;

[9] Sec. 1954(a)(2) of Public Law 104–188 (110 Stat. 1927) struck out "502(a)(4)" and inserted in lieu thereof "507(4)".

(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);[10]

(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 490[11] 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)(A)[12] The President may—

(i)[12] withdraw or suspend the designation of any country as a beneficiary country, or

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[10] Sec. 621(a)(3) of Public Law 103–465 (108 Stat. 4992) struck out "General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979", and inserted in lieu thereof "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)".

[11] Formerly read "section 481(h)(2)(A)". Sec. 6(a) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4932) provided that "any reference in any provision of law enacted before the date of enactment of this Act to section 481(h) of that Act shall be deemed, as of October 1, 1992, to be a reference to section 490.".

[12] Sec. 3103(b) of the Andean Trade Promotion and Drug Eradication Act (title XXXI of Public Law 107–210; 116 Stat. 1033) redesignated subparas. (A) and (B) as clauses (i) and (ii), inserted the subpara. designation (A) after (1), and added a new subpara. (B).

Sec. 3103(d) of the same Act provided:

"(d) PETITIONS FOR REVIEW.—

"(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall promulgate regulations regarding the review of eligibility of articles and countries under the Andean Trade Preference Act, consistent with section 203(e) of such Act, as amended by this title.

"(2) CONTENT OF REGULATIONS.—The regulations shall be similar to the regulations regarding eligibility under the generalized system of preferences under title V of the Trade Act of 1974 with respect to the timetable for reviews and content, and shall include procedures for requesting withdrawal, suspension, or limitations of preferential duty treatment under the Andean Trade Preference Act, conducting reviews of such requests, and implementing the results of the reviews.".

(ii)[12] 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.

(B)[12] The President may, after the requirements of paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as an ATPDEA beneficiary country, or

(ii) withdraw, suspend, or limit the application of preferential treatment under section 204(b)(1), (3), or (4) to any article of any country,

if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 204(b)(6)(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 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)[13] REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Not later than April 30, 2003, and every 2 years thereafter during the period this title is in effect, the United States Trade Representative shall submit to the Congress a report regarding the operation of this title, including—

(A) with respect to subsections (c) and (d), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

(B) the performance of each beneficiary country or ATPEA beneficiary country, as the case may be, under the criteria set forth in section 204(b)(6)(B).

(2) PUBLIC COMMENT.—Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 204(b)(6)(B).

[13] Sec. 3103(e) of the Andean Trade Promotion and Drug Eradication Act (title XXXI of Public Law 107–210; 116 Stat. 1033) amended and restated subsec. (f). Previously, sec. 211(c)(2) of Public Law 106–200 (114 Stat. 287) had amended subsec. (f) by striking out a triennial reporting requirement through the ninth anniversary of the Act and substituting a reporting requirement due not later than January 31, 2001, on the operation of this title.

SEC. 204.[14] **ELIGIBLE ARTICLES.**

(a) IN GENERAL.—(1) Unless otherwise excluded from eligibility (or otherwise provided for)[15] by this title, the duty-free treatment (or preferential treatment)[15] 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 paragraph (1)[15] 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—

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[14] 19 U.S.C. 3203. Sec. 3001(b) of Public Law 107–206 (116 Stat. 910) provided the following: "(b) ANDEAN TRADE PREFERENCE ACT.—Any duty free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled if the fabrics are knit fabrics, is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled if the fabrics are woven fabrics, is carried out in the United States.".

[15] Sec. 3103(c)(2) of the Andean Trade Promotion and Drug Eradication Act (title XXXI of Public Law 107–210; 116 Stat. 1033) inserted "(or otherwise provided for)" and "(or preferential treatment)" in para. (1), and in para. (2) struck out "subsection (a)" and inserted in lieu thereof "paragraph (1)".

(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)[16] EXCEPTIONS AND SPECIAL RULES.—

(1) CERTAIN ARTICLES THAT ARE NOT IMPORT-SENSITIVE.—The President may proclaim duty-free treatment under this title for any article described in subparagraph (A), (B), (C), or (D) that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of this section, if the President determines that such article is not import-sensitive in the context of imports from ATPDEA beneficiary countries:

(A) Footwear not designated at the time of the effective date of this title as eligible for purposes of the generalized system of preferences under title V of the Trade Act of 1974.

(B) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS.

(C) 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.

(D)[17] Handbags, luggage, flat goods, work gloves, and leather wearing apparel that 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.

[16] Sec. 3103(a) of the Andean Trade Promotion and Drug Eradication Act (title XXXI of Public Law 107–210; 116 Stat. 1024) amended and restated subsec. (b).

[17] Sec. 2003(a) of Public Law 108–429 (118 Stat. 2589) provided the following:

(2) EXCLUSIONS.—Subject to paragraph (3), duty-free treatment under this title may not be extended to—

(A) textiles and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on that date;

(B) rum and tafia classified in subheading 2208.40 of the HTS;

(C) sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(D) tuna prepared or preserved in any manner in airtight containers, except as provided in paragraph (4).

(3) APPAREL ARTICLES AND CERTAIN TEXTILE ARTICLES.—

(A) IN GENERAL.—Apparel articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels, but only if such articles are described in subparagraph (B).

(B) COVERED ARTICLES.—The apparel articles referred to in subparagraph (A) are the following:

(i) APPAREL ARTICLES ASSEMBLED FROM PRODUCTS OF THE UNITED STATES OR ATPDEA BENEFICIARY COUNTRIES OR PRODUCTS NOT AVAILABLE IN COMMERCIAL QUANTITIES.—Apparel articles sewn or otherwise assembled in 1 or more ATPDEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following:

(I) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or 1 or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in the United States). Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

"(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to subsection (c)—

"(1) with respect to any article described in section 204(b)(1)(D) of the Andean Trade Preference Act (as amended by section 3103(a)(2) of the Trade Act of 2002) for which the President proclaims duty free treatment pursuant to section 204(b)(1) of the Andean Trade Preference Act, the entry of any such article on or after August 6, 2002, and before the date on which the President so proclaims duty free treatment for such article shall be subject to the rate of duty applicable on August 5, 2002; and

"(2) such entries shall be liquidated or reliquidated as if the reduced duty preferential treatment applied, and the Secretary of the Treasury shall refund any excess duties paid with respect to such entry.".

(II) Fabrics or fabric components formed or components knit-to-shape, in 1 or more ATPDEA beneficiary countries, from yarns wholly formed in 1 or more ATPDEA beneficiary countries, if such fabrics (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in 1 or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, or vicuña.

(III) Fabrics or yarns, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA.

(ii) ADDITIONAL FABRICS.—At the request of any interested party, the President is authorized to proclaim additional fabrics and yarns as eligible for preferential treatment under clause (i)(III) if—

(I) the President determines that such fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(II) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;

(III) within 60 days after the request, 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 the action proposed to be proclaimed and the reasons for such action, and the advice obtained under subclause (II);

(IV) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclause (III), has expired; and

(V) the President has consulted with such committees regarding the proposed action during the period referred to in subclause (III).

(iii) APPAREL ARTICLES ASSEMBLED IN 1 OR MORE ATPDEA BENEFICIARY COUNTRIES FROM REGIONAL FABRICS OR REGIONAL COMPONENTS.—(I) Subject to the limitation set forth in subclause (II), apparel articles sewn or otherwise assembled in 1 or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in 1 or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or 1 or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in 1 or more ATPDEA beneficiary countries), whether or not the apparel articles are also made from

any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i)).

(II) The preferential treatment referred to in subclause (I) shall be extended in the 1-year period beginning October 1, 2002, and in each of the 4 succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(III) For purposes of subclause (II), the term "applicable percentage" means 2 percent for the 1-year period beginning October 1, 2002, increased in each of the 4 succeeding 1-year periods by equal increments, so that for the period beginning October 1, 2006, the applicable percentage does not exceed 5 percent.

(iv) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—A handloomed, handmade, or folklore article of an ATPDEA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

(v) CERTAIN OTHER APPAREL ARTICLES.—

(I) GENERAL RULE.—Any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), or (iv), if the article is both cut and sewn or otherwise assembled in the United States, or one or more ATPDEA beneficiary countries, or both.

(II) LIMITATION.—During the 1-year period beginning on October 1, 2003, and during each of the 3 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under this paragraph only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE.—The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity

controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under this paragraph during any succeeding 1-year period until the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(vi) SPECIAL RULES.—

(I) EXCEPTION FOR FINDINGS AND TRIMMINGS.—An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, "bow buds", decorative lace, trim, elastic strips, zippers, including zipper tapes and labels, and other similar products.

(II) CERTAIN INTERLINING.—(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, "hymo" piece, or "sleeve header", of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(III) DE MINIMIS RULE.—An article that would otherwise be ineligible for preferential treatment under this subparagraph because the article contains yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries shall not be ineligible for such treatment if the total weight of all such yarns is not more than 7 percent of the total weight of the good.

(IV) SPECIAL ORIGIN RULE.—An article otherwise eligible for preferential treatment under clause (i) or (iii) shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

(vii) TEXTILE LUGGAGE.—Textile luggage—

(I) assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or

(II) assembled from fabric cut in an ATPDEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States.

(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—For purposes of subparagraph (B)(iv), the President shall consult with representatives of the ATPDEA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

(D) PENALTIES FOR TRANSSHIPMENT.—

(i) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to apparel articles from an ATPDEA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years.

(ii) PENALTIES FOR COUNTRIES.—Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the ATPDEA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3, to the extent consistent with the obligations of the United States under the WTO.

(iii) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this subparagraph has occurred when preferential treatment under subparagraph (A)

has been claimed for an apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (A).

(E) BILATERAL EMERGENCY ACTIONS.—

(i) IN GENERAL.—The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from an ATPDEA beneficiary country if the application of tariff treatment under subparagraph (A) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

(II) the term 'transition period' in section 4 of the Annex shall mean the period ending December 31, 2006; and

(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the ATPDEA beneficiary country in question and the country does not agree to consult within the time period specified under section 4 of the Annex.

(4) TUNA.—

(A) GENERAL RULE.—Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each, and that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, shall enter the United States free of duty and free of any quantitative restrictions.

(B) DEFINITIONS.—In this paragraph—

(i)[18] UNITED STATES VESSEL.—A "United States vessel" is—

[18] Sec. 2004(e) of Public law 108–429 (118 Stat. 2593) amended and restated clause (i). It previously read as follows:

"(i) UNITED STATES VESSEL.—A 'United States vessel' is a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46, United States Code.".

(I) a vessel that has a certificate of documentation with a fishery endorsement under chapter 121 of title 46, United States Code; or

(II) in the case of a vessel without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988 (16 U.S.C. 973g).

(ii) ATPDEA VESSEL.—An "ATPDEA vessel" is a vessel—

(I) which is registered or recorded in an ATPDEA beneficiary country;

(II) which sails under the flag of an ATPDEA beneficiary country;

(III) which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of such boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

(IV) of which the master and officers are nationals of an ATPDEA beneficiary country; and

(V) of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

(5) CUSTOMS PROCEDURES.—

(A) IN GENERAL.—

(i) REGULATIONS.—Any importer that claims preferential treatment under paragraph (1), (3), or (4) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(ii) DETERMINATION.—

(I) IN GENERAL.—In order to qualify for the preferential treatment under paragraph (1), (3), or (4) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II)—

(aa) has implemented and follows, or

(bb) is making substantial progress toward implementing and following,

procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(II) COUNTRY DESCRIBED.—A country is described in this subclause if it is an ATPDEA beneficiary country—

(aa) from which the article is exported; or

(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment under paragraph (1), (3), or (4).

(B) CERTIFICATE OF ORIGIN.—The Certificate of Origin that otherwise would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraph (1), (3), or (4) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(C) REPORT ON COOPERATION OF ATPDEA COUNTRIES CONCERNING CIRCUMVENTION.—The United States Commissioner of Customs shall conduct a study analyzing the extent to which each ATPDEA beneficiary country—

(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning quantities, description, classification, or origin of textile and apparel goods; and

(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Commissioner of Customs shall submit to the Congress, not later than October 1, 2003, a report on the study conducted under this subparagraph.

(6) DEFINITIONS.—In this subsection—

(A) ANNEX.—The term "the Annex" means Annex 300–B of the NAFTA.

(B) ATPDEA BENEFICIARY COUNTRY.—The term "ATPDEA beneficiary country" means any "beneficiary country", as defined in section 203(a)(1) of this title, which

the President designates as an ATPDEA beneficiary country, taking into account the criteria contained in subsections (c) and (d) of section 203 and other appropriate criteria, including the following:

(i) Whether the beneficiary country has demonstrated a commitment to—

(I) undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule; and

(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

(ii) The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

(iii) The extent to which the country provides internationally recognized worker rights, including—

(I) the right of association;

(II) the right to organize and bargain collectively;

(III) a prohibition on the use of any form of forced or compulsory labor;

(IV) a minimum age for the employment of children; and

(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.

(v) The extent to which the country has met the counternarcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.

(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(vii) The extent to which the country—

(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act; and

(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

(viii) The extent to which the country has taken steps to support the efforts of the United States to combat terrorism.

(C) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

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

(E) ATPDEA.—The term "ATPDEA" means the Andean Trade Promotion and Drug Eradication Act.

(F) FTAA.—The term "FTAA" means the Free Trade Area for the Americas.

(c)[19] 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.

[19] Sec. 3103(a) of the Andean Trade Promotion and Drug Eradication Act (title XXXI of Public Law 107–210; 116 Stat. 1024) deleted subsec. (c) and redesignated subsecs. (d) through (g) as subsecs. (c) through (f).

(d)[19] 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 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 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.

(e)[19] 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).

(f)[20] 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) INCREASE IN DUTY-FREE TOURIST ALLOWANCE.—Note 4 to subchapter IV of chapter 98 of the HTS is amended by inserting before the period the following: "or a country designated as a beneficiary country under the Andean Trade Preference Act".

(b) TREATMENT OF INSULAR POSSESSIONS PRODUCTS.—General Note 3(a)(iv) of the HTS (relating to products of the insular possessions) is amended by adding at the end thereof the following:

"(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.".

SEC. 206.[21] INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THE ANDEAN TRADE PREFERENCE ACT.

(a) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—The United States International Trade Commission (in this section referred to as the 'Commission') shall submit to Congress and the President biennial reports 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.

(2) SUBMISSION.—During the period that this title is in effect, the report required by paragraph (1) shall be submitted on December 31 of each year that the report required by section 215 of the Caribbean Basin Economic Recovery Act is not submitted.

(3) TREATMENT OF PUERTO RICO, ETC.—For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States are 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—

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[20] Sec. 404(e)(2) of Public Law 103–465 (108 Stat. 4961) added subsec. (g). Subsequently, Sec. 3103(a) of the Andean Trade Promotion and Drug Eradication Act (title XXXI of Public Law 107–210; 116 Stat. 1024) redesignated subsec. (g) as subsec. (f).

[21] 19 U.S.C. 3204. Sec. 211(d)(2) of Public Law 106–200 (114 Stat. 287) amended subsec. (a). It previously read as follows:

"(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) the 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.".

(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.[22] 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.[23] TERMINATION OF PREFERENTIAL TREATMENT.

No duty-free treatment or other preferential treatment extended to beneficiary countries under this title shall remain in effect after December 31, 2006.

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[22] 19 U.S.C. 3205.

[23] 19 U.S.C. 3206. Sec. 3104(a) of the Andean Trade Promotion and Drug Eradication Act (title XXXI of Public Law 107–210; 116 Stat. 1034) amended and restated sec. 208, which formerly read as follows:

"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.".

Continued

In addition, sec. 3104(b) of that Act provided the following:

"(b) RETRAOACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

"(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to paragraph (3), the entry—

"(A) of any article to which duty-free treatment (or preferential treatment) under the Andean Trade PreferenceAct (19 U.S.C. 3201 et seq.) would have applied if the entry had been made on December 4, 2001, and

"(B) that was made after December 4, 2001, and before the date of the enactment of this Act,

shall be liquidated or reliquidated as if such duty-free treatment (or preferential treatment) applied, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

"(2) ENTRY.—As used in this subsection, the term 'entry' includes a withdrawal from warehouse for consumption.

"(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

"(A) to locate the entry; or

"(B) to reconstruct the entry if it cannot be located.".

(7) Caribbean Basin Economic Recovery Expansion Act of 1990

Title II of Public Law 101–382 [Customs and Trade Act of 1990; H.R. 1594], 104 Stat. 629 at 655, approved August 20, 1990

AN ACT To make miscellaneous and technical changes to various trade laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE II—CARIBBEAN BASIN ECONOMIC RECOVERY

Subtitle A—Short Title and Findings

SEC. 201.[1] SHORT TITLE.

This title may be cited as the "Caribbean Basin Economic Recovery Expansion Act of 1990".

SEC. 202.[1] 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[2]

* * * * * * *

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.

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[1] 19 U.S.C. 2701 note.

[2] See Caribbean Basin Economic Recovery Act beginning at page 1023. This subtitle also amended the Harmonized Tariff Schedule of the United States, Tariff Act of 1930, Steel Trade Liberalization Program Implementation Act, Trade Act of 1974, and Internal Revenue Code of 1986.

Subtitle C—Scholarship Assistance and Tourism Promotion

SEC. 231.[3] 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 State 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 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,

[3] 20 U.S.C. 226.

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 chapter 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 agrobusiness.[4]

SEC. 233.[5] 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 State 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 Commission 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

[4] Should probably read "agribusiness".
[5] 19 U.S.C. 2071 note.

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.[6] TRADE BENEFITS FOR NICARAGUA.

Notwithstanding any other provision of law, the President is authorized to designate Nicaragua as a beneficiary developing country for the purposes of title V of the Trade Act of 1974, as amended, and as a beneficiary country under the Caribbean Basin Economic Recovery Act, and any such designation may remain effective for the duration of the calendar year 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

[6] Presidential Proclamation 6223 of November 8, 1990 (55 F.R. 47447) designated Nicaragua as a beneficiary country for purposes of the CBERA.

regulations of these countries regarding agricultural commodities and products.

SEC. 243.[7] EXTENSION OF TRADE BENEFITS TO THE ANDEAN REGION.

(a) FINDINGS.—The Congress finds that:

(1) United States antinarcotics policy places a high priority on assisting the nations of the Andean region of South America, the source of 100 percent of the world's supply of cocaine.

(2) The President and Congress have recognized that United States trade and economic policies play an important role in the overall United States antidrug strategy in the Andes.

(3) The extension of special trade preferences for articles from the Andean region would help revitalize the national economies of the Andes and further United States antinarcotics policy in the region.

(b) SENSE OF CONGRESS.—The Congress urges the President to—

(1) review the merits of extending the benefits provided under the Caribbean Basin Economic Recovery Act to the Andean regions; and

(2) continue to explore additional mechanisms to expand trade opportunities for the Andean region, and report to Congress in a regular and timely fashion on the result of this review.

[7] See the Andean Trade Preference Act (Title II of Public Law 102–182; 105 Stat. 1236; 19 U.S.C. 3201 *et seq.*), beginning at page 960.

(8) United States-Canada Free-Trade Agreement Implementation Act of 1988 [1]

Partial text of Public Law 100–449 [H.R. 5090], 102 Stat. 1851, approved September 28, 1988; as amended by Public Law 101–207 [S. 1164], 103 Stat. 1833, approved December 7, 1989; Public Law 101–382 [Customs and Trade Act of 1990; H.R. 1594], 104 Stat. 629, approved August 20, 1990; Public Law 103–182 [North American Free Trade Agreement Implementation Act; H.R. 3450], 107 Stat. 2057, approved December 8, 1993; Public Law 104–66 [Federal Reports Elimination and Sunset Act of 1995; S. 790], 109 Stat. 707, approved December 21, 1995; and Public Law 105–206 [Internal Revenue Service Reform and Restructuring Act of 1998; H.R. 2676], 112 Stat. 685, approved July 22, 1998

AN ACT To implement the United States-Canada Free-Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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;

[1] 19 U.S.C. 2112 note.

(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)[2] 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—

[2] In a memorandum of February 11, 1991 (56 F.R. 6789), the President delegated authority to the United States Trade Representative "to perform the functions necessary to fulfill the consultation and lay-over requirements set forth in section 103(a) (1) through (4) of the United States-Canada Free-Trade Agreement Implementation Act of 1988".

(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 layover 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.[3] 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.

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[3] In a Proclamation of May 25, 1990 (55 F.R. 21835), the President outlined authority vested in him in the United States-Canada Free-Trade Agreement (the Agreement) and in the United States-Canada Free-Trade Implementation Act of 1988 (the Implementation Act), and further provided, in part:

"2. * * * Consistent with Article 401(5) of the Agreement, the President, through his duly empowered representative, on May 18, 1990, entered into an agreement with the Government of Canada providing an accelerated schedule of duty elimination for specific goods of Annexes 401.2 and 401.7 to the Agreement. * * *

"3. Pursuant to section 201(b) of the Implementation Act, I have determined that the modifications hereinafter proclaimed of existing duties on goods originating in the territory of Canada are necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement and to carry out the agreement with Canada providing an accelerated schedule of duty elimination for specific goods of Annexes 401.2 and 401.7 to the Agreement.".

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and lay-over requirements of section 103(a), the President may proclaim—

(1) such modifications as the United States and Canada may agree to regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 of the Agreement;

(2) such modifications or continuance of any existing duty;

(3) such continuance of existing duty-free or excise treatment; or

(4) such additional duties;

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement.

(c) MODIFICATIONS AFFECTING PLYWOOD.—

(1) The Congress encourages the President to facilitate the preparation, and the implementation with Canada, of common performance standards for the use of softwood plywood and other structural panels in construction applications in the United States and Canada.

(2) The President shall report to the Congress on the incorporation of common plywood performance standards into building codes in the United States and Canada and may implement the provisions of article 2008 of the Agreement when he determines that the necessary conditions have been met.

(3) Any tariff reduction undertaken pursuant to paragraph (2) shall be in equal annual increments ending January 1, 1998, unless those reductions commence after January 1, 1991.

SEC. 202. RULES OF ORIGIN.

(a) IN GENERAL.—

(1) For purposes of implementing the tariff treatment contemplated under the Agreement, goods originate in the territory of a Party if—

(A) they are wholly obtained or produced in the territory of either Party or both Parties; or

(B) they—

(i) have been transformed in the territory of either Party or both Parties so as to be subject to a change in tariff classification as described in the Annex rules or to such other requirements as the Annex rules may provide when no change in tariff classifications occurs, and

(ii) meet the other conditions set out in the Annex.

(2) A good shall not be considered to originate in the territory of a party under paragraph (1)(B) merely by virtue of having undergone—

(A) simple packaging or, except as expressly provided by the Annex rules, combining operations;

(B) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(C) any process or work in respect of which it is established, or in respect of which the facts as ascertained clearly justify the presumption, that the sole object was to circumvent the provisions of chapter 3 of the Agreement.

(3) Accessories, spare parts, or tools delivered with any piece of equipment, machinery, apparatus, or vehicle that form part of its standard equipment shall be treated as having the same origin as that equipment, machinery, apparatus, or vehicle if the quantities and values of such accessories, spare parts, or tools are customary for the equipment, machinery, apparatus, or vehicle.

(b) TRANSSHIPMENT.—Goods exported from the territory of one Party originate in the territory of that Party only if—

(1) the goods meet the applicable requirements of subsection (a) and are shipped to the territory of the other Party without having entered the commerce of any third country;

(2) the goods, if shipped through the territory of a third country, do not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the territory of the other Party or to preserve them in good condition; and

(3) the documents related to the exportation and shipment of the goods from the territory of a Party show the territory of the other Party as their final destination.

(c) INTERPRETATION.—In interpreting this section, the following apply:

(1) Whenever the processing or assembly of goods in the territory of either Party or both Parties results in one of the changes in tariff classification described in the Annex rules, such goods shall be considered to have been transformed in the territory of that Party and shall be treated as goods originating in the territory of that Party if—

(A) such processing or assembly occurs entirely within the territory of either Party or both Parties; and

(B) such goods have not subsequently undergone any processing or assembly outside the territories of the Parties that improves the goods in condition or advances them in value.

(2) Whenever the assembly of goods in the territory of a Party fails to result in a change of tariff classification because either—

(A) the goods were imported into the territory of the Party in an unassembled or a disassembled form and were classified as unassembled or disassembled goods pursuant to General Rule of Interpretation 2(a) of the Harmonized System; or

(B) the tariff subheading for the goods provides for both the goods themselves and their parts;

such goods shall not be treated as goods originating in the territory of a Party.

(3) Notwithstanding paragraph (2), goods described in that paragraph shall be considered to have been transformed in the territory of a Party and be treated as goods originating in the territory of the Party if—

(A) the value of materials originating in the territory of either Party or both Parties used or consumed in the production of the goods plus the direct cost of assembling the

goods in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party; and

(B) the goods have not subsequent to assembly undergone processing or further assembly in a third country and they meet the requirements of subsection (b).

(4) The provisions of paragraph (3) shall not apply to goods of chapters 61–63 of the Harmonized System.

(5) In making the determination required by paragraph (3)(A) and in making the same or a similar determination when required by the Annex rules, where materials originating in the territory of either Party or both Parties and materials obtained or produced in a third country are used or consumed together in the production of goods in the territory of a Party, the value of materials originating in the territory of either Party or both Parties may be treated as such only to the extent that it is directly attributable to the goods under consideration.

(6) In applying the Annex rules, a specific rule shall take precedence over a more general rule.

(d) ANNEX RULES.—

(1) The President is authorized to proclaim, as a part of the Harmonized System, the rules set forth under the heading "Rules" in Annex 301.2 of the Agreement. For purposes of carrying out this paragraph—

(A) the phrase "headings 2207–2209" in paragraph 7 of section IV of such Annex 301.2 shall be treated as a reference to headings 2203–2209; and

(B) the phrase "any other heading" in paragraph 11 of section XV in such Annex 301.2 shall be treated as a reference to any other heading of chapter 74 of the Harmonized System.

(2) Subject to the consultation and lay-over requirements of section 103, the President is authorized to proclaim such modifications to the rules as may from time-to-time be agreed to by the United States and Canada.

(e) AUTOMOTIVE PRODUCTS.—

(1) The President is authorized to proclaim such modifications to the definition of Canadian articles (relating to the administration of the Automotive Products Trade Act of 1965) in the general notes of the Harmonized System as may be necessary to conform that definition with chapter 3 of the Agreement.

(2) For purposes of administering the value requirement (as defined in section 304(c)(3)) with respect to vehicles, the Secretary of the Treasury shall prescribe regulations governing the averaging of the value content of vehicles of the same class, or of sister vehicles, assembled in the same plant as an alternative to the calculation of the value content of each vehicle.

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

(1) The term "Annex" means—

(A) the interpretative guidelines set forth in subsection (c); and

(B) the Annex rules.

(2) The term "Annex rules" means the rules proclaimed under subsection (d).

(3) The term "direct cost of processing or direct cost of assembling" means the costs directly incurred in, or that can reasonably be allocated to, the production of goods, including—

(A) the cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(B) the cost of inspecting and testing the goods;

(C) the cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of a Party;

(D) development, design, and engineering costs;

(E) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of goods; and

(F) royalty, licensing, or other like payments for the right to the goods;

but not including—

(i) costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(ii) brokerage charges relating to the importation and exportation of goods;

(iii) the costs for telephone, mail, and other means of communication;

(iv) packing costs for exporting the goods;

(v) royalty payments related to a licensing agreement to distribute or sell the goods;

(vi) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; or

(vii) profit on the goods.

(4) The term "goods wholly obtained or produced in the territory of either Party or both Parties" means—

(A) mineral goods extracted in the territory of either Party or both Parties;

(B) goods harvested in the territory of either Party or both Parties;

(C) live animals born and raised in the territory of either Party or both Parties;

(D) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(E) goods produced on board factory ships from the goods referred to in subparagraph (D) provided such factory

ships are registered or recorded with that Party and fly its flag;

(F) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that Party has rights to exploit such seabed;

(G) goods taken from space, provided they are obtained by a Party or a person of a Party and not processed in a third country;

(H) waste and scrap derived from manufacturing operations and used goods, provided they were collected in the territory of either Party or both Parties and are fit only for the recovery of raw materials; and

(I) goods produced in the territory of either Party or both Parties exclusively from goods referred to in subparagraphs (A) to (H) inclusive or from their derivatives, at any stage of production.

(5) The term "materials" means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods.

(6) The term "Party" means Canada or the United States.

(7) The term "territory" means—

(A) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources; and

(B) with respect to the United States—

(i) the customs territory of the United States, which includes the fifty States, the District of Columbia and the Commonwealth of Puerto Rico,

(ii) the foreign trade zones located in the United States, and the Commonwealth of Puerto Rico, and

(iii) any area beyond the territorial seas of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

(8) The term "third country" means any country other than Canada or the United States or any territory not a part of the territory of either.

(9) The term "value of materials originating in the territory of either Party or both Parties" means the aggregate of—

(A) the price paid by the producer of an exported good for materials originating in the territory of either Party or both Parties or for materials imported from a third country used or consumed in the production of such originating materials; and

(B) when not included in that price, the following costs related thereto—

(i) freight, insurance, packing, and all other costs incurred in transporting any of the materials referred to in subparagraph (A) to the location of the producer;

(ii) duties, taxes, and brokerage fees on such materials paid in the territory of either Party or both Parties;

(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct; and

(iv) the value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of article 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade.

(10) The term "value of the goods when exported to the territory of the other Party" means the aggregate of—

(A) the price paid by the producer for all materials, whether or not the materials originate in either Party or both Parties, and, when not included in the price paid for the materials, the costs related to—

(i) freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) duties, taxes, and brokerage fees on all materials paid in the territory of either Party or both Parties;

(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct; and

(iv) the value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of article 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade; and

(B) the direct cost of processing or the direct cost of assembling the goods.

(g) SPECIAL PROVISION REGARDING APPLICATION OF RULES OF ORIGIN TO CERTAIN APPAREL.—The Secretary of Commerce is authorized to issue regulations governing the exportation to Canada of apparel products that are cut, or knit to shape, and sewn, or otherwise assembled, in either Party from fabric produced or obtained in a third country for the purpose of establishing which exports of such products shall be permitted to claim preferential tariff treatment under the rules of origin of the Agreement, to the extent that the Agreement provides for quantitative limits on the availability of preferential tariff treatment for such products.

SEC. 203. * * *

SEC. 204. DRAWBACK.

(a) DEFINITION.—For purposes of this section, the term "drawback eligible goods" means—

(1) goods provided for under paragraph 8 of article 404 of the Agreement;

(2) goods provided for under paragraphs 4 and 5 of such article; and

(3) goods other than those referred to in paragraphs (1) and (2) that the United States and Canada agree are not subject to paragraphs 1, 2, and 3 of such article.

No drawback may be paid with respect to countervailing duties or antidumping duties imposed on drawback eligible goods.

(b) IMPLEMENTATION OF ARTICLE 404.—The President is authorized—

(1) to proclaim the identity, in accordance with the nomenclature of the Harmonized System, of goods referred to in subsection (a)(1); and

(2) subject to the consultation and lay-over requirements of section 103(a), to proclaim—

(A) the identity, in accordance with the nomenclature of the Harmonized System, of goods referred to in subsection (a)(3); and

(B) a delay in the taking effect of article 404 of the Agreement to a date later than January 1, 1994, with respect to any merchandise if the United States and Canada agree to the delay under paragraph 7 of such article.

(c) * * *

SEC. 205. ENFORCEMENT.

(a) CERTIFICATIONS OF ORIGIN.—

(1) Any person that certifies in writing that goods exported to Canada meet the rules of origin under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 shall provide, upon request by any customs official, a copy of that certification.

(2) Any person that fails to provide a copy of a certification requested under paragraph (1) shall be liable to the United States for a civil penalty not to exceed $10,000.

(3) Any person that certifies falsely that goods exported to Canada meet the rules of origin under such section 202 shall be liable to the United States for the same civil penalties provided under section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) for a violation of section 592(a) of such Act by fraud, gross negligence, or negligence, as the case may be. The procedures and provisions of section 592 of such Act that are applicable to a violation under section 592(a) of such Act shall apply with respect to such false certification.

(b) * * *

SEC. 206. * * *

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[4] submit for publication in the Federal Register notice of the determination.

[4] Sec. 308(a)(1) of the North American Free Trade Agreement Implementation Act (Public Law 103–182; 107 Stat. 2104) struck out "promptly" and inserted in lieu thereof "immediately".

(2)[5] 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)[5] 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)[5] 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)[5] A temporary duty imposed under paragraph (4)[6] 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)[5] 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)[5] For purposes of this subsection:

(A) The term "Canadian fresh fruit or vegetable" means any article originating in Canada (as determined in accordance with section 202) and classified within any of the following headings of the Harmonized System:

(i) 07.01 (relating to potatoes, fresh or chilled);

(ii) 07.02 (relating to tomatoes, fresh or chilled);

(iii) 07.03 (relating to onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled);

[5] Sec. 308(a)(2) and (3) of the North American Free Trade Agreement Implementation Act (Public Law 103–182; 107 Stat. 2104) redesignated former paras. (2) through (9) as (3) through (10), and inserted a new para. (2).

[6] Sec. 308(a)(4) of the North American Free Trade Agreement Implementation Act (Public Law 103–182; 107 Stat. 2104) struck out "paragraph (3)" and inserted in lieu thereof "paragraph (4)".

(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)[5] (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)[5, 7] For purposes of assisting the Secretary in carrying out this subsection—

[7] Para. (9), as redesignated, was amended and restated by sec. 308(a)(5) of the North American Free Trade Agreement Implementation Act (Public Law 103–182; 107 Stat. 2104).

(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)[5] The authority to impose temporary duties under this subsection expires on the 20th anniversary of the date on which the Agreement enters into force.

* * * * * * *

SEC. 302. RELIEF FROM IMPORTS.

(a) RELIEF FROM IMPORTS OF CANADIAN ARTICLES.—

(1) A petition requesting action under this section for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the United States International Trade Commission (hereafter in this section referred to as the "Commission") by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The Commission shall transmit a copy of any petition filed under this paragraph to the United States Trade Representative.

(2)(A) Upon the filing of a petition under paragraph (1), the Commission shall promptly initiate an investigation to determine whether, as a result of a reduction or elimination of a duty provided for under the United States-Canada Free-Trade Agreement, an article originating in Canada is being imported into the United States in such increased quantities, in absolute terms, and under such conditions, so that imports of such Canadian article, alone, constitute a substantial cause of serious injury to the domestic industry producing an article like, or directly competitive with, the imported article.

(B) The provisions of—

(i) paragraphs (2), (3), (4), (6), and (7) of subsection (b), other than paragraph (2)(B), and

(ii) subsection (c),

of section 201 of the Trade Act of 1974 (19 U.S.C. 2251), as in effect on June 1, 1988, shall apply with respect to any investigation initiated under subparagraph (A).

(C) By no later than the date that is 120 days after the date on which an investigation is initiated under subparagraph (A), the Commission shall make a determination under subparagraph (A) with respect to such investigation.

(D) If the determination made by the Commission under subparagraph (A) with respect to imports of an article is affirmative, the Commission shall find and recommend to the President the amount of import relief that is necessary to remedy the injury found by the Commission in such affirmative determination, which shall be limited to that set forth in paragraph (3)(C).

(E)(i) By no later than the date that is 30 days after the date on which a determination is made under subparagraph (A)

with respect to an investigation, the Commission shall submit to the President a report on the determination and the basis for the determination. The report shall include any dissenting or separate views and a transcript of the hearings and any briefs which were submitted to the Commission in the course of the investigation initiated under subparagraph (A).

(ii) Any finding made under subparagraph (D) shall be included in the report submitted to the President under clause (i).

(F) Upon submitting a report to the President under subparagraph (E), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(G) For purposes of this subsection—

(i) 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 paragraph as if such determinations and findings were made under section 201 of the Trade Act of 1974 (19 U.S.C. 2251).

(ii) The determination of whether an article originates in Canada shall be made in accordance with section 202 (including any proclamations issued under section 202).

(3)(A) By no later than the date that is 30 days after the date on which the President receives the report of the Commission containing an affirmative determination made by the Commission under paragraph (2)(A), the President shall provide relief from imports of the article originating in Canada that is the subject of such determination to the extent that, and for such time (not to exceed 3 years) as the President determines to be necessary to remedy the injury found by the Commission.

(B) The President is not required to provide import relief by reason of this paragraph if the President determines that the provision of such import relief is not in the national economic interest.

(C) The import relief that the President is authorized to provide by reason of this paragraph with respect to an article originating in Canada is limited to—

(i) the suspension of any further reductions provided for under the Agreement in the duty imposed on such article originating in Canada,

(ii) an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the lesser of—

(I) the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States[8] that is imposed by the United

[8] Sec. 5003(b)(3) of Public Law 105–206 (112 Stat. 789) struck out "the most-favored-nation rate of duty" and inserted in lieu thereof "the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States".

States on such article from any other foreign country at the time such import relief is provided, or

(II) the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States[8] that is imposed by the United States on such article from any other foreign country on the day before the date on which the Agreement enters into force, or

(iii) in the case of a duty applied on a seasonal basis to such article originating in Canada, an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the most-favored-nation rate of duty imposed by the United States on such article originating in Canada for the corresponding season immediately prior to the date on which the Agreement enters into force.

(4)(A) No investigation may be initiated under paragraph (2)(A) with respect to any article for which import relief has been provided under this subsection.

(B) No import relief may be provided under this subsection after the date that is 10 years after the date on which the Agreement enters into force.

(5) For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under paragraph (3) shall be treated as action taken under chapter I of title II of such Act.

(b) RELIEF FROM IMPORTS FROM ALL COUNTRIES.—

(1)(A) If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the Commission makes an affirmative determination (or a determination which is treated as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930) 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, the Commission shall also find (and report to the President at the time such injury determination is submitted to the President), whether imports from Canada of the article that is the subject of such investigation are substantial and are contributing importantly to such injury or threat thereof.

(B)(i) In determining under subparagraph (A) whether imports of an article from Canada are substantial, the Commission shall not normally consider imports from Canada in the range of 5 to 10 percent or less of total imports of such article to be substantial.

(ii) For purposes of this paragraph, the term "contributing importantly" means an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports.

(2)(A) In determining whether to take action under chapter 1 of title II of the Trade Act of 1974 with respect to imports from Canada, the President shall determine whether imports from Canada of such article are substantial and contributing

importantly to the serious injury or threat of serious injury found by the Commission.

(B) 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 Canada if the President has made a negative determination under subparagraph (A) regarding imports from Canada.

(3)(A) If, under paragraph (2)(B), the President excludes imports from Canada from action taken under chapter 1 of title II of the Trade Act of 1974, the President may, if the President thereafter determines that a surge in imports from Canada of the article that is the subject of the action is undermining the effectiveness of the action, take appropriate action under such chapter with respect to such imports from Canada to include such imports in such action.

(B)(i) If, under paragraph (2)(B), the President excludes imports from Canada from action taken under chapter 1 of title II of the Trade Act of 1974, any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry for which such action is being taken under such chapter may request the Commission to conduct an investigation of imports from Canada of the article that is the subject of such action.

(ii) Upon receiving a request under clause (i), the Commission shall conduct an investigation to determine whether a surge in imports from Canada of the article that is the subject of action being taken under chapter 1 of title II of the Trade Act of 1974 undermines the effectiveness of such action. The Commission shall submit the findings of such investigation to the President by no later than the date that is 30 days after the date on which such request is received by the Commission.

(C) For purposes of this paragraph, the term "surge" means a significant increase in imports over the trend for a reasonable, recent base period for which data are available.

(c) Any entity that is representative of an industry may submit a petition for relief under subsection (a), under chapter 1 of title II of the Trade Act of 1974, or under both subsection (a) and such chapter at the same time. If petitions are submitted by such an entity under subsection (a) and such chapter at the same time, the Commission shall consider such petitions jointly.

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.—The President shall submit to the Congress, at the close of each biennial period occurring after the date on which the Agreement enters into force, a report regarding—

(1) the status of the negotiations regarding agreements that the President is authorized to enter into with Canada under this section;

(2) the effectiveness and operation of any agreement entered into under section 304 that is in force with respect to the United States;

(3) the effectiveness of operation of the Agreement generally; and

(4) the actions taken by the United States and Canada to implement further the objectives of the Agreement.

SEC. 305. ENERGY.

(a)[9] ALASKAN OIL. * * *

(b)[10] URANIUM. * * *

SEC. 306.[11] LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN CANADIAN PRODUCTS. * * *

SEC. 307. TEMPORARY ENTRY FOR BUSINESS PERSONS.

(a) NONIMMIGRANT TRADERS AND INVESTORS.—Upon a basis of reciprocity secured by the United States-Canada Free-Trade Agreement, a citizen of Canada, and the spouse and children of any such citizen if accompanying or following to join such citizen, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in Annex 1502.1 (United States of America), Part B—Traders and Investors, of such Agreement, but only if any such purpose shall have been specified in such Annex as of the date of entry into force of such Agreement.

(b)[12] NONIMMIGRANT PROFESSIONALS. * * *

SEC. 308.[13] 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. * * *

SEC. 402. AMENDMENTS TO TITLE 28, UNITED STATES CODE. * * *[14]

SEC. 403. CONFORMING AMENDMENTS TO THE TARIFF ACT OF 1930. * * *[15]

SEC. 404. 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—

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[9] Subsec. (a) amended sec. 7(d)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(d)(1)).

[10] Subsec. (b) amended 42 U.S.C. 2201(v) (Support of United States Enrichment Corporation).

[11] Sec. 306 amended sec. 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)).

[12] Subsec. (b) amended 8 U.S.C. 1184 (Admission of nonimmigrants).

[13] Sec. 308 amended 12 U.S.C. 24 (Corporate powers of associations).

[14] Subsecs. (a) and (b) amended 28 U.S.C. 2643 (Relief), subsec. (c) amended 28 U.S.C. 2201 (Creation of remedy), and subsec. (d) amended 28 U.S.C. 1584 (Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement).

[15] Subsecs. (a) through (d) amended 19 U.S.C. 1502 (Regulations for appraisement and classification), 1514 (Protest against decisions of Customs Service), 1677f (Access to information), and 1677 (Definitions; special rules), respectively.

(1) section 303 or title VII of the Tariff Act of 1930,[16] or any successor statute, or

(2) any other statute which—

(A) provides for judicial review of final determinations under such section, title, or statute, or

(B) indicates the standard of review to be applied,

shall apply to Canada only to the extent specified in such amendment.

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

[16] The Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 629) made several amendments to title VII of the Tariff Act of 1930. Sec. 135(c) of that Act further provided:

"(c) APPLICATION OF AMENDMENTS TO PRODUCTS OF CANADIAN ORIGIN.—For purposes of section 404 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, the amendments made by subsection (b) [to sec. 777 of the Tariff Act] also apply with respect to investigations under title VII of the Tariff Act of 1930 involving products of Canadian origin.".

panels under Annex 1901.2 of the Agreement and a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 1904.13 of the Agreement.

(B) The selection of individuals for—

(i) placement on lists prepared by the interagency group under clause (i) or (ii) of paragraph (1)(B),

(ii) placement on preliminary candidate lists under subparagraph (A),

(iii) placement on final candidate lists under paragraph (3),

(iv) placement by the Trade Representative on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, and

(v) appointment by the Trade Representative for service on binational panels and extraordinary challenge committees convened under chapter 19 of the Agreement,

shall be made on the basis of the criteria provided in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement and shall be made without regard to political affiliation.

(C) For purposes of applying section 1001 of title 18, United States Code, the written or oral responses of individuals to inquiries of the interagency group established under paragraph (1) or the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for the placements and appointments described in subparagraph (B), shall be treated as matters within the jurisdiction of an agency of the United States.

(3)(A) By no later than January 3 of each calendar year, the Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the "appropriate Congressional Committees") the preliminary candidate lists of those individuals selected by the Trade Representative under paragraph (2)(A) to be candidates eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year.

(B) Upon submission of the preliminary candidate lists under subparagraph (A) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals listed on the preliminary candidate lists.

(C) The Trade Representative may add or delete individuals from the preliminary candidate lists submitted under subparagraph (A) after consulting the appropriate Congressional Committees with regard to such addition or deletion. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the preliminary candidate lists.

(4)(A) By no later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final candidate lists of those individuals selected by the Trade Representative to be candidates eligible to serve on binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final candidate list only if written notice of the addition of such individual to the preliminary candidate list was submitted to the appropriate Congressional Committees at least 15 days before the date on which that final candidate list is submitted to the appropriate Congressional Committees under this subparagraph.

(B) Except as provided in paragraph (5), no additions may be made to the final candidate lists after the final candidate lists are submitted to the appropriate Congressional Committees under subparagraph (A).

(5)(A) If, after the Trade Representative has submitted the final candidate lists to the appropriate Congressional Committees under paragraph (4)(A) for a calendar year and before July 1 of such calendar year, the Trade Representative determines that additional individuals need to be added to a final candidate list, the Trade Representative shall—

(i) request the interagency group established under paragraph (1)(A) to prepare a list of individuals who are qualified to be added to such candidate list,

(ii) select individuals from the list prepared by the interagency group under paragraph (1)(B)(ii) to be included in a proposed amendment to such final candidate list, and

(iii) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees the proposed amendments to such final candidate list developed by the Trade Representative under clause (ii).

(B) Upon submission of a proposed amendment under subparagraph (A)(iii) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.

(C) The Trade Representative may add or delete individuals from any proposed amendment submitted under subparagraph (A)(iii) after consulting the appropriate Congressional Committees with regard to such addition or deletion. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the proposed amendment.

(D)(i) If the Trade Representative submits under subparagraph (A)(iii) in any calendar year a proposed amendment to a final candidate list, the Trade Representative shall, by no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and the individuals included in the final form of such amendment shall be added to the final candidate list.

(ii) An individual may be included in the final form of an amendment submitted under clause (i) only if written notice of the addition of such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment is submitted under clause (i).

(iii) Individuals added to a final candidate list under clause (i) shall be eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement, as the case may be, during the 6-month period beginning on October 1 of the calendar year in which such addition occurs.

(iv) No additions may be made to the final form of an amendment described in clause (i) after the final form of such amendment is submitted to the appropriate Congressional Committees under clause (i).

(6)(A) The Trade Representative is the only officer of the Government of the United States authorized to act on behalf of the Government of the United States in making any selection or appointment of an individual to—

(i) the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, or

(ii) the binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement,

that is to be made solely or jointly by the Government of the United States under the terms of the Agreement.

(B) Except as otherwise provided in paragraph (7)(B), the Trade Representative may—

(i) select an individual for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement during the 1-year period beginning on April 1 of any calendar year,

(ii) appoint an individual to serve as one of those members of any binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement during such 1-year period who, under the terms of the Agreement, are to be appointed solely by the Government of the United States, or

(iii) act to make a joint appointment with the Government of Canada, under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee,

only if such individual is on the appropriate final candidate list that was submitted to the appropriate Congressional Committees under paragraph (4)(A) during such calendar year or on such list as it may be amended under paragraph (5)(D)(i).

(7)(A) Except as otherwise provided in this paragraph, no individual may—

(i) be selected by the Government of the United States for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, or

(ii) be appointed solely or jointly by the Government of the United States to serve as a member of a binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement,

during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the requirements of this subsection.

(B)(i) Notwithstanding paragraphs (3), (4), or (6)(B) (other than paragraph (3)(A)), individuals listed on the preliminary candidate lists submitted to the appropriate Congressional Committees under paragraph (3)(A) may—

(I) be selected by the Trade Representative for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement during the 3-month period beginning on the date on which the Agreement enters into force, and

(II) be appointed solely or jointly by the Trade Representative under the terms of the Agreement to serve as members of binational panels or extraordinary challenge committees that are convened pursuant to chapter 19 of the Agreement during such 3-month period.

(ii) If the Agreement enters into force after January 3, 1989, the provisions of this subsection shall be applied with respect to the calendar year in which the Agreement enters into force—

(I) by substituting "the date that is 30 days after the date on which the Agreement enters into force" for "January 3 of each calendar year" in paragraphs (1)(B)(i) and (3)(A), and

(II) by substituting "the date that is 3 months after the date on which the Agreement enters into force" for "March 31 of each calendar year" in paragraph (4)(A).

(b) STATUS OF PANELISTS.—Notwithstanding any other provision of law, individuals appointed by the United States to serve on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist such appointed individuals, shall not be considered to be employees or special employees of, or to be otherwise affiliated with, the Government of the United States.

(c) IMMUNITY OF PANELISTS.—With the exception of acts described in section 777f(d)(3) of the Tariff Act of 1930, as added by this Act, individuals serving on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.

(d) REGULATIONS.—The administering authority under title VII of the Tariff Act of 1930, the United States International Trade Commission, and the United States Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapters 18 and 19 of the Agreement. Initial regulations to

carry out such functions shall be issued prior to the date of entry into force of the Agreement.

(e) ESTABLISHMENT OF UNITED STATES 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 [17] 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) [18] 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.

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[17] Sec. 1(b) of Public Law 101–207 (103 Stat. 1833) struck out "1989, such sums as may be necessary" and inserted in lieu thereof "1990, $1,492,000".

[18] Sec. 103(b) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 635) amended and restated para. (2).

(4)[19] 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.

[19] Sec. 134(b)(1) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 651) added para. (4).

(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 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.[20]

SEC. 409. SUBSIDIES.

(a) NEGOTIATING AUTHORITY.—

[20] Sec. 134(b)(2) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 651) stuck out "persons who would be regarded as interested parties to the proceeding if the determination in question had been made under title VII of the Tariff Act of 1930." and inserted in lieu thereof "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.".

(1) The President is authorized to enter into an agreement with Canada, including an agreement to amend the Agreement, on rules applicable to trade between the United States and Canada that—

(A) deal with unfair pricing and government subsidization, and

(B) provide for increased discipline on subsidies.

(2)(A) The objectives of the United States in negotiating an agreement under paragraph (1) include (but are not limited to)—

(i) achievement, on an expedited basis, of increased discipline on government production and export subsidies that have a significant impact, directly or indirectly, on bilateral trade between the United States and Canada; and

(ii) attainment of increased and more effective discipline on those Canadian Government (including provincial) subsidies having the most significant adverse impact on United States producers that compete with subsidized products of Canada in the markets of the United States and Canada.

(B) Special emphasis should be given in negotiating an agreement under paragraph (1) to obtain discipline on Canadian subsidy programs that adversely affect United States industries which directly compete with subsidized imports.

(3)[21] The United States members of the working group established under article 1907 of the Agreement shall consult regularly with the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and advisory committees established under section 135 of the Trade Act of 1974 regarding—

(A) the issues being considered by the working group; and

(B) as appropriate, the objectives and strategy of the United States in the negotiations.

(4) Notwithstanding any other provision of this Act or of any other law, the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) shall not apply to any bill or joint resolution that implements an agreement entered into under paragraph (1), unless the President determines and notifies the Congress that such agreement—

(A) will provide greater discipline over government subsidies and no less discipline over unfair pricing practices by producers than that provided by the agreements described in paragraphs (5) and (6) of section 2 of the Trade Agreements Act of 1979 (the Subsidies Code and Antidumping Code), respectively, taking into account the effects of the Agreement, and

(B) will neither undermine such multilateral discipline nor detract from United States efforts to increase such discipline on a multilateral basis in, or subsequent to, the Uruguay Round of multilateral trade negotiations.

[21] Sec. 1021(d) of Public Law 104–66 (109 Stat. 712) amended and restated para. (3), eliminating an annual report to congressional committees on the progress being made reaching the objectives stated in para. (2).

(b) IDENTIFICATION OF INDUSTRIES FACING SUBSIDIZED IMPORTS.—

(1) 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 that—

(A)(i) as a result of implementation of provisions of the Agreement, the industry is likely to face increased competition from subsidized Canadian imports with which it directly competes; or

(ii) 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 after January 1, 1989; and

(B) the industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to such country;

may file a petition with the United States Trade Representative (hereafter referred to in this section as the "Trade Representative") to be identified under this section.

(2) Within 90 days of receipt of a petition under paragraph (1), 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 paragraph (1)(A) and the deterioration described in paragraph (1)(B).

(3) At the request of an entity that is representative of an industry identified under paragraph (2), the Trade Representative shall—

(A) compile and make available to the industry information under section 308 [22] of the Trade Act of 1974,

(B) recommend to the President that an investigation by the United States International Trade Commission be requested under section 332 of the Tariff Act of 1930, or

(C) take actions described in both subparagraphs (A) and (B).

The industry may request the Trade Representative to take appropriate action to update (as often as annually) any information obtained under subparagraph (A) or (B), or both, as the case may be, until an agreement on adequate rules and disciplines relating to government subsidies is reached.

(4)(A) The Trade Representative and the Secretary of Commerce shall review information obtained under paragraph (3) and consult with the industry identified under paragraph (2) with a view to deciding whether any action is appropriate under section 301 of the Trade Act of 1974, including the initiation of an investigation under section 302(c) of that Act (in

[22] Sec. 134(b)(3) of the Customs and Trade Act of 1990 (Public Law 101–382; 104 Stat. 651) struck out "section 305" and inserted in lieu thereof "section 308".

the case of the Trade Representative), or 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).

(B) 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—

(i) shall seek the advice of the advisory committees established under section 135 of the Trade Act of 1974;

(ii) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

(iii) shall coordinate with the interagency committee established under section 242 of the Trade Expansion Act of 1962; and

(iv) may ask the President to request advice from the United States International Trade Commission.

(C) 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 paragraph and the President, 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 President 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 President otherwise determines that application of the action to other products would be more effective.

(5) 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—

(A) prejudice the right of any industry to file a petition under any trade law,

(B) prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Secretary of Commerce, the United States International Trade Commission, or the Trade Representative pursuant to such a petition,

(C) 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.

(6) Nothing in this subsection may be construed to alter in any manner the requirements in effect before 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. 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.[23]

(b) TRANSITION PROVISIONS.—

(1) If on the date on which the Agreement should cease to be in force an investigation or enforcement proceeding concerning the violation of a protective order issued under section 777(d) of the Tariff Act of 1930 (as amended by this Act) or a Canadian undertaking is pending, such investigation or proceeding shall continue and sanctions may continue to be imposed in accordance with the provisions of such section.

(2) If on the date on which the Agreement should cease to be in force a binational panel review under article 1904 of the Agreement is pending, or has been requested, with respect to a determination to which section 516A(g)(2) of the Tariff Act of 1930 (as added by this Act) 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)(2)(A) of the Tariff Act of 1930 shall not begin to run until the date on which the Agreement ceases to be in force.

TITLE V—EFFECTIVE DATES AND SEVERABILITY

SEC. 501. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this Act, and the amendments made by this Act, shall take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 and 2, title I, section 304 (except subsection (f)), section 309, this section and section 502 shall take effect on the date of enactment of this Act.

(c)[24] TERMINATION OR SUSPENSION OF AGREEMENT.—

(1) TERMINATION OF AGREEMENT.—On the date the Agreement ceases to be in force, the provisions of this Act (other than this paragraph and section 410(b)), and the amendments made by this Act, shall cease to have effect.

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[23] Sec. 413 of the North American Free Trade Agreement Implementation Act (Public Law 103–182; 107 Stat. 2147) added the last sentence of subsec. (a).

[24] Sec. 107 of the North American Free Trade Agreement Implementation Act (Public Law 103–182; 107 Stat. 2065) amended and restated subsec. (c). Sec. 109(a)(2) of that Act further provided:

"(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.".

(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.

(9) Caribbean Basin Economic Recovery Act

Partial text of Public Law 98–67 [H.R. 2973], 97 Stat. 369, approved August 5, 1983; as amended by Public Law 98–573 [Trade and Tariff Act of 1984; H.R. 3398], 98 Stat. 2948 at 2992, approved October 30, 1984; by Public Law 99–514 [Tax Reform Act of 1986; H.R. 3838], 100 Stat. 2085 at 2926, approved October 22, 1986; by Public Law 99–570 [Anti-Drug Abuse Act of 1986, H.R. 5484], 100 Stat. 3207, approved October 27, 1986; by Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 100–647 [Technical and Miscellaneous Revenue Act of 1988; H.R. 4333], 102 Stat. 3342, approved November 10, 1988; Public Law 101–382 [Customs and Trade Act of 1990, Caribbean Basin Economic Recovery Expansion Act of 1990; H.R. 1594], 104 Stat. 629, approved August 20, 1990; Public Law 103–182 [North American Free Trade Agreement Implementation Act; H.R. 3450], 107 Stat. 2057, approved December 8, 1993; Public Law 103–465 [Uruguay Round Agreements Act; H.R. 5110], 108 Stat. 4809, approved December 8, 1994; Public Law 104–188 [Small Business Job Protection Act of 1996; H.R. 3448], 110 Stat. 1755, approved August 20, 1996; Public Law 104–295 [Miscellaneous Trade and Technical Corrections Act of 1996; H.R. 3815], 110 Stat. 3514, approved October 11, 1996; Public Law 106–200 [Trade and Development Act of 2000; H.R. 434], 114 Stat. 251, approved May 18, 2000; Public Law 107–206 [2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States; H.R. 4775], 116 Stat. 820, approved August 2, 2002; Public Law 107–210 [Andean Trade Promotion and Drug Eradication Act; H.R. 3009], 116 Stat. 933, approved August 6, 2002; Public Law 108–429 [Miscellaneous Trade and Technical Corrections Act of 2004; H.R. 1047], 118 Stat. 2434, approved December 3, 2004; and Public Law 109–53 [Dominican Republic-Central America-United States Free Trade Agreement Implementation Act; H.R. 3045], 119 Stat. 462, approved August 2, 2005

AN ACT To promote economic revitalization and facilitate expansion of economic opportunities in the Caribbean Basin region, to provide for backup withholding of tax from interest and dividends, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE II—CARIBBEAN BASIN INITIATIVE

SEC. 201.[1] SHORT TITLE.

This title may be cited as the "Caribbean Basin Economic Recovery Act".

[1] See also sec. 1909 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1317), as found on page 740.

See also sec. 202 of the United States-Caribbean Basin Trade Partnership Act (Title II of Public Law 106–200; 114 Stat. 252) as found on page 944.

See also sec. 203 of the United States-Caribbean Basin Trade Partnership Act (Public Law 106–200; 114 Stat. 252), as found on page 945.

SUBTITLE A—DUTY-FREE TREATMENT

SEC. 211.[2] AUTHORITY TO GRANT DUTY-FREE TREATMENT.

The President may proclaim duty-free treatment (or other preferential treatment)[3] for all eligible articles from any beneficiary country in accordance with the provisions of this title.

SEC. 212.[4] 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[5] (19 U.S.C. 1202).

(D)[6] The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(E)[6] The terms "WTO" and "WTO member" have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

(F)[7] The term "former beneficiary country" means a country that ceases to be designated as a beneficiary country under this title because the country has become a party to a free trade agreement with the United States.

(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.

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[2] 19 U.S.C. 2701. Pursuant to the authority vested in him by sec. 211, the President issued Proclamation 5133 on November 30, 1983, implementing the duty-free treatment provided in accordance with the provisions of this Act.

[3] Sec. 211(e)(1)(A) of Public Law 106–200 (114 Stat. 287) inserted "(or other preferential treatment)".

[4] 19 U.S.C. 2702.

[5] Sec. 1214(q)(1) of Public Law 100–418 (102 Stat. 1159) struck out "'TSUS' means Tariff Schedules of the United States" and inserted in lieu thereof "'HTS' means Harmonized Tariff Schedule of the United States".

[6] Sec. 211(e)(2) of Public Law 106–200 added subparas. (D) and (E).

[7] Sec. 402(a) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53; 119 Stat. 495) added subpara. (F).

(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 [8]
Aruba [8]
Bahamas, The [8]
Barbados [8]
Belize [8]
Cayman Islands
Costa Rica [8, 9]
Dominica [8]
Dominican Republic [8, 9, 10]
El Salvador [8, 9, 11]
Grenada [8]
Guatemala [8, 9, 10, 11]
Guyana [8]
Haiti [8]
Honduras [8, 9, 10]
Jamaica [8]
Montserrat [8]
Netherlands Antilles [8]
Nicaragua [8, 9, 12]
Panama [8, 11]
St. Kitts and Nevis [8]
Saint Lucia [8]
Saint Vincent and the Grenadines [8]
Suriname
Trinidad and Tobago [8]
Turks and Caicos Islands
Virgin Islands, British [8]

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

[8] On October 4, 2000, in Presidential Proclamation 7351 (65 F.R. 59329) the President designated these countries as Caribbean Basin Trade Partnership Act (CBTPA) beneficiary countries pursuant to section 213(b)(5)(B) of the Caribbean Basin Economic Recovery Act (CBERA).

[9] Sec. 402(b) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53; 119 Stat. 495) provided that Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua shall be struck from the list of countries eligible for designation as beneficiary countries, effective on the date the President terminates the designation of such countries as beneficiary countries. As of December 31, 2005, the President had not terminated the designation for any of these countries.

[10] In a memorandum of June 25, 1993, to the United States Trade Representative (58 F.R. 34861), the President determined that, "after considered various private sector requests for a review of whether or not certain beneficiary developing countries are providing adequate and effective means under their laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights, I have determined to continue the review of the Dominican Republic, Guatemala, and Honduras.".

[11] In a memorandum of June 25, 1993, to the United States Trade Representative (58 F.R. 34861), the President determined "that Panama has taken or is taking steps to afford international recognized worker rights, and I have determined that Mauritania has not taken and is not taking steps to afford such internationally recognized rights. Therefore, I am notifying the Congress of my intention to suspend the GSP eligibility of Mauritania. Finally, I have determined to continue to review the status of such worker rights in Bahrain, El Salvador, Fiji, Guatemala, Indonesia, Malawi, Oman, and Thailand.".

[12] On November 7, 1990, in Presidential Determination No. 91–8 (55 F.R. 49499), the President determined that the designation of Nicaragua as a beneficiary country under this Act would be in the national security interest of the United States, and subsequently waived the application of sec. 212(b)(7) (as added by Public Law 101–382) toward Nicaragua. In Proclamation 6223 of November 8, 1990 (55 F.R. 47447), the President designated Nicaragua as a beneficiary country for the purposes of the Caribbean Basin Economic Recovery Act.

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;[13]

(6)[14] unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and[13]

(7)[13] if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section

[13] Secs. 213 (1) through (3) of the Caribbean Basin Economic Recovery Expansion Act of 1990 (title II of Public Law 101–382; 104 Stat. 656) struck out "and" at the end of para. (5), struck out the period at the end of para. (6) and inserted in lieu thereof "; and", and added para. (7).

[14] Sec. 9002 of Public Law 99–570 (100 Stat. 3207–166) deleted former para. (6) and renumbered para. (7) as para. (6).

507(4)[15] 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)[16] 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);[17]

(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)[18] whether or not such country has taken or is taking steps to afford 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;

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[15] Sec. 1954(a)(3) of Public Law 104–188 (110 Stat. 1927) struck out "502(a)(4)" and inserted in lieu thereof "507(4)".

[16] Sec. 213(4) of the Caribbean Basin Economic Recovery Expansion Act of 1990 (title II of Public Law 101–382; 104 Stat. 656) struck out "and (5)" and inserted in lieu thereof "(5), and (7)".

[17] Sec. 621(a)(2) of Public Law 103–465 (108 Stat. 4992) struck out "General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979" and inserted in lieu thereof "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)".

[18] Sec. 213(5) of the Caribbean Basin Economic Recovery Expansion Act of 1990 (title II of Public Law 101–382; 104 Stat. 656) amended and restated para. (8). The new text should end with a semicolon. Para. (8) formerly read as follows:

"(8) the degree to which workers in such country are afforded reasonable workplace conditions and enjoy the right to organize and bargain collectively;".

(10) the extent to which such country prohibits its nationals from engaging in the broadcasts 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) General headnote 3(a) of the TSUS (relating to products of the insular possessions) is amended by adding at the end thereof the following paragraph:

"(iv) Subject to the provisions in section 213 of the Caribbean Basin Economic Recovery Act, articles which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded such articles when they are imported from a beneficiary country under such Act.".

(e)[19] (1)(A)[20] The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met—

(i)[20] withdraw or suspend the designation of any country as a beneficiary country, or

(ii)[20] 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).

(B)[21] The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as a CBTPA beneficiary country; or

(ii) withdraw, suspend, or limit the application of preferential treatment under section 213(b)(2) and (3) to any article of any country,

if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 213(b)(5)(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.

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[19] Sec. 1909(c) of Public Law 100–418 (102 Stat. 1318) amended and restated subsec. (e).

[20] Secs. 211(b)(1)(A) and (B) of Public Law 106–200 (114 Stat. 286) redesignated subparas. (A) and (B) as clauses (i) and (ii), and inserted (A) after (1).

[21] Sec. 211(b)(1)(C) of Public Law 106–200 (114 Stat. 286) added subpara. (B).

(3)[22] If preferential treatment under section 213(b)(2) and (3) is withdrawn, suspended, or limited with respect to a CBTPA beneficiary country, such country shall not be deemed to be a 'party' for the purposes of applying section 213(b)(5)(C) to imports of articles for which preferential treatment has been withdrawn, suspended, or limited with respect to such country.

(f) REPORTING REQUIREMENTS.—[23]

(1) IN GENERAL.—Not later than December 31, 2001, and every 2 years thereafter during the period this title is in effect, the United States Trade Representative shall submit to Congress a report regarding the operation of this title, including—

(A) with respect to subsections (b) and (c), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

(B) the performance of each beneficiary country or CBTPA beneficiary country, as the case may be, under the criteria set forth in section 213(b)(5)(B).

(2) PUBLIC COMMENT.—Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 213(b)(5)(B).

SEC. 213.[24] ELIGIBLE ARTICLES.

(a)(1) Unless otherwise excluded from eligibility by this title, and subject to section 423 of the Tax Reform Act of 1986,[25] and except as provided in subsection (b)(2) and (3),[26] 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, the United States Virgin Islands, and any former beneficiary country.[27] If the cost or value of materials produced in the customs territory of the United States (other than the

[22] Sec. 211(b)(2) of Public Law 106–200 (114 Stat. 286) added para. (3).

[23] Sec. 214 of the Caribbean Basin Economic Recovery Expansion Act of 1990 (title II of Public Law 101–382; 104 Stat. 656) added subsec. (f). Sec. 211(c)(1) of Public Law 106–200 (114 Stat. 286) restated the subsection. It originally read as follows:

"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).".

[24] 19 U.S.C. 2703.

[25] Sec. 423(f) of Public Law 99–514 (100 Stat. 2232) inserted the words to this point beginning with "and".

[26] Sec. 211(e)(1)(B) of Public Law 106–200 (112 Stat. 287) inserted "and except as provided in subsection (b)(2) and (3),".

[27] Sec. 402(c) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53; 119 Stat. 496) struck out "the Commonwealth

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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)[28] Notwithstanding section 311 of the Tariff Act of 1930, the products of a beneficiary country which are imported directly from any beneficiary[29] 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).

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of Puerto Rico and the United States Virgin Islands" and inserted in lieu thereof "the Commonwealth of Puerto Rico, the United States Virgin Islands, and any former beneficiary country".

[28] Sec. 235 of Public Law 98–573 (98 Stat. 2992) added this paragraph as para. (3). Sec. 1889 of Public Law 99–514 (100 Stat. 2926) redesignated para. (3) as para. (4).

[29] Sec. 1889 of Public Law 99–514 (100 Stat. 2926) struck out "such" and inserted in lieu thereof "any beneficiary".

(5)[30] The duty-free treatment provided under this title[31] 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.

(6)[32] Notwithstanding paragraph (1), the duty-free treatment provided under this title shall apply to liqueurs and spirituous beverages produced in the territory of Canada from rum if—

(A) such rum is the growth, product, or manufacture of a beneficiary country or of the Virgin Islands of the United States;

(B) such rum is imported directly from a beneficiary country or the Virgin Islands of the United States into the territory of Canada, and such liqueurs and spirituous beverages are imported directly from the territory of Canada into the customs territory of the United States;

(C) when imported into the customs territory of the United States, such liqueurs and spirituous beverages are classified in subheading 2208.90 or 2208.40 of the HTS; and

(D) such rum accounts for at least 90 percent by volume of the alcoholic content of such liqueurs and spirituous beverages.

(b)[33] IMPORT-SENSITIVE ARTICLES.—

(1) IN GENERAL.—Subject to paragraphs (2) through (5), the duty-free treatment provided under this title does not apply to—

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[30] Sec. 215(a) of the Caribbean Basin Economic Recovery Expansion Act of 1990 (title II of Public Law 101–382; 104 Stat. 657) added para. (5). Sec. 215(b) of that Act further provided:

"(b) EFFECTIVE DATES.—

"(1) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

"(2) Notwithstanding section 514 of the Tariff Act of 1930 or any other provisions of law, upon proper request filed with the appropriate customs officer after September 30, 1990, and before April 1, 1991, any entry, or withdrawal from warehouse—

"(A) which was made after August 5, 1983, and before October 1, 1990, and with respect to which liquidation had not occurred before October 1, 1990, and

"(B) with respect to which there would have been no duty, or a lesser duty, if the amendment made by subsection (a) applied

"shall be liquidated as though such amendment applied to such entry or withdrawal.".

[31] Sec. 212(1) of Public Law 106–200 (114 Stat. 288) struck out "chapter" and inserted in lieu thereof "title".

[32] Sec. 212(2) of Public Law 106–200 (114 Stat. 288) added para. (6).

[33] Subsec. 211(a) of Public Law 106–200 (114 Stat. 276) amended and restated subsec. (b), which previously read as follows:

"(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, handbags, luggage, flat goods, work gloves, and leather wearing apparel 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; or

"(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 (h) of this section.".

(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 that date;

(B)[34] footwear provided for in any of subheadings 6401.10.00, 6401.91.00, 6401.92.90, 6401.99.30, 6401.99.60, 6401.99.90, 6402.30.50, 6402.30.70, 6402.30.80, 6402.91.50, 6402.91.80, 6402.91.90, 6402.99.20, 6402.99.80, 6402.99.90, 6403.59.60, 6403.91.30, 6403.99.60, 6403.99.90, 6404.11.90, and 6404.19.20 of the HTS that was 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;

(C) tuna, prepared or preserved in any manner, in airtight containers;

(D) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(E) 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

(F) articles to which reduced rates of duty apply under subsection (h).

(2) TRANSITION PERIOD TREATMENT OF CERTAIN TEXTILE AND APPAREL ARTICLES.—

(A) ARTICLES COVERED.—During the transition period, the preferential treatment described in subparagraph (B) shall apply to the following articles:

(i) APPAREL ARTICLES ASSEMBLED IN ONE OR MORE CBTPA BENEFICIARY COUNTRIES.—Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, or both[35] (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed and cut in the United States) that are—[36]

(I) entered under subheading 9802.00.80 of the HTS; or

(II) entered under chapter 61 or 62 of the HTS, if, after such assembly, the articles would have qualified for entry under subheading 9802.00.80 of

[34] Sec. 1558(1) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2580) amended and restated subpara. (B), which previously read as follows: "(B) 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;".

[35] Sec. 2004(b)(A) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2592) inserted "or both".

[36] Sec. 3107(a)(1)(A) of Andean Trade Promotion and Drug Eradication Act (Public Law 107–210; 116 Stat. 1035) struck out the text to this point in clause (i) and inserted this text. Clause (i) to this point previously read as follows:

"(i) Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed and cut in the United States) that are—".

the HTS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.

Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.[37]

(ii)[38] OTHER APPAREL ARTICLES ASSEMBLED IN ONE OR MORE CBTPA BENEFICIARY COUNTRIES.—Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed in the United States). Apparel articles entered on or after September 1, 2002, shall qualify underthe preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

(iii) CERTAIN KNIT APPAREL ARTICLES.—(I) Apparel articles knit to shape (other than socks provided for in heading 6115 of the HTS) in a CBTPA beneficiary

[37] Sec. 3107(a)(1)(B) of the Andean Trade Promotion and Drug Eradication Act (Public Law 107–210; 116 Stat. 1035) added the last two sentences of clause (i). Previously, sec. 3001(1) of the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States (Public Law 107–206; 116 Stat. 909) had added text at the end of clause (i).

[38] Sec. 3107(a)(2) of the Andean Trade Promotion and Drug Eradication Act (Public Law 107–210; 116 Stat. 1035) amended and restated clause (ii). It previously read as follows:

"(ii) Apparel articles cut in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed in the United States), if such articles are assembled in one or more such countries with thread formed in the United States.".

Previously, sec. 3001(2) of the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States (Public Law 107–206; 116 Stat. 909) had amended clause (ii).

country from yarns wholly formed in the United States, and knit apparel articles (other than t-shirts described in subclause (III)) cut and wholly assembled in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries or the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in one or more CBTPA beneficiary countries), in an amount not exceeding the amount set forth in subclause (II).

(II)[39] The amount referred to in subclause (I) is as follows:

(aa) 500,000,000 square meter equivalents during the 1-year period beginning on October 1, 2002.

(bb) 850,000,000 square meter equivalents during the 1-year period beginning on October 1, 2003.

(cc) 970,000,000 square meter equivalents in each succeeding 1-year period through September 30, 2008.

(III) T-shirts, other than underwear, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, in an amount not exceeding the amount set forth in subclause (IV).

(IV)[40] The amount referred to in subclause (III) is as follows:

(aa) 4,872,000 dozen during the 1-year period beginning on October 1, 2001.

(bb) 9,000,000 dozen during the 1-year period beginning on October 1, 2002.

(cc) 10,000,000 dozen during the 1-year period beginning on October 1, 2003.

(dd) 12,000,000 dozen in each succeeding 1-year period through September 30, 2008.

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[39] Sec. 3107(a)(3) of the Andean Trade Promotion and Drug Eradication Act (Public Law 107–210; 116 Stat. 1036) amended and restated subclause (II). It previously read as follows:

"(II) The amount referred to in subclause (I) is—

"(aa) 250,000,000 square meter equivalents during the 1-year period beginning on October 1, 2000, increased by 16 percent, compounded annually, in each succeeding 1-year period through September 30, 2004; and

"(bb) in each 1-year period thereafter through September 30, 2008, the amount in effect for the 1-year period ending on September 30, 2004, or such other amount as may be provided by law.".

Sec. 3107(b) of Public Law 107–210 further provided that the amendment made by sec. 3107(a)(3) would take effect on October 1, 2002.

[40] Sec. 3107(a)(4) of the Andean Trade Promotion and Drug Eradication Act (Public Law 107–210; 116 Stat. 1036) amended and restated subclause (IV). It previously read as follows:

"(IV) the amount referred to in subclause (III) is—

"(aa) 4,200,000 dozen during the 1-year period beginning on October 1, 2000, increased by 16 percent, compounded annually, in each succeeding 1-year period through September 30, 2004; and

"(bb) in each 1-year period thereafter, the amount in effect for the 1-year period ending on September 30, 2004, or such other amount as may be provided by law.".

(V) It is the sense of the Congress that the Congress should determine, based on the record of expansion of exports from the United States as a result of the preferential treatment of articles under this clause, the percentage by which the amount provided in subclauses (II) and (IV) should be compounded for the 1-year periods occurring after the 1-year period ending on September 30, 2004.

(iv)[41] CERTAIN OTHER APPAREL ARTICLES.—

(I) GENERAL RULE.—Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), (v), or (vi), if the article is both cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both.

(II) LIMITATION.—During the 1-year period beginning on October 1, 2001, and during each of the 6 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all sucharticles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE.—The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then

[41] Sec. 3107(a)(5) of the Andean Trade Promotion and Drug Eradication Act (Public Law 107–210; 116 Stat. 1036) amended and restated clause (iv). It previously read as follows:

"(iv) CERTAIN OTHER APPAREL ARTICLES.—(I) Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, if the article is both cut and sewn or otherwise assembled in the United States, or one or more of the CBTPA beneficiary countries, or both.

"(II) During the 1-year period beginning on October 1, 2001, and during each of the six succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabric components formed in the United States that are used in the production of all such articles of that producer or entity during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

"(III) The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabric components formed in the United States used in the production of such articles of that producer or entity in the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.".

apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(v) APPAREL ARTICLES ASSEMBLED FROM FABRICS OR YARN NOT WIDELY AVAILABLE IN COMMERCIAL QUANTITIES.—(I) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries,[42] to the extent that apparel articles of such fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA.

(II) At the request of any interested party, the President is authorized to proclaim additional fabrics and yarn as eligible for preferential treatment under subclause (I) if—

(aa) the President determines that such fabrics or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(bb) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;

(cc) within 60 days after the request, 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 the action proposed to be proclaimed and the reasons for such actions, and the advice obtained under division (bb);

(dd) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of division (cc), has expired; and

(ee) the President has consulted with such committees regarding the proposed action during the period referred to in division (cc).

(vi) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—A handloomed, handmade, or folklore article of

[42] Sec. 2004(b)(1)(B) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2592) struck out ", from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries" which previously appeared at this point.

a CBTPA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

(vii) SPECIAL RULES.—

(I) EXCEPTION FOR FINDINGS AND TRIMMINGS.—(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, 'bow buds', decorative lace, trim, elastic strips, zippers, including zipper tapes and labels, and other similar products. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and are used in the production of brassieres.

(bb) In the case of an article described in clause (ii) of this subparagraph, sewing thread shall not be treated as findings or trimmings under this subclause.

(II) CERTAIN INTERLINING.—(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, 'hymo' piece, or 'sleeve header', of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(III) DE MINIMIS RULE.—An article that would otherwise be ineligible for preferential treatment under this paragraph because the article contains fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries shall not be ineligible for such treatment if the total weight of all such fibers or yarns is not more than 7 percent of the total weight of the good. Notwithstanding the preceding sentence, an apparel article containing elastomeric yarns shall be eligible for preferential treatment under this paragraph only if such yarns are wholly formed in the United States.

(IV) SPECIAL ORIGIN RULE.—An article otherwise eligible for preferential treatment under clause (i), (ii), or (ix)[43] of this subparagraph shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS duty-free from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

(V)[44] THREAD.—An article otherwise eligible for preferential treatment under this paragraph shallnot be ineligible for such treatment because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.

(viii) TEXTILE LUGGAGE.—Textile luggage—

(I) assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or

(II) assembled from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States.

(ix)[45] APPAREL ARTICLES ASSEMBLED IN ONE OR MORE CBTPA BENEFICIARY COUNTRIES FROM UNITED STATES AND CBTPA BENEFICIARY COUNTRY COMPONENTS.—Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from components cut in the United States and in one or more CBTPAbeneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS). Apparel articles shall qualify under this clause only if they meet the requirements of clause(i) or (ii) (as the case may be) with respect to dyeing, printing, and finishing of knit and woven fabrics from which the articles are assembled.

[43] Sec. 2004(b)(1)(C) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2592) struck out "(i) or (ii)" and inserted in lieu thereof "(i), (ii), or (ix)".

[44] Sec. 3107(a)(6) of the Andean Trade Promotion and Drug Eradication Act (Public Law 107–210; 116 Stat. 1037) added subclause (V).

[45] Sec. 3107(a)(7) of the Andean Trade Promotion and Drug Eradication Act (Public Law 107–210; 116 Stat. 1037) added clause (ix).

(B) PREFERENTIAL TREATMENT.—Except as provided in subparagraph (E), during the transition period, the articles to which this subparagraph applies shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels.

(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—For purposes of subparagraph (A)(vi), the President shall consult with representatives of the CBTPA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

(D) PENALTIES FOR TRANSSHIPMENTS.—

(i) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile or apparel articles from a CBTPA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years.

(ii) PENALTIES FOR COUNTRIES.—Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the CBTPA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3, to the extent consistent with the obligations of the United States under the WTO.

(iii) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this subparagraph has occurred when preferential treatment under subparagraph (B) has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (B).

(E) BILATERAL EMERGENCY ACTIONS.—

(i) IN GENERAL.—The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from a CBTPA beneficiary country if the application of tariff treatment under subparagraph (B) to such article results in conditions that would be cause for the taking of such actions under such section 4

with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

(II) the term 'transition period' in section 4 of the Annex shall have the meaning given that term in paragraph (5)(D) of this subsection; and

(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the CBTPA beneficiary country in question and the country does not agree to consult within the time period specified under section 4.

(3) TRANSITION PERIOD TREATMENT OF CERTAIN OTHER ARTICLES ORIGINATING IN BENEFICIARY COUNTRIES.—

(A) EQUIVALENT TARIFF TREATMENT.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii),[46] the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that is a CBTPA originating good shall be identical to the tariff treatment that is accorded at such time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTS that is a good of Mexico and is imported into the United States.

(ii) EXCEPTION.—Clause (i) does not apply to any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS.

(iii)[46] CERTAIN FOOTWEAR.—Notwithstanding paragraph (1)(B) and clause (i) of this subparagraph, footwearprovided for in any of subheadings 6403.59.60, 6403.91.30, 6403.99.60, and 6403.99.90 of the HTS shall be eligible for the duty-free treatment provided for under this title if-

(I) the article of footwear is the growth, product, or manufacture of a CBTPA beneficiary country; and

(II) the article otherwise meets the requirements of subsection (a), except that in applying such subsection, "CBTPA beneficiary country" shall be substituted for "beneficiary country" each place it appears.

(B) RELATIONSHIP TO SUBSECTION (h) DUTY REDUCTIONS.—If at any time during the transition period the

[46] Sec. 1558(2) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2580) struck out "Subject to clause (ii)", inserted in lieu thereof "Subject to clauses (ii) and (iii)", and added clause (iii).

rate of duty that would (but for action taken under subparagraph (A)(i) in regard to such period) apply with respect to any article under subsection (h) is a rate of duty that is lower than the rate of duty resulting from such action, then such lower rate of duty shall be applied for the purposes of implementing such action.

(4) CUSTOMS PROCEDURES.—

(A) IN GENERAL.—

(i) REGULATIONS.—Any importer that claims preferential treatment under paragraph (2) or (3) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(ii) DETERMINATION.—

(I) IN GENERAL.—In order to qualify for the preferential treatment under paragraph (2) or (3) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II)—

(aa) has implemented and follows; or

(bb) is making substantial progress toward implementing and following,

procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(II) COUNTRY DESCRIBED.—A country is described in this subclause if it is a CBTPA beneficiary country—

(aa) from which the article is exported; or

(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment under paragraph (2) or (3).

(B) CERTIFICATE OF ORIGIN.—The Certificate of Origin that otherwise would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraph (2) or (3) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(C) REPORT BY USTR ON COOPERATION OF OTHER COUNTRIES CONCERNING CIRCUMVENTION.—The United States Commissioner of Customs shall conduct a study analyzing the extent to which each CBTPA beneficiary country—

(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel

goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning fiber content, quantities, description, classification, or origin of textile and apparel goods; and

(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Trade Representative shall submit to Congress, not later than October 1, 2001, a report on the study conducted under this subparagraph.

(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) ANNEX.—The term 'the Annex' means Annex 300–B of the NAFTA.

(B) CBTPA BENEFICIARY COUNTRY.—The term "CBTPA beneficiary country" means any "beneficiary country", as defined in section 212(a)(1)(A) of this title, which the President designates as a CBTPA beneficiary country, taking into account the criteria contained in subsections (b) and (c) of section 212 and other appropriate criteria, including the following:

(i) Whether the beneficiary country has demonstrated a commitment to—

(I) undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule; and

(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

(ii) The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

(iii) The extent to which the country provides internationally recognized worker rights, including—

(I) the right of association;

(II) the right to organize and bargain collectively;

(III) a prohibition on the use of any form of forced or compulsory labor;

(IV) a minimum age for the employment of children; and

(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.

(v) The extent to which the country has met the counter-narcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.

(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(vii) The extent to which the country—

(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act; and

(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

(C) CBTPA ORIGINATING GOOD.—

(i) IN GENERAL.—The term 'CBTPA originating good' means a good that meets the rules of origin for a good set forth in chapter 4 of the NAFTA as implemented pursuant to United States law.

(ii) APPLICATION OF CHAPTER 4.—In applying chapter 4 of the NAFTA with respect to a CBTPA beneficiary country for purposes of this subsection—

(I) no country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;

(II) any reference to trade between the United States and Mexico shall be deemed to refer to trade between the United States and a CBTPA beneficiary country;

(III) any reference to a party shall be deemed to refer to a CBTPA beneficiary country or the United States; and

(IV) any reference to parties shall be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination thereof).

(D) TRANSITION PERIOD.—The term 'transition period' means, with respect to a CBTPA beneficiary country, the period that begins on October 1, 2000, and ends on the earlier of—

(i) September 30, 2008; or

(ii) the date on which the FTAA or another free trade agreement that makes substantial progress in achieving the negotiating objectives set forth in 108(b)(5) of Public Law 103–182 (19 U.S.C. 3317(b)(5)) enters into force with respect to the United States and the CBTPA beneficiary country.

(E) CBTPA.—The term "CBTPA" means the United States-Caribbean Basin Trade Partnership Act.

(F) FTAA.—The term "FTAA" means the Free Trade Area of the Americas.

(G)[47] FORMER CBTPA BENEFICIARY COUNTRY. —The term "former CBTPA beneficiary country" means a country that ceases to be designated as a CBTPA beneficiary country under this title because the country has become a party to a free trade agreement with the United States.

(H)[47] ARTICLES THAT UNDERGO PRODUCTION IN A CBTPA BENEFICIARY COUNTRY AND A FORMER CBTPA BENEFICIARY COUNTRY.—(i) For purposes of determining the eligibility of an article for preferential treatment under paragraph(2) or (3), references in either such paragraph, and in subparagraph (C) of this paragraph to—

(I) a "CBTPA beneficiary country" shall be considered to include any former CBTPA beneficiary country, and

(II) "CBTPA beneficiary countries" shall be considered to include former CBTPA beneficiary countries, if the article, or a good used in the production of the article, undergoes production in a CBTPA beneficiary country.

(ii) An article that is eligible for preferential treatment under clause (i) shall not be ineligible for such treatment because the article is imported directly from a former CBTPA beneficiary country.

(iii) Notwithstanding clauses (i) and (ii), an article that is a good of a former CBTPA beneficiary country for purposes of section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) or section 334 of the Uruguay Round Agreements Act (19 U.S.C. 3592), as the case may be, shall not be eligible for preferential treatment under paragraph (2) or (3), unless—

(I) it is an article that is a good of the Dominican Republic under either such section 304 or 334; and

(II) the article, or a good used in the production of the article, undergoes production in Haiti.

(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,[48] and

[47] Sec. 402(d) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Public Law 109–53; 119 Stat. 496) added subparas. (G) and (H).

[48] Sec. 1214(q)(2)(B)(i) of Public Law 100–418 (102 Stat. 1159) struck out "items 155.20 and 155.30 of the TSUS" and inserted in lieu thereof "subheadings 1701.11.00, 1701.12.00,

(ii) articles of beef or veal, however provided for in chapters 2 and 16 of the Harmonized Tariff Schedule of the United States.[49]

(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) or (C) to the sugar and beef products of a beneficiary country, he must offer to enter into consultation with the

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,".

[49] Sec. 1214(q)(2)(B)(ii) of Public Law 100–418 (102 Stat. 1159) struck out "subpart B of part 2 of schedule 1 of the TSUS" and inserted in lieu thereof "chapters 2 and 16 of the Harmonized Tariff Schedule of the United States".

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)[50] 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[51] 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 202(f)[52] 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 subsections section 203[53] 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[54] 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)[54] of the Trade Act of 1974, determines in the course of its investigation under such section[54] that the serious injury (or threat thereof) substantially caused by imports to the

[50] Sec. 404(e)(1) of Public Law 103–465 (108 Stat. 4961) amended and restated subsec. (d).

[51] Sec. 1401(b)(2) of Public Law 100–418 (102 Stat. 1239) struck out "proclaimed pursuant to section 203" and inserted in lieu thereof "provided under chapter 1 of title II".

[52] Sec. 1401(b)(2)(B) of Public Law 100–418 (102 Stat. 1239) struck out "202(d)(1)" and inserted in lieu thereof "202(f)".

[53] Sec. 1401(b)(2)(C) of Public Law 100–418 (102 Stat. 1240) struck out "(a) and (c) of section 203" and inserted in lieu thereof "section 203". The word "subsections" preceding "section 203" in para. (3) probably should have been struck out also.

[54] Sec. 1401(b)(2)(D) of Public Law 100–418 (102 Stat. 1240) amended subsec. (e)(4) by striking "made under subsections (a) and (c) of section 203" and inserting in lieu thereof "taken under section 203"; by striking "201(b)" and inserting in lieu thereof "202(b)"; and by striking "section 201(b) of such Act" and inserting in lieu thereof "such section".

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[55] 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[56] at the time duty-free treatment is proclaimed pursuant to section 211, the President may reduce or terminate the application of such action[56] relief 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[56] 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 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[57] of the Trade Act of 1974,

(B)[57] on the day a determination by the President not to take action under section 203 of such Act not to take action becomes final,

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[55] Sec. 1401(b)(2)(E) of Public Law 100–418 (102 Stat. 1240) struck out "proclamation issued pursuant to section 203" and inserted in lieu thereof "action taken under section 203".

[56] Sec. 1401(b)(2)(E) of Public Law 100–418 (102 Stat. 1240) amended subpara. (B) by striking out "to import relief" and inserting in lieu thereof "to any such action"; by striking out "such import relief" and inserting in lieu thereof "such action"; and by striking out "subsections (h) and (i) of section 203" and inserting in lieu thereof "section 203".

[57] Sec. 1401(b)(2)(F) of Public Law 100–418 (102 Stat. 1240) struck out "proclamation of import relief pursuant to section 202(a)(1)" and inserted in lieu thereof "taking of action under section 203". Sec. 1401(b)(2)(F) further amended and restated subpara. (B).

(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;[58]

(B) fresh or chilled vegetables provided for in headings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;[59]

(C)[60] 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;

(D)[60] 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)[61] (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.

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[58] Sec. 1214(q)(2)(D) of Public Law 100–418 (102 Stat. 1159) struck out "live plants provided for in subpart A of part 6 of schedule 1 of the TSUS" and inserted in lieu thereof "live plants and fresh cut flowers provided for in chapter 6 of the HTS".

[59] Sec. 1214(q)(2)(B) of Public Law 100–418 (102 Stat. 1159) struck out "items 135.10 through 138.46 of the TSUS" and inserted in lieu thereof "headings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS".

[60] Sec. 1214(q)(2)(D) of Public Law 100–418 (102 Stat. 1159) struck out former subpara. (C) and redesignated subpara. (D) as (C).

Sec. 1214(q)(2)(D) of that Act also struck out former subpara. (E), redesignated subpara. (F) as subpara. (E), struck out "item 165.35 of the TSUS", and inserted in lieu thereof "subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS". Subsequently, sec. 9001(a)(14) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3342) redesignated subpara. (E) as subpara. (D).

[61] Sec. 212(a) of the Caribbean Basin Economic Recovery Expansion Act of 1990 (title II of Public Law 101–382; 104 Stat. 655) added subsec. (h).

(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) * * *

(b) * * *

(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 1986 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 1986) shall not be subject to the requirements of section 301 (other than toxic 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.[62] INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THIS ACT.

(a)[63] REPORTING REQUIREMENTS.—

(1) IN GENERAL.—The United States International Trade Commission (in this section referred to as the 'Commission') shall submit to Congress and the President biennial reports regarding the economic impact of this title on United States industries and consumers and on the economy of the beneficiary countries.

(2) FIRST REPORT.—The first report shall be submitted not later than September 30, 2001.

(3) TREATMENT OF PUERTO RICO, ETC.—For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States are 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, 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

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[62] 19 U.S.C. 2704.

[63] Sec. 211(d) of Public Law 106–200 (114 Stat. 287) amended and restated subsec. (a), which previously read as follows:

"(a) REPORTING REQUIREMENT.—

"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 occurring 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.".

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.[64] 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 the enactment of this Act.

SEC. 218.[65] * * * [Repealed—1990]

SEC. 219.[66] 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

[64] 19 U.S.C. 2705.

[65] 19 U.S.C. 2706. Sec. 211 of the Caribbean Basin Economic Recovery Expansion Act of 1990 (title II of Public Law 101–382; 104 Stat. 655) repealed sec. 218. It had provided the day of enactment of the bill as an effective date for the subtitle, and terminated any duty-free treatment previously extended to beneficiary countries under this subtitle, effective September 30, 1995.

[66] 19 U.S.C. 2707. Sec. 515(a) Sec. 107 of the North American Free Trade Agreement Implementation Act (Public Law 103–182; 107 Stat. 2158) added sec. 219. Sec. 515(b) of that Act further provided the following:

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized 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)).".

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;[67]

(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.

[67] Sec. 21(d)(1) of Public Law 104–295 (110 Stat. 3530) struck out a comma and inserted in lieu thereof a semicolon.

(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[68] 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" mean 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;[69]

(2) the reasons for selecting the institution or institutions as the Center;[71] 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.

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[68] Sec. 2(a) of the Dante B. Fascell North-South Center Act (Public Law 106–929; 113 Stat. 54) provided that any reference in any provision of law to the North/South Center "shall be deemed to be a reference to the 'Dante B. Fascell North-South Center'.".

[69] Sec. 21(d)(2) of Public Law 104–295 (110 Stat. 3530) struck out a comma and inserted in lieu thereof a semicolon.

SUBTITLE B—TAX PROVISIONS [70]

* * * * * * *

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.

[70] Subtitle B amended secs. 7652 and 274(h) of the Internal Revenue Code of 1986, relating to the payment of excise taxes collected on rum to Puerto Rico and the U.S. Virgin Islands, and to the treatment of Caribbean conventions, respectively.

(10) Tariff Treatment of Cuban Products [1]

Partial text of Public Law 87–456 [Tariff Classification Act of 1962; H.R. 10607], 76 Stat. 72, approved May 24, 1962

AN ACT To amend the Tariff Act of 1930 and certain related laws to provide for the restatement of the tariff classification provisions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "Tariff Classification Act of 1962".

* * * * * * *

TITLE IV—TARIFF TREATMENT OF CUBAN PRODUCTS [2]

SEC. 401. (a) Cuba is hereby declared to be a nation described in section 5 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C. 1362, relating to imports from nations and areas dominated or controlled by the foreign government or foreign organization controlling the world Communist movement). Articles which are—

(1) the growth, produce, or manufacture of Cuba, and

(2) imported on or after the date of enactment of this Act (May 24, 1962),

shall be denied the benefits of concessions contained in any trade agreement entered into under the authority of section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351).

(b) Nothing in subsection (a) shall affect the rates of duty or the customs or excise treatment of articles the growth, produce, or manufacture of any country other than Cuba.

(c) Subsection (a) shall not apply on or after the date on which the President proclaims that he has determined that Cuba is no longer dominated or controlled by the foreign government or foreign organization controlling the world Communist movement.

(d) The Act of December 17, 1903 (19 U.S.C. 124, 125), and section 316 of the Tariff Act of 1930, as amended (19 U.S.C. 1316), both relating to the implementation of the treaty with Cuba concluded on December 11, 1902, shall not apply during the period during which subsection (a) applies.

* * * * * * *

[1] See also the Cuban Democracy Act of 1992 (title XVII of Public Law 102–484; 106 Stat. 2574; 22 U.S.C. 6001 *et seq.*).

[2] 19 U.S.C. 1351 note.

(11) Implementing the United States-Canada Free-Trade Agreement Implementation Act

Executive Order 12662, December 31, 1988, 54 F.R. 785, 19 U.S.C. 2112 note

By virtue of the authority vested in me as President of the United States of America, including the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449, 102 Stat. 1851) ("FTA Implementation Act"),[1] it is hereby ordered as follows:

Section 1.[2] *Publication of Proposed Rules Regarding Technical Standards.* * * * [Superseded—1993]

Sec. 2. *Establishment of United States Secretariat.*

Pursuant to subsection 405(e) of the FTA Implementation Act, a "United States Secretariat" shall be established within the International trade Administration of the Department of Commerce. The Secretariat shall facilitate:

(1) the operation of Chapters 18 and 19 of the Free-Trade Agreement, and

(2) the work of the binational panels and extraordinary challenge committees convened under those Chapters.

Sec. 3. *Acceptance by the President of Panel and Committee Decisions.*

In accordance with subsection 401(c) of the FTA Implementation Act, in the event that the provisions of subparagraph 516A(g)(7)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. section 1516a(g)(7)(B), take effect, I accept, as a whole, all decisions of binational panels and extraordinary challenge committees.

Sec. 4. *Judicial Review.*

This Order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Sec. 5. *Effective Date.*

This Order shall take effect upon entry into force of the Free-Trade Agreement.

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[1] For text of United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449; 102 Stat. 1851), see page 987.

[2] Sec. 4 of Executive Order 12889 superceded sec. 1; see page 1057.

(12) Implementation of the North American Free Trade Agreement

Executive Order 12889, December 27, 1993, 58 F.R. 69681, 19 U.S.C. 3311 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act (Public Law 103–182; 107 Stat. 2057) (the NAFTA Implementation Act), and section 302 of title 3, United States Code, and in order to implement the North American Free Trade Agreement (NAFTA), it is hereby ordered:

Section 1. *Establishment of United States Section of the NAFTA Secretariat.* Pursuant to section 105(a) of the NAFTA Implementation Act, a United States section of the NAFTA Secretariat shall be established within the Department of Commerce and shall carry out the functions set out in that section.

Sec. 2. *Acceptance by the President of Panel and Committee Decisions.* Pursuant to subparagraph 516A(g)(7)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. 1516a(g)(7)(B), in the event that the provisions of that subparagraph take effect, I accept, as a whole, all decisions of binational panels and extraordinary challenge committees.

Sec. 3. *Implementation of Safeguard Provisions for Textile and Apparel Goods.* Pursuant to section 201 of the NAFTA Implementation Act, the Committee for the Implementation of Textile Agreements (the Committee) shall take such action as necessary to implement the bilateral safeguard provisions (tariff actions) set out in section 4 of Annex 300–B of the NAFTA. The United States Customs Service shall take such actions to carry out those safeguard provisions as directed by the Secretary of the Treasury, upon the advice and recommendation of the Chairman of the Committee.

Sec. 4. *Publication of Proposed Rules Regarding Technical Regulations and Sanitary and Phytosanitary Measures.* (a) In accordance with Articles 718 and 909 of the NAFTA, each agency subject to the provisions of the Administrative Procedures Act, as amended (5 U.S.C. 551 *et seq.*), shall, in applying section 553 of title 5, United States Code, with respect to any proposed Federal technical regulation or any Federal sanitary or phytosanitary measure of general application, other than a regulation issued pursuant to section 104(a) of the NAFTA Implementation Act, publish or serve notice of such regulation or measure not less than 75 days before the comment due date, except:

(1) in the case of a technical regulation relating to perishable goods, in which case the agency shall, to the greatest extent practicable, publish or serve notice at least 30 days prior to adoption of such regulation;

(2) in the case of a technical regulation, where the United States considers it necessary to address an urgent problem relating to safety or to protection of human, animal or plant life or health, the environment or consumers; or

(3) in the case of a sanitary or phytosanitary measure, where the United States considers it necessary to address an urgent problem relating to sanitary or phytosanitary protection.

(b) For purposes of this section, the term "sanitary or phytosanitary measure" shall be defined in accordance with section 463 of the Trade Agreements Act of 1979, and "technical regulation" shall be defined in accordance with section 473 of the Trade Agreements Act of 1979.

(c) This section supersedes section 1 of Executive Order No. 12662 of December 31, 1988.

Sec. 5. *Government Procurement Procedures.* (a) Waiver.

(1) With respect to eligible products (as defined in section 381(c) of the NAFTA Implementation Act) of Canada and Mexico, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Federal Government procurement that would, if applied to such products or suppliers, result in treatment less favorable than the most favorable treatment accorded:

(A) to United States products and services and suppliers of such products and services; or

(B) to eligible products of either Mexico or Canada, shall be waived.

(2) This waiver shall be applied by all executive agencies listed in Annexes 1 and 2 of this Executive order in consultation with, and when deemed necessary at the direction of, the United States Trade Representative (Trade Representative).

(b) The Secretary of Defense, or his designee, in consultation with the Trade Representative, shall be responsible for determinations under Article 1018(1), pursuant to Annex 1001.1b–1(A)(4), of the NAFTA. The Secretary of Defense, or his designee, and the Trade Representative shall establish procedures for this purpose.

(c) The executive agencies listed in Annex 2 are directed to procure eligible products in compliance with the procedural provisions of Chapter 10 of the NAFTA.

(d) The Trade Representative shall be responsible for calculating and adjusting the threshold as required by Article 1001(1)(c) of the NAFTA.

(e) This order shall apply only to solicitations issued on or after the date of entry into force of the NAFTA for the United States.

(f) Although regulatory implementation of this order must await revisions to the Federal Acquisitions Regulations (FAR), it is expected that agencies listed in Annexes 1 and 2 of this order will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

(g) Pursuant to section 25 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 421(a)), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 30 days from the date this order is issued.

Sec. 6. *Government Use of Patented Technology.* (a) Each agency shall, within 30 days from the date this order is issued, modify or

adopt procedures to ensure compliance with Article 1709(10) of the NAFTA regarding notice when patented technology is used by or for the Federal Government without a license from the owner, except that the requirement of Article 1709(10)(b) regarding reasonable efforts to obtain advance authorization from the patent owner:

(1) is hereby waived for an invention used or manufactured by or for the Federal Government, except that the patent owner must be notified whenever the agency or its contractor, without making a patent search, knows or has demonstrable reasonable grounds to know that an invention described in and covered by a valid United States patent is or will be used or manufactured without a license; and

(2) is waived whenever a national emergency or other circumstances of extreme urgency exists, except that the patent owner must be notified as soon as it is reasonably practicable to do so.

(b) Agencies shall treat the term "remuneration" as used in Articles 1709(10)(h) and (j) and 1715 of the NAFTA as equivalent to "reasonable and entire compensation" as used in section 1498 of title 28, United States Code.

(c) In addition to the general provisions of section 7 of this order regarding enforceable rights, nothing in this order is intended to suggest that the giving of notice to a patent owner under Article 1709(10) of the NAFTA constitutes an admission that the Federal Government has infringed a valid privately-owned patent.

Sec. 7. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Sec. 8. *Effective Date.* This order shall take effect upon the date of entry into force of the NAFTA for the United States.

Annex 1

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
United States Agency for International Development
General Services Administration
National Aeronautics and Space Administration
Department of Veterans Affairs
Environmental Protection Agency
United States Information Agency
National Science Foundation
Panama Canal Commission

Executive Office of the President
Farm Credit Administration
National Credit Union Administration
Merit Systems Protection Board
ACTION Agency
United States Arms Control and Disarmament Agency
Office of Thrift Supervision
Federal Housing Finance Board
National Labor Relations Board
National Mediation Board
Railroad Retirement Board
American Battle Monuments Commission
Federal Communications Commission
Federal Trade Commission
Interstate Commerce Commission
Securities and Exchange Commission
Office of Personnel Management
United States International Trade Commission
Export-Import Bank of the United States
Federal Mediation and Conciliation Service
Selective Service System
Smithsonian Institution
Federal Deposit Insurance Corporation
Consumer Product Safety Commission
Equal Employment Opportunity Commission
Federal Maritime Commission
National Transportation Safety Board
Nuclear Regulatory Commission
Overseas Private Investment Corporation
Administrative Conference of the United States
Board for International Broadcasting
Commission on Civil Rights
Commodity Futures Trading Commission
Peace Corps
National Archives and Records Administration

Annex 2

The Power Marketing Administrations of the Department of Energy
Tennessee Valley Authority
St. Lawrence Seaway Development Corporation

(13) Federal Implementation of the North American Agreement on Environmental Cooperation

Executive Order 12915, May 13, 1994, 59 F.R. 25775, 19 U.S.C. 3472 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act, Public Law 103–182; 107 Stat. 2057 ("NAFTA Implementation Act"), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* (a) The North American Agreement on Environmental Cooperation ("Environmental Cooperation Agreement") shall be implemented consistent with United States policy for the protection of human, animal or plant life or health, and the environment. The Environmental Cooperation Agreement shall also be implemented to advance sustainable development, pollution prevention, environmental justice, ecosystem protection, and biodiversity preservation and in a manner that promotes transparency and public participation in accordance with the North American Free Trade Agreement ("NAFTA") and the Environmental Cooperation Agreement.

(b) Effective implementation of the Environmental Cooperation Agreement is essential to the realization of the environmental objectives of NAFTA and the NAFTA Implementation Act and promotes cooperation on trade and environmental issues between the United States, Canada, and Mexico.

Sec. 2. *Implementation of the Environmental Cooperation Agreement.*

(a) *Policy Priorities.* In accordance with Article 10(2) of the Environmental Cooperation Agreement, it is the policy of the United States to promote consideration of, with a view towards developing recommendations and reaching agreement on, the following priorities within the Council of the Commission for Environmental Cooperation ("Council"):

(1) pursuant to Article 10(2)(m), the environmental impact of goods throughout their life cycles, including the environmental effects of processes and production methods and the internalization of environmental costs associated with products from raw material to disposal;

(2) pursuant to Articles 10(2)(b), (g), (i), (j), and (k), pollution prevention techniques and strategies, transboundary and border environmental issues, the conservation and protection of wild flora and fauna (including endangered species), their habitats and specially protected natural areas, and environmental emergency preparedness and response activities;

(3) pursuant to Articles 10(3) and 10(4), implementation of Environmental Cooperation Agreement provisions and the exchange of information among the United States, Canada, and

Mexico concerning the development, continuing improvement, and effective enforcement of, and compliance with, environmental laws, policies, incentives, regulations, and other applicable standards;

(4) pursuant to Article 10(5)(a), public access to environmental information held by public authorities of each party to the Environmental Cooperation Agreement, including information on hazardous materials and activities in its communities, and the opportunity to participate in decision-making processes related to such public access;

(5) pursuant to Article 10(2)(1), environmental matters as they relate to sustainable development; and

(6) other priorities as appropriate or necessary.

(b) *United States Representation on the Council.* The Administrator of the Environmental Protection Agency ("EPA") shall be the representative of the United States on the Council. The policies and positions of the United States in the Council shall be coordinated through applicable interagency procedures.

(c) *Environmental Effects of the NAFTA.* Pursuant to Article 10(6)(d) of the Environmental Cooperation Agreement, the Administrator of the EPA shall work actively within the Council to consider on an ongoing basis the environmental effects of the NAFTA and review progress toward the objectives of the Environmental Cooperation Agreement.

(d) *Transparency and Public Participation.* The United States, as appropriate, shall endeavor to ensure the transparency and openness of, and opportunities for the public to participate in, activities under the Environmental Cooperation Agreement.

(1) To the greatest extent practicable, pursuant to Articles 15(1) and 15(2), where the Secretariat of the Commission for Environmental Cooperation ("Secretariat") informs the Council that a factual record is warranted, the United States shall support the preparation of such factual record.

(2) To the greatest extent practicable, the United States shall support public disclosure of all nonconfidential and nonproprietary elements of reports, factual records, decisions, recommendations, and other information gathered or prepared by the Commission for Environmental Cooperation ("Commission"). Where requested information is not made available, the United States shall endeavor to have the Commission state in writing to the public its reasons for denial of the request.

(3) The United States shall provide public notice of the opportunity to apply for inclusion on a roster of qualified individuals available to serve on arbitral panels under the Environmental Cooperation Agreement.

(4) The United States shall seek to ensure that the Model Rules of Procedure for dispute settlement established pursuant to Articles 28(1) and 28(2) of the Environmental Cooperation Agreement provide for the preparation of public versions of written submissions and arbitral reports not otherwise made publicly available, and for public access to arbitral hearings.

(5) Consistent with the Environmental Cooperation Agreement, the EPA Administrator shall develop procedures to inform the public of arbitral proceedings and Commission activities under the Environmental Cooperation Agreement, and to provide appropriate mechanisms for receiving public comment with respect to such arbitral proceedings and Commission activities involving the United States.

(6) As a disputing party, the United States shall seek to ensure, pursuant to Article 30 of the Environmental Cooperation Agreement, that the arbitral panels consult with appropriate experts for information and technical advice.

(e) *Consultation with States.* (1) Pursuant to Article 18 of the Environmental Cooperation Agreement, the EPA Administrator shall establish a governmental committee to furnish advice regarding implementation and further elaboration of the Agreement. Through this committee, or through other means as appropriate, the EPA Administrator and other relevant Federal agencies shall:

(A) inform States on a continuing basis of matters under the Environmental Cooperation Agreement that directly relate to, or will potentially have a direct impact on, the States, including: (i) dispute settlement proceedings and other matters involving enforcement by the States of environmental laws; and (ii) implementation of the Environmental Cooperation Agreement, including Council, committee, and working group activities, in any area in which the States exercise concurrent or exclusive legislative, regulatory, or enforcement authority;

(B) provide the States with an opportunity to submit information and advice with respect to the matters identified in section 2(e)(1)(A) of this order; and

(C) involve the States to the greatest extent practicable at each stage of the development of United States positions regarding matters identified in section 2(e)(1)(A) if this order that will be addressed by the Council, committees, subcommittees, or working groups established under the Environmental Cooperation Agreement, or through dispute settlement processes prescribed under the Environmental Cooperation Agreement (including involvement through the inclusion of appropriate representatives of the States).

(2) When formulating positions regarding matters identified in section 2(e)(1)(A) of this order, the United States shall take into account the information and advice received from the States.

(3) The United States, where appropriate, shall include representatives of interested States as Members of the United States delegations to the Council and other Commission bodies, including arbitral panels.

Sec. 3. *National Advisory Committee.* The EPA Administrator shall utilize a National Advisory Committee as provided under Article 17 of the Environmental Cooperation Agreement.

Sec. 4. *United States Contributions to the Commission for Environmental Cooperation.* In accordance with section 532(a)(2) of the NAFTA Implementation Act, the EPA is designated as the agency authorized to make the contributions of the United states from funds available for such contributions to the annual budget of the Commission for Environmental Cooperation.

Sec. 5. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(14) Implementation of the Border Environment Cooperation Commission and the North American Development Bank

Executive Order 12916, May 13, 1994, 59 F.R. 25779, 19 U.S.C. 3473 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act, Public Law 103–182; 107 Stat. 2057 ("NAFTA Implementation Act"), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. The 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 ("Agreement") shall be implemented consistent with the United States policy for the protection of human, animal or plant life or health, and the environment. The Agreement shall also be implemented to advance sustainable development, pollution prevention, environmental justice, ecosystem protection, and biodiversity preservation and in a manner that promotes transparency and public participation in accordance with the North American Free Trade Agreement and the Agreement.

Sec. 2. (a) The Administrator of the Environmental Protection Agency and the United States Commission, International Boundary and Water Commission, United States and Mexico ("Commissioner"), shall represent the United States as Members of the Board of Directors of the Border Environment Cooperation Commission in accordance with the Agreement.

(b) The policies and positions of the United States in the Border Environment Cooperation Commission shall be coordinated through applicable interagency procedures, which shall include participation by the Department of State, the Department of the Treasury, the Department of Housing and Urban Development, the Department of the Interior, the Agency for International Development, the Environmental Protection Agency, and, as appropriate, other Federal agencies.

(c) The Commission shall promote cooperation, as appropriate, between the International Boundary and Water Commission and the Border Environment Cooperation Commission in planning, developing, carrying out border sanitation, and other environmental activities.

Sec. 3. (a) The United States Government representatives to the Board of the North American Development Bank shall be the Secretary of the Treasury, the Secretary of State, and the Administrator of the Environmental Protection Agency.

(b) For purposes of loans or guarantees for projects certified by the Border Environment Cooperation Commission, the representatives shall be instructed in accordance with the procedures of the National Advisory Council on International Monetary and Financial Policies ("Council") as established by Executive Order No. 11269. For purposes of this section only, the membership of the Council shall be expanded to include the Secretary of the Department of Housing and Urban Development, the Secretary of the Interior, and the Administrator of the Environmental Protection Agency.

(c) For purposes of loans or guarantees for projects certified by the Border Environment Cooperation Commission, the representatives shall consult with the Community Adjustment and Investment Program Advisory Committee ("Advisory Committee"), established pursuant to section 543(b) of the NAFTA Implementation Act concerning community adjustment and investment aspects of such loans or guarantees.

(d) For purposes of loans, guarantees, or grants endorsed by the United States for community adjustment and investment, the representatives shall be instructed by the Secretary of the Treasury in accordance with procedures established by the Community Adjustment and Investment Program Finance Committee established pursuant to section 7 of this order.

Sec. 4. The functions vested in the President by section 543(a)(1) of the NAFTA Implementation Act are delegated to the Secretary of the Treasury.

Sec. 5. The functions vested in the President by section 543(a)(2) and (3) of the NAFTA Implementation Act are delegated to the Secretary of the Treasury, who shall exercise such functions in accordance with the recommendations of the Community Adjustment and Investment Program Finance Committee established pursuant to section 7 of this order.

Sec. 6. The functions vested in the President by section 543(a)(5) and section 543(d) of the NAFTA Implementation Act are delegated to the Community Adjustment and Investment Program Finance Committee established pursuant to section 7 of this order, which shall exercise such functions in consultation with the Advisory Committee.

Sec. 7. (a) There is hereby established a Community Adjustment and Investment Program Finance Committee ("Finance Committee").

(b) The Finance Committee shall be composed of representatives from the Department of the Treasury, the Department of Agriculture, the Department of Housing and Urban Development, the Small Business Administration, and any other Federal agencies selected by the Chair of the Finance Committee to assist in carrying out the community adjustment and investment program pursuant to section 543(a)(3) of the NAFTA Implementation Act.

(c) The Department of the Treasury representative shall serve as Chair of the Finance Committee. The Chair shall be responsible for presiding over the meetings of the Finance Committee, ensuring that the views of all other Members are taken into account, coordinating with other appropriate United States Government agencies

in carrying out the community adjustment and investment program, and requesting meetings of the Advisory Committee pursuant to section 543(b)(4)(C) of the NAFTA Implementation Act.

Sec. 8. Any advice or conclusions of reviews provided to the President by the Advisory Committee pursuant to section 543(b)(3) of the NAFTA Implementation Act shall be provided through the Finance Committee.

Sec. 9. Any summaries of public comments or conclusions of investigations and audits provided to the President by the ombudsman pursuant to section 543(c)(1) of the NAFTA Implementation Act shall be provided through the Finance Committee.

Sec. 10. The authority of the President under section 6 of Public Law 102–532; 7 U.S.C. 5404, to establish an advisory board to be known as the Good Neighbor Environmental Board is delegated to the Administrator of the Environmental Protection Agency.

Sec. 11. This order is intended only to improve the internal management of the Executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(15) Interagency Task Force on the Economic Development of the Southwest Border

Executive Order 13122, May 25, 1999, 64 F.R. 29201, 42 U.S.C. 3121 note; as amended by Executive Order 13284, January 23, 2003, 68 F.R. 4075

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide a more rapid and integrated Federal response to the economic development challenges of the Southwest Border region, it is hereby ordered as follows:

Section 1. *Establishment of an Interagency Task Force on the Economic Development of the Southwest Border.* (a) There is established the "Interagency Task Force on the Economic Development of the Southwest Border" (Task Force) that reports to the Vice President, as Chair of the President's Community Empowerment Board (PCEB), and to the Assistant to the President for Economic Policy, as Vice Chair of the PCEB.

(b) The Task Force shall comprise the Secretary of State, Secretary of Agriculture, Secretary of Commerce, Secretary of Defense, the Attorney General, Secretary of the Interior, Secretary of Education, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Energy, Secretary of Labor, Secretary of Transportation, Secretary of the Treasury, Secretary of Homeland Security,[1] Director of the Office of Management and Budget, Director of National Drug Control Policy, Administrator of General Services, Administrator of the Small Business Administration, Administrator of the Environmental Protection Agency, or their designees, and such other senior executive branch officials as may be determined by the Co-Chairs of the Task Force. The Secretaries of the Treasury, Agriculture, and Labor shall Co-Chair the Task Force, rotating annually. The agency chairing the Task Force will provide administrative support for the Task Force.

(c) The purpose of the Task Force is to coordinate and better leverage existing Administration efforts for the Southwest Border, in concert with locally led efforts, in order to increase the living standards and the overall economic profile of the Southwest Border so that it may achieve the average of the Nation. Specifically, the Task Force shall:

(1) analyze the existing programs and policies of Task Force members that relate to the Southwest Border to determine what changes, modifications, and innovations should be considered;

(2) consider statistical and data analysis, research, and policy studies related to the Southwest Border;

(3) develop and recommend short-term and long-term options for promoting sustainable economic development;

[1] Sec. 6 of Executive Order 13284 (68 F.R. 4075) inserted "Secretary of Homeland Security,".

(4) consult and coordinate activities with State, tribal, and local governments, community leaders, Members of Congress, the private sector, and other interested parties, paying particular attention to maintaining existing authorities of the States, tribes, and local governments, and preserving their existing working relationships with other agencies, organizations, or individuals;

(5) coordinate and collaborate on research and demonstration priorities of Task Force member agencies related to the Southwest Border;

(6) integrate Administration initiatives and programs into the design of sustainable economic development actions for the Southwest Border; and

(7) focus initial efforts on pilot communities for implementing a coordinated and expedited Federal response to local economic development and other needs.

(d) The Task Force shall issue an interim report to the Vice President by November 15, 1999. The Task Force shall issue its first annual report to the Vice President by April 15, 2000, with subsequent reports to follow yearly and a final report on April 15, 2002. The reports shall describe the actions taken by, and progress of, each member of the Task Force in carrying out this order. The Task Force shall terminate 30 days after submitting its final report unless a Task Force consensus recommends continuation of activities.

Sec. 2. *Specific Activities by Task Force Members and Other Agencies.* The agencies represented on the Task Force shall work together and report their actions and progress in carrying out this order to the Task Force Chair 1 month before the reports are due to the Vice President under section 1(d) of this order.

Sec. 3. *Cooperation.* All efforts taken by agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation with organizations that represent the Southwest Border and with State and local governments.

Sec. 4. (a) "Agency" means an executive agency as defined in 5 U.S.C. 105.

(b) The "Southwest Border" or "Southwest Border region" is defined as including the areas up to 150 miles north of the United States-Mexican border in the States of Arizona, New Mexico, Texas, and California.

Sec. 5. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

(16) Implementation of Article VIII of the Agreement Establishing the World Trade Organization

Executive Order 13042, April 9, 1997, 62 F.R. 18017, 19 U.S.C. 3511 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 101(b) of the Uruguay Round Agreements Act (Public Law 103–465) and section 1 of the International Organizations Immunities Act (22 U.S.C. 288), I hereby implement for the United States the provisions of Article VIII of the Agreements Establishing the World Trade Organization.

Section 1. The provisions of the Convention on the Privileges and Immunities of the Specialized Agencies (U.N. General Assembly Resolution 179 (II) of November 21, 1947, 33 U.N.T.S. 261) shall apply to the World Trade Organization, its officials, and the Representatives of its members, provided: (1) sections 19(b) and 15, regarding immunity from taxation, and sections 13(d) and section 20, regarding immunity from national service obligations, shall not apply to U.S. nationals and aliens admitted for permanent residence; (2) with respect to section 13(d) and section 19(c), regarding exemption from immigration restrictions and alien registration requirements, World Trade Organization officials and representatives of its members shall be entitled to the same, and no greater, privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees of foreign governments, and members of their families; (3) with respect to section 9(a) regarding exemption from taxation, such exemption shall not extend to taxes levied on real property, or that portion of real property, which is not used for the purposes of the World Trade Organization. The leasing or renting by the World Trade Organization of its property to another entity or person to generate revenue shall not be considered a use for the purposes of the World Trade Organization. Whether property or portions thereof are used for the purposes of the World Trade Organization shall be determined within the sole discretion of the Secretary of State or the Secretary's designee; (4) with respect to section 25(2)(II) regarding approval of orders to leave the United States, "Foreign Minister" shall mean the Secretary of State or the Secretary's designee.

Sec. 2. In addition and without impairment to the protections extended above, having found that the World Trade Organization is a public international organization in which the United States participates within the meaning of the International Organizations Immunities Act, I hereby designate the World Trade Organization as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by that Act, except that section 6 of that Act, providing exemption from property tax imposed by, or under the authority of, any Act of Congress, shall not extend to taxes levied on property, or that portion of property,

that is not used for the purposes of the World Trade Organization. The leasing or renting by the World Trade Organization of its property to another entity or person to generate revenue shall not be considered a use for the purposes of the World Trade Organization. Whether property or portions thereof are used for the purposes of the World Trade Organization shall be determined within the sole discretion of the Secretary of State or the Secretary's designee. This designation is not intended to abridge in any respect privileges, exemptions, or immunities that the World Trade Organization otherwise enjoys or may acquire by international agreements or by congressional action.

(17) Implementation of the African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act

Executive Order 13191, January 17, 2001, 66 F.R. 7271, 19 U.S.C. 2703 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the African Growth and Opportunity Act (Title I of Public Law 106-200) (AGOA), the United States-Caribbean Basin Trade Partnership Act (Title II of Public Law 106-200) (CBTPA), the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.), and section 301 of title 3, United States Code, and in order to expand international trade and enhance our economic partnership with sub-Saharan Africa and the Caribbean Basin, promote investment and economic development and reduce poverty in those regions, and create new economic opportunities for American workers and businesses, it is hereby ordered as follows:

PART I—IMPLEMENTATION OF THE AGOA [1]

* * * * * * *

PART II—IMPLEMENTATION OF THE CBTPA

Sec. 6. *Apparel Articles Assembled from Fabrics or Yarn Not Available in Commercial Quantities.* The Committee is authorized to exercise the authority vested in the President under section 213(b)(2)(A)(v)(II)(aa) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v)(II)(aa)), as added by section 211(a) of the CBTPA, to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The Committee and the USTR are jointly authorized to exercise the authority vested in the President under sections 213(b)(2)(A)(v)(II)(bb), (cc), and (ee) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v)(II)(bb), (cc), and (ee)), as added by section 211(a) of the CBTPA, to obtain advice from the appropriate advisory committee, to submit a report to the appropriate Congressional committees, and to consult with those Congressional committees. The USTR is authorized to exercise the authority vested in the President under section 213(b)(2)(A)(v)(II)(bb) of the CBERA to obtain advice from the USITC.

Sec. 7. *Certain Interlinings.* The Committee is authorized to exercise the authority vested in the President under section 213(b)(2)(A)(vii)(II)(cc) of the CBERA (19 U.S.C. 2703(b)(2)(A)(vii)(II)(cc)), as added by section 211(a) of the CBTPA,

[1] Part I, regarding the implementation of the African Growth and Opportunity Act (AGOA), can be found on page 1105.

to determine whether U.S. manufacturers are producing interlinings in the United States in commercial quantities. The Committee shall establish procedures to ensure appropriate public participation in any such ceterminatio. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the Federal Register. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 8. *Handloomed, Handmade, and Folklore Articles.* The Committee, after consultation with the Commissioner, is authorized to exercise the authority vested in the President under section 213(b)(2)(C) of the CBERA (19 U.S.C. 2703(b)(2)(C)), as added by section 211(a) of the CBTPA, to consult with representatives of CBTPA beneficiary countries for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, hand made, or folklore goods within the meaning of that section. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 9. *Penalties for Transshipments.* The Committee, after consultation with the Commissioner, is authorized to exercise the authority vested in the President under section 213(b)(2)(D) of the CBERA (19 U.S.C. 2703(b)(2)(D)), as added by section 211(a) of the CBTPA, to determine, based on sufficient evidence, whether an exporter has engaged in transshipment and, if transshipment has occurred, to deny all benefits under the CBTPA to any such exporter, and any successor of such exporter, for a period of 2 years; to request that any CBTPA beneficiary country through whose territory transshipment has occurred take all necessary and appropriate actions to prevent such transshipment; and to impose the penalty provided in section 213(b)(2)(D)(ii) of the CBERA on a CBTPA beneficiary country if the Committee determines that such country is not taking such actions. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the Federal Register. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 10. *Bilateral Emergency Tariff Actions.* The Committee is authorized to exercise the authority vested in the President under section 213(b)(2)(E) of the CBERA (19 U.S.C. 2703(b)(2)(E)), as added by section 211(a) of the CBTPA, to take bilateral emergency tariff actions, if the Committee determines that the conditions provided in section 213(b)(2)(E) of the CBERA are satisfied. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the Federal Register. The Commissioner shall take such actions to carry out any such bilateral emergency tariff action as directed by the Committee.

PART III—GENERAL PROVISIONS

Sec. 11. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law or equity by

a party against the United States, its agencies, its officers, or any person.

c. Implementation of Agreement With the European Community on Government Procurement

Executive Order 12849 of May 25, 1993, 58 F.R. 30931, 19 U.S.C. 2511 note

Whereas, the United States and the European Community (EC) have entered into a Memorandum of Understanding on Government Procurement (Agreement) that provides appropriate reciprocal competitive government procurement opportunities;

Whereas, the commitments made in the Agreement are intended to become part of an expanded General Agreement on Tariffs and trade Agreement on Government Procurement (GATT Code) and are an important step toward an expanded GATT Code;

Whereas, as a result of these commitments, U.S. businesses will obtain increased access to EC member state procurement for U.S. goods and services;

Whereas, I have determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act, as amended (41 U.S.C. 10a–10d), to procurement covered by the Agreement;

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518), and in order to implement the agreement, it is hereby ordered as follows:

Section 1. In applying the provisions of the Buy American Act, the heads of the agencies listed in Annex 1, Parts A and B, of this order are requested, as of the date of this order, to apply no price differential between articles, materials, or supplies of U.S. origin and those originating in the member states of the EC.

Sec. 2. For purposes of this order, the rule of origin specified in section 308 of the trade Agreements Act of 1979, as amended (19 U.S.C. 2518), shall apply in determining whether goods originate in the member states of the EC.

Sec. 3. This order shall apply only to solicitations, issued by agencies listed in Annex 1, Parts A and B, of this order, above the threshold amounts set for in Annex 2.

Sec. 4. This order shall apply to solicitations outstanding on the date of this order, except for those for which the initial deadline for receipt of bids or proposals has passed, and to all solicitations issued after the date of this order.

Sec. 5. Except for procurements by the Department of Defense, the United States Trade Representative (USTR) shall be responsible for interpretation of the Agreement. The USTR shall seek the advice of the interagency organization established under section 242(a) of the trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and

consult with affected agencies, including the Office of Federal Procurement Policy.

Sec. 6. This Executive order is effective immediately. although regulatory implementation of this order must await revisions to the Federal Acquisition Regulation (FAR), it is expected that agencies listed in annex 1, Parts A and B, of this order will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

Sec. 7. Pursuant to section 25 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 421(a)), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 30 days from the date this order is issued.

Annex 1A

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
(Not including national security procurement made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act; and oil purchases related to the Strategic Petroleum reserve)
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
(The national security consideration currently applicable to the Department of Defense under the GATT Government Procurement Code is equally applicable under this Agreement to the Coast Guard)
Department of the Treasury
United States Agency for International Development
General Services Administration (other than Federal Supply Groups 51 and 52 and Federal Supply Class 7340)
National Aeronautics and Space Administration
Department of Veterans Affairs
Environmental Protection Agency
United States Information Agency
National Science Foundation
Panama Canal Commission
Executive Office of the President
Farm Credit Administration
National Credit Union Administration
Merit Systems Protection Board
ACTION Agency
United States Arms Control and Disarmament Agency
Office of Thrift Supervision
Federal Housing Finance Board

National Labor Relations Board
National Mediation Board
Railroad Retirement Board
American Battle Monuments Commission
Federal Communications Commission
Federal Trade Commission
Interstate Commerce Commission
Securities and Exchange Commission
Office of Personnel Management
United States International Trade Commission
Export-Import Bank of the United States
Federal Mediation and Conciliation Service
Selective Service System
Smithsonian Institution
Federal Deposit Insurance Corporation
Consumer Product Safety Commission
Equal Employment Opportunity Commission
Federal Maritime Commission
National Transportation Safety Board
Nuclear Regulatory Commission
Overseas Private Investment Corporation
Administrative Conference of the United States
Board for International Broadcasting
Commission on Civil Rights
Commodity Futures Trading Commission
The Peace Corps
National Archives and Records Administration

Annex 1B

The Power Marketing Administration of the Department of Energy
Tennessee Valley Authority

Annex 2

Thresholds Applicable to Agencies listed in Annex 1A
Goods contracts—130,000 SDRs (currently $176,000)
Construction contracts—$6,500,000
Thresholds Applicable to Agencies listed in Annex 1B
Goods contracts—$450,000
Construction contracts—$6,500,000
United States

d. U.S. Trade With Africa

(1) African Growth and Opportunity Act

Partial text of Public Law 106–200 [H.R. 434], 114 Stat. 251, approved May 18, 2000; as amended by Public Law 107–210 [Trade Act of 2002; H.R. 3009], 116 Stat. 933, approved August 6, 2002; Public Law 108–274 [AGOA Acceleration Act of 2004; H.R. 4103], 118 Stat. 820, approved July 13, 2004; and Public Law 108–429 [Miscellaneous Trade and Technical Corrections Act of 2004; H.R. 1047], 118 Stat. 2434, approved December 3, 2004

AN ACT To authorize a new trade and investment policy for sub-Saharan Africa, expand trade benefits to the countries in the Caribbean Basin, renew the generalized system of preferences, and reauthorize the trade adjustment assistance programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE I—EXTENSION OF CERTAIN TRADE BENEFITS TO SUB-SAHARAN AFRICA

SUBTITLE A—TRADE POLICY FOR SUB-SAHARAN AFRICA

SEC. 101.[1] SHORT TITLE.

This title may be cited as the "African Growth and Opportunity Act".

SEC. 102.[2] FINDINGS.

Congress finds that—

(1) it is in the mutual interest of the United States and the countries of sub-Saharan Africa to promote stable and sustainable economic growth and development in sub-Saharan Africa;

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

(3) sub-Saharan Africa represents a region of enormous economic potential and of enduring political significance to the United States;

(4) the region has experienced the strengthening of democracy as countries in sub-Saharan Africa have taken steps to encourage broader participation in the political process;

(5) certain countries in sub-Saharan Africa have increased their economic growth rates, taken significant steps towards liberalizing their economies, and made progress toward regional economic integration that can have positive benefits for the region;

(6) despite those gains, the per capita income in sub-Saharan Africa averages approximately $500 annually;

[1] 19 U.S.C. 3701 note.
[2] 19 U.S.C. 3701.

(7) trade and investment, as the American experience has shown, can represent powerful tools both for economic development and for encouraging broader participation in a political process in which political freedom can flourish;

(8) increased trade and investment flows have the greatest impact in an economic environment in which trading partners eliminate barriers to trade and capital flows and encourage the development of a vibrant private sector that offers individual African citizens the freedom to expand their economic opportunities and provide for their families;

(9) offering the countries of sub-Saharan Africa enhanced trade preferences will encourage both higher levels of trade and direct investment in support of the positive economic and political developments under way throughout the region; and

(10) encouraging the reciprocal reduction of trade and investment barriers in Africa will enhance the benefits of trade and investment for the region as well as enhance commercial and political ties between the United States and sub-Saharan Africa.

SEC. 103.[3] STATEMENT OF POLICY.

Congress supports—

(1) encouraging increased trade and investment between the United States and sub-Saharan Africa;

(2) reducing tariff and nontariff barriers and other obstacles to sub-Saharan African and United States trade;

(3) expanding United States assistance to sub-Saharan Africa's regional integration efforts;

(4) negotiating reciprocal and mutually beneficial trade agreements, including the possibility of establishing free trade areas that serve the interests of both the United States and the countries of sub-Saharan Africa;

(5) focusing on countries committed to the rule of law, economic reform, and the eradication of poverty;

(6) strengthening and expanding the private sector in sub-Saharan Africa, especially enterprises owned by women and small businesses;

(7) facilitating the development of civil societies and political freedom in sub-Saharan Africa;

(8) establishing a United States-Sub-Saharan Africa Trade and Economic Cooperation Forum; and

(9) the accession of the countries in sub-Saharan Africa to the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

SEC. 104.[4] ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—The President is authorized to designate a sub-Saharan African country as an eligible sub-Saharan African country if the President determines that the country—

(1) has established, or is making continual progress toward establishing—

[3] 19 U.S.C. 3702.
[4] 19 U.S.C. 3703.

(A) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;

(B) the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;

(C) the elimination of barriers to United States trade and investment, including by—

(i) the provision of national treatment and measures to create an environment conducive to domestic and foreign investment;

(ii) the protection of intellectual property; and

(iii) the resolution of bilateral trade and investment disputes;

(D) economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through micro-credit or other programs;

(E) a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and

(F) protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(2) does not engage in activities that undermine United States national security or foreign policy interests; and

(3) does not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

(b) CONTINUING COMPLIANCE.—If the President determines that an eligible sub-Saharan African country is not making continual progress in meeting the requirements described in subsection (a)(1), the President shall terminate the designation of the country made pursuant to subsection (a).

SEC. 105.[5] UNITED STATES-SUB-SAHARAN AFRICA TRADE AND ECONOMIC COOPERATION FORUM.

(a) DECLARATION OF POLICY.—The President shall convene annual high-level meetings between appropriate officials of the United States Government and officials of the governments of sub-Saharan African countries in order to foster close economic ties between the United States and sub-Saharan Africa.

[5] 19 U.S.C. 3704.

(b) ESTABLISHMENT.—Not later than 12 months after the date of the enactment of this Act, the President, after consulting with Congress and the governments concerned, shall establish a United States-Sub-Saharan Africa Trade and Economic Cooperation Forum (in this section referred to as the "Forum").

(c) REQUIREMENTS.—In creating the Forum, the President shall meet the following requirements:

(1) The President shall direct the Secretary of Commerce, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative to host the first annual meeting with their counterparts from the governments of sub-Saharan African countries eligible under section 104, and those sub-Saharan African countries that the President determines are taking substantial positive steps towards meeting the eligibility requirements in section 104. The purpose of the meeting shall be to discuss expanding trade and investment relations between the United States and sub-Saharan Africa and the implementation of this title including encouraging joint ventures between small and large businesses. The President shall also direct the Secretaries and the United States Trade Representative to invite to the meeting representatives from appropriate sub-Saharan African regional organizations and government officials from other appropriate countries in sub-Saharan Africa.

(2)(A) The President, in consultation with the Congress, shall encourage United States nongovernmental organizations to host annual meetings with nongovernmental organizations from sub-Saharan Africa in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).

(B) The President, in consultation with the Congress, shall encourage United States representatives of the private sector to host annual meetings with representatives of the private sector from sub-Saharan Africa in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).

(3) The President shall, to the extent practicable, meet with the heads of governments of sub-Saharan African countries eligible under section 104, and those sub-Saharan African countries that the President determines are taking substantial positive steps toward meeting the eligibility requirements in section 104, not less than once every 2 years for the purpose of discussing the issues described in paragraph (1). The first such meeting should take place not later than 12 months after the date of the enactment of this Act.

(d) DISSEMINATION OF INFORMATION BY USIS.—In order to assist in carrying out the purposes of the Forum, the United States Information Service shall disseminate regularly, through multiple media, economic information in support of the free market economic reforms described in this title.

(e) HIV/AIDS EFFECT ON THE SUB-SAHARAN AFRICAN WORKFORCE.—In selecting issues of common interest to the United States-Sub-Saharan Africa Trade and Economic Cooperation Forum, the President shall instruct the United States delegates to

the Forum to promote a review by the Forum of the HIV/AIDS epidemic in each sub-Saharan African country and the effect of the HIV/AIDS epidemic on economic development in each country.

SEC. 106.[6] REPORTING REQUIREMENT.

The President shall submit to the Congress, not later than 1 year after the date of the enactment of this Act, and annually thereafter through 2008, a comprehensive report on the trade and investment policy of the United States for sub-Saharan Africa, and on the implementation of this title and the amendments made by this title.

SEC. 107.[7] SUB-SAHARAN AFRICA DEFINED.

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

Republic of Angola (Angola).[8]
Republic of Benin (Benin).[9, 10]
Republic of Botswana (Botswana).[9]
Burkina Faso (Burkina).[11]
Republic of Burundi (Burundi).[12]
Republic of Cameroon (Cameroon).[9, 10]
Republic of Cape Verde (Cape Verde).[9, 10]
Central African Republic.[8, 10]
Republic of Chad (Chad).[10]
Federal Islamic Republic of the Comoros (Comoros).
Democratic Republic of Congo.[13]

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[6] 19 U.S.C. 3705.

[7] 19 U.S.C. 3706.

[8] On December 3, 2003, in Presidential Proclamation 7748 (69 F.R. 225), the President designated the Republic of Angola as a beneficiary sub-Saharan African country pursuant to sec. 506A(a) of the Trade Act of 1974, and as a lesser developed beneficiary sub-Saharan African country for purposes of sec. 112(b)(3)(b) of the AGOA.

Also in Presidential Proclamation 7748, the President terminated the designation for the Central African Republic and the State of Eritrea as beneficiary sub-Saharan African countries.

[9] On October 2, 2000, in Presidential Proclamation 7350 (65 F.R. 59321), the President designated these countries as beneficiary sub-Saharan African countries pursuant to sec. 506A(a) of the Trade Act of 1974. In addition, the President authorized the United States Trade Representative (USTR) "to perform the functions specified in sections 112(c) and 113(b)(1)(B) of the AGOA [African Growth and Opportunity Act] and to make the findings identified in section 113(a) of the AGOA and to perform certain functions under section 604 of the 1974 Act." The President also determined that "it is appropriate to authorize the USTR to determine the effective date of [Sierra Leone's] designation as a beneficiary sub-Saharan African country.".

[10] On October 2, 2000, in Presidential Proclamation 7350 (65 F.R. 53921), the President designated these countries as lesser developed beneficiary sub-Saharan African countries for purposes of sec. 112(b)(3)(b) of the AGOA.

[11] On December 10, 2004, in Presidential Proclamation 7853 (69 F.R. 74945), the President designated Burkina Faso as an eligible sub-Saharan African country pursuant to sec. 104 of the AGOA, as a beneficiary sub-Saharan African country pursuant to sec. 506A(a) of the Trade Act of 1974, and as a lesser developed beneficiary sub-Saharan African country for purposes of sec. 112(b)(3)(b) of the AGOA.

[12] On December 22, 2005, in Presidential Proclamation 7970 (70 F.R. 76647), the President designated Burundi as an eligible sub-Saharan African country pursuant to sec. 104 of the AGOA, as a beneficiary sub-Saharan African country pursuant to sec. 506A(a) of the Trade Act of 1974, and as a lesser developed beneficiary sub-Saharan African country for purposes of sec. 112(b)(3)(b) of the AGOA.

In Presidential Proclamation 7970, the President further terminated the designation for the Islamic Republic of Mauritania as a beneficiary sub-Saharan African country.

[13] On March 28, 2003, in Presidential Proclamation 7657 (68, F.R. 15921), the President designated the Democratic Republic of Congo as an eligible sub-Saharan African country pursuant to sec. 104 of the AGOA. In addition, the President authorized the United States Trade Representative (USTR) "to exercise the authority provided to the President under section 506A(a)(1) of the 1974 Act with respect to DROC. The USTR shall announce any such exercise of authority in a notice published in the Federal Register. To implement any designation of DROC as a beneficiary sub-Saharan African country, the USTR is authorized to exercise the authority provided to the President under section 604 of the 1974 Act to embody modifications and technical or

Republic of the Congo (Congo).[9, 10]
Republic of Cote d'Ivoire (Cote d'Ivoire).[14]
Republic of Djibouti (Djibouti).[9, 10]
Republic of Equatorial Guinea (Equatorial Guinea).
State of Eritrea (Eritrea).[8, 9, 10]
Ethiopia.[9, 10]
Gabonese Republic (Gabon).[9]
Republic of the Gambia (Gambia).[13]
Republic of Ghana (Ghana).[9,10]
Republic of Guinea (Guinea).[9, 10]
Republic of Guinea-Bissau (Guinea-Bissau).[9, 10]
Republic of Kenya (Kenya).[9, 10]
Kingdom of Lesotho (Lesotho).[9, 10]
Republic of Liberia (Liberia).
Republic of Madagascar (Madagascar).[9, 10]
Republic of Malawi (Malawi).[9, 10]
Republic of Mali (Mali).[9, 10]
Islamic Republic of Mauritania (Mauritania).[9, 10, 12]
Republic of Mauritius (Mauritius).[9]
Republic of Mozambique (Mozambique).[9, 10]
Republic of Namibia (Namibia).[9]
Republic of Niger (Niger).[9, 10]
Federal Republic of Nigeria (Nigeria).[9, 10]
Republic of Rwanda (Rwanda).[9, 10]
Democratic Republic of Sao Tome and Principe (Sao Tomei and Principe).[9, 10]
Republic of Senegal (Senegal).[9, 10]
Republic of Seychelles (Seychelles).[9]
Republic of Sierra Leone (Sierra Leone).[9, 10]
Somalia.
Republic of South Africa (South Africa).[9]
Republic of Sudan (Sudan).
Kingdom of Swaziland (Swaziland).[15]
United Republic of Tanzania (Tanzania).[9, 10]
Republic of Togo (Togo).
Republic of Uganda (Uganda).[9, 10]
Republic of Zambia (Zambia).[9, 10]
Republic of Zimbabwe (Zimbabwe).

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conforming changes in the HTS.". In a determination issued on October 30, 2003 (68 F.R. 62158), the USTR designated the Democratic Republic of Congo as a beneficiary sub-Saharan African country and as a lesser developed beneficiary sub-Saharan African country.

In Presidential Proclamation 7657 (68 F.R. 15921), the President further designated the Republic of the Gambia as an eligible sub-Saharan African country pursuant to sec. 104 of the AGOA, as a beneficiary sub-Saharan African country pursuant to sec. 506A(a) of the Trade Act of 1974, and as a lesser developed beneficiary sub-Saharan African country for purposes of sec. 112(b)(3)(b) of the AGOA.

[14] On May 16, 2002, in Presidential Proclamation 7561 (67 F.R. 35705), the President designated the Republic of Cote d'Ivoire as a beneficiary sub-Saharan African country pursuant to sec. 506A(a) of the Trade Act of 1974, and as a lesser developed beneficiary sub-Saharan African country for purposes of sec. 112(b)(3)(b) of the AGOA.

Subsequently, on December 21, 2004, in Presidential Proclamation 7858 (69 F.R. 77603), the President terminated the designation for the Republic of Cote d'Ivoire as a beneficiary sub-Saharan African country.

[15] On January 17, 2001, in Presidential Proclamation 7400 (66 F.R. 7373), the President designated the Kingdom of Swaziland as a beneficiary sub-Saharan African country pursuant to sec. 506A(a) of the Trade Act of 1974, and as a lesser developed beneficiary sub-Saharan African country for purposes of sec. 112(b)(3)(b) of the AGOA.

SUBTITLE B—TRADE BENEFITS

SEC. 111.[16] ELIGIBILITY FOR CERTAIN BENEFITS * * *

SEC. 112.[17] TREATMENT OF CERTAIN TEXTILES AND APPAREL.

(a) PREFERENTIAL TREATMENT.—Textile and apparel articles described in subsection (b) that are imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country described in section 506A(c) of the Trade Act of 1974, shall enter the United States free of duty and free of any quantitative limitations in accordance with the provisions set forth in subsection (b), if the country has satisfied the requirements set forth in section 113.

(b) PRODUCTS COVERED.—The preferential treatment described in subsection (a) shall apply only to the following textile and apparel products:

(1)[18] APPAREL ARTICLES ASSEMBLED IN ONE OR MORE BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES.—Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, or both[19] (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in the United States) that are—

(A) entered under subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States; or

(B) entered under chapter 61 or 62 of the Harmonized Tariff Schedule of the United States, if, after such assembly, the articles would have qualified for entry under subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.

(2)[20] OTHER APPAREL ARTICLES ASSEMBLED IN ONE OR MORE BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES.—Apparel articles sewn or otherwise assembled in one or more beneficiary

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[16] Sec. 111 amends the Trade Act of 1974 by inserting a new sec. 506A (19 U.S.C. 2466a).

[17] 19 U.S.C. 3721.

[18] Sec. 3108(a)(1) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 1038) amended and restated para. (1). It previously read as follows:

"(1) APPAREL ARTICLES ASSEMBLED IN BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES.—Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in the United States) that are—".

[19] Sec. 7(b)(1) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 824) inserted "or both".

[20] Sec. 3108(a)(2) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 1038) amended and restated para. (2). It previously read as follows:

"(2) APPAREL ARTICLES CUT AND ASSEMBLED IN BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES.—Apparel articles cut in one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in the United

sub-Saharan African countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary Sub-Saharan African countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in the United States).

(3)[21] APPAREL ARTICLES FROM REGIONAL FABRIC OR YARNS.—Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarns originating in the United States or one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries, or both[22] (including fabrics not formed from yarns, if such fabrics are classified under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in one or more beneficiary sub-Saharan African countries), or from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating in the United States or one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries, or both,[22] whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2)),[23] subject to the following:

(A)[24] LIMITATIONS ON BENEFITS.—

States) if such articles are assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States.".

[21] Sec. 3108(a)(3)(A) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 1038) amended and restated the text preceding subpara. (A) in para. (3). It previously read as follows:

"(3) APPAREL ARTICLES ASSEMBLED FROM REGIONAL AND OTHER FABRIC.—Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in one or more beneficiary sub-Saharan African countries), subject to the following:".

[22] Sec. 7(b)(2)(A)(i) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 824) struck out "either in the United States or one or more beneficiary sub-Saharan African countries" and inserted in lieu thereof "in the United States or one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries, or both".

[23] Sec. 7(b)(2)(A)(ii) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 824) inserted "whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2)),".

[24] Sec. 7(b)(2)(B) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 824) amended and restated subparas. (A) and (B). Previously, sec. 3108(a)(3)(B) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 1039) amended and restated para. (B).

(i) IN GENERAL.—Preferential treatment under this paragraph shall be extended in the 1-year period beginning October 1, 2003, and in each of the 11 succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the term "applicable percentage" means—

(I) 4.747 percent for the 1-year period beginning October 1, 2003, increased in each of the 5 succeeding 1-year periods by equal increments, so that for the 1-year period beginning October 1, 2007, the applicable percentage does not exceed 7 percent; and

(II) for each succeeding 1-year period until September 30, 2015, not to exceed 7 percent.

(B)[24] SPECIAL RULE FOR LESSER DEVELOPED COUNTRIES.—

(i) IN GENERAL.—Preferential treatment under this paragraph shall be extended though September 30, 2007, for apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric or the yarn used to make such articles, in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States the preceding 12-month period for which data are available.

(ii) APPLICABLE PERCENTAGE.—For purposes of the subparagraph, the term "applicable percentage" means—

(I) 2.3571 percent for the 1-year period beginning October 1, 2003;

(II) 2.6428 percent for the 1-year period beginning October 1, 2004;

(III) 2.9285 percent for the 1-year period beginning October 1, 2005; and

(IV) 1.6071 percent for the 1-year period beginning October 1, 2006.

(iii) LESSER DEVELOPED BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY.—For purposes of this subparagraph, the term "lesser developed beneficiary sub-Saharan African country" means—

(I) a beneficiary sub-Saharan African country that had a per capita gross national product of less than $1,500 in 1998, as measured by the International Bank for Reconstruction and Development;

(II) Botswana; and

(III) Namibia.

(iv)[25] SEPARATE LIMITATION FOR MAURITIUS.—For the 1-year period beginning October 1, 2004—

(I) the term "lesser developed beneficiary sub-Saharan African country" includes Mauritius; and

(II) the applicable percentage with respect to Mauritius shall be 5 percent of the applicable percentage described in clause (ii)(II).

(C) SURGE MECHANISM.—

(i) IMPORT MONITORING.—The Secretary of Commerce shall monitor imports of articles described in this paragraph on a monthly basis to determine if there has been a surge in imports of such articles. In order to permit public access to preliminary international trade data and to facilitate the early identification of potentially disruptive import surges, the Director of the Office of Management and Budget may grant an exception to the publication dates established for the release of data on United States international trade in covered articles, if the Director notifies Congress of the early release of the data.

(ii) DETERMINATION OF DAMAGE OR THREAT THEREOF.—Whenever the Secretary of Commerce determines, based on the data described in clause (i), or pursuant to a written request made by an interested party, that there has been a surge in imports of an article described in this paragraph from a beneficiary sub-Saharan African country, the Secretary shall determine whether such article from such country is being imported in such increased quantities as to cause serious damage, or threat thereof, to the domestic industry producing a like or directly competitive article. If the Secretary's determination is affirmative, the President shall suspend the duty-free treatment provided for such article under this paragraph. If the inquiry is initiated at the request of an interested party, the Secretary shall make the determination within 60 days after the date of the request.

(iii) FACTORS TO CONSIDER.—In determining whether a domestic industry has been seriously damaged, or is threatened with serious damage, the Secretary shall examine the effect of the imports on relevant economic indicators such as domestic production, sales, market

[25] Sec. 2004(k)(1) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2595) added clause (iv). Sec. 2004(k)(2) of such Act further stated that:

"(2) RETROACTIVE APPLICATION.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the Bureau of Customs and Border Protection before the 90th day after the date of the enactment of this Act, any entry, or withdrawal from warehouse for consumption, of any good—

"(A) that was made on or after October 1, 2004, and before the date of the enactment of this Act, and

"(B) with respect to which there would have been no duty if the amendment made by this subsection applied to such entry or withdrawal,

"shall be liquidated or reliquidated as if such amendment applied to such entry or withdrawal.".

share, capacity utilization, inventories, employment, profits, exports, prices, and investment.

(iv) PROCEDURE.—

(I) INITIATION.—The Secretary of Commerce shall initiate an inquiry within 10 days after receiving a written request and supporting information for an inquiry from an interested party. Notice of initiation of an inquiry shall be published in the Federal Register.

(II) PARTICIPATION BY INTERESTED PARTIES.—The Secretary of Commerce shall establish procedures to ensure participation in the inquiry by interested parties.

(III) NOTICE OF DETERMINATION.—The Secretary shall publish the determination described in clause (ii) in the Federal Register.

(IV) INFORMATION AVAILABLE.—If relevant information is not available on the record or any party withholds information that has been requested by the Secretary, the Secretary shall make the determination on the basis of the facts available. When the Secretary relies on information submitted in the inquiry as facts available, the Secretary shall, to the extent practicable, corroborate the information from independent sources that are reasonably available to the Secretary.

(v) INTERESTED PARTY.—For purposes of this subparagraph, the term "interested party" means any producer of a like or directly competitive article, a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or sale in the United States of a like or directly competitive article, a trade or business association representing producers or sellers of like or directly competitive articles, producers engaged in the production of essential inputs for like or directly competitive articles, a certified union or group of workers which is representative of an industry engaged in the manufacture, production, or sale of essential inputs for the like or directly competitive article, or a trade or business association representing companies engaged in the manufacture, production, or sale of such essential inputs.

(4) SWEATERS KNIT-TO-SHAPE FROM CASHMERE OR MERINO WOOL.—

(A) CASHMERE.—Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary sub-Saharan African countries and classifiable under subheading 6110.10 of the Harmonized Tariff Schedule of the United States.

(B) MERINO WOOL.—Sweaters, 50 percent or more by weight of wool measuring 21.5[26] microns in diameter or

[26] Sec. 3108(c) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 1038) struck out "18.5" and inserted in lieu thereof "21.5".

finer, knit-to-shape in one or more beneficiary sub-Saharan African countries.

(5) APPAREL ARTICLES WHOLLY ASSEMBLED FROM FABRIC OR YARN NOT AVAILABLE IN COMMERCIAL QUANTITIES IN THE UNITED STATES.—

(A)[27] IN GENERAL.—Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 to the NAFTA.

(B) ADDITIONAL APPAREL ARTICLES.—At the request of any interested party and subject to the following requirements, the President is authorized to proclaim the treatment provided under subparagraph (A) for yarns or fabrics not described in subparagraph (A) if—

(i) the President determines that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(ii) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;

(iii) within 60 calendar days after the request, 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—

(I) the action proposed to be proclaimed and the reasons for such action; and

(II) the advice obtained under clause (ii);

(iv) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclauses (I) and (II) of clause (iii), has expired; and

(v) the President has consulted with such committees regarding the proposed action during the period referred to in clause (iii).

(6)[28] HANDLOOMED, HANDMADE, FOLKLORE ARTICLES AND ETHNIC PRINTED FABRICS.—

[27] Sec. 7(b)(3) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 825) amended and restated para. (A). It previously read as follows:

"(A) IN GENERAL.—Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the NAFTA.".

[28] Sec. 7(c) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 825) amended and restated para. (6). It previously read as follows:

"(6) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—A handloomed, handmade, or folklore article of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of such beneficiary country or countries. For purposes of this paragraph, the President, after consultation with the beneficiary sub-Saharan African country or

Continued

(A) IN GENERAL.—A handloomed, handmade, folklore article or an ethnic printed fabric of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of such beneficiary country or countries. For purposes of this section, the President, after consultation with the beneficiary sub-Saharan African country or countries concerned, shall determine which, if any, particular textile and apparel goods of the country (or countries) shall be treated as being handloomed, handmade, or folklore articles or an ethic[29] printed fabric.

(B) REQUIREMENTS FOR ETHNIC PRINTED FABRIC.—Ethnic printed fabrics qualified under this paragraph are—

(i) fabrics containing a selvedge on both edges, having a width of less than 50 inches, classifiable under subheading 5208.52.30 or 5208.52.40 of the Harmonized Tariff Schedule of the United States;

(ii) of the type that contains designs, symbols, and other characteristics of African prints—

(I) normally produced for and sold on the indigenous African market; and

(II) normally sold in Africa by the piece as opposed to being tailored into garments before being sold in indigenous African markets;

(iii) printed, including waxed, in one or more eligible beneficiary sub-Saharan countries; and

(iv) fabrics formed in the United States, from yarns formed in the United States, or from fabric formed in one or more beneficiary sub-Saharan African country from yarn originating in either the United States or one or more beneficiary sub-Saharan African countries.

(7)[30] APPAREL ARTICLES ASSEMBLED IN ONE OR MORE BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES FROM UNITED STATES AND BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY COMPONENTS.—Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from components cut in the United States and one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries[31] from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries[31] from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States).

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countries concerned, shall determine which, if any, particular textile and apparel goods of the country (or countries) shall be treated as being handloomed, handmade, or folklore articles.".

[29] Should probably read as "ethnic".

[30] Sec. 3108(a)(5) of the Trade Act of 2002 (Public Law 107–210; 116 Stat. 1039) added para. (7).

[31] Sec. 7(d) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 826) inserted "or former beneficiary sub-Saharan African countries".

(c) TREATMENT OF QUOTAS ON TEXTILE AND APPAREL IMPORTS FROM KENYA AND MAURITIUS.—The President shall eliminate the existing quotas on textile and apparel articles imported into the United States—

(1) from Kenya within 30 days after that country adopts an effective visa system to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents relating to the importation of the articles into the United States; and

(2) from Mauritius within 30 days after that country adopts such a visa system.

The Customs Service shall provide the necessary technical assistance to Kenya and Mauritius in the development and implementation of the visa systems.

(d) SPECIAL RULES.—

(1) FINDINGS AND TRIMMINGS.—

(A) GENERAL RULE.—An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if the value of such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled article. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, "bow buds", decorative lace trim, elastic strips, and zippers, including zipper tapes and labels. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and used in the production of brassieres.

(B) CERTAIN INTERLININGS.—

(i) GENERAL RULE.—An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(ii) INTERLININGS DESCRIBED.—Interlinings eligible for the treatment described in clause (i) include only a chest type plate, a "hymo" piece, or "sleeve header", of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(iii) TERMINATION OF TREATMENT.—The treatment described in this subparagraph shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(C) EXCEPTION.—In the case of an article described in subsection (b)(2), sewing thread shall not be treated as findings or trimmings under subparagraph (A).

(2) DE MINIMIS RULE.—An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains fibers or yarns not wholly formed in the United States or one or more beneficiary

sub-Saharan African countries or former beneficiary sub-Saharan African countries[32] if the total weight of all such fibers and yarns is not more than 10 percent[32] of the total weight of the article.

(3)[33] CERTAIN COMPONENTS.—An article otherwise eligible for preferential treatment under this section will not be ineligible for such treatment because the article contains—

(A) any collars or cuffs (cut or knit-to-shape),
(B) drawstrings,
(C) shoulder pads or other padding,
(D) waistbands,
(E) belt attached to the article,
(F) straps containing elastic, or
(G) elbow patches,

that do not meet the requirements set forth in subsection (b), regardless of the country of origin of the item referred to in the applicable subparagraph of this paragraph.

(e) DEFINITIONS.—In this section and section 113:

(1) AGREEMENT ON TEXTILES AND CLOTHING.—The term "Agreement on Textiles and Clothing" means the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

(2) BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY, ETC.—The terms "beneficiary sub-Saharan African country" and "beneficiary sub-Saharan African countries" have the same meaning as such terms have under section 506A(c) of the Trade Act of 1974.

(3) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(4)[34] FORMER SUB-SAHARAN AFRICAN COUNTRY.—The term "former[35] sub-Saharan African country" means a country that, after being designated as a beneficiary sub-Saharan African country under this Act, ceased to be designated as such a beneficiary sub-Saharan country by reason of its entering into a free trade agreement with the United States.

(f) EFFECTIVE DATE.—This section takes effect on October 1, 2000, and shall remain in effect through September 30, 2008.

SEC. 113.[36] PROTECTIONS AGAINST TRANSSHIPMENT.

(a) PREFERENTIAL TREATMENT CONDITIONED ON ENFORCEMENT MEASURES.—

(1) IN GENERAL.—The preferential treatment under section 112(a) shall not be provided to textile and apparel articles that are imported from a beneficiary sub-Saharan African country unless that country—

[32] Sec. 7(e)(2) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 826) inserted "or former beneficiary sub-Saharan African countries", and struck out "7 percent" and inserted in lieu thereof "10 percent".

[33] Sec. 7(e)(1) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 826) added para. (3).

[34] Sec. 7(f) of the AGOA Acceleration Act of 2004 (Public Law 108–274; 118 Stat. 826) added para. (4).

[35] The word "beneficiary" probably should have appeared at this point.

[36] 19 U.S.C. 3722.

(A) has adopted an effective visa system, domestic laws, and enforcement procedures applicable to covered articles to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to the importation of the articles into the United States;

(B) has enacted legislation or promulgated regulations that would permit United States Customs Service verification teams to have the access necessary to investigate thoroughly allegations of transshipment through such country;

(C) agrees to report, on a timely basis, at the request of the United States Customs Service, on the total exports from and imports into that country of covered articles, consistent with the manner in which the records are kept by that country;

(D) will cooperate fully with the United States to address and take action necessary to prevent circumvention as provided in Article 5 of the Agreement on Textiles and Clothing;

(E) agrees to require all producers and exporters of covered articles in that country to maintain complete records of the production and the export of covered articles, including materials used in the production, for at least 2 years after the production or export (as the case may be); and

(F) agrees to report, on a timely basis, at the request of the United States Customs Service, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system.

(2) COUNTRY OF ORIGIN DOCUMENTATION.—For purposes of paragraph (1)(F), documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter.

(b) CUSTOMS PROCEDURES AND ENFORCEMENT.—

(1) IN GENERAL.—

(A) REGULATIONS.—Any importer that claims preferential treatment under section 112 shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(B) DETERMINATION.—

(i) IN GENERAL.—In order to qualify for the preferential treatment under section 112 and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in clause (ii)—

(I) has implemented and follows; or

(II) is making substantial progress toward implementing and following,

procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(ii) COUNTRY DESCRIBED.—A country is described in this clause if it is a beneficiary sub-Saharan African country—

(I) from which the article is exported; or

(II) in which materials used in the production of the article originate or in which the article or such materials, undergo production that contributes to a claim that the article is eligible for preferential treatment.

(2) CERTIFICATE OF ORIGIN.—The Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (1) shall not be required in the case of an article imported under section 112 if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(3) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment as defined in paragraph (4), then the President shall deny for a period of 5 years all benefits under section 112 to such exporter, any successor of such exporter, and any other entity owned or operated by the principal of the exporter.

(4) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this subsection has occurred when preferential treatment for a textile or apparel article under this Act has been claimed on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this paragraph, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under section 112.

(5) MONITORING AND REPORTS TO CONGRESS.—The Customs Service shall monitor and the Commissioner of Customs shall submit to Congress, not later than March 31 of each year, a report on the effectiveness of the visa systems and the implementation of legislation and regulations described in subsection (a) and on measures taken by countries in sub-Saharan Africa which export textiles or apparel to the United States to prevent circumvention as described in Article 5 of the Agreement on Textiles and Clothing.

(c) CUSTOMS SERVICE ENFORCEMENT.—The Customs Service shall—

(1) make available technical assistance to the beneficiary sub-Saharan African countries—

(A) in the development and implementation of visa systems, legislation, and regulations described in subsection (a)(1)(A); and

(B) to train their officials in anti-transshipment enforcement;

(2) send production verification teams to at least four beneficiary sub-Saharan African countries each year; and

(3) to the extent feasible, place beneficiary sub-Saharan African countries on the Electronic Visa (ELVIS) program.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (c) the sum of $5,894,913.

SEC. 114.[37] TERMINATION. * * *

SEC. 115.[38] CLERICAL AMENDMENTS. * * *

SEC. 116.[39] FREE TRADE AGREEMENTS WITH SUB-SAHARAN AFRICAN COUNTRIES.

(a) DECLARATION OF POLICY.—Congress declares that free trade agreements should be negotiated, where feasible, with interested countries in sub-Saharan Africa, in order to serve as the catalyst for increasing trade between the United States and sub-Saharan Africa and increasing private sector investment in sub-Saharan Africa.

(b) PLAN REQUIREMENT.—

(1) IN GENERAL.—The President, taking into account the provisions of the treaty establishing the African Economic Community and the willingness of the governments of sub-Saharan African countries to engage in negotiations to enter into free trade agreements, shall develop a plan for the purpose of negotiating and entering into one or more trade agreements with interested beneficiary sub-Saharan African countries.

(2) ELEMENTS OF PLAN.—The plan shall include the following:

(A) The specific objectives of the United States with respect to negotiations described in paragraph (1) and a suggested timetable for achieving those objectives.

(B) The benefits to both the United States and the relevant sub-Saharan African countries with respect to the applicable free trade agreement or agreements.

(C) A mutually agreed-upon timetable for the negotiations.

(D) The implications for and the role of regional and subregional organizations in sub-Saharan Africa with respect to such free trade agreement or agreements.

(E) Subject matter anticipated to be covered by the negotiations and United States laws, programs, and policies, as well as the laws of participating eligible African countries and existing bilateral and multilateral and economic cooperation and trade agreements, that may be affected by the agreement or agreements.

(F) Procedures to ensure the following:

(i) Adequate consultation with the Congress and the private sector during the negotiations.

(ii) Consultation with the Congress regarding all matters relating to implementation of the agreement or agreements.

[37] Sec. 114 adds a new sec. 506B to the Trade Act of 1974.
[38] Sec. 115 provides for additions to the table of contents of the Trade Act of 1974.
[39] 19 U.S.C. 3723.

(iii) Approval by the Congress of the agreement or agreements.

(iv) Adequate consultations with the relevant African governments and African regional and subregional intergovernmental organizations during the negotiation of the agreement or agreements.

(c) REPORTING REQUIREMENT.—Not later than 12 months after the date of the enactment of this Act, the President shall prepare and transmit to the Congress a report containing the plan developed pursuant to subsection (b).

SEC. 117.[40] ASSISTANT UNITED STATES TRADE REPRESENTATIVE FOR AFRICAN AFFAIRS.

It is the sense of the Congress that—

(1) the position of Assistant United States Trade Representative for African Affairs is integral to the United States commitment to increasing United States-sub-Saharan African trade and investment;

(2) the position of Assistant United States Trade Representative for African Affairs should be maintained within the Office of the United States Trade Representative to direct and coordinate interagency activities on United States-Africa trade policy and investment matters and serve as—

(A) a primary point of contact in the executive branch for those persons engaged in trade between the United States and sub-Saharan Africa; and

(B) the chief advisor to the United States Trade Representative on issues of trade and investment with Africa; and

(3) the United States Trade Representative should have adequate funding and staff to carry out the duties of the Assistant United States Trade Representative for African Affairs described in paragraph (2), subject to the availability of appropriations.

Subtitle C—Economic Development Related Issues

NOTE.—Secs. 121 through 131 of the Act are found in *Legislation on Foreign Relations Through 2005*, vol. I–B.

* * * * * * *

[40] 19 U.S.C. 3724.

(2) AGOA Acceleration Act of 2004

Partial text of Public Law 108–274 [H.R. 4103], 118 Stat. 820, approved July 13, 2004; as amended by Public Law 108–429 [Miscellaneous Trade and Technical Corrections Act of 2004; H.R. 1047], 118 Stat. 2434, approved December 3, 2004

AN ACT To extend and modify the trade benefits under the African Growth and Opportunity Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "AGOA Acceleration Act of 2004".

SEC. 2.[1] FINDINGS.

The Congress finds the following:

(1) The African Growth and Opportunity Act (in this section and section 3 referred to as "the Act") has helped to spur economic growth and bolster economic reforms in the countries of sub-Saharan Africa and has fostered stronger economic ties between the countries of sub-Saharan Africa and the United States; as a result, exports from the United States to sub-Saharan Africa reached record levels after the enactment of the Act, while exports from sub-Saharan Africa to the United States have increased considerably.

(2) The Act's eligibility requirements have reinforced democratic values and the rule of law, and have strengthened adherence to internationally recognized worker rights in eligible sub-Saharan African countries.

(3) The Act has helped to bring about substantial increases in foreign investment in sub-Saharan Africa, especially in the textile and apparel sectors, where tens of thousands of new jobs have been created.

(4) As a result of the Agreement on Textiles and Apparel of the World Trade Organization, under which quotas maintained by WTO member countries on textile and apparel products end on January 1, 2005, sub-Saharan Africa's textile and apparel industry will be severely challenged by countries whose industries are more developed and have greater capacity, economies of scale, and better infrastructure.

(5) The underdeveloped physical and financial infrastructure in sub-Saharan Africa continues to discourage investment in the region.

(6) Regional integration establishes a foundation on which sub-Saharan African countries can coordinate and pursue policies grounded in African interests and history to achieve sustainable development.

[1] 19 USC 3701 note.

(7) Expanded trade because of the Act has improved fundamental economic conditions within sub-Saharan Africa. The Act has helped to create jobs in the poorest region of the world, and most sub-Saharan African countries have sought to take advantage of the opportunities provided by the Act.

(8) Agricultural biotechnology holds promise for helping solve global food security and human health crises in Africa and, according to recent studies, has made contributions to the protection of the environment by reducing the application of pesticides, reducing soil erosion, and creating an environment more hospitable to wildlife.

(9)(A) One of the greatest challenges facing African countries continues to be the HIV/AIDS epidemic, which has infected as many as one out of every four people in some countries, creating tremendous social, political, and economic costs. African countries need continued United States financial and technical assistance to combat this epidemic.

(B) More awareness and involvement by governments are necessary. Countries like Uganda, recognizing the threat of HIV/AIDS, have boldly attacked it through a combination of education, public awareness, enhanced medical infrastructure and resources, and greater access to medical treatment. An effective HIV/AIDS prevention and treatment strategy involves all of these steps.

(10) African countries continue to need trade capacity assistance to establish viable economic capacity, a well-grounded rule of law, and efficient government practices.

SEC. 3.[1] STATEMENT OF POLICY.

The Congress supports—

(1) a continued commitment to increase trade between the United States and sub-Saharan Africa and increase investment in sub-Saharan Africa to the benefit of workers, businesses, and farmers in the United States and in sub-Saharan Africa, including by developing innovative approaches to encourage development and investment in sub-Saharan Africa;

(2) a reduction of tariff and nontariff barriers and other obstacles to trade between the countries of sub-Saharan Africa and the United States, with particular emphasis on reducing barriers to trade in emerging sectors of the economy that have the greatest potential for development;

(3) development of sub-Saharan Africa's physical and financial infrastructure;

(4) international efforts to fight HIV/AIDS, malaria, tuberculosis, other infectious diseases, and serious public health problems;

(5) many of the aims of the New Partnership for African Development (NEPAD), which include—

(A) reducing poverty and increasing economic growth;

(B) promoting peace, democracy, security, and human rights;

(C) promoting African integration by deepening linkages between African countries and by accelerating Africa's economic and political integration into the rest of the world;

(D) attracting investment, debt relief, and development assistance;

(E) promoting trade and economic diversification;

(F) broadening global market access for United States and African exports;

(G) improving transparency, good governance, and political accountability;

(H) expanding access to social services, education, and health services with a high priority given to addressing HIV/AIDS, malaria, tuberculosis, other infectious diseases, and other public health problems;

(I) promoting the role of women in social and economic development by reinforcing education and training and by assuring their participation in political and economic arenas; and

(J) building the capacity of governments in sub-Saharan Africa to set and enforce a legal framework, as well as to enforce the rule of law;

(6) negotiation of reciprocal trade agreements between the United States and sub-Saharan African countries, with the overall goal of expanding trade across all of sub-Saharan Africa;

(7) the President seeking to negotiate, with interested eligible sub-Saharan African countries, bilateral trade agreements that provide investment opportunities, in accordance with section 2102(b)(3) of the Trade Act of 2002 (19 U.S.C. 3802(b)(3));

(8) efforts by the President to negotiate with the member countries of the Southern African Customs Union in order to provide the opportunity to deepen and make permanent the benefits of the Act while giving the United States access to the markets of these African countries for United States goods and services, by reducing tariffs and non-tariff barriers, strengthening intellectual property protection, improving transparency, establishing general dispute settlement mechanisms, and investor-state and state-to-state dispute settlement mechanisms in investment;

(9) a comprehensive and ambitious trade agreement with the Southern African Customs Union, covering all products and sectors, in order to mature the economic relationship between sub-Saharan African countries and the United States and because such an agreement would deepen United States economic and political ties to the region, lend momentum to United States development efforts, encourage greater United States investment, and promote regional integration and economic growth;

(10) regional integration among sub-Saharan African countries and business partnerships between United States and African firms; and

(11) economic diversification in sub-Saharan African countries and expansion of trade beyond textiles and apparel.

SEC. 4.[1] SENSE OF CONGRESS ON RECIPROCITY AND REGIONAL ECONOMIC INTEGRATION.

It is the sense of the Congress that—

(1) the preferential market access opportunities for eligible sub-Saharan African countries will be complemented and enhanced if those countries are implementing actively and fully, consistent with any remaining applicable phase-in periods, their obligations under the World Trade Organization, including obligations under the Agreement on Trade-Related Aspects of Intellectual Property, the Agreement on the Application of Sanitary and Phytosanitary Measures, and the Agreement on Trade-Related Investment Measures, as well as the other agreements described in section 101(d) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d));

(2) eligible sub-Saharan African countries should participate in and support mutual trade liberalization in ongoing negotiations under the auspices of the World Trade Organization, including by making reciprocal commitments with respect to improving market access for industrial and agricultural goods, and for services, recognizing that such commitments may need to reflect special and differential treatment for developing countries;

(3) some of the most pernicious trade barriers against exports by developing countries are the trade barriers maintained by other developing countries; therefore, eligible sub-Saharan African countries will benefit from the reduction of trade barriers in other developing countries, especially in developing countries that represent some of the greatest potential markets for African goods and services; and

(4) all countries should make sanitary and phytosanitary decisions on the basis of sound science.

SEC. 5.[1] SENSE OF CONGRESS ON INTERPRETATION OF TEXTILE AND APPAREL PROVISIONS OF AGOA.

It is the sense of the Congress that the executive branch, particularly the Committee for the Implementation of Textile Agreements (CITA), the Bureau of Customs and Border Protection of the Department of Homeland Security, and the Department of Commerce, should interpret, implement, and enforce the provisions of section 112 of the African Growth and Opportunity Act, relating to preferential treatment of textile and apparel articles, broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible sub-Saharan African countries.

SEC. 6.[1] DEFINITION.

In this Act, the term "eligible sub-Saharan African country" means an eligible sub-Saharan African country under the African Growth and Opportunity Act.

SEC. 7.[1] EXTENSION OF AFRICAN GROWTH AND OPPORTUNITY ACT.[2]

* * *

SEC. 8.[1] ENTRIES OF CERTAIN APPAREL ARTICLES PURSUANT TO THE AFRICAN GROWTH AND OPPORTUNITY ACT.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the Secretary of the Treasury shall liquidate or reliquidate as free of duty

[2] Sec. 7 consists of amendments to the Trade Act of 1974 and the African Growth and Opportunity Act and have been incorporated at the appropriate sections of those Acts.

and free of any quantitative restrictions, limitations, or consultation levels entries of articles described in subsection (d) made on or after October 1, 2000, and before the date of the enactment of this Act.

(b)[3] REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Secretary of the Treasury within 90 days after the date of the enactment of this Act and the request contains sufficient information to enable the Secretary to locate the entry or reconstruct the entry if it cannot be located.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of any entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) ENTRIES.—The entries referred to in subsection (a) are entries of apparel articles that meet the requirements of section 112[4] of the African Growth and Opportunity Act, as amended by section 3108 of the Trade Act of 2002 and this Act.

SEC. 9.[1] DEVELOPMENT STUDY AND CAPACITY BUILDING.

(a) REPORTS.—The President shall, by not later than 1 year after the date of the enactment of this Act, conduct a study on each eligible sub-Saharan African country, that—

(1) identifies sectors of the economy of that country with the greatest potential for growth, including through export sales;

(2) identifies barriers, both domestically and internationally, that are impeding growth in such sectors; and

(3) makes recommendations on how the United States Government and the private sector can provide technical assistance to that country to assist in dismantling such barriers and in promoting investment in such sectors.

(b) DISSEMINATION OF INFORMATION.—The President shall disseminate information in each study conducted under subsection (a) to the appropriate United States agencies for the purpose of implementing recommendations on the provision of technical assistance and in identifying opportunities for United States investors, businesses, and farmers.

SEC. 10.[1] ACTIVITIES IN SUPPORT OF INFRASTRUCTURE TO SUPPORT INCREASING TRADE CAPACITY AND ECOTOURISM.

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

(1) Ecotourism, which consists of—

(A) responsible and sustainable travel and visitation to relatively undisturbed natural areas in order to enjoy and appreciate nature (and any accompanying cultural features, both past and present) and animals, including species that are rare or endangered,

[3] Sec. 2004(j)(2)(B) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2595) provided that sec. 8(b) of the AGOA Acceleration Act of 2004 shall be applied with respect to the amendment made by sec. 2004(j)(1) to sec. 8(d) of this Act "by substituting '90 days after the date of the enactment of the Miscellaneous Trade and Technical Corrections Act of 2004' for '90 days after the date of the enactment of this Act'.".

[4] Sec. 2004(j)(1) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108–429; 118 Stat. 2595) struck out "section 112(b)" and inserted in lieu thereof "section 112". Sec. 2204(j)(2)(A) further provided that "The amendment made by paragraph (1) shall take effect as if included in the enactment of section 8 of the AGOA Acceleration Act of 2004."

(B) promotion of conservation and provision for beneficial involvement of local populations, and

(C) visitation designed to have low negative impact upon the environment,

is expected to expand 30 percent globally over the next decade.

(2) Ecotourism will increase trade capacity by sustaining otherwise unsustainable infrastructure, such as road, port, water, energy, and telecommunication development.

(3) According to the United States Department of State and the United Nations Environment Programme, sustainable tourism, such as ecotourism, can be an important part of the economic development of a region, especially a region with natural and cultural protected areas.

(4) Sub-Saharan Africa enjoys an international comparative advantage in ecotourism because it features extensive protected areas that host a variety of ecosystems and traditional cultures that are major attractions for nature-oriented tourism.

(5) National parks and reserves in sub-Saharan Africa should be considered a basis for regional development, involving communities living within and adjacent to them and, given their strong international recognition, provide an advantage in ecotourism marketing and promotion.

(6) Desert areas in sub-Saharan Africa represent complex ecotourism attractions, showcasing natural, geological, and archaeological features, and nomad and other cultures and traditions.

(7) Many natural zones in sub-Saharan Africa cross the political borders of several countries; therefore, transboundary cooperation is fundamental for all types of ecotourism development.

(8) The commercial viability of ecotourism is enhanced when small and medium enterprises, particularly microenterprises, successfully engage with the tourism industry in sub-Saharan Africa.

(9) Adequate capacity building is an essential component of ecotourism development if local communities are to be real stakeholders that can sustain an equitable approach to ecotourism management.

(10) Ecotourism needs to generate local community benefits by utilizing sub-Saharan Africa's natural heritage, parks, wildlife reserves, and other protected areas that can play a significant role in encouraging local economic development by sourcing food and other locally produced resources.

(b) ACTION BY THE PRESIDENT.—The President shall develop and implement policies to—

(1) encourage the development of infrastructure projects that will help to increase trade capacity and a sustainable ecotourism industry in eligible sub-Saharan African countries;

(2) encourage and facilitate transboundary cooperation among sub-Saharan African countries in order to facilitate trade;

(3) encourage the provision of technical assistance to eligible sub-Saharan African countries to establish and sustain adequate trade capacity development; and

(4) encourage micro-, small-, and medium-sized enterprises in eligible sub-Saharan African countries to participate in the ecotourism industry.

SEC. 11.[1] ACTIVITIES IN SUPPORT OF TRANSPORTATION, ENERGY, AGRICULTURE, AND TELECOMMUNICATIONS INFRASTRUCTURE.

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

(1) In order to increase exports from, and trade among, eligible sub-Saharan African countries, transportation systems in those countries must be improved to increase transport efficiencies and lower transport costs.

(2) Vibrant economic growth requires a developed telecommunication and energy infrastructure.

(3) Sub-Saharan Africa is rich in exportable agricultural goods, but development of this industry remains stymied because of an underdeveloped infrastructure.

(b) ACTION BY THE PRESIDENT.—In order to enhance trade with Africa and to bring the benefits of trade to African countries, the President shall develop and implement policies to encourage investment in eligible sub-Saharan African countries, particularly with respect to the following:

(1) Infrastructure projects that support, in particular, development of land transport road and railroad networks and ports, and the continued upgrading and liberalization of the energy and telecommunications sectors.

(2) The establishment and expansion of modern information and communication technologies and practices to improve the ability of citizens to research and disseminate information relating to, among other things, the economy, education, trade, health, agriculture, the environment, and the media.

(3) Agriculture, particularly in processing and capacity enhancement.

SEC. 12.[1] FACILITATION OF TRANSPORTATION.

In order to facilitate and increase trade flows between eligible sub-Saharan African countries and the United States, the President shall foster improved port-to-port and airport-to-airport relationships. These relationships should facilitate—

(1) increased coordination between customs services at ports and airports in the United States and such countries in order to reduce time in transit;

(2) interaction between customs and technical staff from ports and airports in the United States and such countries in order to increase efficiency and safety procedures and protocols relating to trade;

(3) coordination between chambers of commerce, freight forwarders, customs brokers, and others involved in consolidating and moving freight; and

(4) trade through air service between airports in the United States and such countries by increasing frequency and capacity.

SEC. 13.[1] AGRICULTURAL TECHNICAL ASSISTANCE.

(a) IDENTIFICATION OF COUNTRIES.—The President shall identify not fewer than 10 eligible sub-Saharan African countries as having

the greatest potential to increase marketable exports of agricultural products to the United States and the greatest need for technical assistance, particularly with respect to pest risk assessments and complying with sanitary and phytosanitary rules of the United States.

(b) PERSONNEL.—The President shall assign at least 20 full-time personnel for the purpose of providing assistance to the countries identified under subsection (a) to ensure that exports of agricultural products from those countries meet the requirements of United States law.

SEC. 14.[1] TRADE ADVISORY COMMITTEE ON AFRICA.

The President shall convene the trade advisory committee on Africa established by Executive Order 11846 of March 27, 1975, under section 135(c) of the Trade Act of 1974, in order to facilitate the goals and objectives of the African Growth and Opportunity Act and this Act, and to maintain ongoing discussions with African trade and agriculture ministries and private sector organizations on issues of mutual concern, including regional and international trade concerns and World Trade Organization issues.

(3) Implementation of the African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act

Executive Order 13191, January 17, 2001, 66 F.R. 7271, 19 U.S.C. 2703 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the African Growth and Opportunity Act (Title I of Public Law 106-200) (AGOA), the United States-Caribbean Basin Trade Partnership Act (Title II of Public Law 106-200) (CBTPA), the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.), and section 301 of title 3, United States Code, and in order to expand international trade and enhance our economic partnership with sub-Saharan Africa and the Caribbean Basin, promote investment and economic development and reduce poverty in those regions, and create new economic opportunities for American workers and businesses, it is hereby ordered as follows:

PART I—IMPLEMENTATION OF THE AGOA

Section 1. *Apparel Articles Assembled from Fabrics or Yarn Not Available in Commercial Quantities.* The Committee for the Implementation of Textile Agreements (the "Committee") is authorized to exercise the authority vested in the President under section 112(b)(5)(B)(i) of the AGOA (19 U.S.C. 3721(b)(5)(B)(i)) to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The Committee and the United States Trade Representative (USTR) are jointly authorized to exercise the authority vested in the President under sections 112(b)(5)(B)(ii), (iii), and (v) of the AGOA (19 U.S.C. 3721(b)(5)(B)(ii), (iii), and (v)) to obtain advice from the appropriate advisory committee, to submit a report to the appropriate Congressional committees, and to consult with those Congressional committees. The USTR is authorized to exercise the authority vested in the President under section 112(b)(5)(B)(ii) of the AGOA to obtain advice from the U.S. International Trade Commission (USITC).

Sec. 2. *Handloomed, Handmade, and Folklore Articles.* The Committee, after consultation with the Commissioner, United States Customs Service (Commissioner), is authorized to exercise the authority vested in the President under section 112(b)(6) of the AGOA (19 U.S.C. 3721(b)(6)) to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 3. *Certain Interlinings.* The Committee is authorized to exercise the authority vested in the President under section 112(d)(1)(B)(iii) of the AGOA (19 U.S.C. 3721(d)(1)(B)(iii)) to determine whether U.S. manufacturers are producing interlinings in the United States in commercial quantities. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the Federal Register. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 4. *Penalties for Transshipments.* The Committee, after consultation with the Commissioner, is authorized to exercise the authority vested in the President under section 113(b)(3) of the AGOA (19 U.S.C. 3722(b)(3)) to determine, based on sufficient evidence, whether an exporter has engaged in transshipment and to deny for a period of 5 years all benefits under section 112 of the AGOA (19 U.S.C. 3721) to any such exporter, any successor of such exporter, and any other entity owned or operated by the principal of such exporter. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the Federal Register. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 5. *Effective Visa Systems.* Pursuant to sections 112(a) and 113(a)(1) of the AGOA (19 U.S.C. 3721(a) and 3722(a)(1)), the USTR is authorized to direct the Commissioner to take such actions as may be necessary to ensure that textile and apparel articles described in section 112(b) of the AGOA (19 U.S.C. 3721(b)) that are entered, or withdrawn from warehouse, for consumption are accompanied by an appropriate export visa, if the preferential treatment described in section 112(a) of the AGOA is claimed with respect to such articles.

PART II—IMPLEMENTATION OF THE CBTPA [1]

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PART III—GENERAL PROVISIONS

Sec. 11. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

[1] Part II, regarding the implementation of the United States-Caribbean Basin Trade Partnership Act (CBTPA), can be found on page 1072.

e. U.S. Trade With the Middle East and North Africa

(1) United States-Bahrain Free Trade Agreement Implementation Act

Partial text of Public Law 109–169 [H.R. 4340], 119 Stat. 3581, approved January 11, 2006

AN ACT To implement the United States-Bahrain Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.[1]—This Act may be cited as the "United States-Bahrain Free Trade Agreement Implementation Act".

(b) TABLE OF CONTENTS.—* * *

SEC. 2.[1] PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and Bahrain entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Bahrain for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

SEC. 3.[1] DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the United States-Bahrain Free Trade Agreement approved by Congress under section 101(a)(1).

(2) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

(3) TEXTILE OR APPAREL GOOD.—The term "textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade

[1] 19 U.S.C. 3805 note.

Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves—

(1) the United States-Bahrain Free Trade Agreement entered into on September 14, 2004, with Bahrain and submitted to Congress on November 16, 2005; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on November 16, 2005.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Bahrain has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Bahrain providing for the entry into force, on or after January 1, 2006, of the Agreement with respect to the United States.

SEC. 102.[1] RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

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

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

(A) to amend or modify any law of the United States; or

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term "State law" includes—

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

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

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

SEC. 103.[1] IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date on which the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date on which the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date on which the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104.[1] CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

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

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

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

(B) the United States International Trade Commission;

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

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with the Committees referred to in paragraph (2) regarding the proposed action during the period referred to in paragraph (3).

SEC. 105.[1] ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 19 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2005 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office established or designated under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 19 of the Agreement.

SEC. 106.[1] EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS[2]

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TITLE III—RELIEF FROM IMPORTS[3]

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TITLE IV—PROCUREMENT[4]

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[2] Freestanding provisions in this title are codified at 19 U.S.C. 3805 note.

[3] Freestanding provisions in this title are codified at 19 U.S.C. 3805 note (subtitle A—relief from imports benefiting from the agreement; subtitle B—textile and apparel safeguard measures).

[4] Title IV amends sec. 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)(A)).

(2) United States-Morocco Free Trade Agreement Implementation Act

Partial text of Public Law 108–302 [H.R. 4842], 118 Stat. 1103, approved August 17, 2004

AN ACT To implement the United States-Morocco Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.[1]—This Act may be cited as the "United States-Morocco Free Trade Agreement Implementation Act".

(b) TABLE OF CONTENTS.—* * *

SEC. 2.[1] PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and Morocco entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Morocco for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

SEC. 3.[1] DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the United States-Morocco Free Trade Agreement approved by Congress under section 101(a)(1).

(2) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

(3) TEXTILE OR APPAREL GOOD.—The term "textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101.[1] APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves—

[1] 19 U.S.C. 3805 note.

(1) the United States-Morocco Free Trade Agreement entered into on June 15, 2004, with Morocco and submitted to Congress on July 15, 2004; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 15, 2004.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Morocco has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Morocco providing for the entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.

SEC. 102.[1] RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

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

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

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

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term "State law" includes—

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

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

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

SEC. 103.[1] IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104.[1] CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

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

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

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

(B) the United States International Trade Commission;

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

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

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

SEC. 105.[1] ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106.[1] ARBITRATION OF CLAIMS.

The United States is authorized to resolve any claim against the United States covered by article 10.15.1(a)(i)(C) or article 10.15.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

SEC. 107.[1] EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS[2]

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TITLE III—RELIEF FROM IMPORTS[3]

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[2] Freestanding provisions in this title are codified at 19 U.S.C. 3805 note.

[3] Freestanding provisions in this title are codified at 19 U.S.C. 3805 note (subtitle A—relief from imports benefiting from the agreement; subtitle B—textile and apparel safeguard measures).

(3) United States-Jordan Free Trade Area Implementation Act

Partial text of Public Law 107–43 [H.R. 2603], 115 Stat. 243, approved September 28, 2001

AN ACT To implement the agreement establishing a United States-Jordan free trade area.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.[1]—This Act may be cited as the "United States-Jordan Free Trade Area Implementation Act".

(b) TABLE OF CONTENTS.—* * *

SEC. 2.[1] PURPOSES.

The purposes of this Act are—

(1) to implement the agreement between the United States and Jordan establishing a free trade area;

(2) to strengthen and develop the economic relations between the United States and Jordan for their mutual benefit; and

(3) to establish free trade between the 2 nations through the removal of trade barriers.

SEC. 3.[1] DEFINITIONS.

For purposes of this Act:

(1) AGREEMENT.—The term "Agreement" means the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, entered into on October 24, 2000.

(2) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

TITLE I—TARIFF MODIFICATIONS; RULES OF ORIGIN

SEC. 101.[1] TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—The President may proclaim—

(1) such modifications or continuation of any duty;

(2) such continuation of duty-free or excise treatment; or

(3) such additional duties,

as the President determines to be necessary or appropriate to carry out article 2.1 of the Agreement and the schedule of duty reductions with respect to Jordan set out in Annex 2.1 of the Agreement.

(b) OTHER TARIFF MODIFICATIONS.—The President may proclaim—

(1) such modifications or continuation of any duty;

(2) such continuation of duty-free or excise treatment; or

[1] 19 U.S.C. 2112 note.

(3) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Jordan provided for by the Agreement.

SEC. 102.[1] RULES OF ORIGIN.

(a) IN GENERAL.—

(1) ELIGIBLE ARTICLES.—

(A) IN GENERAL.—The reduction or elimination of any duty imposed on any article by the United States provided for in the Agreement shall apply only if—

(i) that article is imported directly from Jordan into the customs territory of the United States; and

(ii) that article—

(I) is wholly the growth, product, or manufacture of Jordan; or

(II) is a new or different article of commerce that has been grown, produced, or manufactured in Jordan and meets the requirements of subparagraph (B).

(B) REQUIREMENTS.—

(i) GENERAL RULE.—The requirements of this subparagraph are that with respect to an article described in subparagraph (A)(ii)(II), the sum of—

(I) the cost or value of the materials produced in Jordan, plus

(II) the direct costs of processing operations performed in Jordan, is not less than 35 percent of the appraised value of such article at the time it is entered.

(ii) MATERIALS PRODUCED IN UNITED STATES.—If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this paragraph applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in clause (i).

(2) EXCLUSIONS.—No article may be considered to meet the requirements of paragraph (1)(A) by virtue of having merely undergone—

(A) simple combining or packaging operations; or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(b) DIRECT COSTS OF PROCESSING OPERATIONS.—

(1) IN GENERAL.—As used in this section, the term "direct costs of processing operations" includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

(2) EXCLUDED COSTS.—The term "direct costs of processing operations" does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as—

(A) profit; and

(B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(c) TEXTILE AND APPAREL ARTICLES.—

(1) IN GENERAL.—A textile or apparel article imported directly from Jordan into the customs territory of the United States shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) only if—

(A) the article is wholly obtained or produced in Jordan;

(B) the article is a yarn, thread, twine, cordage, rope, cable, or braiding, and—

(i) the constituent staple fibers are spun in Jordan, or

(ii) the continuous filament is extruded in Jordan;

(C) the article is a fabric, including a fabric classified under chapter 59 of the HTS, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in Jordan; or

(D) the article is any other textile or apparel article that is wholly assembled in Jordan from its component pieces.

(2) DEFINITION.—For purposes of paragraph (1), an article is "wholly obtained or produced in Jordan" if it is wholly the growth, product, or manufacture of Jordan.

(3) SPECIAL RULES.—

(A) CERTAIN MADE-UP ARTICLES, TEXTILE ARTICLES IN THE PIECE, AND CERTAIN OTHER TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (C) and (D) of this paragraph, subparagraph (A), (B), or (C) of paragraph (1), as appropriate, shall determine whether a good that is classified under one of the following headings or subheadings of the HTS shall be considered to meet the requirements of paragraph (1)(A) of subsection (a): 5609, 5807, 5811, 6209.20.50.40, 6213, 6214, 6301, 6302, 6304, 6305, 6306, 6307.10, 6307.90, 6308, and 9404.90.

(B) CERTAIN KNIT-TO-SHAPE TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (C) and (D) of this paragraph, a textile or apparel article which is knit-to-shape in Jordan shall be considered to meet the requirements of paragraph (1)(A) of subsection (a).

(C) CERTAIN DYED AND PRINTED TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D), a good classified under heading 6117.10, 6213.00, 6214.00. 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85, or 9404.90.95 of the HTS, except for a good classified under any such heading as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton, shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the fabric in the good is both dyed and printed in Jordan, and such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

(D) FABRICS OF SILK, COTTON, MANMADE FIBER OR VEGETABLE FIBER.—Notwithstanding paragraph (1)(C), a fabric classified under the HTS as of silk, cotton, man-made fiber, or vegetable fiber shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the fabric is both dyed and printed in Jordan, and such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

(4) MULTICOUNTRY RULE.—If the origin of a textile or apparel article cannot be determined under paragraph (1) or (3), then that article shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if—

(A) the most important assembly or manufacturing process occurs in Jordan; or

(B) if the applicability of paragraph (1)(A) of subsection (a) cannot be determined under subparagraph (A), the last important assembly or manufacturing occurs in Jordan.

(d) EXCLUSION.—A good shall not be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the good—

(1) is imported into Jordan, and, at the time of importation, would be classified under heading 0805 of the HTS; and

(2) is processed in Jordan into a good classified under any of subheadings 2009.11 through 2009.30 of the HTS.

(e) REGULATIONS.—The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this section.

TITLE II—RELIEF FROM IMPORTS [2]

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TITLE III—TEMPORARY ENTRY [3]

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[2] Freestanding provisions in this title are codified at 19 U.S.C. 2112 note (Subtitle A—General Provisions; subtitle B—Relief from Imports Benefiting from the Agreement; Subtitle C—Cases Under Title II of the Trade Act of 1974).

[3] This title is codified at 19 U.S.C. 2112 note.

TITLE IV—GENERAL PROVISIONS

SEC. 401.[1] RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

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

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

(A) to amend or modify any law of the United States; or

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

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term "State law" includes—

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

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement; or

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

SEC. 402.[1] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year after fiscal year 2001 to the Department of Commerce not more than $100,000 for the payment of the United States share of the expenses incurred in dispute settlement proceedings under article 17 of the Agreement.

SEC. 403.[1] IMPLEMENTING REGULATIONS.

After the date of enactment of this Act—

(1) the President may proclaim such actions; and

(2) other appropriate officers of the United States may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date the Agreement enters into force.

SEC. 404.[1] EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection) and the amendments made by this Act, shall cease to be effective.

(4) United States-Israel Free Trade Area Implementation Act of 1985

Partial text of Public Law 99–47 [H.R. 2268], 99 Stat. 82, approved June 11, 1985; as amended by Public Law 104–234 [H.R. 3074], 110 Stat. 3058, approved October 2, 1996

NOTE.—Sections of this Act that have been omitted amend the Trade Agreements Act of 1979, the Trade and Tariff Act of 1984, and the Trade Act of 1974. They are reproduced elsewhere in this volume.

AN ACT To approve and implement the Free Trade Area Agreement between the United States and Israel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States-Israel Free Trade Area Implementation Act of 1985".[1]

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.[1] APPROVAL OF A FREE TRADE AREA AGREEMENT.

Pursuant to sections 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.

[1] 19 U.S.C. 2112 note.

SEC. 4.[1] 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.[1] 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.

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SEC. 9.[2] 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

[2] 19 U.S.C. 2112 note. Sec. 1 of Public Law 104–234 (110 Stat. 3058) added sec. 9.

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, qualifying industrial zone, or Israel and identification of the direct costs of processing operations.

(iii) A description of any materials used in production of the article which are wholly the growth, product, or manufacture of the West Bank, the Gaza Strip, a qualifying industrial zone, Israel or United States, and a statement as to the cost or value of such materials.

(iv) A description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the article which are claimed to have been sufficiently processed in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel so as to be materials produced in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel.

(v) A description of the origin and cost or value of any foreign materials used in the article which have not been substantially transformed in the West Bank, the Gaza Strip, or a qualifying industrial zone.

(c) SHIPMENT OF ARTICLES OF ISRAEL THROUGH WEST BANK OR GAZA STRIP.—The President is authorized to proclaim that articles of Israel may be treated as though they were articles directly shipped from Israel for the purposes of the Agreement even if shipped to the United States from the West Bank, the Gaza Strip, or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement.

(d) TREATMENT OF COST OR VALUE OF MATERIALS.—The President is authorized to proclaim that the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement, and the direct costs of processing operations performed in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

(e) QUALIFYING INDUSTRIAL ZONE DEFINED.—For purposes of this section, a "qualifying industrial zone" means any area that—

(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt;

(2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and

(3) has been specified by the President as a qualifying industrial zone.

(5) Report on Free Trade Agreement with Israel

Partial text of Public Law 107–210 [Trade Act of 2002; H.R. 3009], 116 Stat. 933, approved August 6, 2002

AN ACT To extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

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SEC. 3105. REPORT ON FREE TRADE AGREEMENT WITH ISRAEL.

(a) REPORT TO CONGRESS.—The United States Trade Representative shall review the implementation of the United States-Israel Free Trade Agreement and shall submit to the Speaker of the House of Representatives, the President of the Senate, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate a report on the results of such review.

(b) CONTENTS OF REPORT.—The report under subsection (a) shall include the following:

(1) A review of the terms of the United States-Israel Free Trade Agreement, particularly the terms with respect to market access commitments.

(2) A review of subsequent agreements which may have been reached between the parties to the Agreement and of unilateral concessions of additional benefits received by each party from the other.

(3) A review of any current negotiations between the parties to the Agreement with respect to implementation of the Agreement and other pertinent matters.

(4) An assessment of the degree of fulfillment of obligations under the Agreement by the United States and Israel.

(5) An assessment of improvements in structuring future trade agreements that should be considered based on the experience of the United States under the Agreement.

(c) TIMING OF REPORT.—The United States Trade Representative shall submit the report under subsection (a) not later than 6 months after the date of the enactment of this Act.

(d) DEFINITION.—In this section, the terms "United States-Israel Free Trade Agreement" and "Agreement" means the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel entered into on April 22, 1985.

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(6) Trade with Israel

Partial text of Title IV of Public Law 98–573 [Trade and Tariff Act of 1984; H.R. 3398], 98 Stat. 2948 at 3013, approved October 30, 1984; as amended by Public Law 99–47 [H.R. 2268], 99 Stat. 82, approved June 11, 1985; Public Law 99–514 [Tax Reform Act of 1986; H.R. 3838], 100 Stat. 2085 at 2926, approved October 22, 1986; and Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988

AN ACT To amend the trade laws, authorize the negotiation of trade agreements, extend trade preferences, change the tariff treatment with respect to certain articles, and for other purposes.

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TITLE IV—TRADE WITH ISRAEL

SEC. 401.[1] NEGOTIATION OF TRADE AGREEMENTS TO REDUCE TRADE BARRIERS. * * *

SEC. 402.[2] 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

[1] Sec. 401 amended sec. 102 of the Trade Act of 1974.
[2] 19 U.S.C. 2112 note.

(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.[2] 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)[3] 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 or recommendations apply to such an article when imported from Israel.

(c) For purposes of[4] 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

[3] Sec. 1401(b)(3)(i)(I) of Public Law 100–418 (102 Stat. 1240) struck out "section 201(d)(1)" and inserted in lieu thereof "section 202(f)".

[4] Sec. 1401(b)(3)(i)(II) of Public Law 100–418 (102 Stat. 1240) struck out "subsections (a) and (c) of" which previously appeared following this point.

under[4] 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)[5] of the Trade Act of 1974, determines in the course of its investigation under that section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under section 102(b)(1) of the Trade Act of 1974.

(e)(1) Any proclamation issued under section 203 of the Trade Act of 1974 that is in effect when an agreement with Israel is entered into under section 102(b)(1) of the Trade Act of 1974 shall remain in effect until modified or terminated.

(2) If any article is subject to import relief at the time an agreement is entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the President may reduce or terminate the application of such import relief to the importation of such article before the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of sections 203 and 204[6] of the Trade Act of 1974.

SEC. 404.[2] FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

(a) If a petition is filed with the Commission under the provisions of section 202(a)[7] 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 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

[5] Sec. 1401(b)(3) of Public Law 100–418 (102 Stat. 1240) struck out "201(b)" and inserted in lieu thereof "202(b)".

[6] Sec. 1401(b)(3) of Public Law 100–418 (102 Stat. 1240) struck out "subsections (h) and (i) of section 203" and inserted in lieu thereof "sections 203 and 204".

[7] Sec. 1401(b)(3)(ii)(II) of Public Law 100–418 (102 Stat. 1240) struck out "section 201" and inserted in lieu thereof "section 202(a)".

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[8] of the Trade Act of 1974;

(2)[8] 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 products" means any—

(1)[9] 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)[9] 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)[9] 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.[10] 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.

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[8] Sec. 1401(b)(3)(ii) of Public Law 100–418 (102 Stat. 1240) struck out "proclamation of import relief under section 202(a)(1)", and inserted in lieu thereof "upon the taking of action under section 203", and restated subsec. (d)(2). Subsec. (d)(2) previously read as follows:

"(2) on the day the President makes a determination under section 203(b)(2) of such Act not to impose import relief;".

[9] Sec. 1214(s)(4) of Public Law 100–418 (102 Stat. 1160) amended and restated paras. (1) and (2), struck out paras. (3), (4), (5), and (6), and inserted a new para. (3).

[10] 19 U.S.C. 2112 note. Sec. 8(a)(3) of the U.S.-Israel Free Trade Area Implementation Act (Public Law 99–47; 99 Stat. 84) redesignated sec. 406 as sec. 405.

(7) Exemption of Israeli Products From Certain User Fees

Partial text of Public Law 101–382 [Customs and Trade Act of 1990; H.R. 1594], 104 Stat. 629 at 639, approved August 20, 1990 [1]

AN ACT To make miscellaneous and technical changes to various trade laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SEC. 112.[2] **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.

* * * * * * *

[1] Sec. 138 of this Act, relating to economic sanctions against products of Burma, may be found at page 1650.
[2] 19 U.S.C. 58c note.

f. U.S. Trade With Asia and Pacific

(1) United States-Australia Free Trade Agreement Implementation Act

Partial text of Public Law 108–286 [H.R. 4759], 118 Stat. 919, approved August 3, 2004

AN ACT To implement the United States-Australia Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.[1]—This Act may be cited as the "United States-Australia Free Trade Agreement Implementation Act".

(b) TABLE OF CONTENTS.—* * *

SEC. 2.[1] PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and Australia, entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Australia for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

SEC. 3.[1] DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the United States-Australia Free Trade Agreement approved by Congress under section 101(a)(1).

(2) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

(3) TEXTILE OR APPAREL GOOD.—The term "textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101.[1] APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade

[1] 19 U.S.C. 3805 note.

Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves—

(1) the United States-Australia Free Trade Agreement entered into on May 18, 2004, with the Government of Australia and submitted to Congress on July 6, 2004; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 6, 2004.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Australia has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Australia providing for the entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.

SEC. 102.[1] RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

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

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

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

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

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term "State law" includes—

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

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

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

SEC. 103.[1] IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date on which the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104, may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104.[1] CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

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

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

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

(B) the United States International Trade Commission;

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

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

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

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a)[1] ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 21 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 21 of the Agreement.

SEC. 106.[1] EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS[2]

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TITLE III—RELIEF FROM IMPORTS[3]

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TITLE IV—PROCUREMENT[4]

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[2] Freestanding provisions in this title are codified at 19 U.S.C. 3805 note.

[3] Freestanding provisions in this title are codified at 19 U.S.C. 3805 note (Subtitle A—Relief from Imports Benefiting from the Agreement; Subtitle B—Textile and Apparel Safeguard Measures; Subtitle C—Cases Under Title II of the Trade Act of 1974).

[4] Title IV amends sec. 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)(A)).

(2) United States-Singapore Free Trade Agreement Implementation Act

Partial text of Public Law 108–78 [H.R. 2739], 117 Stat. 948, approved September 3, 2003

AN ACT To implement the United States-Singapore Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.[1]—This Act may be cited as the "United States-Singapore Free Trade Agreement Implementation Act".

(b) TABLE OF CONTENTS.—* * *

Sec. 2.[1] PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and the Republic of Singapore entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002;

(2) to strengthen and develop economic relations between the United States and Singapore for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

SEC. 3.[1] DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the United States-Singapore Free Trade Agreement approved by Congress under section 101(a).

(2) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101.[1] APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves—

(1) the United States-Singapore Free Trade Agreement entered into on May 6, 2003, with the Government of Singapore and submitted to Congress on July 15, 2003; and

[1] 19 U.S.C. 3805 note.

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 15, 2003.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Singapore has taken measures necessary to bring it into compliance with those provisions of the Agreement that take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Singapore providing for the entry into force, on or after January 1, 2004, of the Agreement for the United States.

SEC. 102.[1] RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

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

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

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

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term "State law" includes—

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

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

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

SEC. 103.[1] CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

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

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

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

(B) the United States International Trade Commission;

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

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

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

(3) a period of 60 calendar days beginning on the first day on which the requirements of paragraphs (1) and (2) have been met has expired; and

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

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

SEC. 104.[1] IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations—

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

(2) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 105.[1] ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of

Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. Such office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2003 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106.[1] ARBITRATION OF CERTAIN CLAIMS.

(a) SUBMISSION OF CERTAIN CLAIMS.—The United States is authorized to resolve any claim against the United States covered by article 15.15.1(a)(i)(C) or article 15.15.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section C of chapter 15 of the Agreement.

(b) CONTRACT CLAUSES.—All contracts executed by any agency of the United States on or after the date of entry into force of the Agreement shall contain a clause specifying the law that will apply to resolve any breach of contract claim.

SEC. 107.[1] EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—

(1) Sections 1 through 3 and this title take effect on the date of enactment of this Act.

(2) Section 205 takes effect on the date on which the textile and apparel provisions of the Agreement take effect pursuant to article 5.10 of the Agreement.

(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS[2]

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TITLE III—RELIEF FROM IMPORTS[3]

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TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS

SEC. 401.[1] NONIMMIGRANT TRADERS AND INVESTORS.

Upon a basis of reciprocity secured by the Agreement, an alien who is a national of Singapore (and any spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1))) of such alien, if accompanying or following to join the alien) may, if otherwise eligible for a visa and if otherwise

[2] Freestanding provisions in this title are codified at 19 U.S.C. 3805 note.

[3] Freestanding provisions in this title are codified at 19 U.S.C. 3805 note (Subtitle A—Relief from Imports Benefiting from the Agreement; Subtitle B—Textile and Apparel Safeguard Measures; Subtitle C—Cases Under Title II of the Trade Act of 1974).

admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in clause (i) or (ii) of such section 101(a)(15)(E). For purposes of this section, the term "national" has the meaning given such term in Annex 1A of the Agreement.

SEC. 402.[4] **NONIMMIGRANT PROFESSIONALS.** * * *

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[4] Sec. 402 amends the sec. 214(g)(8) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(8)).

(3) United States-China Relations Act of 2000

Partial text of Division B of Public Law 106–286 [H.R. 4444], 114 Stat. 880, approved October 10, 2000; as amended by Public Law 107–228 [Foreign Relations Authorization Act, Fiscal Year 2003; H.R. 1646], 116 Stat. 1350, approved September 30, 2002

AN ACT To authorize extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China, and to establish a framework for relations between the United States and the People's Republic of China.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into two divisions as follows:

(1) Division A—Normal trade relations for the People's Republic of China.

(2) Division B—United States-China Relations.

(b) TABLE OF CONTENTS.—* * *

DIVISION A—NORMAL TRADE RELATIONS FOR THE PEOPLE'S REPUBLIC OF CHINA

TITLE I—NORMAL TRADE RELATIONS

SEC. 101.[1] TERMINATION OF APPLICATION OF CHAPTER 1 OF TITLE IV OF THE TRADE ACT OF 1974 TO THE PEOPLE'S REPUBLIC OF CHINA. * * *

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DIVISION B—UNITED STATES-CHINA RELATIONS

TITLE II—GENERAL PROVISIONS

SEC. 201.[2] SHORT TITLE OF DIVISION; TABLE OF CONTENTS OF DIVISION.

(a) SHORT TITLE OF DIVISION.—This division may be cited as the "U.S.-China Relations Act of 2000".

(b) TABLE OF CONTENTS OF DIVISION.—The table of contents of this division is as follows: * * *

* * * * * * *

SEC. 202.[3] FINDINGS.

The Congress finds the following:

(1) In 1980, the United States opened trade relations with the People's Republic of China by entering into a bilateral

[1] Title I, Division A of this Act can be found on page 1176 of this volume.
[2] 22 U.S.C. 6901 note.
[3] 22 U.S.C. 6901.

trade agreement, which was approved by joint resolution enacted pursuant to section 405(c) of the Trade Act of 1974.

(2) Since 1980, the President has consistently extended nondiscriminatory treatment to products of the People's Republic of China, pursuant to his authority under section 404 of the Trade Act of 1974.

(3) Since 1980, the United States has entered into several additional trade-related agreements with the People's Republic of China, including a memorandum of understanding on market access in 1992, two agreements on intellectual property rights protection in 1992 and 1995, and an agreement on agricultural cooperation in 1999.

(4) Trade in goods between the People's Republic of China and the United States totaled almost $95,000,000,000 in 1999, compared with approximately $18,000,000,000 in 1989, representing growth of approximately 428 percent over 10 years.

(5) The United States merchandise trade deficit with the People's Republic of China has grown from approximately $6,000,000,000 in 1989 to over $68,000,000,000 in 1999, a growth of over 1,000 percent.

(6) The People's Republic of China currently restricts imports through relatively high tariffs and nontariff barriers, including import licensing, technology transfer, and local content requirements.

(7) United States businesses attempting to sell goods to markets in the People's Republic of China have complained of uneven application of tariffs, customs procedures, and other laws, rules, and administrative measures affecting their ability to sell their products in the Chinese market.

(8) On November 15, 1999, the United States and the People's Republic of China concluded a bilateral agreement concerning terms of the People's Republic of China's eventual accession to the World Trade Organization.

(9) The commitments that the People's Republic of China made in its November 15, 1999, agreement with the United States promise to eliminate or greatly reduce the principal barriers to trade with and investment in the People's Republic of China, if those commitments are effectively complied with and enforced.

(10) The record of the People's Republic of China in implementing trade-related commitments has been mixed. While the People's Republic of China has generally met the requirements of the 1992 market access memorandum of understanding and the 1992 and 1995 agreements on intellectual property rights protection, other measures remain in place or have been put into place which tend to diminish the benefit to United States businesses, farmers, and workers from the People's Republic of China's implementation of those earlier commitments. Notably, administration of tariff-rate quotas and other trade-related laws remains opaque, new local content requirements have proliferated, restrictions on importation of animal and plant products are not always supported by sound science, and licensing requirements for importation and distribution of goods

remain common. Finally, the Government of the People's Republic of China has failed to cooperate with the United States Customs Service in implementing a 1992 memorandum of understanding prohibiting trade in products made by prison labor.

(11) The human rights record of the People's Republic of China is a matter of very serious concern to the Congress. The Congress notes that the Department of State's 1999 Country Reports on Human Rights Practices for the People's Republic of China finds that "[t]he Government's poor human rights record deteriorated markedly throughout the year, as the Government intensified efforts to suppress dissent, particularly organized dissent.".

(12) The Congress deplores violations by the Government of the People's Republic of China of human rights, religious freedoms, and worker rights that are referred to in the Department of State's 1999 Country Reports on Human Rights Practices for the People's Republic of China, including the banning of the Falun Gong spiritual movement, denial in many cases, particularly politically sensitive ones, of effective representation by counsel and public trials, extrajudicial killings and torture, forced abortion and sterilization, restriction of access to Tibet and Xinjiang, perpetuation of "reeducation through labor", denial of the right of workers to organize labor unions or bargain collectively with their employers, and failure to implement a 1992 memorandum of understanding prohibiting trade in products made by

SEC. 203.[4] POLICY.

It is the policy of the United States—

(1) to develop trade relations that broaden the benefits of trade, and lead to a leveling up, rather than a leveling down, of labor, environmental, commercial rule of law, market access, anticorruption, and other standards across national borders;

(2) to pursue effective enforcement of trade-related and other international commitments by foreign governments through enforcement mechanisms of international organizations and through the application of United States law as appropriate;

(3) to encourage foreign governments to conduct both commercial and noncommercial affairs according to the rule of law developed through democratic processes;

(4) to encourage the Government of the People's Republic of China to afford its workers internationally recognized worker rights;

(5) to encourage the Government of the People's Republic of China to protect the human rights of people within the territory of the People's Republic of China, and to take steps toward protecting such rights, including, but not limited to—

(A) ratifying the International Covenant on Civil and Political Rights;

(B) protecting the right to liberty of movement and freedom to choose a residence within the People's Republic of

[4] 22 U.S.C. 6902.

China and the right to leave from and return to the People's Republic of China; and

(C) affording a criminal defendant—

(i) the right to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing;

(ii) the right to be informed, if he or she does not have legal assistance, of the right set forth in clause (i);

(iii) the right to have legal assistance assigned to him or her in any case in which the interests of justice so require and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(iv) the right to a fair and public hearing by a competent, independent, and impartial tribunal established by the law;

(v) the right to be presumed innocent until proved guilty according to law; and

(vi) the right to be tried without undue delay; and

(6) to highlight in the United Nations Human Rights Commission and in other appropriate fora violations of human rights by foreign governments and to seek the support of other governments in urging improvements in human rights practices.

SEC. 204.[5] DEFINITIONS.

In this division:

(1) DISPUTE SETTLEMENT UNDERSTANDING.—The term "Dispute Settlement Understanding" means the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 101(d)(16) of the Uruguay Round Agreements Act (19 U.S.C. 3511(16)).

(2) GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA.—The term "Government of the People's Republic of China" means the central Government of the People's Republic of China and any other governmental entity, including any provincial, prefectural, or local entity and any enterprise that is controlled by the central Government or any such governmental entity or as to which the central Government or any such governmental entity is entitled to receive a majority of the profits.

(3) INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—The term "internationally recognized worker rights" has the meaning given that term in section 507(4) of the Trade Act of 1974 (19 U.S.C. 2467(4)) and includes the right to the elimination of the "worst forms of child labor", as defined in section 507(6) of the Trade Act of 1974 (19 U.S.C. 2467(6)).

(4) TRADE REPRESENTATIVE.—The term "Trade Representative" means the United States Trade Representative.

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

[5] 22 U.S.C. 6903.

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

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

TITLE III—CONGRESSIONAL-EXECUTIVE COMMISSION ON THE PEOPLE'S REPUBLIC OF CHINA

SEC. 301.[6] ESTABLISHMENT OF CONGRESSIONAL-EXECUTIVE COMMISSION ON THE PEOPLE'S REPUBLIC OF CHINA.

There is established a Congressional-Executive Commission on the People's Republic of China (in this title referred to as the "Commission").

SEC. 302.[7] FUNCTIONS OF THE COMMISSION.

(a) MONITORING COMPLIANCE WITH HUMAN RIGHTS.—The Commission shall monitor the acts of the People's Republic of China which reflect compliance with or violation of human rights, in particular, those contained in the International Covenant on Civil and Political Rights and in the Universal Declaration of Human Rights, including, but not limited to, effectively affording—

(1) the right to engage in free expression without fear of any prior restraints;

(2) the right to peaceful assembly without restrictions, in accordance with international law;

(3) religious freedom, including the right to worship free of involvement of and interference by the government;

(4) the right to liberty of movement and freedom to choose a residence within the People's Republic of China and the right to leave from and return to the People's Republic of China;

(5) the right of a criminal defendant—

(A) to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing;

(B) to be informed, if he or she does not have legal assistance, of the right set forth in subparagraph (A);

(C) to have legal assistance assigned to him or her in any case in which the interests of justice so require and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(D) to a fair and public hearing by a competent, independent, and impartial tribunal established by the law;

(E) to be presumed innocent until proved guilty according to law; and

(F) to be tried without undue delay;

(6) the right to be free from torture and other forms of cruel or unusual punishment;

(7) protection of internationally recognized worker rights;

(8) freedom from incarceration as punishment for political opposition to the government;

[6] 22 U.S.C. 6911.
[7] 22 U.S.C. 6912.

(9) freedom from incarceration as punishment for exercising or advocating human rights (including those described in this section);

(10) freedom from arbitrary arrest, detention, or exile;

(11) the right to fair and public hearings by an independent tribunal for the determination of a citizen's rights and obligations; and

(12) free choice of employment.

(b) VICTIMS LISTS.—The Commission shall compile and maintain lists of persons believed to be imprisoned, detained, or placed under house arrest, tortured, or otherwise persecuted by the Government of the People's Republic of China due to their pursuit of the rights described in subsection (a). In compiling such lists, the Commission shall exercise appropriate discretion, including concerns regarding the safety and security of, and benefit to, the persons who may be included on the lists and their families.

(c) MONITORING DEVELOPMENT OF RULE OF LAW.—The Commission shall monitor the development of the rule of law in the People's Republic of China, including, but not limited to—

(1) progress toward the development of institutions of democratic governance;

(2) processes by which statutes, regulations, rules, and other legal acts of the Government of the People's Republic of China are developed and become binding within the People's Republic of China;

(3) the extent to which statutes, regulations, rules, administrative and judicial decisions, and other legal acts of the Government of the People's Republic of China are published and are made accessible to the public;

(4) the extent to which administrative and judicial decisions are supported by statements of reasons that are based upon written statutes, regulations, rules, and other legal acts of the Government of the People's Republic of China;

(5) the extent to which individuals are treated equally under the laws of the of the People's Republic of China without regard to citizenship;

(6) the extent to which administrative and judicial decisions are independent of political pressure or governmental interference and are reviewed by entities of appellate jurisdiction; and

(7) the extent to which laws in the People's Republic of China are written and administered in ways that are consistent with international human rights standards, including the requirements of the International Covenant on Civil and Political Rights.

(d) BILATERAL COOPERATION.—The Commission shall monitor and encourage the development of programs and activities of the United States Government and private organizations with a view toward increasing the interchange of people and ideas between the United States and the People's Republic of China and expanding cooperation in areas that include, but are not limited to—

(1) increasing enforcement of human rights described in subsection (a); and

(2) developing the rule of law in the People's Republic of China.

(e) CONTACTS WITH NONGOVERNMENTAL ORGANIZATIONS.—In performing the functions described in subsections (a) through (d), the Commission shall, as appropriate, seek out and maintain contacts with nongovernmental organizations, including receiving reports and updates from such organizations and evaluating such reports.

(f) COOPERATION WITH SPECIAL COORDINATOR.—In performing the functions described in subsections (a) through (d), the Commission shall cooperate with the Special Coordinator for Tibetan Issues in the Department of State.

(g) ANNUAL REPORTS.—The Commission shall issue a report to the President and the Congress not later than 12 months after the date of the enactment of this Act, and not later than the end of each 12-month period thereafter, setting forth the findings of the Commission during the preceding 12-month period, in carrying out subsections (a) through (c). The Commission's report may contain recommendations for legislative or executive action.

(h) SPECIFIC INFORMATION IN ANNUAL REPORTS.—The Commission's report under subsection (g) shall include—

(1)[8] specific information as to the nature and implementation of laws or policies concerning the rights set forth in paragraphs (1) through (12) of subsection (a), and as to restrictions applied to or discrimination against persons exercising any of the rights set forth in such paragraphs; and

(2)[8] a description of the status of negotiations between the Government of the People's Republic of China and the Dalai Lama or his representatives, and measures taken to safeguard Tibet's distinct historical, religious, cultural, and linguistic identity and the protection of human rights.

(i) CONGRESSIONAL HEARINGS ON ANNUAL REPORTS.—(1) The Committee on International Relations of the House of Representatives shall, not later than 30 days after the receipt by the Congress of the report referred to in subsection (g), hold hearings on the contents of the report, including any recommendations contained therein, for the purpose of receiving testimony from Members of Congress, and such appropriate representatives of Federal departments and agencies, and interested persons and groups, as the committee deems advisable, with a view to reporting to the House of Representatives any appropriate legislation in furtherance of such recommendations. If any such legislation is considered by the Committee on International Relations within 45 days after receipt by the Congress of the report referred to in subsection (g), it shall be reported by the committee not later than 60 days after receipt by the Congress of such report.

(2) The provisions of paragraph (1) are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such are deemed a part of the rules of the House, and they supersede other rules only to the extent that they are inconsistent therewith; and

[8] Sec. 615 of the Tibet Policy Act of 2002 (subtitle B of title VI of Public Law 107–228; 116 Stat. 1396) struck out "shall include specific information", and inserted in lieu thereof "shall include—(1) specific information", and added para. (2).

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

(j) SUPPLEMENTAL REPORTS.—The Commission may submit to the President and the Congress reports that supplement the reports described in subsection (g), as appropriate, in carrying out subsections (a) through (c).

SEC. 303.[9] MEMBERSHIP OF THE COMMISSION.

(a) SELECTION AND APPOINTMENT OF MEMBERS.—The Commission shall be composed of 23 members as follows:

(1) Nine Members of the House of Representatives appointed by the Speaker of the House of Representatives. Five members shall be selected from the majority party and four members shall be selected, after consultation with the minority leader of the House, from the minority party.

(2) Nine Members of the Senate appointed by the President of the Senate. Five members shall be selected, after consultation with the majority leader of the Senate, from the majority party, and four members shall be selected, after consultation with the minority leader of the Senate, from the minority party.

(3) One representative of the Department of State, appointed by the President of the United States from among officers and employees of that Department.

(4) One representative of the Department of Commerce, appointed by the President of the United States from among officers and employees of that Department.

(5) One representative of the Department of Labor, appointed by the President of the United States from among officers and employees of that Department.

(6) Two at-large representatives, appointed by the President of the United States, from among the officers and employees of the executive branch.

(b) CHAIRMAN AND COCHAIRMAN.—

(1) DESIGNATION OF CHAIRMAN.—At the beginning of each odd-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the members of the Commission from the Senate as Chairman of the Commission. At the beginning of each even-numbered Congress, the Speaker of the House of Representatives shall designate one of the members of the Commission from the House as Chairman of the Commission.

(2) DESIGNATION OF COCHAIRMAN.—At the beginning of each odd-numbered Congress, the Speaker of the House of Representatives shall designate one of the members of the Commission from the House as Cochairman of the Commission. At the beginning of each even-numbered Congress, the President of the Senate, on the recommendation of the majority leader, shall designate one of the members of the Commission from the Senate as Cochairman of the Commission.

[9] 22 U.S.C. 6913.

SEC. 304.[10] VOTES OF THE COMMISSION.

Decisions of the Commission, including adoption of reports and recommendations to the executive branch or to the Congress, shall be made by a majority vote of the members of the Commission present and voting. Two-thirds of the Members of the Commission shall constitute a quorum for purposes of conducting business.

SEC. 305.[11] EXPENDITURE OF APPROPRIATIONS.

For each fiscal year for which an appropriation is made to the Commission, the Commission shall issue a report to the Congress on its expenditures under that appropriation.

SEC. 306.[12] TESTIMONY OF WITNESSES, PRODUCTION OF EVIDENCE; ISSUANCE OF SUBPOENAS; ADMINISTRATION OF OATHS.

In carrying out this title, the Commission may require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, and electronically recorded data as it considers necessary. Subpoenas may be issued only pursuant to a two-thirds vote of members of the Commission present and voting. Subpoenas may be issued over the signature of the Chairman of the Commission or any member designated by the Chairman, and may be served by any person designated by the Chairman or such member. The Chairman of the Commission, or any member designated by the Chairman, may administer oaths to any witness.

SEC. 307.[13] APPROPRIATIONS FOR THE COMMISSION.

(a) AUTHORIZATION; DISBURSEMENTS.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the Commission for fiscal year 2001, and each fiscal year thereafter, such sums as may be necessary to enable it to carry out its functions. Appropriations to the Commission are authorized to remain available until expended.

(2) DISBURSEMENTS.—Appropriations to the Commission shall be disbursed on vouchers approved—

(A) jointly by the Chairman and the Cochairman; or

(B) by a majority of the members of the personnel and administration committee established pursuant to section 308.

(b) FOREIGN TRAVEL FOR OFFICIAL PURPOSES.—Foreign travel for official purposes by members and staff of the Commission may be authorized by either the Chairman or the Cochairman.

SEC. 308.[14] STAFF OF THE COMMISSION.

(a) PERSONNEL AND ADMINISTRATION COMMITTEE.—The Commission shall have a personnel and administration committee composed of the Chairman, the Cochairman, the senior member of the Commission from the minority party of the House of Representatives, and the senior member of the Commission from the minority party of the Senate.

(b) COMMITTEE FUNCTIONS.—All decisions pertaining to the hiring, firing, and fixing of pay of personnel of the Commission shall

[10] 22 U.S.C. 6914.
[11] 22 U.S.C. 6915.
[12] 22 U.S.C. 6916.
[13] 22 U.S.C. 6917.
[14] 22 U.S.C. 6918.

be by a majority vote of the personnel and administration committee, except that—

(1) the Chairman shall be entitled to appoint and fix the pay of the staff director, and the Cochairman shall be entitled to appoint and fix the pay of the Cochairman's senior staff member; and

(2) the Chairman and Cochairman shall each have the authority to appoint, with the approval of the personnel and administration committee, at least four professional staff members who shall be responsible to the Chairman or the Cochairman (as the case may be) who appointed them.

Subject to subsection (d), the personnel and administration committee may appoint and fix the pay of such other personnel as it considers desirable.

(c) STAFF APPOINTMENTS.—All staff appointments shall be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates.

(d) QUALIFICATIONS OF PROFESSIONAL STAFF.—The personnel and administration committee shall ensure that the professional staff of the Commission consists of persons with expertise in areas including human rights, internationally recognized worker rights, international economics, law (including international law), rule of law and other foreign assistance programming, Chinese politics, economy and culture, and the Chinese language.

(e) COMMISSION EMPLOYEES AS CONGRESSIONAL EMPLOYEES.—

(1) IN GENERAL.—For purposes of pay and other employment benefits, rights, and privileges, and for all other purposes, any employee of the Commission shall be considered to be a congressional employee as defined in section 2107 of title 5, United States Code.

(2) COMPETITIVE STATUS.—For purposes of section 3304(c)(1) of title 5, United States Code, employees of the Commission shall be considered as if they are in positions in which they are paid by the Secretary of the Senate or the Clerk of the House of Representatives.

SEC. 309.[15] PRINTING AND BINDING COSTS.

For purposes of costs relating to printing and binding, including the costs of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of the Congress.

[15] 22 U.S.C. 6919.

TITLE IV—MONITORING AND ENFORCEMENT OF THE PEOPLE'S REPUBLIC OF CHINA'S WTO COMMITMENTS

Subtitle A—Review of Membership of the People's Republic of China in the WTO

SEC. 401.[16] REVIEW WITHIN THE WTO.

It shall be the objective of the United States to obtain as part of the Protocol of Accession of the People's Republic of China to the WTO, an annual review within the WTO of the compliance by the People's Republic of China with its terms of accession to the WTO.

Subtitle B—Authorization To Promote Compliance With Trade Agreements

SEC. 411.[17] FINDINGS.

The Congress finds as follows:

(1) The opening of world markets through the elimination of tariff and nontariff barriers has contributed to a 56-percent increase in exports of United States goods and services since 1992.

(2) Such export expansion, along with an increase in trade generally, has helped fuel the longest economic expansion in United States history.

(3) The United States Government must continue to be vigilant in monitoring and enforcing the compliance by our trading partners with trade agreements in order for United States businesses, workers, and farmers to continue to benefit from the opportunities created by market-opening trade agreements.

(4) The People's Republic of China, as part of its accession to the World Trade Organization, has committed to eliminating significant trade barriers in the agricultural, services, and manufacturing sectors that, if realized, would provide considerable opportunities for United States farmers, businesses, and workers.

(5) For these opportunities to be fully realized, the United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO.

SEC. 412.[18] PURPOSE.

The purpose of this subtitle is to authorize additional resources for the agencies and departments engaged in monitoring and enforcement of United States trade agreements and trade laws with respect to the People's Republic of China.

SEC. 413.[19] AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF COMMERCE.—There is authorized to be appropriated to the Department of Commerce, in addition to amounts otherwise available for such purposes, such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter, for additional staff for—

[16] 22 U.S.C. 6931.
[17] 22 U.S.C. 6941.
[18] 22 U.S.C. 6942.
[19] 22 U.S.C. 6943.

(1) monitoring compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China;

(2) enforcement of United States trade laws with respect to products of the People's Republic of China; and

(3) a Trade Law Technical Assistance Center to assist small- and medium-sized businesses, workers, and unions in evaluating potential remedies available under the trade laws of the United States with respect to trade involving the People's Republic of China.

(b) OVERSEAS COMPLIANCE PROGRAM.—

(1) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated to the Department of Commerce and the Department of State, in addition to amounts otherwise available, such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter, to provide staff for monitoring in the People's Republic of China that country's compliance with its international trade obligations and to support the enforcement of the trade laws of the United States, as part of an Overseas Compliance Program which monitors abroad compliance with international trade obligations and supports the enforcement of United States trade laws.

(2) REPORTING.—The annual report on compliance by the People's Republic of China submitted to the Congress under section 421 of this Act shall include the findings of the Overseas Compliance Program with respect to the People's Republic of China.

(c) UNITED STATES TRADE REPRESENTATIVE.—There are authorized to be appropriated to the Office of the United States Trade Representative, in addition to amounts otherwise available for such purposes, such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter, for additional staff in—

(1) the Office of the General Counsel, the Monitoring and Enforcement Unit, and the Office of the Deputy United States Trade Representative in Geneva, Switzerland, to investigate, prosecute, and defend cases before the WTO, and to administer United States trade laws, including title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq.) and other trade laws relating to intellectual property, government procurement, and telecommunications, with respect to the People's Republic of China;

(2) the Office of Economic Affairs, to analyze the impact on the economy of the United States, including United States exports, of acts of the Government of the People's Republic of China affecting access to markets in the People's Republic of China and to support the Office of the General Counsel in presenting cases to the WTO involving the People's Republic of China;

(3) the geographic office for the People's Republic of China; and

(4) offices relating to the WTO and to different sectors of the economy, including agriculture, industry, services, and intellectual property rights protection, to monitor and enforce the trade agreement obligations of the People's Republic of China in those sectors.

(d) DEPARTMENT OF AGRICULTURE.—There are authorized to be appropriated to the Department of Agriculture, in addition to amounts otherwise available for such purposes, such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter, for additional staff to increase legal and technical expertise in areas covered by trade agreements and United States trade law, including food safety and biotechnology, for purposes of monitoring compliance by the People's Republic of China with its trade agreement obligations.

Subtitle C—Report on Compliance by the People's Republic of China With WTO Obligations

SEC. 421.[20] REPORT ON COMPLIANCE.

(a) IN GENERAL.—Not later than 1 year after the entry into force of the Protocol of Accession of the People's Republic of China to the WTO, and annually thereafter, the Trade Representative shall submit a report to Congress on compliance by the People's Republic of China with commitments made in connection with its accession to the World Trade Organization, including both multilateral commitments and any bilateral commitments made to the United States.

(b) PUBLIC PARTICIPATION.—In preparing the report described in subsection (a), the Trade Representative shall seek public participation by publishing a notice in the Federal Register and holding a public hearing.

TITLE V—TRADE AND RULE OF LAW ISSUES IN THE PEOPLE'S REPUBLIC OF CHINA

Subtitle A—Task Force on Prohibition of Importation of Products of Forced or Prison Labor From the People's Republic of China

SEC. 501.[21] ESTABLISHMENT OF TASK FORCE.

There is hereby established a task force on prohibition of importation of products of forced or prison labor from the People's Republic of China (hereafter in this subtitle referred to as the "Task Force").

SEC. 502.[22] FUNCTIONS OF TASK FORCE.

The Task Force shall monitor and promote effective enforcement of and compliance with section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) by performing the following functions:

(1) Coordinate closely with the United States Customs Service to promote maximum effectiveness in the enforcement by the Customs Service of section 307 of the Tariff Act of 1930 with respect to the products of the People's Republic of China.

[20] 22 U.S.C. 6951.
[21] 22 U.S.C. 6961.
[22] 22 U.S.C. 6962.

In order to assure such coordination, the Customs Service shall keep the Task Force informed, on a regular basis, of the progress of its investigations of allegations that goods are being entered into the United States, or that such entry is being attempted, in violation of the prohibition in section 307 of the Tariff Act of 1930 on entry into the United States of goods mined, produced, or manufactured wholly or in part in the People's Republic of China by convict labor, forced labor, or indentured labor under penal sanctions. Such investigations may include visits to foreign sites where goods allegedly are being mined, produced, or manufactured in a manner that would lead to prohibition of their importation into the United States under section 307 of the Tariff Act of 1930.

(2) Make recommendations to the Customs Service on seeking new agreements with the People's Republic of China to allow Customs Service officials to visit sites where goods may be mined, produced, or manufactured by convict labor, forced labor, or indentured labor under penal sanctions.

(3) Work with the Customs Service to assist the People's Republic of China and other foreign governments in monitoring the sale of goods mined, produced, or manufactured by convict labor, forced labor, or indentured labor under penal sanctions to ensure that such goods are not exported to the United States.

(4) Coordinate closely with the Customs Service to promote maximum effectiveness in the enforcement by the Customs Service of section 307 of the Tariff Act of 1930 with respect to the products of the People's Republic of China. In order to assure such coordination, the Customs Service shall keep the Task Force informed, on a regular basis, of the progress of its monitoring of ports of the United States to ensure that goods mined, produced, or manufactured wholly or in part in the People's Republic of China by convict labor, forced labor, or indentured labor under penal sanctions are not imported into the United States.

(5) Advise the Customs Service in performing such other functions, consistent with existing authority, to ensure the effective enforcement of section 307 of the Tariff Act of 1930.

(6) Provide to the Customs Service all information obtained by the departments represented on the Task Force relating to the use of convict labor, forced labor, or/and indentured labor under penal sanctions in the mining, production, or manufacture of goods which may be imported into the United States.

SEC. 503.[23] COMPOSITION OF TASK FORCE.

The Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labor, the Secretary of State, the Commissioner of Customs, and the heads of other executive branch agencies, as appropriate, acting through their respective designees at or above the level of Deputy Assistant Secretary, or in the case of the Customs

[23] 22 U.S.C. 6963.

Service, at or above the level of Assistant Commissioner, shall compose the Task Force. The designee of the Secretary of the Treasury shall chair the Task Force.

SEC. 504.[24] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 2001, and each fiscal year thereafter, such sums as may be necessary for the Task Force to carry out the functions described in section 502.

SEC. 505.[25] REPORTS TO CONGRESS.

(a) FREQUENCY OF REPORTS.—Not later than the date that is 1 year after the date of the enactment of this Act, and not later than the end of each 1-year period thereafter, the Task Force shall submit to the Congress a report on the work of the Task Force during the preceding 1-year period.

(b) CONTENTS OF REPORTS.—Each report under subsection (a) shall set forth, at a minimum—

(1) the number of allegations of violations of section 307 of the Tariff Act of 1930 with respect to products of the Peoples' Republic of China that were investigated during the preceding 1-year period;

(2) the number of actual violations of section 307 of the Tariff Act of 1930 with respect to the products of the People's Republic of China that were discovered during the preceding 1-year period;

(3) in the case of each attempted entry of products of the People's Republic of China in violation of such section 307 discovered during the preceding 1-year period—

(A) the identity of the exporter of the goods;

(B) the identity of the person or persons who attempted to sell the goods for export; and

(C) the identity of all parties involved in transshipment of the goods; and

(4) such other information as the Task Force considers useful in monitoring and enforcing compliance with section 307 of the Tariff Act of 1930.

Subtitle B—Assistance To Develop Commercial and Labor Rule of Law

SEC. 511.[26] ESTABLISHMENT OF TECHNICAL ASSISTANCE AND RULE OF LAW PROGRAMS.

(a) COMMERCE RULE OF LAW PROGRAM.—The Secretary of Commerce, in consultation with the Secretary of State, is authorized to establish a program to conduct rule of law training and technical assistance related to commercial activities in the People's Republic of China.

(b) LABOR RULE OF LAW PROGRAM.—

(1) IN GENERAL.—The Secretary of Labor, in consultation with the Secretary of State, is authorized to establish a program to conduct rule of law training and technical assistance

[24] 22 U.S.C. 6964.
[25] 22 U.S.C. 6965.
[26] 22 U.S.C. 6981.

related to the protection of internationally recognized worker rights in the People's Republic of China.

(2) USE OF AMOUNTS.—In carrying out paragraph (1), the Secretary of Labor shall focus on activities including, but not limited to—

(A) developing, laws, regulations, and other measures to implement internationally recognized worker rights;

(B) establishing national mechanisms for the enforcement of national labor laws and regulations;

(C) training government officials concerned with implementation and enforcement of national labor laws and regulations; and

(D) developing an educational infrastructure to educate workers about their legal rights and protections under national labor laws and regulations.

(3) LIMITATION.—The Secretary of Labor may not provide assistance under the program established under this subsection to the All-China Federation of Trade Unions.

(c) LEGAL SYSTEM AND CIVIL SOCIETY RULE OF LAW PROGRAM.—The Secretary of State is authorized to establish a program to conduct rule of law training and technical assistance related to development of the legal system and civil society generally in the People's Republic of China.

(d) CONDUCT OF PROGRAMS.—The programs authorized by this section may be used to conduct activities such as seminars and workshops, drafting of commercial and labor codes, legal training, publications, financing the operating costs for nongovernmental organizations working in this area, and funding the travel of individuals to the United States and to the People's Republic of China to provide and receive training.

SEC. 512.[27] ADMINISTRATIVE AUTHORITIES.

In carrying out the programs authorized by section 511, the Secretary of Commerce and the Secretary of Labor (in consultation with the Secretary of State) may utilize any of the authorities contained in the Foreign Assistance Act of 1961 and the Foreign Service Act of 1980.

SEC. 513.[28] PROHIBITION RELATING TO HUMAN RIGHTS ABUSES.

Amounts made available to carry out this subtitle may not be provided to a component of a ministry or other administrative unit of the national, provincial, or other local governments of the People's Republic of China, to a nongovernmental organization, or to an official of such governments or organizations, if the President has credible evidence that such component, administrative unit, organization or official has been materially responsible for the commission of human rights violations.

SEC. 514.[29] AUTHORIZATION OF APPROPRIATIONS.

(a) COMMERCIAL LAW PROGRAM.—There are authorized to be appropriated to the Secretary of Commerce to carry out the program

[27] 22 U.S.C. 6982.
[28] 22 U.S.C. 6983.
[29] 22 U.S.C. 6984.

described in section 511(a) such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter.

(b) LABOR LAW PROGRAM.—There are authorized to be appropriated to the Secretary of Labor to carry out the program described in section 511(b) such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter.

(c) LEGAL SYSTEM AND CIVIL SOCIETY RULE OF LAW PROGRAM.—There are authorized to be appropriated to the Secretary of State to carry out the program described in section 511(c) such sums as may be necessary for fiscal year 2001, and each fiscal year thereafter.

(d) CONSTRUCTION WITH OTHER LAWS.—Except as provided in this division, funds may be made available to carry out the purposes of this subtitle notwithstanding any other provision of law.

TITLE VI—ACCESSION OF TAIWAN TO THE WTO

SEC. 601.[30] ACCESSION OF TAIWAN TO THE WTO.

It is the sense of the Congress that—

(1) immediately upon approval by the General Council of the WTO of the terms and conditions of the accession of the People's Republic of China to the WTO, the United States representative to the WTO should request that the General Council of the WTO consider Taiwan's accession to the WTO as the next order of business of the Council during the same session; and

(2) the United States should be prepared to aggressively counter any effort by any WTO member, upon the approval of the General Council of the WTO of the terms and conditions of the accession of the People's Republic of China to the WTO, to block the accession of Taiwan to the WTO.

TITLE VII—RELATED ISSUES

SEC. 701.[31] AUTHORIZATIONS OF APPROPRIATIONS FOR BROADCASTING CAPITAL IMPROVEMENTS AND INTERNATIONAL BROADCASTING OPERATIONS.

(a) BROADCASTING CAPITAL IMPROVEMENTS.—In addition to such sums as may otherwise be authorized to be appropriated, there are authorized to be appropriated for "Department of State and Related Agency, Related Agency, Broadcasting Board of Governors, Broadcasting Capital Improvements" $65,000,000 for the fiscal year 2003.[32]

(b) INTERNATIONAL BROADCASTING OPERATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as are otherwise authorized to be appropriated, there are authorized to be appropriated $34,000,000 for each of the fiscal years 2001, 2002, and 2003 [32] for "Department of State and Related Agency, Related Agency, Broadcasting Board of Governors, International Broadcasting Operations" for the purposes under paragraph (2).

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[30] 22 U.S.C. 6991.

[31] 22 U.S.C. 7001.

[32] Sec. 121(b) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228; 116 Stat. 1360), struck out "2001" and inserted in lieu thereof "2003" in subsec. (a) and struck out "2001 and 2002" and inserted in lieu thereof "2001, 2002, and 2003" in subsec. (b)(1).

(2) USES OF FUNDS.—In addition to other authorized purposes, funds appropriated pursuant to paragraph (1) shall be used for the following:

(A) To increase personnel for the program development office to enhance marketing programming in the People's Republic of China and neighboring countries.

(B) To enable Radio Free Asia's expansion of news research, production, call-in show capability, and web site/Internet enhancement for the People's Republic of China and neighboring countries.

(C) VOA enhancements, including the opening of new news bureaus in Taipei and Shanghai, enhancement of TV Mandarin, and an increase of stringer presence abroad.

(4) United States-Hong Kong Policy Act of 1992

Public Law 102–383 [S. 1731], 106 Stat. 1448, approved October 5, 1992; as amended by Public Law 104–107 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996; H.R. 1868], 110 Stat. 704, approved February 12, 1996; Public Law 105–206 [Internal Revenue Service Restructuring and Reform Act of 1998; H.R. 2676], 112 Stat. 685, approved July 22, 1998; and Public Law 107–77 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002; H.R. 2506], 115 Stat. 2118, approved January 10, 2002

AN ACT To set forth the policy of the United States with respect to Hong Kong, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "United States-Hong Kong Policy Act of 1992".

SEC. 2.[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 exercise 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

[1] 22 U.S.C. 5701 note.
[2] 22 U.S.C. 5701.

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.[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.[4] 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

[3] 22 U.S.C. 5702.
[4] 22 U.S.C. 5711.

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.[5] 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 General Agreement on Tariffs and Trade, whether or not the People's Republic of China participates in the latter organization.

[5] 22 U.S.C. 5712.

SEC. 103.[6] 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[7] 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.

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[6] 22 U.S.C. 5713.

[7] Sec. 5003(b)(7) of Public Law 105–206 (115 Stat. 790) struck out "(commonly referred to as 'most-favored-nation' status)".

SEC. 104.[8] 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 the negotiations described in paragraph (7) lead to pro-competitive air service agreements.

SEC. 105.[9] 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.

[8] 22 U.S.C. 5714.
[9] 22 U.S.C. 5715.

(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.[10] 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.[11] 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.

[10] 22 U.S.C. 5721.
[11] 22 U.S.C. 5722.

(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.[12] RULES AND REGULATIONS.

The President is authorized to prescribe such rules and regulations as the President may deem appropriate to carry out this Act.

SEC. 204.[13] CONSULTATION WITH CONGRESS.

In carrying out this title, the President shall consult appropriately with the Congress.

TITLE III—REPORTING PROVISIONS

SEC. 301.[14] REPORTING REQUIREMENT.

Not later than March 31, 1993, March 31, 1995, March 31, 1996,[15] March 31, 1997, March 31, 1998, March 31, 1999, March

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[12] 22 U.S.C. 5723.

[13] 22 U.S.C. 5724.

[14] 22 U.S.C. 5731.

[15] Sec. 576(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107; 110 Stat. 750) inserted "March 31, 1996," after "March 31, 1995,".

Sec. 576(b) of Public Law 104–107 (110 Stat. 750) further provided the following:

"(b) In light of the deficiencies in reports submitted to the Congress pursuant to section 301 of the United States-Hong Kong Policy Act (22 U.S.C. 5731), the Congress directs that the additional report required to be submitted under such section by subsection (a) of this section include detailed information on the status of, and other developments affecting, implementation of the Sino-British Joint Declaration on the Question of Hong Kong, including—

"(1) the Basic Law and its consistency with the Joint Declaration;

"(2) the openness and fairness of elections to the legislature;

"(3) the openness and fairness of the election of the chief executive and the executive's accountability to the legislature;

"(4) the treatment of political parties;

"(5) the independence of the judiciary and its ability to exercise the power of final judgment over Hong Kong law; and

"(6) the Bill of Rights.".

Sec. 571 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (sec. 101(c) of title I of Public Law 104–208; 110 Stat. 3009), provided the following:

"REPORT REGARDING HONG KONG

"SEC. 571. In light of the deficiencies in reports submitted to the Congress pursuant to section 301 of the United States-Hong Kong Policy Act (22 U.S.C. 5731), the Congress directs that the additional report required to be submitted during 1997 under such section include detailed information on the status of, and other developments affecting, implementation of the Sino-British Joint Declaration on the Question of Hong Kong, including—

"(1) the Basic Law and its consistency with the Joint Declaration;

"(2) Beijing's plans to replace the elected legislature with an appointed body;

"(3) the openness and fairness of the election of the chief executive and the executive's accountability to the legislature;

"(4) the treatment of political parties;

31, 2000, March 31, 2001, March 31, 2002, March 31, 2003, March 31, 2004, March 31, 2005, and March 31, 2006[15] 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.[16] 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);

"(5) the independence of the judiciary and its ability to exercise the power of final judgment over Hong Kong law; and

"(6) the Bill of Rights.".

Sec. 586(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–77; 115 Stat. 2173) struck out "and March 31, 2000," and inserted in lieu thereof "March 31, 2000, March 31, 2001, March 31, 2002, March 31, 2003, March 31, 2004, March 31, 2005, and March 31, 2006.".

Sec. 586(b) of Public Law 107–77 (115 Stat. 2173) further provided that "The requirement in section 301 of the United States-Hong Kong Policy Act, as amended by subsection (a), that a report under that section shall be transmitted not later than March 31, 2001, shall be considered satisfied by the transmittal of such report by August 7, 2001.".

[16] 22 U.S.C. 5732.

(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).

(5) Commission on United States-Pacific Trade and Investment Policy

Executive Order 12964, June 21, 1995, 60 F.R. 33095; amended by Executive Order 12987, January 31, 1996, 61 F.R. 4205; and Executive Order 13032, December 26, 1996, 61 F.R. 68985

NOTE.—This Executive Order, establishing a Commission in United States-Pacific Trade and Investment Policy, was revoked by Executive Order 13062 of September 29, 1997 (62 F.R. 51755). The Commission was scheduled to report its finding to the President on or about February 28, 1997, and was to terminate thereafter.

g. Normal Trade Relations (Most-Favored-Nation) Extensions, Suspensions, Terminations

(1) Armenia

Partial text of Public Law 108–429 [Miscellaneous Trade and Technical Corrections Act of 2004, H.R. 1047] 118 Stat. 2434, approved December 3, 2004

AN ACT To amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes.

* * * * * * *

SEC. 2001.[1] TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ARMENIA.

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

(1) Armenia has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.

(2) Armenia acceded to the World Trade Organization on February 5, 2003.

(3) Since declaring its independence from the Soviet Union in 1991, Armenia has made considerable progress in enacting free-market reforms.

(4) Armenia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has concluded many bilateral treaties and agreements with the United States.

(5) Total United States-Armenia bilateral trade for 2002 amounted to more than $134,200,000.

(b) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to Armenia; and

(2) after making a determination under paragraph (1) with respect to Armenia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(c) TERMINATION OF APPLICATION OF TITLE IV.[2]—On and after the effective date of the extension under subsection (b)(2) of nondiscriminatory treatment to the products of Armenia, title IV of the Trade Act of 1974 shall cease to apply to that country.

* * * * * * *

[1] 19 U.S.C. 2434 note.

[2] Prior to passage of Public Law 108–429, the President waived the application of subsecs. (a) and (b) of the Trade Act of 1974 (19 U.S.C. 2432) with respect to Armenia in Executive Order 12798 (April 3, 1992, 57 F.R. 12175).

(2) Laos

Partial text of Public Law 108–429 [Miscellaneous Trade and Technical Corrections Act of 2004, H.R. 1047] 118 Stat. 2434, approved December 3, 2004

AN ACT To amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes.

* * * * * * *

SEC. 2005. EXTENSION OF NORMAL TRADE RELATIONS TO LAOS.

(a) FINDINGS.—Congress finds that—

(1) the Lao People's Democratic Republic is pursuing a broad policy of adopting market-based reforms to enhance its economic competitiveness and achieve an attractive climate for investment;

(2) extension of normal trade relations treatment would assist the Lao People's Democratic Republic in developing its economy based on free market principles and becoming competitive in the global marketplace;

(3) establishing normal commercial relations on a reciprocal basis with the Lao People's Democratic Republic will promote United States exports to the rapidly growing southeast Asian region and expand opportunities for United States business and investment in the Lao People's Democratic Republic economy;

(4) United States and Laotian commercial interests would benefit from the bilateral trade agreement between the United States and the Lao People's Democratic Republic, signed in 2003, providing for market access and the protection of intellectual property rights;

(5) the Lao People's Democratic Republic has taken cooperative steps with the United States in the global war on terrorism, combating the trafficking of narcotics, and the accounting for American servicemen and civilians still missing from the Vietnam war; and

(6) expanding bilateral trade relations that include a commercial agreement may promote further progress by the Lao People's Democratic Republic on human rights, religious tolerance, democratic rule, and transparency, and assist that country in adopting regional and world trading rules and principles.

(b) EXTENSION OF NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC.—

(1) HARMONIZED TARIFF SCHEDULE AMENDMENT.—General note 3(b) of the Harmonized Tariff Schedule of the United States is amended by striking "Laos".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective date of a

notice published in the Federal Register by the United States Trade Representative that a trade agreement obligating reciprocal most-favored-nation treatment between the Lao People's Democratic Republic and the United States has entered into force.

* * * * * * *

(3) Vietnam

Public Law 107–52 [H.J. Res. 51] 115 Stat. 268, approved October 16, 2001

JOINT RESOLUTION Approving the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of Vietnam.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of Vietnam transmitted by the President to the Congress on June 8, 2001.[1]

[1] 19 U.S.C. 2434 note. Prior to passage of Public Law 107–52, the President waived the application of subsecs. 402(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2432) with respect to Vietnam in Executive Order 13079 (April 7, 1998, 63 F.R. 17309). The waiver was extended by Presidential determinations as follows: Presidential Determination No. 98–27 (June 3, 1998, 63 F.R. 32707); Presidential Determination No. 99–27 (June 3, 1999, 64 F.R. 31111); and Presidential Determination No. 2000–21 (June 2, 2000, 65 F.R. 36309).

(4) Georgia

Title III of Public Law 106–476 [Tariff Suspension and Trade Act of 2000, H.R. 4868] 114 Stat. 2101, approved November 9, 2000

AN ACT To amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE III—EXTENSION OF NONDISCRIMINATORY TREATMENT TO GEORGIA

SEC. 3001.[1] FINDINGS.

Congress finds that Georgia has—

(1) made considerable progress toward respecting fundamental human rights consistent with the objectives of title IV of the Trade Act of 1974;

(2) adopted administrative procedures that accord its citizens the right to emigrate, travel freely, and to return to their country without restriction;

(3) been found to be in full compliance with the freedom of emigration provisions in title IV of the Trade Act of 1974;

(4) made progress toward democratic rule and creating a free market economic system since its independence from the Soviet Union;

(5) demonstrated strong and effective enforcement of internationally recognized core labor standards and a commitment to continue to improve effective enforcement of its laws reflecting such standards;

(6) committed to developing a system of governance in accordance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (also known as the "Helsinki Final Act") regarding human rights and humanitarian affairs;

(7) endeavored to address issues related to its national and religious minorities and, as a member state of the Organization for Security and Cooperation in Europe (OSCE), committed to adopting special measures for ensuring that persons belonging to national minorities have full equality individually as well as in community with other members of their group;

(8) also committed to enacting legislation to provide protection against incitement to violence against persons or groups

[1] 19 U.S.C. 2434 note.

based on national, racial, ethnic, or religious discrimination, hostility, or hatred, including anti-Semitism;

(9) continued to return communal properties confiscated from national and religious minorities during the Soviet period, facilitating the reemergence of these communities in the national life of Georgia and establishing the legal framework for completion of this process in the future;

(10)[2] concluded a bilateral trade agreement with the United States in 1993 and a bilateral investment treaty in 1994;

(11) demonstrated a strong desire to build a friendly and cooperative relationship with the United States; and

(12) acceded to the World Trade Organization on June 14, 2000, and the extension of unconditional normal trade relations treatment to the products of Georgia will enable the United States to avail itself of all rights under the World Trade Organization with respect to Georgia.

SEC. 3002.[3] TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO GEORGIA.

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.[4]—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 Georgia; and

(2) after making a determination under paragraph (1) with respect to Georgia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(b) TERMINATION OF APPLICATION OF TITLE IV.—[5] On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Georgia, title IV of the Trade Act of 1974 shall cease to apply to that country.

* * * * * * *

[2] On August 27, 1996, the President determined that "actual and forseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by Georgia" (Presidential Determination No. 96–49, August 27, 1996, 61 F.R. 45869).

[3] 19 U.S.C. 2434 note.

[4] Prior to passage of Public Law 106–476, the President waived the application of subsecs. 402(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2432) with respect to Georgia in Executive Order 12809 (June 3, 1992, 57 F.R. 145321, see page 1203, this volume, for text). The waiver was extended by Presidential determinations as follows: Presidential Determination No. 92–25 (May 6, 1992, 57 F.R. 22147); Presidential Determination No. 93–25 (June 2, 1993, 58 F.R. 33005); Presidential Determination No. 94–27 (June 2, 1994, 59 F.R. 31105); Presidential Determination No. 95–24 (June 2, 1995, 60 F.R. 31409); and Presidential Determination No. 96–30 (June 3, 1996, 61 F.R. 29457).

On June 3, 1997, the President determined that Georgia "is not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2) or (3) of subsection 409(a) of the Act" (Presidential Determination No. 97–27, June 3, 1997, 62 F.R. 32017).

[5] In Presidential Proclamation 7389 (66 F.R. 703), of December 29, 2000, the President determined pursuant to sec. 3002 that "Title IV of the Trade Act of 1974 should no longer apply to Georgia.".

(5) China

Partial text of Division A of Public Law 106–286 [Normal Trade Relations for the People's Republic of China, H.R. 4444], 114 Stat. 880, approved October 10, 2000

AN ACT To authorize extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China, and to establish a framework for relations between the United States and the People's Republic of China.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

DIVISION A—NORMAL TRADE RELATIONS FOR THE PEOPLE'S REPUBLIC OF CHINA

TITLE I—NORMAL TRADE RELATIONS

SEC. 101.[1] TERMINATION OF APPLICATION OF CHAPTER 1 OF TITLE IV OF THE TRADE ACT OF 1974 TO THE PEOPLE'S REPUBLIC OF CHINA

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.[2]—Notwithstanding any provision of chapter 1 of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), as designated by section 3(a)(2) of this Act, the President may—

(1) determine that such chapter should no longer apply to the People's Republic of China; and

(2) after making a determination under paragraph (1) with respect to the People's Republic of China, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(b) ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION.—Prior to making the determination provided for in subsection (a)(1) and pursuant to the provisions of

[1] 19 U.S.C. 2431 note.

[2] Prior to passage of Public Law 106–286, the President waived the application of subsecs. 402(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2732) with respect to China in Executive Order 12167 (October 23, 1979, 44 F.R. 61167, see page 1212, this volume, for text). The waiver was extended as follows: Presidential Determination No. 81–8 (June 2, 1981, 46 F.R. 30797); Presidential Determination No. 83–7 (June 3, 1983, 48 F.R. 26585); Presidential Determination No. 84–9 (May 31 1994, 49 F.R. 24107); Presidential Determination No. 86–10 (June 3, 1986, 51 F.R. 22057); Presidential Determination No. 87–14 (June 2, 1987, 52 F.R. 22431); Presidential Determination No. 88–18 (June 3, 1988, 53 F.R. 21407); Presidential Determination No. 89–14 (May 31, 1989, 54 F.R. 26943); Presidential Determination No. 90–21 (May 24, 1990, 55 F.R. 23183); Presidential Determination No. 91–36 (May 29, 1991, 56 F.R. 26757); Presidential Determination No. 92–29 (June 2, 1992, 57 F.R. 24539); Presidential Determination No. 93–23 (May 28, 1993, 58 F.R. 31329); Presidential Determination No. 94–26 (June 2, 1994, 59 F.R. 33005); Presidential Determination No. 95–23 (June 2, 1995, 60 F.R. 31047); Presidential Determination No. 96–29 (May 31, 1996, 61 F.R. 29455); Presidential Determination No. 97–25 (May 29, 1997, 62 F.R. 31313); Presidential Determination No. 98–26 (June 3, 1998, 63 F.R. 32705); Presidential Determination No. 99–28 (June 3, 1999, 64 F.R. 31113); Presidential Determination No. 2000–23 (June 2, 2000, 65 F.R. 36313); and Presidential Determination No. 2001–16 (June 1, 2001, 66 F.R. 30631).

section 122 of the Uruguay Round Agreements Act (19 U.S.C. 3532), the President shall transmit a report to Congress certifying that the terms and conditions for the accession of the People's Republic of China to the World Trade Organization are at least equivalent to those agreed between the United States and the People's Republic of China on November 15, 1999.

SEC. 102.[3] EFFECTIVE DATE.

(a) EFFECTIVE DATE OF NONDISCRIMINATORY TREATMENT.—The extension of nondiscriminatory treatment pursuant to section 101(a) shall be effective no earlier than the effective date of the accession of the People's Republic of China to the World Trade Organization.

(b) TERMINATION OF APPLICABILITY OF TITLE IV.—On and after the effective date under subsection (a) of the extension of nondiscriminatory treatment to the products of the People's Republic of China, chapter 1 of title IV of the Trade Act of 1974 (as designated by section 103(a)(2) of this Act) shall cease to apply to that country.

SEC. 103.[4] RELIEF FROM MARKET DISRUPTION. * * *

SEC. 104.[5] AMENDMENT TO SECTION 123 OF THE TRADE ACT OF 1974—COMPENSATION AUTHORITY.

* * * * * * *

[3] 19 U.S.C. 2431 note.

[4] Sec. 103 amended Title IV of the Trade Act of 1974 (19 U.S.C. 2431 *et seq.*) adding new chapter headings and adding new secs. 421 through 423 at the end. Title IV of the Trade Act of 1974 is found in this volume on page 370.

[5] Sec. 104 amended sec. 123(a)(1) of the Trade Act of 1974 (19 U.S.C. 2133(a)(1)) by inserting ", or under chapter 2 of title IV of the Trade Act of 1974" after "title III", as found on page 269 of this volume.

(6) Albania, Kyrgyzstan

Title III of Public Law 106–200 [Trade and Development Act of 2000, H.R. 434], 114 Stat. 251, approved May 18, 2000

AN ACT To authorize a new trade and investment policy for sub-Saharan Africa, expand trade benefits to the countries of the Caribbean Basin, renew the generalized system of preferences, and reauthorize the trade adjustment assistance programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE III—NORMAL TRADE RELATIONS

SEC. 301.[1] NORMAL TRADE RELATIONS FOR ALBANIA.

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

(1) Albania has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.

(2) Since its emergence from communism, Albania has made progress toward democratic rule and the creation of a free-market economy.

(3)[2] Albania has concluded a bilateral investment treaty with the United States.

(4) Albania has demonstrated a strong desire to build a friendly relationship with the United States and has been very cooperative with NATO and the international community during and after the Kosova crisis.

(5) The extension of unconditional normal trade relations treatment to the products of Albania will enable the United States to avail itself of all rights under the World Trade Organization with respect to Albania when that country becomes a member of the World Trade Organization.

(b) TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ALBANIA.—

(1) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.[3]—Notwithstanding any provision

[1] 19 U.S.C. 2434 note.

[2] Public Law 102–363, approved August 26, 1992 (106 Stat. 969) provided "that the Congress approves the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania transmitted by the President to the Congress on June 16, 1992" (see page 1192, this volume, for text). The agreement was implemented by Presidential Proclamation 6445 of June 15, 1992 (57 F.R. 26921), effective on the date an exchange of notices of the acceptance of the agreement takes place (effective date was November 2, 1992).

On June 15, 1992, the President also determined that the "Agreement on Trade Relations Between the United States of America and the Republic of Albania * * * is in the national interest" (Presidential Determination No. 92–33, 57 F.R. 28583). The agreement was reconfirmed by Presidential Determination No. 96–44 (61 F.R. 45859) on August 27, 1996.

[3] On June 29, 2000, the President determined pursuant to sec. 301(b) of Public Law 106–200 that Title IV of the Trade Act of 1974 should no longer apply to Albania (Presidential Proclamation 7326, 65 F.R. 41547).

of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Albania; and

(B) after making a determination under subparagraph (A) with respect to Albania, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Albania, title IV of the Trade Act of 1974 shall cease to apply to that country.

SEC. 302.[4] NORMAL TRADE RELATIONS FOR KYRGYZSTAN.

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

(1) Kyrgyzstan has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.

(2) Since its independence from the Soviet Union in 1991, Kyrgyzstan has made great progress toward democratic rule and toward creating a free-market economic system.

(3)[5] Kyrgyzstan concluded a bilateral investment treaty with the United States in 1994.

(4) Kyrgyzstan has demonstrated a strong desire to build a friendly and cooperative relationship with the United States.

(5) The extension of unconditional normal trade relations treatment to the products of Kyrgyzstan will enable the United States to avail itself of all rights under the World Trade Organization with respect to Kyrgyzstan.

(b) TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO KYRGYZSTAN.—[6]

Prior to passage of Public Law 106–200, the President waived the application of subsecs. 402(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2732) with respect to Albania in Executive Order 12809 (June 3, 1992, 57 F.R. 23925, see page 1203, this volume, for text). This waiver was extended as follows: Presidential Determination No. 92–26 (May 20, 1992, 57 F.R. 48711); Presidential Determination No. 93–25 (June 2, 1993, 58 F.R. 33005); Presidential Determination No. 94–27 (June 2, 1994, 59 F.R. 31105); Presidential Determination No. 95–24 (June 2, 1995, 60 F.R. 31049); Presidential Determination No. 96–30 (June 3, 1996, 61 F.R. 29457); and Presidential Determination No. 97–27 (June 3, 1997, 62 F.R. 32019).

On December 5, 1997, the President determined that Albania is "not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2) or (3) of subsection 409(a) of the Act" (Presidential Determination No. 98–7, December 5, 1997, 62 F.R. 66253).

[4] 19 U.S.C. 2434 note.

[5] The President transmitted the bilateral trade agreement between the United States and the Kyrgyz Republic to the Congress on September 7, 1993. On August 27, 1996, the President reconfirmed that "a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement" (Presidential Determination No. 96–45, 61 F.R. 45861).

[6] On June 29, 2000, the President determined that Title IV of the Trade Act of 1974 should no longer apply to Kyrgyzstan pursuant to sec. 302(b) (Presidential Proclamation 7326, 65 F.R. 41547).

Prior to passage of Public Law 106–200, the President waived the application of subsecs. 402(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2732) with respect to Kyrgyzstan in Executive Order 12802 (April 16, 1992, 57 F.R. 14321, see page 1203, this volume, for text). This waiver was extended as follows: Presidential Determination No. 92–20 (April 3, 1992, 57 F.R. 13623); Presidential Determination No. 93–25 (June 2, 1993, 58 F.R. 33005); Presidential Determination No. 94–27 (June 2, 1994, 59 F.R. 31105); Presidential Determination No. 95–24 (June 2, 1995, 60 F.R. 31049); Presidential Determination No. 96–30 (June 3, 1996, 61 F.R. 29457); and Presidential Determination No. 97–28 (June 3, 1997, 62 F.R. 32019).

Continued

(1) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Kyrgyzstan; and

(B) after making a determination under subparagraph (A) with respect to Kyrgyzstan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Kyrgyzstan, title IV of the Trade Act of 1974 shall cease to apply to that country.

On December 5, 1997, the President determined that Kyrgyzstan is "not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2) or (3) of subsection 409(a) of the Act" (Presidential Determination No. 98–7, December 5, 1997, 62 F.R. 66253).

(7) Mongolia

Partial text of Public Law 106–36 [H.R. 435], 113 Stat. 180, approved June 25, 1999

AN ACT To make miscellaneous technical changes to various trade laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE I—MISCELLANEOUS TRADE CORRECTIONS

* * * * * * *

TITLE II—TEMPORARY DUTY SUSPENSIONS AND REDUCTIONS; OTHER TRADE PROVISIONS

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Subtitle A—Temporary Duty Suspensions and Reductions

* * * * * * *

Subtitle B—Other Trade Provisions

SEC. 2424.[1] EXTENSION OF NONDISCRIMINATORY TREATMENT (NORMAL TRADE RELATIONS TREATMENT) TO THE PRODUCTS OF MONGOLIA.

(a) FINDINGS.—The Congress finds that Mongolia—

(1) has received normal trade relations treatment since 1991 and has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974;

(2) has emerged from nearly 70 years of communism and dependence on the former Soviet Union, approving a new constitution in 1992 which has established a modern parliamentary democracy charged with guaranteeing fundamental human rights, freedom of expression, and an independent judiciary;

(3) has held four national elections under the new constitution, two presidential and two parliamentary, thereby solidifying the nation's transition to democracy;

(4) has undertaken significant market-based economic reforms, including privatization, the reduction of government subsidies, the elimination of most price controls and virtually all import tariffs, and the closing of insolvent banks;

[1] 19 U.S.C. 2434 note.

(5)[2] has concluded a bilateral trade treaty with the United States in 1991, and a bilateral investment treaty in 1994;

(6) has acceded to the Agreement Establishing the World Trade Organization, and extension of unconditional normal trade relations treatment to the products of Mongolia would enable the United States to avail itself of all rights under the World Trade Organization with respect to Mongolia; and

(7) has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

(b) TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO MONGOLIA.—

(1)[3] PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(A) determine that such title should no longer apply to Mongolia; and

(B) after making a determination under subparagraph (A) with respect to Mongolia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1)(B) of nondiscriminatory treatment to the products of Mongolia, title IV of the Trade Act of 1974 shall cease to apply to that country.

* * * * * * *

[2] The "Agreement on Trade Relations Between the United States of America and the Mongolian People's Republic" was implemented on June 24, 1991 (Presidential Proclamation No. 6308, 56 F.R. 29834), effective after an exchange of written notices of acceptance. On the same date, the President determined that the agreement "will promote the purposes of the Trade Act [of 1974] and is in the national interest" (Presidential Determination No. 91–44, 56 F.R. 31039). The Congress approved nondiscriminatory treatment with respect to Mongolian products in Public Law 102–157, November 13, 1991, 105 Stat. 1040 (see page 1198, this volume, for text).

[3] On July 9, 1999, the President extended permanent nondiscriminatory treatment to the products of Mongolia pursuant to sec. 2424 (Presidential Proclamation No. 7297, 64 F.R. 36549).

Prior to passage of Public Law 106–36, the President waived the application of subsecs. 402(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2732) with respect to Mongolia in Executive Order 12746 (January 23, 1991, 56 F.R. 2837, see page 1207, this volume, for text).

This waiver was extended by Presidential Determination No. 91–19, January 23, 1991 (56 F.R. 4171); by Presidential Determination No. 92–30 (June 3, 1992, 57 F.R. 24929); by Presidential Determination No. 93–25 (June 2, 1993, 58 F.R. 33005); by Presidential Determination No. 94–27 (June 2, 1994, 59 F.R. 31105); by Presidential Determination No. 95–24 (June 2, 1995, 60 F.R. 31409); and by Presidential Determination No. 96–30, June 3, 1996 (61 F.R. 29457).

On September 4, 1996, the President determined that Mongolia is "not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2) or (3) of subsection 409(a) of the Act" (Presidential Determination No. 96–51, 61 F.R. 48603).

(8) Cambodia

Public Law 104–203 [H.R. 1642], 110 Stat. 2872, approved September 25, 1996 [1]

AN ACT To extend nondiscriminatory treatment (most-favored-nation treatment) to the products of Cambodia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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.[2]

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[1] 19 U.S.C. 2434 note.

[2] According to a notice issued by the Office of the USTR, "On October 4, 1996, the Acting United States Trade Representative (USTR) signed a trade agreement with the Kingdom of Cambodia (Cambodia) obligating reciprocal most-favored-nation treatment between Cambodia and the United States. The trade agreement entered into force as of October 25, 1996 . . ." (61 F.R. 56256).

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).

(9) Romania

Public Law 104–171 [H.R. 3161], 110 Stat. 1539, approved August 3, 1996 [1]

AN ACT To authorize the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Romania.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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) [2] 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

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[1] 19 U.S.C. 2434 note.

[2] Public Law 103–133 (107 Stat. 1373, approved November 2, 1993) provided that "the Congress approves the extension of nondiscriminatory treatment with respect to the products of Romania transmitted by the President on July 2, 1993".

A bilateral treaty with Romania was originally implemented on April 24, 1975 in Presidential Proclamation No. 4369 of April 24, 1975 (40 F.R. 18389), and renewed on June 2, 1976 (Presidential Determination No. 78–13); on June 2, 1981 (Presidential Determination No. 81–9); on May 31, 1984 (Presidential Determination 84–10); on June 14, 1987 (Presidential Determination No. 87–15, 52 F.R. 23785); and on July 3, 1990 (Presidential Determination No. 90–28; 55 F.R. 27797).

On June 22, 1992 in Presidential Proclamation No. 6449 (57 F.R. 28033), and once again in Proclamation 6577 of July 2, 1993 (58 F.R. 36301) the President implemented the trade agreement between the United States and Romania, to become effective on the date of exchange of written notices of acceptance. The Congress officially approved the agreement on November 2, 1993 in Public Law 103–133. The treaty was renewed on July 2, 1993 (Presidential Determination No. 93–30, 58 F.R. 43785).

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.[3] TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ROMANIA.

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to Romania; and

(2) after making a determination under paragraph (1), proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Romania, title IV of the Trade Act of 1974 shall cease to apply to that country.

[3] In Proclamation 6951 of November 7, 1996 (61 F.R. 58129), the President proclaimed pursuant to Public Law 104–171 that "nondiscriminatory treatment (most-favored-nation treatment) shall be extended to the products of Romania, which will no longer be subject to Title IV of the Trade Act of 1974".

Prior to passage of Public Law 104–171, the President waived the application of subsecs. 402(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2732) with respect to Romania in Executive Order 11854 (April 24, 1975, 40 F.R. 18391, see page 1214, this volume, for text). This waiver was extended each year until 1988, when the President determined that the Romanian Government had decided to renounce the renewal of nondiscriminatory treatment accorded to the products of Romania by the United States (Presidential Proclamation 5836, June 28, 1988, 53 F.R. 24921). Therefore, the waiver expired on July 3, 1988. On August 17, 1991, the President once again waived the application of secs. 402(a) and (b) of the Trade Act with respect to Romania (Executive Order 12772, August 17, 1991, 56 F.R. 41621). This waiver was extended as follows: Presidential Determination No. 91–48 (August 17, 1991, 56 F.R. 43861); Presidential Determination No. 92–30 (June 3, 1992, 57 F.R. 24929); Presidential Determination No. 93–25 (June 2, 1993, 58 F.R. 33005); Presidential Determination No. 94–27 (June 2, 1994, 59 F.R. 31105).

On May 19, 1995, the President determined that Romania is "not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2) or (3) of subsection 409(a) of the Act" (Presidential Determination No. 95–22, 62 F.R. 29463).

(10) Bulgaria—Extension of MFN and Pending Termination of Title IV Application [1]

Public Law 104–162 [H.R. 2853], 110 Stat. 1414, approved July 18, 1996

AN ACT To authorize the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Bulgaria.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSIONAL FINDINGS AND SUPPLEMENTAL ACTION.

(a) CONGRESSIONAL FINDINGS.—The Congress finds that Bulgaria—

(1) [2] 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.

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[1] 19 U.S.C. 2434 note.

[2] In Public Law 102–158 (105 Stat. 1041), Congress approved the bilateral agreement of the United States with the People's Republic of Bulgaria transmitted by the President to the Congress on June 25, 1991. In Proclamation No. 6307 of June 24, 1991 (56 F.R. 29787) the President implemented the "Agreement on Trade Relations between the United States and Bulgaria". The President determined that the agreement with Bulgaria "is in the national interest" on the same date (Presidential Determination No. 91–43, 56 F.R. 31037).

SEC. 2.[3] 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.

[3] In Proclamation 6922 of September 27, 1996 (61 F.R. 51205), pursuant to sec. 2 of Public Law 104–162, the President proclaimed that "nondiscriminatory treatment (most-favored-nation treatment) shall be extended to the products of Bulgaria, which will no longer be subject to Title IV of the Trade Act of 1974".

Prior to passage of Public Law 104–162, the President waived the application of subsecs. 402(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2732) with respect to Bulgaria in Executive Order 12745 (January 22, 1991, 56 F.R. 2835, see page 1208, this volume, for text). This waiver was extended as follows: Presidential Determination No. 91–18 (January 22, 1991, 56 F.R. 4169); Presidential Determination No. 92–30 (June 3, 1992, 57 F.R. 24929).

In Presidential Determination No. 93–26 of June 3, 1993 (58 F.R. 33007), the President determined "that the Republic of Bulgaria is not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the [Trade] Act [of 1974], or paragraph (1), (2), or (3) of subsection 409(a) of the [Trade] Act.".

(11) Conditions for Renewal of Most-Favored-Nation Status for the People's Republic of China in 1994

Executive Order 12850 of May 28, 1993, 58 F.R. 31327

Whereas, the Congress and the American people have expressed deep concern about the appropriateness of unconditional most-favored-nation (MFN) trading status for the People's Republic of China (China);

Whereas, I share the concerns of the Congress and the American people regarding this important issue, particularly with respect to China's record on human rights, nuclear proliferation, and trade;

Whereas, I have carefully weighed the advisability of conditioning China's MFN status as a means of achieving progress in these areas;

Whereas, I have concluded that the public interest would be served by a continuation of the waiver of the application of sections 402 (a) and (b) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2432(b)) (Act) on China's MFN status for an additional 12 months with renewal thereafter subject to the conditions below;

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. The Secretary of State (Secretary) shall make a recommendation to the President to extend or not to extend MFN status to China for the 12-month period beginning July 3, 1994.

(a) In making this recommendation the Secretary shall not recommend extension unless he determines that:

—extension will substantially promote the freedom of emigration objectives of section 402 of the Act; and

—China is complying with the 1992 bilateral agreement between the United States and China concerning prison labor.

(b) In making this recommendation the Secretary shall also determine whether China has made overall, significant progress with respect to the following:

—taking steps to begin adhering to the Universal Declaration of Human Rights;

—releasing and providing an acceptable accounting for Chinese citizens imprisoned or detained for the non-violent expression of their political and religious beliefs, including such expression of beliefs in connection with the Democracy Wall and Tiananmen Square movements;

—ensuring humane treatment of prisoners, such as by allowing access to prisons by international humanitarian and human rights organizations;

—protecting Tibet's distinctive religious and cultural heritage; and

—permitting international radio and television broadcasts into China.

Sec. 2. The Secretary shall submit his recommendation to the President before June 3, 1994.

Sec. 3. The Secretary, and other appropriate officials of the United States, shall pursue resolutely all legislative and executive actions to ensure that China abides by its commitments to follow fair, nondiscriminatory trade practices in dealing with U.S. businesses, and adheres to the Nuclear Non-Proliferation Treaty, the Missile Technology Control Regime guidelines and parameters, and other nonproliferation commitments.

Sec. 4. This order does not create any right or benefit, substantive or procedural, enforceable by any person of entity against the United States, its officers, or employees.

(12) Withdrawal of Most Favored Nation Status From Serbia and Montenegro

Public Law 102–420 [H. R. 5258], 106 Stat. 2149, approved October 16, 1992

AN ACT An Act[1] to provide for the withdrawal of most favored nation status from Serbia and Montenegro and to provide for the restoration of such status if certain conditions are fulfilled.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[2] 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.

[1] As enrolled.
[2] 19 U.S.C. 2432 note.

(13) Albania

Public Law 102–363 [H.J. Res. 507], 106 Stat. 969, approved August 26, 1992

JOINT RESOLUTION To approve the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania transmitted by the President to the Congress on June 16, 1992.[1]

[1] 19 U.S.C. 2434 note. See also Public Law 106–200 (114 Stat. 251) with respect to Albania, this volume, page 1178.

(14) Union of Soviet Socialist Republics

Public Law 102–197 [H.J. Res 346], 105 Stat. 1622, approved December 9, 1991

A JOINT RESOLUTION Approving the extension of nondiscriminatory treatment with respect to the products of the Union of Soviet Socialist Republics.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves the extension of nondiscriminatory treatment to the products of the Union of Soviet Socialist Republics transmitted by the President to the Congress on October 9, 1991.[1]

[1] 19 U.S.C. 2434 note. On October 9, 1991, the President implemented the "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics" signed on June 1, 1990 (Proclamation No. 6352, 56 F.R. 51317).

(15) Czech and Slovakia, Hungary, Estonia, Latvia, and Lithuania

Partial text of Public Law 102–182 [H.R. 1724], 105 Stat. 1233, approved December 4, 1991

AN ACT To provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[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.

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[1] 19 U.S.C. 2434 note. Previously, in Public Law 101–541 (104 Stat. 2380), approved November 8, 1990, Congress approved the extension of nondiscriminatory treatment with respect to the products of Czechoslovakia transmitted by the President to the Congress on September 6, 1990. The agreement was implemented by Proclamation No. 6175 (55 F.R. 37643) on the same date, to become effective on the date of exchange of written notices of acceptance. On the same date, the President determined that the agreement with Czechoslovakia is in the national interest (55 F. R. 39259).

A bilateral trade agreement with Hungary was implemented on April 7, 1978 by Presidential Proclamation No. 4560 (43 F.R. 15125), to become effective on the date of written notices of acceptance. The trade agreement was renewed on June 2, 1981 (Presidential Determination No. 81–9); on June 23, 1987 (Presidential Determination No. 87–15, 52 F.R. 23785); and on June 22, 1990 (Presidential Determination No. 90–27, 55 F.R. 25945).

SEC. 2.[1] TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO CZECHOSLOVAKIA AND HUNGARY.

(a)[2] 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.

SEC. 3.[3] MODIFICATION OF THE EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1991. * * *

SEC. 4. REPEAL OF THE PROHIBITION ON THE IMPORTATION OF SOVIET GOLD COINS.

Section 510 of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5100) is repealed.

TITLE I—EXTENSION OF NONDISCRIMINATORY TREATMENT TO ESTONIA, LATVIA, AND LITHUANIA[1]

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

[2] The President made such a determination with respect to Czechoslovakia and Hungary on April 10, 1992 (Presidential Determination No. 92–21; 57 F.R. 12863; April 14, 1992), and issued a supporting proclamation on the same date (Proclamation No. 6419, April 19, 1992, 57 F.R. 12865). Prior to the Passage of Public Law 102–182, the President extended a waiver to Czechoslovakia in Executive Order No. 12702 (February 20, 1990, 55 F.R. 6231, see this volume, page 1211 for text). This waiver was extended by Presidential Determination No. 90–22 of June 3, 1990 (55 F.R. 42831), and Presidential Determination No. 91–39 of June 3, 1991 (56 F.R. 27187).

With respect to Hungary, a Presidential waiver was extended by Executive Order No. 12051 (April 7, 1978, 43 F.R. 15131, see page 1213). This waiver was extended by Presidential Determination No. 81–8 of June 2, 1981 (46 F.R. 30797); by Presidential Determination No. 83–7 of June 3, 1983 (48 F.R. 26585); by Presidential Determination No. 84–9 of May 31, 1994 (49 F.R. 24107); by Presidential Determination No. 86–10, June 3, 1986 (51 F.R. 22057); by Presidential Determination No. 87–14, June 2, 1987 (52 F.R. 22431); by Presidential Determination No. 88–18, June 3, 1988 (53 F.R. 21407); and by Presidential Determination No. 89–14, May 31, 1989 (54 F.R. 26943).

[3] Sec. 3 amended the Emergency Unemployment Compensation Act of 1991.

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.—General Note 3(b) of the Harmonized Tariff Schedule of the United States is amended by striking out "Estonia", "Latvia", and "Lithuania".

(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.[4] 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.

TITLE II—TRADE PREFERENCE FOR THE ANDEAN REGION[5] * * *

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TITLE III—CONTROL AND ELIMINATION OF CHEMICAL AND BIOLOGICAL WEAPONS[6] * * *

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[4] Estonia, Latvia, and Lithuania were added to the list of independent countries for purposes of the Generalized System of Preferences by Presidential Proclamation 6402 of February 5, 1992 (57 F.R. 4833), effective February 22, 1992.

[5] For the Andean Trade Preference Act (title II, 19 U.S.C. 3201 *et seq.*), see page 960.

[6] For the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III, 22 U.S.C. 5601 *et seq.*), see *Legislation on Foreign Relations Through 2005*, vol. II–B.

(16) Mongolia

Public Law 102–157 [H.J. Res 281], 105 Stat. 1040, approved November 13, 1991

A JOINT RESOLUTION Approving the extension of nondiscriminatory treatment with respect to the products of the Mongolian People's Republic.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves the extension of nondiscriminatory treatment to the products of Mongolian People's Republic transmitted by the President to the Congress on June 25, 1991.[1]

[1] 19 U.S.C. 2434 note.

(17) East Germany

Partial text of Public Law 101–382 [Customs and Trade Act of 1990; H.R. 1594], 104 Stat. 629, approved August 20, 1990

NOTE.—The Customs and Trade Act of 1990 consists of amendments to several Public Laws; those amendments are incorporated at the appropriate places. Freestanding provisions are presented here, or it is noted where such provisions appear elsewhere in this compilation.

AN ACT To make miscellaneous and technical changes to various trade laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Customs and Trade Act of 1990".

(b) TABLE OF CONTENTS.—

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TITLE I—TRADE AGENCY AUTHORIZATION, CUSTOMS USER FEES, AND OTHER PROVISIONS

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Subtitle D—Miscellaneous Provisions

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SEC. 138.[2] ECONOMIC SANCTIONS AGAINST PRODUCTS OF BURMA.

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SEC. 142. NONDISCRIMINATORY TREATMENT FOR THE PRODUCTS OF EAST GERMANY.

Notwithstanding any other provision of law, the President may, by proclamation, lower the rate of duty under the Harmonized Tariff Schedule of the United States on products of the German Democratic Republic that are entered, or withdrawn from warehouses for consumption, in the customs territory of the United States—

(1) after September 30, 1990; and

[1] 19 U.S.C. 2101 note.

[2] For text of sec. 138, see page 1650.

(2) before the beginning date on which a unified Germany is treated as a country eligible for column 1 duty treatment under such Harmonized Schedule;

to any rate of duty that is not lower than the rate that would be imposed if the column 1 general rate of duty provided for in such Schedule applied to the product at the time of entry or withdrawal.

TITLE II—CARIBBEAN BASIN ECONOMIC RECOVERY[3]

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TITLE IV—EXPORTS OF UNPROCESSED TIMBER[4]

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[3] Freestanding provisions of title II may be found beginning at page 981.

[4] Freestanding provisions of title IV may be found in *Legislation on Foreign Relations Through 2005*, vol. IV, sec. N.

h. Trade Act of 1974—Waivers [1]

(1) Waiver Under the Trade Act of 1974 With Respect to Belarus

Executive Order 13220, July 2, 2001, 66 F.R. 35527

By the authority vested in me as President by the Constitution and the laws of the United States of America, including subsection 402(c)(2) of the Trade Act of 1974, as amended (the "Act")(19 U.S.C. 2432(c)(2)), which continues to apply to the Republic of Belarus pursuant to subsection 402(d) of the Act (19 U.S.C. 2432(d)), and having made the report to the Congress required by subsection 402(c)(2), I hereby waive the application of subsections 402(a) and 402(b) of the Act with respect to the Republic of Belarus.

[1] See also Normal Trade Relations (Most-Favored-Nation) Extensions, Suspensions, Terminations, beginning at page 1170.

(2) Waiver Under the Trade Act of 1974 With Respect to Tajikistan and Turkmenistan

Executive Order 12811, June 24, 1992, 57 F.R. 28585

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2432(c)(2)), which continues to apply to Tajikistan and Turkmenistan pursuant to section 402(d) of the Act, and having made the report to the Congress required by section 402(c)(2), I hereby waive the application of sections 402(a) and 402(b) of the Act with respect to Tajikistan and Turkmenistan.[1]

[1] This waiver was extended by Presidential Determination No. 93–25 of June 2, 1993 (58 F.R. 33005); Presidential Determination No. 95–24 of June 2, 1995 (60 F.R. 31049); Presidential Determination No. 96–30 of June 3, 1996 (61 F.R. 29457); and Presidential Determination No. 94–28 of June 3, 1997 (62 F.R. 32019).

On December 5, 1997, the President determined that Tajikistan and Turkmenistan "are not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act [of 1974] or paragraph (1), (2) or (3) of subsection 409(a)" (Presidential Determination No. 98–7, 62 F.R. 66253).

(3) Waiver Under the Trade Act of 1974 With Respect to Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan

Executive Order 12809, June 3, 1992, 57 F.R. 23925

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2432(c)(2)), which continues to apply to Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan pursuant to section 402(d) of the Act, and having made the report to the Congress required by section 402(c)(2) of the Act, I hereby waive the application of sections 402(a) and 402(b) of the Act with respect to Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan.[1]

[1] The waivers were extended by Presidential Determination No. 93–25 (June 2, 1993, 58 F.R. 33005); Presidential Determination No. 95–24 (June 2, 1995, 60 F.R. 31049); Presidential Determination No. 96–30 (June 3, 1996, 61 F.R. 29457); and Presidential Determination No. 97–28 (June 3, 1997, 62 F.R. 32019).

On June 3, 1997, the President determined that Armenia, Azerbaijan, Georgia, Moldova, and Ukraine "are not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act [of 1974] or paragraph (1), (2) or (3) of subsection 409(a)" (Presidential Determination No. 97–27, 62 F.R. 66253). A similar determination was made for Kazakhstan, Kyrgyzstan, and Uzbekistan on December 5, 1997 (Presidential Determination No. 98–7, 62 F.R. 66253).

(4) Waiver Under the Trade Act of 1974 With Respect to the Republic of Byelarus, the Republic of Kyrgyzstan, and the Russian Federation

Executive Order 12802, April 16, 1992, 57 F.R. 14321

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2432(c)(2)), which continues to apply to the Republic of Byelarus, the Republic of Kyrgyzstan, and the Russian Federation pursuant to section 402(d) of the Act, and having made the report to the Congress required by section 402(c)(2) of the Act, I waive the application of sections 402(a) and 402(b) of the Act with respect to the Republic of Byelarus, the Republic of Kyrgyzstan, and the Russian Federation.[1]

[1] In Presidential Determination No. 93–25 (June 2, 1993, 58 F.R. 33005), the President determined "that the continuation of the waivers applicable to Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan will substantially promote the objectives of section 402 of the [Trade] Act [of 1974].". The President continued the waiver for Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgystan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan in Presidential Determination No. 95–24 of June 2, 1995 (60 F.R. 31049); and in Presidential Determination No. 96–30 of June 3, 1996 (61 F.R. 29457). Presidential waiver authority continued to be exercised with respect to Belarus in Presidential Determination No. 98–28 (June 3, 1998, 63 F.R. 32709), Presidential Determination No. 99–26 (June 3, 1999, 64 F.R. 31109); Presidential Determination No. 2000–22 (June 2, 2000, 65 F.R. 36311); and Presidential Determination No. 2001–20 (July 2, 2001, 66 F.R. 37109).

(5) Waiver Under the Trade Act of 1974 With Respect to Armenia

Executive Order 12798, April 6, 1992, 57 F.R. 12175

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2432(c)(2)), which continues to apply to Armenia pursuant to section 402(d) of the Act, and having made the report to the Congress required by section 402(c)(2) of the Act, I waive the application of sections 402(a) and 402(b) of the Act with respect to Armenia.[1]

[1] This waiver was continued in Presidential Determination No. 93–25 (June 2, 1993, 58 F.R. 33005); Presidential Determination No. 95–24 (June 2, 1995, 60 F.R. 31049); and Presidential Determination No. 96–30 (June 3, 1996, 61 F.R. 29457).

On June 3, 1997, the President determined that Armenia, Azerbaijan, Georgia, Moldova, and Ukraine "are not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act [of 1974] or paragraph (1), (2) or (3) of subsection 409(a)" (Presidential Determination No. 97–27, 62 F.R. 66253).

(6) Waiver Under the Trade Act of 1974 With Respect to Romania

Executive Order 12772, August 17, 1991, 56 F.R. 41621

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2432(c)(2)), which continues to apply to Romania pursuant to section 402(d), and having made the report to the Congress required by section 402(c)(2) of the Act, I waive the application of sections 402(a) and 402(b) of the Act with respect to Romania.[1]

[1] See also Public Law 104–171 (110 Stat. 1539), page 1185, relating to Romania.

(7) Waiver Under the Trade Act of 1974 With Respect to Mongolia

Executive Order 12746, January 23, 1991, 56 F.R. 2837

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974 ("the Act") (19 U.S.C. 2432(c)(2)), which continues to apply to Mongolia pursuant to section 402(d), and having made the report to the Congress required by section 402(c)(2), I waive the application of subsections (a) and (b) of section 402 of the Act with respect to Mongolia.[1]

[1] See also sec. 2434 of Public Law 106–36 (113 Stat. 180), page 1181, relating to Mongolia.

(8) Waiver Under the Trade Act of 1974 With Respect to Bulgaria

Executive Order 12745, January 22, 1991, 56 F.R. 2835

By virtue of the authority vested in me as President by the Constitution and the law of the United States of America, including section 402(c)(2) of the Trade Act of 1974 ("the Act") (19 U.S.C. 2432(c)(2)), which continues to apply to Bulgaria pursuant to section 402(d), and having made the report to the Congress required by section 402(c)(2), I waive the application of subsections (a) and (b) of section 402 of the Act with respect to Bulgaria.[1]

[1] See also Public Law 104–162 (110 Stat. 1414), page 1187, relating to Bulgaria.

(9) Waiver Under the Trade Act of 1974 With Respect to the Soviet Union

Executive Order 12740, December 29, 1990, 56 F.R. 355

By virtue of the authority vested in me as President by the Constitution and the law of the United States of America, including section 402(c)(2) of the Trade Act of 1974 ("the Act") (19 U.S.C. 2432(c)(2)), which continues to apply to the Soviet Union pursuant to section 402(d), and having made the report to the Congress required by section 402(c)(2), I waive the application of subsections (a) and (b) of section 402 of the Act with respect to the Soviet Union.[1]

[1] See also Public Law 102–197 (105 Stat. 1622), page 1193; Executive Order 12802 (page 1204); and Executive Order 12809 (page 1203), with respect to the former Soviet Union and the Russian Federation.

(10) Waiver Under the Trade Act of 1974 With Respect to the German Democratic Republic

Executive Order 12726, August 15, 1990, 55 F.R. 33637

By virtue of the authority vested in me as President by the Constitution and the law of the United States of America, including section 402(c)(2) of the Trade Act of 1974 (the Act) (19 U.S.C. 2432(c)(2)), which continues to apply to the German Democratic Republic pursuant to section 402(d), and having made the report to the Congress required by section 402(c)(2), I waive the application of subsections (a) and (b) of section 402 of the Act with respect to the German Democratic Republic.[1]

[1] In Presidential Determination No. 90–30 (August 15, 1990, 55 F.R. 35421), the President determined "that a waiver by Executive order of the application of subsections (a) and (b) of section 402 of the [Trade] Act [of 1974] with respect to the German Democratic Republic will substantially promote the objectives of section 402.". On October 3, 1990, the German Democratic Republic united with the Federal Republic of Germany, automatically ending the suspension of East Germany's MFN status.

(11) Waiver Under the Trade Act of 1974 With Respect to Czechoslovakia

Executive Order 12702, February 20, 1990, 55 F.R. 6231

By virtue of the authority vested in me as President by the Constitution and the law of the United States of America, including section 402(c)(2) of the Trade Act of 1974 (19 U.S.C. 2432(c)(2)), which continues to apply to Czechoslovakia pursuant to section 402(d), and having made the report to the Congress required by section 402(c)(2), I waive the application of subsections (a) and (b) of section 402 of said Act with respect to Czechoslovakia.[1]

[1] See Public Law 102–182 (105 Stat. 1233), page 1194, in relation to Czechoslovakia.

(12) Waiver Under the Trade Act of 1974 With Respect to the People's Republic of China

Executive Order 12167, October 23, 1979, 44 F.R. 61167

By virtue of the authority vested in me as President of the United States of America by Section 402(c)(2) of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), which continues to apply to the People's Republic of China pursuant to Section 402(d), and having made the report to the Congress required by Section 402(c)(2), I waive the application of subsections (a) and (b) of Section 402 of said Act with respect to the People's Republic of China.[1]

[1] See also Public Law 106–286 (114 Stat. 880), page 1176, relative to the People's Republic of China.

(13) Waiver Under the Trade Act of 1974 With Respect to the Hungarian People's Republic

Executive Order 12051, April 7, 1978, 43 F.R. 15131

By virtue of the authority vested in me as President of the United States of America by Section 402(c)(2) of the Trade Act of 1974 (88 Stat. 2057, 19 U.S.C. 2432(c)(2)), which continues to apply to the Hungarian People's Republic pursuant to Section 402(d), and having made the report to the Congress required by Section 402(c)(2), I waive the application of subsections (a) and (b) of Section 402 of said Act with respect to the Hungarian People's Republic.[1]

[1] See also Public Law 102–182 (105 Stat. 1233), page 1194, with respect to Hungary.

(14) Waiver Under the Trade Act of 1974 With Respect to the Socialist Republic of Romania

Executive Order 11854, April 24 1975, 40 F.R. 18391

By virtue of the authority vested in me by Section 402(c)(1) of the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1857, 2057), and having made the report to the Congress required by that provision, I hereby waive the application of subsections (a) and (b) of section 402 of said Act with respect to the Socialist Republic of Romania.[1]

[1] See also Executive Order 12772, page 1206 and Public Law 104–171 (110 Stat. 1539), page 1185, with respect to Romania.

2. Export-Import Bank

a. Export-Import Bank Act of 1945, as amended

Public Law 79–173 [H.R. 3771], 59 Stat. 526, approved July 31, 1945; as amended by Public Law 79–282 [H.R. 4683], 59 Stat. 666, approved December 28, 1945; Public Law 80–89 [S. 993], 61 Stat. 130, approved June 9, 1947; Public Law 82–158 [S. 2006], 65 Stat. 367, approved October 3, 1951; Public Law 83–30 [H.R. 4465], 67 Stat. 28, approved May 21, 1953; Public Law 83–570 [S. 3589], 68 Stat. 677, approved August 9, 1954; Public Law 83–779 [H.R. 9730], 68 Stat. 1237, approved September 3, 1954; Public Law 85–55 [H.R. 4136], 71 Stat. 82, approved June 17, 1957; Public Law 85–424 [S. 3149], 72 Stat. 133, approved May 22, 1958; Public Law 87–311 [S. 2325], 75 Stat. 673, approved September 26 1961; Public Law 88–101 [H.R. 3872], 77 Stat. 128, approved August 20, 1963; Public Law 89–348 [S. 2150], 79 Stat. 1312, approved November 8, 1965; Public Law 90–267 [S. 1155], 82 Stat. 47, approved March 13, 1968; Public Law 92–126 [Export Expansion Finance Act of 1971; S. 581], 86 Stat. 345, approved August 17, 1971; Public Law 93–331 [S.J. Res 218], 88 Stat. 289, approved July 4, 1974; Public Law 93–374 [S.J. Res. 229], 88 Stat. 445, approved August 14, 1974; Public Law 93–425 [S.J. Res. 244], 88 Stat. 1166, approved September 30, 1974; Public Law 93–450 [S.J. Res. 251], 88 Stat. 1368, approved October 18, 1974; Public Law 93–646 [Export-Import Bank Amendments of 1974; H.R. 15977], 88 Stat. 2333, approved January 4, 1975; Public Law 95–143 [H.R. 6415], 91 Stat. 1210, approved October 26, 1977; Public Law 95–407 [H.J. Res. 1140], 92 Stat. 882, approved September 30 1978; Public Law 95–630 [Financial Institutions Regulatory and Interest Rate Control Act of 1978; H.R. 14279], 92 Stat. 3641 at 3724, approved November 10, 1978; Public Law 96–470 [Congressional Reports Elimination Act of 1980; H.R. 6686], 94 Stat. 2237 at 2245, approved October 19, 1980; Public Law 97–35 [Omnibus Budget Reconciliation Act of 1981; H.R. 3982], 95 Stat. 357 at 431, approved August 13, 1981; Public Law 98–109 [H.J. Res. 366], 97 Stat. 745 at 746, approved October 1, 1983; Public Law 98–143 [S.J. Res. 189], 97 Stat. 916, approved November 1, 1983; Public Law 98–181 [Supplemental Appropriations, 1984; H.R. 3959], 97 Stat. 1153 at 1255, approved November 30, 1983; Public Law 99–440 [Comprehensive Anti-Apartheid Act of 1986; H.R. 4868], 100 Stat. 1086, approved October 2, 1986; Public Law 99–472 [Export-Import Bank Act Amendments of 1986; H.R. 5548], 100 Stat. 1200, approved October 15, 1986; Public Law 99–509 [Omnibus Budget Reconciliation Act of 1986; H.R. 5300], 100 Stat. 1874, approved October 21, 1986; Public Law 100–217 [Tied Aid Credit Fund Reimbursements: Extension; H.R. 3289], 101 Stat. 1454, approved December 29, 1987; Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 100–690 [Anti-Drug Abuse Act of 1988; H.R. 5210], 102 Stat. 4181, approved November 18, 1988; Public Law 101–240 [International Development and Finance Act of 1989, H.R. 2494], 103 Stat. 2492, approved December 19, 1989; Public Law 101–513 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991; H.R. 5114], 104 Stat. 1979, approved November 5, 1990; Public Law 101–623 [International Narcotics Control Act of 1990, H.R. 5567], 104 Stat. 3350, approved November 21, 1990; Public Law 102–145 [Further Continuing Appropriations, Fiscal Year 1992, as amended by Public Law 102–266], 105 Stat. 968 [at 106 Stat. 95], approved October 28, 1991; Public Law 102–429 [Export Enhancement Act of 1992, H.R. 5739],

106 Stat. 2186, approved October 21, 1992; Public Law 102–583 [International Narcotics Control Act of 1992, H.R. 6187], 106 Stat. 4914, approved November 2, 1992; Public Law 103–87 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993; H.R. 2295], 107 Stat. 931, approved September 30, 1993; Public Law 103–149 [South African Democratic Transition Support Act of 1993; H.R. 3225], 107 Stat. 1503, approved November 23, 1993; Public Law 103–236 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 108 Stat. 382, approved April 30, 1994; Public Law 103–428 [H.R. 4455], 108 Stat. 4375, approved October 31, 1994; Public Law 103–447 [International Narcotics Control Corrections Act of 1994; H.R. 5246], 108 Stat. 4691, approved November 2, 1994; Public Law 104–97 [H.R. 2203], 109 Stat. 984, approved January 11, 1996; Public Law 104–107 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996; H.R. 1868], 110 Stat. 704, approved February 12, 1996; Public Law 104–201 [National Defense Authorization Act for Fiscal Year 1997; H.R. 3230], 110 Stat. 2422, approved September 23, 1996; Public Law 105–121 [Export-Import Bank Reauthorization Act of 1997; S. 1026], 111 Stat. 2528, approved November 26, 1997; Public Law 106–46 [H.R. 2565], 113 Stat. 227, approved August 11, 1999; Public Law 106–569 [American Homeownership and Economic Opportunity Act of 2000; H.R. 5640], 114 Stat. 2944, approved December 27, 2000; and Public Law 107–189 [Export-Import Bank Reauthorization Act of 2002; S. 1372], 116 Stat. 698, approved June 14, 2002

AN ACT To provide for increasing the lending authority of the Export-Import Bank of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Export-Import Bank Act of 1945."

SEC. 2.[1] (a)(1) There is hereby created a corporation with the name Export-Import Bank of the United States[2] which shall be an agency of the United States of America. The objects and purposes of the Bank shall be to aid in financing and to facilitate exports of goods and services, imports, and the exchange of commodities and services[3] between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals of any such country, and in so doing to contribute to the employment of United States workers. The Bank's objective in authorizing loans, guarantees, insurance, and credits shall be to contribute to maintaining or increasing employment of United States workers.[4] In connection with and in furtherance of its objects and purposes, the Bank is authorized and empowered to do a general banking business except that of circulation; to receive deposits; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and to guarantee notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to guarantee, insure, co-insure, reinsure against political and credit

[1] 12 U.S.C. 635. The Act of December 28, 1945 (59 Stat. 666), amended and restated subsec. (a)(1). Subsequently, the Act of June 9, 1947 (61 Stat. 130), further amended and restated subsec. (a)(1).

[2] Public Law 90–267 (82 Stat. 47) changed the name of the Bank from the "Export-Import Bank of Washington" to the "Export-Import Bank of the United States".

[3] Sec. 616(a)(1) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1257) added the words "and services".

[4] Sec. 2 of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 698) amended and restated this sentence. It previously read as follows:

"The objects and purposes of the Bank shall be to aid in financing and to facilitate exports and imports and the exchange of commodities and services between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals thereof.".

risks of loss;[5] to purchase, sell, and guarantee securities but not to purchase with its funds any stock in any other corporation except that it may acquire any such stock, through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness to it; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to perform any act herein authorized in participation with any other person, including any individual, partnership, corporation, or association; to adopt, alter, and use a corporate seal, which shall be judicially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States;[5] and the enumeration of the foregoing powers shall not be deemed to exclude other powers necessary to the achievement of the objects and purposes of the Bank. The Bank shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Government. The Bank is authorized to publish or arrange for the publications of any documents, reports, contracts, or other material necessary in connection with or in furtherance of its objects and purposes without regard to the provisions of section 501 of title 44, United States Code, whenever the Bank determines that publication in accordance with the provisions of such section would not be practicable.[6] Subject to regulations which the Bank shall issue pursuant to section 553 of title 5, United States Code, the Bank may[7] impose and collect reasonable fees to cover the costs of conferences and seminars sponsored by, and publications provided by, the Bank, and may accept reimbursement for travel and subsistence expenses incurred by a director, officer, or employee of the Bank, in accordance with subchapter I of chapter 57 of title 5, United States Code.[7] Amounts received under the preceding sentence shall be credited to the fund which initially paid for such activities and shall be offset against the expenses of the Bank for such activities.[8] The Bank is hereby authorized to use all of its assets and all moneys which have been or may thereafter be allocated to or borrowed by it in the exercise of its functions. Net earnings of the Bank after reasonable provision for possible losses shall be used for payment of dividends on capital stock. Any such dividends shall be deposited into the Treasury as miscellaneous receipts.

(2)[9] In order for the Bank to be competitive in all of its financing programs with countries whose exports compete with United States exports, the Bank shall establish a program that—

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[5] Sec. 2 of Public Law 93–646 (88 Stat. 2333) added this phrase.

[6] Sec. 2 of Public Law 93–646 (88 Stat. 2333) added this sentence.

[7] Sec. 101(c)(1) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2494), struck out "The Bank may" in this sentence, added the opening clause to this point, and inserted text at the end of this sentence beginning with ", and may accept".

Previously, sec. 2 of the Export-Import Bank Act Amendments of 1986 (Public Law 99–472; 100 Stat. 1200) amended this sentence.

[8] Sec. 101(c)(2) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2494), inserted "and shall be offset against the expenses of the Bank for such activities" before the period.

[9] Sec. 622 of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1261) added para. (2). Previously, Public Law 92–126 (85 Stat. 346) had added para. (2), which was repealed by sec. 13 of Public Law 93–646 (88 Stat. 2337).

(A) provides medium-term financing where necessary to be fully competitive—

(i) at rates of interest to the customer which are equal to rates established in international agreements; and

(ii) in amounts up to 85 percent of the total cost of the exports involved; and

(B) enables the Bank to cooperate fully with the Secretary of Commerce and the Administrator of the Small Business Administration to develop a program for purposes of disseminating information (using existing private institutions) to small business concerns regarding the medium-term financing provided under this paragraph.

(3)[10] ENHANCEMENT OF MEDIUM-TERM PROGRAM.—To enhance the medium-term financing program established pursuant to paragraph (2), the Bank shall establish measures to—

(A)[10] improve the competitiveness of the Bank's medium-term financing and ensure that its medium-term financing is fully competitive with that of other major official export credit agencies;

(B)[10] ease the administrative burdens and procedural and documentary requirements imposed on the users of medium-term financing;

(C)[10] attract the widest possible participation of private financial institutions and other sources of private capital in the medium-term financing of United States exports; and

(D)[10] render the Bank's medium-term financing as supportive of United States exports as is its Direct Loan Program.

(b)(1)[11] (A) It is the policy of the United States to foster expansion of exports of manufactured goods, agricultural products, and other goods and services,[12] thereby contributing to the promotion and maintenance of high levels of employment and real income, a commitment to reinvestment and job creation, and the increased development of the productive resources of the United States.[13] To meet this objective in all its programs,[14] the Export-Import Bank is directed, in the exercise of its functions, to provide guarantees, insurance, and extensions of credit at rates and on terms and other

[10] Sec. 4 of Public Law 99–472 (100 Stat. 1200) added para. (3). Sec. 121(a) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2198) struck out the designation for subpara. (A), struck out subpara. (B), and redesignated clauses (i) through (iv) as subparas. (A) through (D).

[11] Public Law 92–126 (85 Stat. 345) amended and restated subsec. (b)(1). Subsequently, sec. 3 of Public Law 93–646 (88 Stat. 2333) further amended and restated subsec. (b)(1).

[12] Sec. 1910 of Public Law 95–630 (92 Stat. 3726) struck out "goods and related services" and inserted in lieu thereof "manufactured goods, agricultural products, and other goods and services".

[13] Sec. 10 of the Export-Import Bank Reauthorization Act of 1997 (Public Law 105–121, 111 Stat. 2530), struck out "real income, to the increased development of the productive resources of the United States." and inserted in lieu thereof "real income, a commitment to reinvestment and job creation, and the increased development of the productive resources of the United States.".

[14] Sec. 612(a)(1) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1255) inserted "in all its programs".

conditions which are fully[15] competitive with the Government-supported rates and terms and other conditions available for the financing of exports of goods and services[16] from the principal countries whose exporters compete with United States exporters. The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in Government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing. The Bank shall,[17] not later than June 30 of each year,[18] report to the appropriate committees of Congress its actions in complying with these directives. In this report the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with United States exporters (including through use of market windows)[19] and indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly. With respect to the preceding sentence, the Bank shall use all available information to estimate the annual amount of export financing available from each government and government-related agency.[20] Further the Bank shall at the same time survey a representative number of United States exporters and United States commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with United States exporters. The results of this survey shall be included as part of the annual report required by this subparagraph. The Bank shall include in the annual report a description of its role in the implementation of the strategic plan prepared by the Trade Promotion Coordinating Committee in accordance with section 2312 of the Export Enhancement Act of 1988.[21] The annual report required under this subparagraph shall include the report required under section 10(g).[22] The Bank shall include in the annual

[15] Sec. 612(a)(2) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1255) inserted "fully".

[16] Sec. 616(a)(2) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1255) inserted "of goods and services".

[17] Sec. 1 of Public Law 95–143 (91 Stat. 1210) inserted "and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing. The Bank shall, on".

[18] Sec. 11(1) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 704) struck out "on an annual basis" and inserted in lieu thereof "not later than June 30 of each year". Previously, sec. 210 of Public Law 96–470 (94 Stat. 2245) altered this requirement from a semiannual report to an annual report. Sec. 1103(d)(1) of Public Law 106–569 (114 Stat. 3030) struck out "a annual" and inserted "an annual".

[19] Sec. 11(2) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 704) inserted "(including through use of market windows)".

[20] Sec. 11(3) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 704) added this sentence.

[21] Sec. 121(a)(2) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2198) struck out "The Bank shall also include in the annual report a description of each loan by the Bank involving the export of any product or service related to the production, refining, or transportation of any type of energy or the development of any energy resources with a statement assessing the impact, if any, on the availability of such products, services, or energy supplies thus developed for use within the United States.", and inserted in lieu thereof "The Bank shall include in the annual report a description of its role in the implementation of the strategic plan prepared by the Trade Promotion Coordinating Committee in accordance with section 2312 of the Export Enhancement Act of 1988.".

[22] Sec. 1103(d)(1) of Public Law 106–569 (114 Stat. 3030) added this sentence.

report a description of all Bank transactions which shall be classified according to their principal purpose, such as to correct a market failure or to provide matching support.[23] The Bank shall include in the annual report a description of the efforts undertaken under subparagraph (K).[24]

(B) It is further the policy of the United States that loans made by the Bank in all its programs shall bear interest at rates determined by the Board of Directors, consistent with the Bank's mandate to support United States exports at rates and on terms and conditions which are fully competitive with exports of other countries, and consistent with international agreements. For the purpose of the preceding sentence, rates and terms and conditions need not be identical in all respects[25] to those offered by foreign countries, but should be established so that the effect of such rates, terms, and conditions for all the Bank's programs, including those for small businesses and for medium-term financing, will be to neutralize the effect of such foreign credit on international sales competition. The Bank shall consider its average cost of money as one factor in its determination of interest rates, where such consideration does not impair the Bank's primary function of expanding United States exports through fully competitive financing. The Bank may not impose a credit application fee unless (i) the fee is competitive with the average fee charged by the Bank's primary foreign competitors, and (ii) the borrower or the exporter is given the option of paying the fee at the outset of the loan or over the life of the loan and the present value of the fee determined under either such option is the same amount.[26] It is also the policy of the United States[27] that the Bank in the exercise of its functions should supplement and encourage, and not compete with, private capital; that the Bank, in determining whether to provide support for a transaction under the loan, guarantee, or insurance program, or any combination thereof, shall consider the need to involve private capital in support of United States exports as well as the cost of the transaction as calculated in accordance with the requirements of the Federal Credit Reform Act of 1990;[28] that the Bank shall accord equal opportunity to export agents and managers, independent export firms, export trading companies,[29] and small commercial banks in the formulation and implementation of its programs;[30] that the Bank should give emphasis to assisting new and small business entrants in the agricultural export market, and

[23] Sec. 11(4) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 704) added this sentence.

[24] Sec. 13(b) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 705) added this sentence.

[25] Sec. 5 of Public Law 99–472 (100 Stat. 1201) struck out "equivalent" and inserted in lieu thereof "identical in all respects".

[26] Sec. 3 of Public Law 99–472 (100 Stat. 1200) added this sentence.

[27] Sec. 612(b) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1255) amended and restated subpara. (B) to this point.

[28] Sec. 104 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2189) added this clause.

[29] Sec. 612(c) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1255) inserted "export trading companies,".

[30] Sec. 618(a)(1) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1258) struck out text which previously appeared at this point concerning the Bank's policy toward small business concerns. See sec. 2(b)(1)(E) of this Act for new text regarding small businesses.

shall, in cooperation with other relevant Government agencies, including the Commodity Credit Corporation, develop a program of education to increase awareness of export opportunities among small agribusinesses and cooperatives,[31] that loans, so far as possible consistent with the carrying out of the purposes of subsection (a) of this section, shall generally be for specific purposes, and, in the judgment of the Board of Directors, offer reasonable assurance of repayment; and that in authorizing any loan or guarantee, the Board of Directors shall take into account any serious adverse effect of such loan or guarantee on the competitive position of United States industry, the availability of materials which are in short supply in the United States, and employment in the United States, and shall give particular emphasis to the objective of strengthening the competitive position of United States exporters and thereby of expanding total United States exports. Only in cases where the President, after consultation with the Committee on[32] Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate[33] determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism (including, when relevant, a foreign nation's lack of cooperation in efforts to eradicate terrorism),[34] nuclear proliferation, the enforcement of the Foreign Corrupt Practices Act of 1977, the Arms Export Control Act, the International Emergency Economic Powers Act, or the Export Administration Act of 1979,[35] environmental protection and human rights (such as are provided in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948)[36] (including child labor),[37] should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations.[38] Each such determination shall be delivered in writing to the President of the Bank, shall state that the determination is made pursuant to this section, and shall specify the applications or categories of applications for credit which

[31] Sec. 1916 of Public Law 95–630 (92 Stat. 3727) added this phrase beginning with the last semicolon.

[32] Sec. 24(a) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 708) struck out "Banking and".

[33] Sec. 5(1) of the Export-Import Bank Reauthorization Act of 1997 (Public Law 105–121; 111 Stat. 2529) inserted "after consultation with the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate".

[34] Sec. 17 of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 706) inserted "(including, when relevant, a foreign nation's lack of cooperation in efforts to eradicate terrorism)".

[35] Sec. 21 of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 707) inserted "the enforcement of the Foreign Corrupt Practices Act of 1977, the Arms Export Control Act, the International Emergency Economic Powers Act, or the Export Administration Act of 1979,".

[36] Sec. 15 of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 705) inserted "(such as are provided in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948)".

[37] Sec. 11 of Public Law 105–121 (111 Stat. 2530) inserted "(including child labor)".

[38] Popularly referred to as the Chafee amendment. Sec. 1904 of Public Law 95–630 (92 Stat. 3724) struck out a phrase concerning human rights, which had been added by sec. 2 of Public Law 95–143 (91 Stat. 1210), and inserted in lieu thereof the words to this point beginning with "and shall give particular emphasis to".

should be denied by the Bank in furtherance of the national interest.[39]

(C)[40] Consistent with the policy of section 501 of the Nuclear Non-Proliferation Act of 1978 and section 119 of the Foreign Assistance Act of 1961, the Board of Directors shall name an officer of the Bank whose duties shall include advising the President of the Bank on ways or promoting the export of goods and services to be used in the development, production, and distribution of non-nuclear renewable energy resources, disseminating information concerning export opportunities and the availability of Bank support for such activities, and acting as a liaison between the Bank and the Department of Commerce and other appropriate departments and agencies.

(D)[41] It is further the policy of the United States to foster the delivery of United States services in international commerce. In exercising its powers and functions, the Bank shall give full and equal consideration to making loans and providing guarantees for the export of services (independently, or in conjunction with the export of manufactured goods, equipment, hardware or other capital goods) consistent with the Bank's policy to neutralize foreign subsidized credit competition and to supplement the private capital market.

(E)[42] (i)(I) It is further the policy of the United States to encourage the participation of small business in international commerce.

(II) In exercising its authority, the Bank shall develop a program which gives fair consideration to making loans and providing guarantees for the export of goods and services by small businesses.

(ii) It is further the policy of the United States that the Bank shall give due recognition to the policy stated in section 2(a) of the Small Business Act that "the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise".

(iii) In furtherance of this policy, the Board of Directors shall designate an officer of the Bank who—

(I) shall be responsible to the President of the Bank for all matters concerning or affecting small business concerns; and

(II) among other duties, shall be responsible for advising small business concerns of the opportunities for small business concerns in the functions of the Bank, with particular emphasis on conducting outreach and increasing loans to socially and economically disadvantaged small business concerns (as defined in section 8(a)(4) of the Small Business Act), small business concerns (as defined in section 3(a) of the Small Business Act) owned by women, and small business concerns (as defined in section 3(a) of the Small Business Act) employing fewer than

[39] Sec. 5(2) of Public Law 105–121 (111 Stat. 2529) added this sentence.

[40] Sec. 1907 of Public Law 95–630 (92 Stat. 3725) added subpara. (C).

[41] Sec. 616(a)(3) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1257) added subpara. (D).

Sec. 1104 of Public Law 106–569 (114 Stat. 3031) struck out "(i)" at the beginning of sec. 2(b)(1)(D), and struck out clause (ii). Clause (ii) previously read as follows:

"(ii) The Bank shall include in its annual report a summary of its programs regarding the export of services.".

[42] Sec. 618 of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1258) added subparas. (E) and (F).

100 employees,[43] and for maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns.)

(iv) The Director appointed to represent the interests of small business under section 3(c) of this Act shall ensure that the Bank carries out its responsibilities under clauses (ii) and (iii) of this subparagraph and that the Bank's financial and other resources are, to the maximum extent possible, appropriately used for small business needs.

(v) To assure that the purposes of clauses (i) and (ii) of this subparagraph are carried out, the Bank shall make available, from the aggregate loan, guarantee, and insurance authority available to it, an amount to finance exports directly[44] by small business concerns (as defined under section 3 of the Small Business Act) which shall be not less than 20[45] percent of such authority for each fiscal year.[46]

(vi) The Bank shall utilize the amount set-aside pursuant to clause (v) of this subparagraph to offer financing for small business exports on terms which are fully competitive with regard to interest rates and with regard to the portion of financing which may be provided, guaranteed, or insured. Financing under this clause (vi) shall be available without regard to whether financing for the particular transaction was disapproved by any other Federal agency.

(vii)(I) The Bank shall utilize a part of the amount set aside pursuant to clause (v) to provide lines of credit or guarantees to consortia of small or medium size banks, export trading companies, State export finance agencies, export financing cooperatives, small business investment companies (as defined in section 103 of the Small Business Investment Act of 1958), or other financing institutions or entities in order to finance small business exports.

(II) Financing under this clause (vii) shall be made available only where the consortia or the participating institutions agree to undertake processing, servicing, and credit evaluation functions in connection with such financing.

(III) To the maximum extent practicable, the Bank shall delegate to the consortia the authority to approve financing under this clause (vii).

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[43] Sec. 7(b) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 700) inserted ", with particular emphasis on conducting outreach and increasing loans to socially and economically disadvantaged small business concerns (as defined in section 8(a)(4) of the Small Business Act), small business concerns (as defined in section 3(a) of the Small Business Act) owned by women, and small business concerns (as defined in section 3(a) of the Small Business Act) employing fewer than 100 employees,".

[44] Sec. 116 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2196) inserted "directly".

[45] Sec. 7(a) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 700) struck out "10" and inserted in lieu thereof "20".

[46] Sec. 121(a)(3) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2198) struck out:

"not less than—

(I) 6 per centum of such authority for fiscal year 1984;

(II) 8 per centum of such authority for fiscal year 1985; and

(III) 10 per centum of such authority for fiscal year 1986 and thereafter.",

and inserted in lieu thereof "not less than 10 percent of such authority for each fiscal year.".

(IV) In the administration of the program under this clause (vii), the Bank shall provide appropriate technical assistance to participating consortia and may require such consortia periodically to furnish information to the Bank regarding the number and amount of loans made and the creditworthiness of the borrowers.

(viii) In order to assure that the policy stated in clause (i) is carried out, the Bank shall promote small business exports and its small business export financing programs in cooperation with the Secretary of Commerce, the Office of International Trade of the Small Business Administration, and the private sector, particularly small business organizations, State agencies, chambers of commerce, banking organizations, export management companies, export trading companies and private industry.

(ix)[47] The Bank shall provide, through creditworthy trade associations, export trading companies, State export finance companies, export finance cooperatives, and other multiple-exporter organizations, medium-term risk protection coverage for the members and clients of such organizations. Such coverage shall be made available to each such organization under a single risk protection policy covering its members or clients. Nothing in this provision shall be interpreted as limiting the Bank's authority to deny support for specific transactions or to disapprove a request by such an organization to participate in such coverage.

(x)[48] The Bank shall implement technology improvements that are designed to improve small business outreach, including allowing customers to use the Internet to apply for the Bank's small business programs.

(F)[42] Consistent with international agreements, the Bank shall urge the Foreign Credit Insurance Association to provide coverage against 100 per centum of any loss with respect to exports having a value of less than $100,000.

(G)[49] Participation in or access to long-, medium-, and short-term financing, guarantees, and insurance provided by the Bank shall not be denied solely because the entity seeking participation or access is not a bank or is not a United States person.

(H)[50] (i) It is further the policy of the United States to foster the development of democratic institutions and market economies in countries seeking such development, and to assist the export of high technology items to countries.

(ii) In exercising its authority, the Bank shall develop a program for providing guarantees and insurance with respect to the export of high technology items to countries making the transition to market based economies, including eligible East European countries

[47] Sec. 6 of Public Law 99–472 (100 Stat. 1201) added clause (ix).

[48] Sec. 8(a) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 700) added clause (x). Sec. 8(c) of such Act further provided:

"(c) REPORTS.—The Export-Import Bank of the United States shall include in the annual report required by section 8(a) of the Export-Import Bank Act of 1945 for each of fiscal years 2002 through 2006 a report on the efforts made by the Bank to carry out subparagraphs (E)(x) and (J) of section 2(b)(1) of such Act, and on how the efforts are assisting small businesses.".

[49] Sec. 7 of Public Law 99–472 (100 Stat 1201) added subpara. (G).

[50] Sec. 114 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2195) added subpara. (H).

(within the meaning of section 3[51] of the Support For East European Democracy (SEED) Act of 1989).

(iii) As part of the ongoing marketing and outreach efforts of the Bank, the Bank shall, to the maximum extent practicable, inform high technology companies, particularly small business concerns (as such term is defined in section 3 of the Small Business Act), about the programs of the Bank for United States companies interested in exporting high technology goods to countries making the transition to market based economies, including any eligible East European country (within the meaning of section 3[51] of the Support For East European Democracy (SEED) Act of 1989).

(iv) In carrying out clause (iii), the Bank shall—

(I) work with other agencies involved in export promotion and finance; and

(II) invite State and local governments, trade centers, commercial banks, and other appropriate public and private organizations to serve as intermediaries for the outreach efforts.

(I)[52] The President of the Bank shall undertake efforts to enhance the Bank's capacity to provide information about the Bank's programs to small and rural companies which have not previously participated in the Bank's programs. Not later than 1 year after November 26, 1997, the President of the Bank shall submit to Congress a report on the activities undertaken pursuant to this subparagraph.

(J)[53] The Bank shall implement an electronic system designed to track all pending transactions of the Bank.

(K)[54] The Bank shall promote the export of goods and services related to renewable energy sources.

(L)[55] The Bank shall require an applicant for assistance from the Bank to disclose whether the applicant has been found by a court of the United States to have violated the Foreign Corrupt Practices Act of 1977, the Arms Export Control Act, the International Emergency Economic Powers Act, or the Export Administration Act of 1979 within the preceding 12 months, and shall maintain, in cooperation with the Department of Justice, for not less than 3 years a record of such applicants so found to have violated any such Act.

(2)[56] PROHIBITION ON AID TO MARXIST-LENINIST COUNTRIES.—

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[51] Sec. 24(b)(1) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 700) struck out "4" and inserted in lieu thereof "3".

[52] Sec. 9 of Public Law 105–121 (111 Stat. 2528) added subpara. (I).

[53] Sec. 8(b) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 700) added subpara. (J). Sec. 8(c) of such Act further provided:

"(c) REPORTS.—The Export-Import Bank of the United States shall include in the annual report required by section 8(a) of the Export-Import Bank Act of 1945 for each of fiscal years 2002 through 2006 a report on the efforts made by the Bank to carry out subparagraphs (E)(x) and (J) of section 2(b)(1) of such Act, and on how the efforts are assisting small businesses.".

[54] Sec. 13(a) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 705) added subpara. (K).

[55] Sec. 19 of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 707) added subpara. (L).

[56] Sec. 8 of Public Law 99–472 (100 Stat. 1201) amended and restated para. (2).

Sec. 303 of Public Law 101–179 (103 Stat. 1312) provided that:

"(a) AUTHORITY TO EXTEND CREDIT TO POLAND AND HUNGARY.—Notwithstanding section 2(b)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(2)), the Export-Import Bank of the United States may guarantee, insure, finance, extend credit, and participate in the extension of credit in connection with the purchase or lease of any product by the Republic of Hungary or any agency or national thereof or by the Polish People's Republic or any agency or national thereof.

Continued

(A) IN GENERAL.—The Bank in the exercise of its functions shall not guarantee, insure, extend credit, or participate in the extension of credit—

(i) in connection with the purchase or lease of any product by a Marxist-Leninist country, or agency or national thereof; or

(ii) in connection with the purchase or lease of any product by any other foreign country, or agency or national thereof, if the product to be purchased or leased by such other country, agency, or national is, to the knowledge of the Bank, principally for use in, or sale or lease to, a Marxist-Leninist country.

(B)[57] MARXIST-LENINIST COUNTRY DEFINED.—

(i) IN GENERAL.—For purposes of this paragraph, the term "Marxist-Leninist country" means any country that maintains a centrally planned economy based on the principles of Marxism-Leninism, or is economically and militarily dependent on any other such country.

(ii)[58] SPECIFIC COUNTRIES DEEMED TO BE MARXIST-LENINIST.—Unless otherwise determined by the President in accordance with subparagraph (C), the following countries are deemed to be Marxist-Leninist countries for purposes of this paragraph:

(I) Cambodian People's Republic.

(II) Democratic People's Republic of Korea.

(III) Democratic Republic of Afghanistan.[59]

(IV) Lao People's Democratic Republic.

(V) People's Republic of China.[60]

"(b) PRIVATE FINANCIAL INTERMEDIARIES TO FACILITATE EXPORTS TO POLAND.—Consistent with the provisions of the Export-Import Bank Act of 1945 (12 U.S.C. 635 and following), the Export-Import Bank of the United States shall work with private financial intermediaries in Poland to facilitate the export of goods and services to Poland.".

[57] Sec. 110 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2194) amended and restated subpara. (B).

[58] Prior to being amended by sec. 110 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2194), this list included Cambodian People's Republic, Cooperative Republic of Guyana, Czechoslovak Socialist Republic, Democratic People's Republic of Korea, Democratic Republic of Afghanistan, Estonia, German Democratic Republic, Hungarian People's Republic, Lao People's Democratic Republic, Latvia, Lithuania, Mongolian People's Republic, People's Democratic Republic of Yemen, People's Republic of Albania, People's Republic of Angola, People's Republic of Benin, People's Republic of Bulgaria, People's Republic of China, People's Republic of the Congo, People's Republic of Mozambique, Polish People's Republic, Republic of Cuba, Republic of Nicaragua, Socialist Ethiopia, Socialist Federal Republic of Yugoslavia, Socialist Republic of Romania, Socialist Republic of Vietnam, Surinam, Tibet, Union of Soviet Socialist Republics (including its captive constituent republics).

[59] In Presidential Determination No. 90–8 (February 14, 1990; 55 F.R. 5425), the President determined "that Mozambique has 'ceased to be a Marxist-Leninist country within the definition of such term in subparagraph (B)(i) of section 2(b)(2) of that Act (12 U.S.C. 635(b)(2)(B)(i)).'".

In Presidential Determination No. 90–11 (February 20, 1990; 55 F.R. 11129), the President determined that "it is in the national interest for the Export-Import Bank to guarantee, insure, extend credit, and participate in the extension of credit in connection with the purchase or lease of any product or service by, for use in, or for sale or lease to Czechoslovakia.".

The President made similar determinations with regards to Nicaragua (Presidential Determination No. 90–17; May 3, 1990; 55 F.R. 18587); Mongolia (Presidential Determination No. 91–32; April 19, 1991; 56 F.R. 21585); Bulgaria (Presidential Determination No. 91–40; June 5, 1991; 56 F.R. 28467); Latvia, Lithuania, and Estonia (Presidential Determination No. 92–11; January 28, 1992; 57 F.R. 5787); Albania (Presidential Determination No. 92–40; August 17, 1992; 57 F.R. 40073); Ethiopia (Presidential Determination No. 92–14; February 10, 1992; 57 F.R. 6659); Angola (Presidential Determination No. 92–32; June 3, 1992; 57 F.R. 24933); Afghanistan (Presidential Determination No. 93–3; October 7, 1992; 57 F.R. 47557); and Vietnam (Presidential Determination No. 98–18; March 9, 1998; 63 F.R. 14331).

[60] Sec. 103 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2494) provided that:

(VI) Republic of Cuba.
(VII) Socialist Federal Republic of Yugoslavia.
(VIII) Socialist Republic of Vietnam.
(IX) Tibet.[59]

(C) PRESIDENTIAL DETERMINATION THAT A COUNTRY HAS CEASED TO BE MARXIST-LENINIST.—If the President determines that any country on the list contained in subparagraph (B)(ii) has ceased to be a Marxist-Leninist country (within the definition of such term in subparagraph (B)(i)), such country shall not be treated as a Marxist-Leninist country for purposes of this paragraph after the date of such determination, unless the President subsequently determines that such country has again become a Marxist-Leninist country.

(D)[61] PRESIDENTIAL DETERMINATION RELATING TO FINANCING IN THE NATIONAL INTEREST.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to guarantees, insurance, or extensions of credit by the Bank to a country, agency, or national described in clause (i) or (ii) of subparagraph (A) (in connection with transactions described in such clauses) if the President determines that such guarantees, insurance, or extensions of credit are in the national interest.

(ii) SEPARATE DETERMINATION FOR CERTAIN TRANSACTIONS.—The President shall make a separate determination under clause (i) for each transaction described in clause (i) or (ii) of subparagraph (A) for which the Bank would extend a loan in an amount equal to or greater than $50,000,000.

(iii) REPORT OF CLAUSE (i) DETERMINATIONS TO CONGRESS.—Any determination by the President under clause

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"(a) Notwithstanding any other provision of law and subject to the provisions of subsections (b) and (c), the Export-Import Bank of the United States shall not finance any trade with, nor extend any loan, credit, credit guarantee, insurance, or reinsurance to the People's Republic of China.

"(b) The prohibitions described in subsection (a) of this section shall not apply to food or agricultural commodities.

"(c) The President may waive the prohibitions in subsection (a) if he makes a report to Congress either—

"(1) that the Government of the People's Republic of China has made progress on a program of political reform throughout the country, as well as in Tibet, which includes—

"(A) lifting of martial law;

"(B) halting of executions and other reprisals against individuals for the nonviolent expression of their political beliefs;

"(C) release of political prisoners;

"(D) increased respect for internationally recognized human rights, including freedom of expression, the press, assembly, and association; and

"(E) permitting a freer flow of information, including an end to the jamming of Voice of America and greater access for foreign journalists; or

"(2) it is in the national interest of the United States to terminate a suspension under subsection (a).".

[61] In Presidential Determination No. 94–53 (September 30, 1994; 59 F.R. 51483), the President determined "that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately $134,009,496 to the People's Republic of China in connection with the purchase of U.S. equipment and services for the expansion of the Ligang power station within Jiangsu Province.".

The President made similar determinations regarding loans to the People's Republic of China in Presidential Determination No. 95–18 (April 21, 1995; 60 F.R. 22447); Presidential Determination No. 95–19 (April 21, 1995; 60 F.R. 22449); Presidential Determination No. 96–35 (June 26, 1996; 61 F.R. 36495); Presidential Determination No. 96–37 (June 29, 1996; 61 F.R. 36989); Presidential Determination No. 96–38 (June 29, 1996; 61 F.R. 36991); Presidential Determination No. 97–2 (November 11, 1996; 61 F.R. 59805); Presidential Determination No. 97–3 (November 11, 1996; 61 F.R. 59807); and Presidential Determination No. 97–36 (September 30, 1997; 62 F.R. 52475).

(i) shall be reported to the Congress not later than the earlier of—

(I) the end of the 30-day period beginning on the date of such determination; or

(II) the date the Bank takes final action with respect to the first transaction involving the country, agency, or national for which such determination is made after the date of the enactment of the Export-Import Bank Amendments of 1974, unless a report of a determination with respect to such date of enactment.

(iv) REPORT OF CLAUSE (ii) DETERMINATIONS TO CONGRESS.—Any determination by the President under clause (ii) shall be reported to the Congress not later than the earlier of—

(I) the end of the 30-day period beginning on the date of such determination; or

(II) the date the Bank takes final action with respect to the transaction for which such determination is made.

(3)[62] Except as provided by the fourth sentence of this paragraph, no loan[63] or financial guarantee or general guarantee or insurance facility[64] or combination thereof (i) in an amount which equals or exceeds $100,000,000,[65] or (ii)[66] for the export of technology, fuel, equipment, materials, or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities, shall be finally approved by the Board of Directors of the Bank, unless in each case the Bank has submitted to the Congress with respect to such loan, financial guarantee, or combination thereof, a detailed statement describing and explaining the transaction, at least 25 days of continuous session of the Congress prior to the date of final approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as 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 3 days to a day certain shall be excluded in the computation of the 25 day period referred to in such sentence. Such statement shall contain—

(A)[67] in the case of a loan or financial guarantee—

(i) a brief description of the purposes of the transaction;

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[62] Sec. 5 of Public Law 93–646 (88 Stat. 2333 at 2335) redesignated paras. (3), (4), and (5) as paras. (4), (5), and (6), respectively, and added a new para. (3). Subsequently, sec. 3(b) of Public Law 95–143 (91 Stat. 1210) redesignated these paragraphs as paras. (5), (6), and (7), added a new para. (4), and amended and restated para. (3).

[63] Sec. 1902(1) of Public Law 95–630 (92 Stat. 3724) struck out "No loan" and inserted in lieu thereof "Except as provided by the fourth sentence of this paragraph, no loan".

[64] Sec. 619(b) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1260) inserted "or general guarantee or insurance facility".

[65] Sec. 1902(2) of Public Law 95–630 (92 Stat. 3724) struck out "$60,000,000" and inserted in lieu thereof "$100,000,000".

[66] Sec. 121 of the Further Continuing Appropriations, Fiscal Year 1992 (Public Law 102–145, as amended by Public Law 102–266) struck out "(ii) in an amount which equals or exceeds 25,000,000 for the export of goods or services involving research, exploration, or production of fossil fuel energy resources in the Union of Soviet Socialist Republics,", and redesignated clause (iii) as clause (ii).

[67] Sec. 619(c) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1260) amended and restated subpara. (A).

(ii) the identity of the party or parties requesting the loan or financial guarantee;

(iii) the nature of the goods or services to be exported and the use for which the goods or services are to be exported; and

(iv) in the case of a general guarantee or insurance facility—

(I) a description of the nature and purpose of the facility;

(II) the total amount of guarantees or insurance; and

(III) the reasons for the facility and its methods of operation; and

(B) a full explanation of the reasons for Bank financing of the transaction, the amount of the loan to be provided by the Bank, the approximate rate and repayment terms at which such loan will be made available and the approximate amount of the financial guarantee.

If the Bank submits a statement to the Congress under this paragraph and either House of Congress is in an adjournment for a period which continues for at least ten days after the date of submission of the statement, then any such loan or guarantee or combination thereof may, subject to the second sentence of this paragraph, be finally approved by the Board of Directors upon the termination of the twenty-five-day period referred to in the first sentence of this paragraph or upon the termination of a thirty-five-calendar-day period (which commences upon the date of submission of the statement), whichever occurs sooner.[68]

(4)[62, 69] (A) If the Secretary of State determines that—

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[68] Sec. 1902 of Public Law 95–630 (92 Stat. 3724) added this sentence.

[69] Para. (4) is popularly referred to as the Glenn amendment. Sec. 3(b) of Public Law 95–143 (91 Stat. 1210) added para. (4) and redesignated paras. (4) through (6) as paras. (5) through (7), respectively.

Subsequently, sec. 620(a) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1261), sec. 825 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 514), and sec. 1303(a) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2702) amended and restated para. (4).

Sec. 1303(b) of the National Defense Authorization Act for Fiscal Year 1997 (110 Stat. 2704) further provided the following:

"(b) RECOMMENDATIONS TO MAKE NONPROLIFERATION LAWS MORE EFFECTIVE.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to the Congress his recommendations on ways to make the laws of the United States more effective in controlling and preventing the proliferation of weapons of mass destruction and missiles. The report shall identify all sources of Government funds used for such nonproliferation activities.".

In Presidential Determination No. 99–44 (September 30, 1999; 64 F.R. 54503) the President waived the application of sanctions and prohibitions contained in sec. 2(b)(4) of this Act with regard to Pakistan and India "insofar as such sanctions and prohibitions would otherwise apply to any credit, credit guarantee, or financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity.".

In Presidential Determination 2000–4 (October 27, 1999; 64 F.R. 60649), the President waived the application of sec. 2(b)(4) of the Act "(1) with respect to India, insofar as such sanctions would otherwise apply to the Export-Import Bank . . .; the making of any loan or the providing of any credit to the Government of India by any U.S. bank; . . . and any credit, credit guarantee, or other financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity; and (2) with respect to Pakistan, insofar as such sanctions would otherwise apply to any credit, credit guarantee or other financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity, and the making of any loan or providing of any credit to the Government of Pakistan by any U.S. bank.".

In Presidential Determination No. 2000–18 (March 16, 2000; 65 F.R. 16297), the President waived the sanctions contained in sec. 2(b)(4) of the Act "with respect to India, insofar as the

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(i) any country that has agreed to International Atomic Energy Agency nuclear safeguards materially violates, abrogates, or terminates, after October 26, 1977, such safeguards;

(ii) any country that has entered into an agreement for cooperation concerning the civil use of nuclear energy with the United States materially violates, abrogates, or terminates, after October 26, 1977, any guarantee or other undertaking to the United States made in such agreement;

(iii) any country that is not a nuclear-weapon state detonates, after October 26, 1977, a nuclear explosive device;

(iv) any country willfully aids or abets, after June 29, 1994, any non-nuclear-weapon state to acquire any such nuclear explosive device or to acquire unsafeguarded special nuclear material; or

(v) any person knowingly aids or abets, after the date of enactment of the National Defense Authorization Act for Fiscal Year 1997, any non-nuclear-weapon state to acquire any such nuclear explosive device or to acquire unsafeguarded special nuclear material,

then the Secretary of State shall submit a report to the appropriate committees of the Congress and to the Board of Directors of the Bank stating such determination and identifying each country or person the Secretary determines has so acted.

(B)(i) If the Secretary of State makes a determination under subparagraph (A)(v) with respect to a foreign person, the Congress urges the Secretary to initiate consultations immediately with the government with primary jurisdiction over that person with respect to the imposition of the prohibition contained in subparagraph (C).

(ii) In order that consultations with that government may be pursued, the Board of Directors of the Bank shall delay imposition of the prohibition contained in subparagraph (C) for up to 90 days if the Secretary of State requests the Board to make such delay. Following these consultations, the prohibition contained in subparagraph (C) shall apply immediately unless the Secretary 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 subparagraph (A)(v). The Board of Directors of the Bank shall delay the imposition of the prohibition contained in subparagraph (C) for up to an additional 90 days if the Secretary requests

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sanctions would otherwise apply to assistance for the South Asian Regional Initiative/Energy; the Presidential Initiative on Internet for Economic Development; the Financial Institution Reform and Expansion Program; and the United States Educational Foundation in India Environmental Exchange . . .".

In Presidential Determination No. 2001–28 (September 22, 2001; 66 F.R. 50095), the President waived, to the extent not already waived, the sanctions contained in sec. 2(b)(4) of the Act for India and Pakistan.

In Presidential Determination No. 2003–33 (August 27, 2003; 68 F.R. 52679), the President, consistent with sec. 2(b)(4) of the Export-Import Bank Act of 1945, determined that it was in the national interest for the Export-Import Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to Iraq.

In Presidential Determination No. 2004–44 (September 10, 2004; 69 F.R. 56153), the President, pursuant to sec. 2(b)(4) of the Export-Import Bank Act of 1945, determined that it was in the national interest for the Export-Import Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to Libya.

the Board to make such additional delay and if the Secretary determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(iii) Not later than 90 days after making a determination under subparagraph (A)(v), the Secretary of State shall submit to the appropriate committees of the Congress a report on the status of consultations with the appropriate government under this subparagraph, and the basis for any determination under clause (ii) that such government has taken specific corrective actions.

(C) The Board of Directors of the Bank shall not give approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to any country, or to or by any person, identified in the report described in subparagraph (A).

(D) The prohibition in subparagraph (C) shall not apply to approvals to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to a country with respect to which a determination is made under clause (i), (ii), (iii), or (iv) of subparagraph (A) regarding any specific event described in such clause if the President determines and certifies in writing to the Congress not less than 45 days prior to the date of the first approval following the determination that it is in the national interest for the Bank to give such approvals.

(E) The prohibition in subparagraph (C) shall not apply to approvals to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to or by a person with respect to whom a determination is made under clause (v) of subparagraph (A) regarding any specific event described in such clause if—

(i) the Secretary of State determines and certifies to the Congress that the appropriate government has taken the corrective actions described in subparagraph (B)(ii); or

(ii) the President determines and certifies in writing to the Congress not less than 45 days prior to the date of the first approval following the determination that—

(I) reliable information indicates that—

(aa) such person has ceased to aid or abet any nonnuclear-weapon state to acquire any nuclear explosive device or to acquire unsafeguarded special nuclear material; and

(bb) steps have been taken to ensure that the activities described in item (aa) will not resume; or

(II) the prohibition would have a serious adverse effect on vital United States interests.

(F) For purposes of this paragraph:

(i) The term "country" has the meaning given to "foreign state" in section 1603(a) of title 28, United States Code.

(ii) The term "knowingly" is used within the meaning of the term "knowing" in section 104(h)(3) of the Foreign Corrupt Practices Act (15 U.S.C. 78dd–2(h)(3)).

(iii) 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.

(iv) The term "nuclear-weapon state" has the meaning given the term in Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow on July 1, 1968.

(v) The term "non-nuclear-weapon state" has the meaning given the term in section 830(5) of the Nuclear Proliferation Prevention Act of 1994 (Public Law 103–236; 108 Stat. 521).

(vi) The term "nuclear explosive device" has the meaning given the term in section 830(4) of the Nuclear Proliferation Prevention Act of 1994 (Public Law 103–236; 108 Stat. 521).

(vii) The term "unsafeguarded special nuclear material" has the meaning given the term in section 830(8) of the Nuclear Proliferation Prevention Act of 1994.

(5)[62, 69, 70] The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with (A) the purchase of any product, technical data, or other information by a national or agency of any nation which engages in armed conflict declared or otherwise, with the Armed Forces of the United States, (B) the purchase by any nation (or national or agency thereof) of any product, technical data, or other information which is to be used principally by or in any such nation described in clause (A). The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or other information by a national or agency of any nation if the President determines that any such transaction would be contrary to the national interest, or (C) the purchase of any liquid metal fast breeder nuclear reactor or any nuclear fuel reprocessing facility.[71]

(6)[62, 69] (A)[72] The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with

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[70] Public Law 90–267 (82 Stat. 48) added para. (5), initially as para. (3). Subsequently, Public Law 92–126 (85 Stat. 346) amended and restated para. (5), which at the time was designated as para. (3).

[71] Sec. 3(c) of Public Law 95–143 (91 Stat. 1211) added clause (C).

[72] Sec. 4703 of the Anti-Drug Abuse Act of 1988 (Public Law 100–690; 102 Stat. 4181) amended para. (6) by inserting subpara. designation "(A)"; by substituting "subparagraph" in lieu of "paragraph"; and by adding new subpara. (B).

Effective July 11, 1994, the Secretary of State determined, pursuant to sec. 2(b)(6), that: "(1) the U.S. content of five early warning aircraft systems, for which the Government of Brazil has requested Export-Import Bank financial guarantees, will be used primarily for counternarcotics purposes and (2) the sale of such defense articles and services is in the national interest of the United States." (Department of State Public Notice 2054; 59 F.R. 44450).

Effective September 24, 1997, the Acting Secretary of State determined that: "(1) The defense articles and services for which the Government of The Bahamas has requested Export-Import Bank financial guarantees, two (2) 60 meter patrol craft, are being sold primarily for anti-narcotics purposes; (2) The sale of such defense articles and services would be in the national interest of the United States; (3) The requirement for a determination that the Commonwealth of The Bahamas has complied with all restrictions imposed by the United States on the end use of defense articles or services . . . is inapplicable; (4) The requirement for a determination that the Commonwealth of The Bahamas has not used defense articles or services for which the Export-Import Bank has provided guarantees . . . to engage in a consistent pattern of gross violations of international recognized human rights is inapplicable . . ." (State Department Public Notice 2613; 62 F.R. 52603).

Effective June 26, 1998, the Secretary of State determined that: "(1) the defense articles and services for which the Government of Venezuela has requested Export-Import Bank financial guarantees, parts and services for the refurbishment to seventeen (17) OV–10 aircraft, are being sold primarily for anti-narcotics purposes; (2) the sale of such defense articles and services would be in the national interest of the United States; (3) the requirement for a determination that the Government of Venezuela has complied with all restrictions imposed by the United

any credit sale of defense articles and defense services to any country.[73]

(B)[72] Subparagraph (A)[74] shall not apply to any sale of defense articles or services if—

(i) the Bank is requested to provide a guarantee or insurance for the sale;

(ii) the President determines that the defense articles or services are being sold primarily for anti-narcotics purposes;

(iii) section 490(e)[75] of the Foreign Assistance Act of 1961 does not apply with respect to the purchasing country; and

(iv) the President determines, in accordance with subparagraph (C), that the sale is in the national interest of the United States; and[76]

States on the end-use of defense articles or services for which the Export-Import Bank has provided guarantees or insurance under section 2(b)6 of the Export-Import Bank Act is inapplicable because the pending financing will be the first Ex-Im Bank transaction with Venezuela made under section 2(b)(6) of the Act; (4) The requirement for a determination that the Government of Venezuela has not used defense articles or services for which the Export-Import Bank has provided guarantees or insurance under section (2)(b)(6) of the Export-Import Bank Act to engage in a consistent pattern of gross violations of internationally recognized human rights is inapplicable because of the pending transactions will be the first Ex-Im Bank transaction with Venezuela made under section 2(b)(6) of the Act . . ." (State Department Public Notice No. 2843, 63 F.R. 34952).

Effective July 11, 2000, the Secretary of State determined that: "(1) The defense articles and services for which the Government of Colombia has requested Export-Import Bank (Ex-Im) financial guarantees, fourteen UH–60 (Blackhawk) helicopters, are to be used primarily for anti-narcotics purposes; (2) the sale of such defense articles and services would be in the national interest of the United States; (3) The Government of Colombia has complied with all U.S.-imposed end-use restrictions on the use of defense articles and services previously financed under the Act; and (4) The Government of Columbia has not used defense articles or services previously provided under the Act to engage in a consistent pattern of gross violations of internationally recognized human rights . . ." (State Department Public Notice No. 3361; 65 F.R. 42743).

[73] Sec. 112(d) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2195) inserted a period and struck out the rest of the subpara., which read as follows:

"* * * designated under section 4916 of the Internal Revenue Code of 1986 as an economically less developed country for purposes of the tax imposed by section 4911 of that Code. The prohibitions set forth in this subparagraph shall not apply with respect to any transaction the consummation of which the President determines would be in the national interest and reports such determination (within thirty days after making the same) to the Senate and House of Representatives. In making any such determination the President shall take into account, among other considerations, the national interest in avoiding arm races among countries not directly menaced by the Soviet Union or by Communist China; in avoiding arming military dictators who are denying social progress to their own peoples; and in avoiding expenditures by developing countries of scarce foreign exchange needed for peaceful economic progress.".

Subsequently, sec. 12(c)(1)(A) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4935) struck out from "designated" through the end of the subparagraph, and inserted in lieu thereof ", except as otherwise provided in subparagraph (B).". This amendment, however, could not be executed because the words did not appear subsequent to the amendment by sec. 112(d) of Public Law 102–429, noted above.

[74] Sec. 112(d)(2) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2195) struck out ", and section 32 of the Arms Export Control Act," and repealed sec. 32 of the Arms Export Control Act. Sec. 12(c) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4935) made the same amendments.

[75] Formerly read "section 481(h)(5)". Sec. 6(a) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4932) provided that "any reference in any provision of law enacted before the date of enactment of this Act to section 481(h) of that Act shall be deemed, as of October 1, 1992, to be a reference to section 490.". Sec. 6(c)(1) of that Act struck out "481(h)(5)" and inserted in lieu thereof "490(e)".

[76] Sec. 112(a) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2194) inserted "and" at the end of clause (iv); struck out "; and" at the end of clause (v) and inserted in lieu thereof "."; and struck out clause (vi). Clause (vi) had required that "the sale is made on or before September 30, 1992". Previously, sec. 562(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513; 104 Stat. 2031) extended these authorities to September 30, 1992. Sec. 12(a) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4935) would have extended these authorities to September 30, 1997. Such amendment, however, was superseded by the amendment in Public Law 102–429.

(v) the Bank determines that, notwithstanding the provision of a guarantee or insurance for the sale, not more than 5 percent of the guarantee and insurance authority available to the Bank in any fiscal year will be used by the Bank to support the sale of defense articles or services.[77]

(C) In determining whether a sale of defense articles or services would be in the national interest of the United States, the President shall take into account whether the sale would—

(i) be consistent with the anti-narcotics policy of the United States;

(ii) involve the end use of a defense article or service in a major illicit drug producing or major drug-transit country (as defined in section 481(e)[78] of the Foreign Assistance Act of 1961); and

(iii) be made to a country with a democratic form of government.

(D)(i) The Board shall not give approval to guarantee or insure a sale of defense articles or services unless—

(I) the President determines, in accordance with subparagraph (C), that it is in the national interest of the United States for the Bank to provide such guarantee or insurance;[79]

(II)[79] the President determines, after consultation with the Assistant Secretary of State for Human Rights and Humanitarian Affairs, that the purchasing country has complied with all restrictions imposed by the United States on the end use of any defense articles or services for which a guarantee or insurance was provided under subparagraph (B), and has not used any such defense articles or services to engage in a consistent pattern of gross violations of internationally recognized human rights; and

(III)[79] such determinations have[80] been reported to the Speaker and the Committee on Financial Services[81] of the House of Representatives, and to the Committee on Banking,

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[77] Sec. 112(d)(2)(B) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2195) struck out "and services" and inserted in lieu thereof "or services". Sec. 12(c)(1)(B)(ii) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4935) made the same amendment.

[78] Sec. 102(a) of the International Narcotics Control Corrections Act of 1994 (Public Law 103–447; 108 Stat. 4693) struck out "determined under section 490(h) or 481(e), as appropriate," and inserted in lieu thereof "defined in section 481(e)". Previously, sec. 6(c)(2) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4932) struck out "defined in section 481(i)" and inserted in lieu thereof "determined under section 490(h) or 481(e), as appropriate,".

[79] Sec. 112(b) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2194) struck out "and" at the end of subclause (I); redesignated subclause (II) as (III); and added a new subclause (II).

Sec. 12(b) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4935) made the same amendments.

[80] Sec. 112(d)(3) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2195) struck out "determination has" and inserted in lieu thereof "determinations have". Sec. 12(c)(1)(C) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4935) made the same amendment.

[81] Sec. 24(a)(2) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 708) struck out "Banking, Finance and Urban Affairs" and inserted in lieu thereof "Financial Services". Previously, sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate, not less than 25 days of continuous session of the Congress before the date of such approval.

(ii) For purposes of clause (i), continuity of a session of the Congress shall be considered as 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 3 days to a day certain shall be excluded in the computation of the 25-day period referred to in such clause.[82]

(E) The provision of a guarantee or insurance under subparagraph (B) shall be deemed to be the provision of security assistance for purposes of section 502B of the Foreign Assistance Act of 1961 (relating to governments which engage in a consistent pattern of gross violations of internationally[83] recognized human rights).

(F) To the extent that defense articles or services for which a guarantee or insurance is provided under subparagraph (B) are used for a purpose other than anti-narcotics purposes, they may be used only for those purposes for which defense articles and defense services sold under the Arms Export Control Act (relating to the foreign military sales program) may be used under section 4 of such Act.

(G) As used in subparagraphs (B), (C), (D), and (F),[84] the term "defense articles or services"[85] means articles, services, and related technical data that are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act and listed on the United States Munitions List (part 121 of title 22 of the Code of Federal Regulations).

(H)[86] Once in each calendar quarter, the Bank shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services[80] of the House of Representatives on all instances in which the Bank, during the reporting quarter, guaranteed, insured, or extended credit or participated in an extension of credit in connection with any credit sale of an article, service, or related technical data described in subparagraph (G) that the Bank determined would not be put to a military use or described in subparagraph (I)(i).[87] Such report

[82] Sec. 112(d)(4) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2195) struck out "sentence" and inserted in lieu thereof "clause". Sec. 12(c)(1)(D) of the International Narcotics Control Act of 1992 (Public Law 102–583; 106 Stat. 4935) made the same amendment.

[83] Sec. 24(b)(3) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 709) struck out "international" and inserted in lieu thereof "internationally".

[84] Sec. 101(d) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2495) struck out "this paragraph" and inserted in lieu thereof "subparagraphs (B), (C), (D), and (F)".

[85] Sec. 112(d)(5) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2195) struck out "and services" and inserted in lieu thereof "or services".

[86] Sec. 112(c) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2195) added subpara. (H).

[87] Sec. 1(b) of Public Law 103–428 (108 Stat. 4375) inserted "or described in subparagraph (I)(i)". Sec. 1(c) of that Act, however, stipulated that "The amendments made by this section shall remain in effect during the period beginning on the date of enactment of this Act [October 31, 1994] and ending on September 30, 2001." [12 U.S.C. 635 note]. Sec. 4 of Public Law 105–121 amended sec. 1(c) of Public Law 103–428 by striking "1997" and inserting "2001". Subsequently, sec. 5 of Public Law 107–240 (116 Stat. 1494) extended the date to January 11, 2003; Division E, Title I of Public Law 108–7 (117 Stat. 159) extended the date to September 30, 2003; Division D, Title I of Public Law 108–199 (118 Stat. 143) extended the date to October 1, 2004; Division D, Title I of Public Law 108–447 (118 Stat. 2968) extended the date to October 1, 2005; and Title I of Public Law 109–102 (119 Stat. 2172) extended the date to October 1, 2006.

shall include a description of each of the transactions and the justification for the Bank's actions.

(I)[88] (i) Subparagraph (A) shall not apply to a transaction involving defense articles or services if—

(I) the Bank determines that—

(aa) the defense articles or services are nonlethal; and

(bb) the primary end use of the defense articles or services will be for civilian purposes; and

(II) at least 15 calendar days before the date on which the Board of Directors of the Bank gives final approval to Bank participation in the transaction, the Bank provides notice of the transaction to the Committees on Financial Services[89] and on Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and on Appropriations of the Senate.

(ii) Not more than 10 percent of the loan, guarantee, and insurance authority available to the Bank for a fiscal year may be used by the Bank to support the sale of defense articles or services to which subparagraph (A) does not apply by reason of clause (i) of this subparagraph.

(iii) Not later than September 1 of each fiscal year, the Comptroller General of the United States, in consultation with the Bank, shall submit to the Committees on Financial Services[88] and on Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and on Appropriations of the Senate a report on the end uses of any defense articles or services described in clause (i) with respect to which the Bank provided support during the second preceding fiscal year.

(7)[62, 69] In no event shall the Bank have outstanding at any time in excess of 7½ per centum of the limitation imposed by section 7 of this Act for such guarantees, insurance, credits or participation in credits with respect to exports of defense articles and services to countries which, in the judgment of the Board of Directors of the Bank, are less developed.

(8)[90] The Bank shall supplement but not compete with private capital and the programs of the Commodity Credit Corporation to ensure that adequate financing will be made available to assist the export of agricultural commodities, except that, consistent with section 2(b)(1)(A) of this Act, the Bank in assisting any such export transactions shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in Government-supported export financing, and shall, in cooperation

[88] Sec. 1(a) of Public Law 103–428 (108 Stat. 4375) added subpara. (I). Sec. 1(c) of that Act, however, stipulated that "The amendments made by this section shall remain in effect during the period beginning on the date of enactment of this Act [October 31, 1994] and ending on September 30, 1997." [12 U.S.C. 635 note]. Sec. 4 of Public Law 105–121 amended sec. 1(c) of Public Law 103–428 by striking "1997" and inserting "2001". Subsequently, sec. 5 of Public Law 107–240 (116 Stat. 1494) extended the date to January 11, 2003; Division E, Title I of Public Law 108–7 (117 Stat. 159) extended the date to September 30, 2003; Division D, Title I of Public Law 108–199 (118 Stat. 143) extended the date to October 1, 2004; Division D, Title I of Public Law 108–447 (118 Stat. 2968) extended the date to October 1, 2005; and Title I of Public Law 109–102 (119 Stat. 2172) extended the date to October 1, 2006.

[89] Sec. 24(a)(2) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 708) struck out "Banking, Finance and Urban Affairs" and inserted in lieu thereof "Financial Services".

[90] Sec. 1909 of Public Law 95–630 (92 Stat. 3725) added para. (8) which was originally designated as para. (7). Subsequently, sec. 619(d)(2) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1261) redesignated para. (7) as para. (8).

with other appropriate United States Government agencies, seek to reach international agreements to reduce Government subsidized export financing. In order to carry out the purposes of this subsection, the Bank shall consult with the Secretary of Agriculture and where the Secretary of Agriculture has recommended against Bank financing of the export of a particular agricultural commodity, shall take such recommendation into consideration in determining whether to provide credit or other assistance for any export sale of such commodity, and shall consider the importance of agricultural commodity exports to the United States export market and the Nation's balance of trade in deciding whether or not to provide assistance under this subsection. The Bank shall include in the report to Congress under section 9(a) of this Act a description of the measures undertaken by it pursuant to this subsection.

(9)[91] (A) The Board of Directors of the Bank shall, in consultation with the Secretary of Commerce and the Trade Promotion Coordinating Committee,[92] take prompt measures, consistent with the credit standards otherwise required by law, to promote the expansion of the Bank's financial commitments in sub-Saharan Africa under the loan, guarantee, and insurance programs of the Bank.

(B)(i)[93] The Board of Directors of the Bank shall establish and use an advisory committee to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion described in subparagraph (A).

(ii) The advisory committee shall make recommendations to the Board of Directors on the development and implementation of policies and programs designed to support the expansion described in subparagraph (A).

(iii)[94] The advisory committee shall terminate on September 30, 2006.

(10)[95] (A) The Bank shall not, without a specific authorization by law, guarantee, insure, or extend credit (or participate in the extension of credit) to—

(i) assist specific countries with balance of payments financing; or

[91] Sec. 4(b)(5) of the South African Democratic Transition Support Act of 1993 (Public Law 103–149; 107 Stat. 1505) repealed para. (9), which was popularly referred to as the Evans amendment. The paragraph had prohibited the Bank, in most cases, from guaranteeing, insuring, or extending credit or participating in the extension of credit in support of any export which would contribute to enabling the Government of the Republic of South Africa to maintain or enforce apartheid. Originally, sec. 1915 of Public Law 95–630 (92 Stat. 3727) had added this para. as para. (8).

[92] Sec. 6(b) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 700) inserted ", in consultation with the Secretary of Commerce and the Trade Promotion Coordinating Committee,".

Sec. 7 of Public Law 105–121 (111 Stat. 2529) inserted a new sec. 2(b)(9) establishing an advisory committee for sub-Saharan Africa.

[93] Sec. 7(b) of Public Law 105–121 (111 Stat. 2529), as amended by sec. 6(c) of Public Law 107–189 (116 Stat. 700), provided the following:

"(b) REPORTS TO CONGRESS.—Within 6 months after the date of enactment of this Act, and annually for each of the 8 years thereafter, the Board of Directors of the Export-Import Bank of the United States shall submit to Congress a report on the steps that the Board has taken to implement section 2(b)(9)(B) of the Export–Import Bank Act of 1945 and any recommendations of the advisory committee established pursuant to such section.".

[94] Sec. 6(a) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 700) amended and restated clause (iii). It previously read as follows:

"(iii) The advisory committee shall terminate 4 years after the date of enactment of this subparagraph.".

[95] Sec. 619(d)(3) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1261) added para. (10).

(ii) assist (as the primary purpose of any such guarantee, insurance, or credit) any country in the management of its international indebtedness, other than its outstanding obligations to the Bank.

(B) Nothing contained in subparagraph (A) shall preclude guarantees, insurance, or credit the primary purpose of which is to support United States exports.

(11)[96] PROHIBITION RELATING TO ANGOLA.—The[97] Bank may not guarantee, insure, or extend (or participate in the extension of) credit in connection with any export of any good (other than food or an agricultural commodity) or service to the People's Republic of Angola until the President certifies to the Congress that free and fair elections have been held in Angola in which all participants were afforded free and fair access, and that the government of Angola—

(A) is willing, and is actively seeking, to achieve an equitable political settlement of the conflict in Angola, including free and fair elections, through a mutual cease-fire and a dialogue with the opposition armed forces;

(B) has demonstrated progress in protecting internationally recognized human rights, and particularly in—

(i) ending, through prosecution or other means, involvement of members of the military and security forces in political violence and abuses of internationally recognized human rights;

(ii) vigorously prosecuting persons engaged in political violence who are connected with the government; and

(iii) bringing to justice those responsible for the abduction, torture, and murder of citizens of Angola and citizens of the United States; and

(C) has demonstrated progress in its respect for, and protection of—

(i) the freedom of the press;

(ii) the freedom of speech;

(iii) the freedom of assembly;

(iv) the freedom of association (including the right to organize for political purposes);

(v) internationally recognized worker rights; and

(vi) other attributes of political pluralism and democracy.

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[96] Sec. 102 of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2495) added this paragraph as "(12)". Sec. 111(1) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2194) struck out former para. (11), and redesignated it as "(11)". Former para. (11), which had been added by sec. 9 of Public Law 99–472 (100 Stat. 1203), read as follows:

"(11) PROHIBITION RELATING TO ANGOLA.—Notwithstanding any determination by the President under paragraph (2), the Bank may not guarantee, insure, or extend credit (or participate in the extension of credit) in connection with any export of goods or service, except food or agricultural commodities, to the People's Republic of Angola until the President certifies to the Congress that no combatant forces or military advisors of the Republic of Cuba or of any other Marxist-Leninist country (as such term is defined in paragraph (2)(B)) remain in Angola.".

[97] Sec. 111(2) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2194) struck out "Notwithstanding any determination by the President under paragraph (2) or (11), the", and inserted in lieu thereof "The".

The President shall include in each report made pursuant to this paragraph a detailed statement with respect to each of the conditions set forth in this paragraph. This paragraph shall not be construed to impose any requirement with respect to Angola that is more restrictive than any requirement imposed by this section generally on all other countries.

(12)[98] PROHIBITION RELATING TO RUSSIAN TRANSFERS OF CERTAIN MISSILE SYSTEMS.—If the President of the United States determines that the military of Government of the Russian Federation has transferred or delivered to the People's Republic of China an SS–N–22 missile system and that the transfer or delivery represents a significant and imminent threat to the security of the United States, the President of the United States shall notify the Bank of the transfer or delivery as soon as practicable. Upon receipt of the notice and if so directed by the President of the United States, the Board of Directors of the Bank shall not give the approval or guarantee, insure, extend, credit, or participate in the extension of credit in connection with the purchase of any good or service by the military or Government of the Russian Federation.

(c)(1)[99] The Bank shall charge fees and premiums commensurate, in the judgment of the Bank, with risks covered in connection with the contractual liability that the Bank incurs for guarantees, insurance, coinsurance, and reinsurance against political and credit risks of loss.

(2) The Bank may issue such guarantees, insurance, coinsurance, and reinsurance to or with exporters, insurance companies, financial institutions, or others, or groups thereof, and where appropriate may employ any of the same to act as its agent in the issuance and servicing of such guarantees, insurance, coinsurance, and reinsurance, and the adjustment of claims arising thereunder.

(3)[100] TRANSFERABILITY OF GUARANTEES.—

(A)[101] IN GENERAL.—With respect to medium-term and long-term obligation insured or guaranteed by the Bank after the date of the enactment of the Export-Import Bank Act Amendments of 1986, the Bank shall authorize the unrestricted transfer of such obligations by the originating lenders or their transferees to other lenders without affecting, limiting, or terminating the guarantee or insurance provided by the Bank.

(B)[101] GUARANTEE COVERAGE.—For the guarantee program provided for in this subsection, the Bank may provide up to 100 percent coverage of the interest and principal if the Board of Directors determines such coverage to be necessary to ensure acceptance of Bank guarantees by financial institutions for any transaction in any export market in which the Bank is open for business.

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[98] Sec. 12 of the Export-Import Bank Reauthorization Act of 1997 (Public Law 105–121; 111 Stat. 2530) added para. (12). Subsequently, sec. 24(b)(2) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 709) made a technical correction to para. (12).

[99] Sec. 109(a) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2193) amended and restated para. (1). Previously, sec. 6 of Public Law 93–646 (88 Stat. 2335) amended and restated para. (1).

[100] Sec. 10 of Public Law 99–472 (100 Stat. 1203) added para. (3).

[101] Sec. 105 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2189) inserted the subpara. designation "(A)" and added subpara. (B).

(d)[102] (1) In carrying out its responsibilities under this Act, the Bank shall work to ensure that United States companies are afforded an equal and nondiscriminatory opportunity to bid for insurance in connection with transactions assisted by the Bank.

(2)[103] COMPETITIVE OPPORTUNITY FOR INSURANCE COMPANIES.—In the case of any long-term loan or guarantee of not less than $10,000,000, the Bank shall seek to ensure that United States insurance companies are accorded a fair and open competitive opportunity to provide insurance against risk of loss in connection with any transaction with respect to which such loan or guarantee is provided.

(3)[103] RESPONSIVE ACTIONS.—If the Bank becomes aware that a fair and open competitive opportunity is not accorded to any United States insurance company in a foreign country with respect to which the Bank is considering a loan or guarantee, the Bank—

(A) may approve or deny the loan or guarantee after considering whether such action would be likely to achieve competitive access for United States insurance companies; and

(B) shall forward information regarding any foreign country that denies United States insurance companies a fair and open competitive opportunity to the Secretary of Commerce and to the United States Trade Representative for consideration of a recommendation to the President that access by such country to export credit of the United States should be restricted.

(4)[103] NOTICE OF APPROVAL.—If the Bank approves a loan or guarantee with respect to a foreign country notwithstanding information regarding denial by that foreign country of competitive opportunities for United States insurance companies, the Bank shall include notice of such approval and the reason for such approval in the report on competition in officially supported export credit required under subsection (b)(1)(A).

(5)[103] DEFINITIONS.—For purposes of this section—

(A) the term "United States insurance company"—

(i) includes an individual, partnership, corporation, holding company, or other legal entity which is authorized (or in the case of a holding company, subsidiaries of which are authorized) by a State to engage in the business of issuing insurance contracts or reinsuring the risk underwritten by insurance companies; and

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[102] Sec. 617 of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1257) added subsec. (d).

[103] Sec. 107 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2190) struck out paras. (2) and (3) and inserted new paras. (2) through (5). Paras. (2) and (3) formerly read as follows:

"(2) In furtherance of such effort, the Chairman of the Bank shall review Bank policies and programs in regard to this issue, and in coordination with the United States Trade Representative and the appropriate agencies of the Department of State, the Department of the Treasury, and the Department of Commerce, undertake actions designed to promote equal and nondiscriminatory opportunities to bid for insurance in connection with all aspects of international trade activities.

"(3) The Bank shall report to the Committee or Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than May 15, 1984, regarding—

"(A) the existing obstacles to equal and nondiscriminatory bidding for insurance related to transactions assisted by the Bank;

"(B) the efforts that the Bank has taken in addressing such problems; and

"(C) recommendations for such legislative or administrative actions as the Bank considers necessary.".

(ii) includes foreign operations, branches, agencies, subsidiaries, affiliates, or joint ventures of any entity described in clause (i); and

(B) the term "fair and open competitive opportunity" means, with respect to the provision of insurance by a United States insurance company, that the company—

(i) has received notice of the opportunity to provide such insurance; and

(ii) has been evaluated for such opportunity on a nondiscriminatory basis.

(e)[104] LIMITATION ON ASSISTANCE WHICH ADVERSELY AFFECT THE UNITED STATES.—

(1) IN GENERAL.—The Bank may not extend any direct credit of financial guarantee for establishing or expanding production of any commodity for export by any country other than the United States, if—

(A) the Bank determines that—

(i) the commodity is likely to be in surplus on world markets at the time the resulting commodity will first be sold;[105] or

(ii) the resulting production capacity is expected to compete with United States production of the same, similar, or competing commodity; and

(B) the Bank determines that the extension of such credit or guarantee will cause substantial injury to United States producers of the same, similar, or competing commodity.

(2)[106] OUTSTANDING ORDERS AND PRELIMINARY INJURY DETERMINATIONS.—

(A) ORDERS.—The Bank shall not provide any loan or guarantee to an entity for the resulting production ofsubstantially the same product that is the subject of—

(i) a countervailing duty or antidumping order under title VII of the Tariff Act of 1930; or

(ii) a determination under title II of the Trade Act of 1974.

(B) AFFIRMATIVE DETERMINATION.—Within 60 days after the date of the enactment of this paragraph, the Bank shall establish procedures regarding loans or guarantees provided to any entity that is subject to a preliminary determination of a reasonable indication of material injury to an industry under title VII of the Tariff Act of 1930. The procedures shall help to ensure that these loans and guarantees are likely to not result in a significant increase in imports of substantially the same product covered by the preliminary determination and are likely to not have a significant adverse impact on the domestic industry. The

[104] Sec. 11 of Public Law 99–472 (100 Stat. 1203) added subsec. (e).

[105] Sec. 3304(a) of Public Law 100–418 (Omnibus Trade and Competitiveness Act of 1988; 102 Stat. 1384) struck out "productive capacity is expected to become operative" and inserted in lieu thereof "commodity will first be sold".

[106] Sec. 18 of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 706) redesignated paras. (2) and (3) as paras. (3) and (4), and added a new para. (2). Sec. 18 further struck out "Paragraph (1)" and inserted in lieu thereof "Paragraphs (1) and (2)" in para. (3), as redesignated.

Bank shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the implementation of these procedures.

(C) COMMENT PERIOD.—The Bank shall establish procedures under which the Bank shall notify interested parties and provide a comment period with regard to loans or guarantees reviewed pursuant to subparagraph (B) or (D).

(D) CONSIDERATION OF INVESTIGATION UNDER TITLE II OF THE TRADE ACT OF 1974.—In making any determination under paragraph (1) for a transaction involving more than $10,000,000, the Bank shall consider investigations under title II of the Trade Act of 1974 that have been initiated at the request of the President of the United States, the United States Trade Representative, the Committee on Finance of the Senate, or the Committee on Ways and Means of the House of Representatives, or by the International Trade Commission on its own motion.

(3)[106] EXCEPTION.—Paragraphs (1) and (2)[105] shall not apply in any case where, in the judgment of the Board of Directors of the Bank, the short- and long-term benefits to industry and employment in the United States are likely to outweigh the short- and long-term[107] injury to United States producers and employment[107] of the same, similar, or competing commodity.

(4)[108] DEFINITION.—For purposes of paragraph (1)(B), the extension of any credit or guarantee by the Bank will cause substantial injury if the amount of the capacity for production established, or the amount of the increase in such capacity expanded, by such credit or guarantee equals or exceeds 1 percent of United States production.

(f)[109] AUTHORITY TO DENY APPLICATION FOR ASSISTANCE BASED ON FRAUD OR CORRUPTION BY PARTY INVOLVED IN THE TRANSACTION.—In addition to any other authority of the Bank, the Bank may deny an application for assistance with respect to a transaction if the Bank has substantial credible evidence that any party to the transaction or any party involved in the transaction has committed an act of fraud or corruption in connection with the transaction.

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[107] Sec. 3304(b) of Public Law 100–418 (102 Stat. 1384) inserted "short- and long-term" and "and employment".

[108] Sec. 3304(c) of Public Law 100–418 (102 Stat. 1384) added para. (4), originally designated as para. (3). Subsequently, sec. 18(2) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 706) redesignated para. (3) as para. (4).

Title I of Public Law 108–447 (118 Stat. 2668) provided that "That not later than 30 days after the date of enactment of this Act, the Export-Import Bank shall submit a report to the Committees on Appropriations of the House of Representatives and the Senate, containing an analysis of the economic impact on United States producers of ethanol of the extension of credit and financial guarantees for the development of an ethanol dehydration plant in Trinidad and Tobago, including a determination of whether such extension will cause substantial injury to such producers, as defined in section 2(e)(4) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(e)(4)).".

[109] Sec. 16 of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 706) added subsec. (f). Previously, sec. 121(a)(4) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2198) had struck out subsec. (f), relating to interest subsidy payments and limitations on authorization of appropriations.

SEC. 3.[110] (a) The Export-Import Bank of the United States shall constitute an independent agency of the United States and neither the Bank nor any of its functions, powers, or duties shall be transferred to or consolidated with any other department, agency, or corporation of the Government unless the Congress shall otherwise by law provide.

(b) There shall be a President of the Export-Import Bank of the United States, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall receive a salary at the rate of $40,000[111] per annum, and who shall serve as chief executive officer of the Bank. There shall be a First Vice President of the Bank, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall receive a salary at the rate of $38,000[112] per annum, who shall serve as President of the Bank during the absence or disability of or in the event of a vacancy in the office of President of the Bank, and who shall at other times perform such functions as the President of the Bank may from time to time prescribe.

(c)(1)[113] There shall be a Board of Directors of the Bank consisting of the President of the Export-Import Bank of the United States who shall serve as Chairman, the First Vice President who shall serve as Vice Chairman, and three additional persons appointed by the President of the United States by and with the advice and consent of the Senate.

(2)[113] Of the five members of the Board, not more than three shall be members of any one political party.

(3)[113] Each director, other than the President of the Export-Import Bank and the Vice President of the Export-Import Bank, shall receive a salary at the rate of $38,000 per annum.

(4)[113] Before entering upon his duties, each of the directors shall take an oath faithfully to discharge the duties of his office.

(5)[113, 114] The directors, in addition to their duties as members of the Board, shall perform such additional duties and may hold such other offices in the administration of the Bank as the President of the Bank may from time to time prescribe.

(6)[113, 115] A quorum of the Board of Directors shall consist of at least three members.

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[110] 12 U.S.C. 635a. Sec. 117 of Public Law 102–429 (111 Stat. 2187) provided that 2 years after enactment of that Act (October 21, 1991), sec. 3(a) would be repealed. Subsequently, several Acts have extended this date, the most current being Public Law 109–102 (119 Stat. 2173) which stated that "subsection (a) thereof shall remain in effect until October 1, 2006.".

[111] Pursuant to 5 U.S.C. 5314(41), the President of the Bank receives a salary according to level III of Schedule 5—Executive Schedule. Executive Order 13393 of December 22, 2005 (70 F.R. 76665), raised the salary of level III to $152,000.

[112] Pursuant to 5 U.S.C. 5315 (49) and (56), the First Vice President of the Bank and Members, Board of Directors of the Bank receive a salary according to level IV of Schedule 5—Executive Schedule. Executive Order 13393 of December 22, 2005 (70 F.R. 76665), raised the salary of level IV to $165,200.

[113] Sec. 614(a) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1255) redesignated each sentence in subsec. (c) as paras. (1) through (7) and inserted a new para. (8).

[114] Sec. 614(a)(2) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1256) struck out the first phrase in this sentence which previously read as follows: "Terms of the directors shall be at the pleasure of the President of the United States, and".

[115] Sec. 1 of Public Law 106–46 (113 Stat. 227) amended and restated sec. 3(c)(6). It previously read as follows: "A majority of the Board of Directors shall constitute a quorum.".

Public Law 106–46 further provided:

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(7)[113] The Board of Directors shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Bank, and shall, in such bylaws, designate the vice presidents and other officers of the Bank and prescribe their duties.

(8)[113] (A) The terms of the directors, including the President and the First Vice President of the Bank, appointed under this section shall be four years, except that—

(i) during their terms of office, the directors shall serve at the pleasure of the President of the United States;

(ii) the term of any director appointed after the date of enactment of this paragraph to serve before January 20, 1985, shall expire on January 20, 1985;

(iii) of the directors first appointed to serve beginning on or after January 21, 1985, two directors (other than the President and First Vice President of the Bank) shall be appointed for terms of two years, as designated by the President of the United States at the time of their appointment; and

(iv) any director first appointed to serve for a term beginning on any date after January 21, 1985, shall serve only for the remainder of the period for which such director would have been appointed if such director's term had begun on January 21, 1985. If such term would have expired before the date on which such director's term actually begins, the term of such director shall be the four-year period, or remainder thereof, as if such director had been preceded by a director whose term had begun on January 21, 1985.

(B)[116] Of the five members of the Board appointed by the President, not less than one such member shall be selected from among the small business community and shall represent the interests of small business.

(C) Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the director whom such person succeeds.

(D) Any director whose term has expired may be reappointed.

(E)[117] Any director whose term has expired may continue to serve on the Board of Directors until the earlier of—

(i) the date on which such director's successor is qualified; or

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"(b) EXCEPTION.—Notwithstanding section 3(c)(6) of the Export-Import Bank Act of 1945, if, during the period that begins on July 21, 1999 and ends on December 2, 1999, there are fewer than three persons holding office on the Board of Directors of the Export-Import Bank of the United States, the entire membership of such Board of Directors shall constitute a quorum until the end of such period.".

Sec. 122 of Public Law 106–62 (113 Stat. 509) amended Public Law 106–46 (12 U.S.C. 635a note) by deleting "October 1, 1999" and inserting "November 1, 1999". Public Law 106–46 was further amended by Public Law 106–85 (113 Stat. 1297) by striking "November 1, 1999" and inserting "November 5, 1999"; by Public Law 106–88 (113 Stat. 1304) by striking "November 5, 1999" and inserting "November 10, 1999"; by Public Law 106–94 (113 Stat. 1311) by striking "November 10, 1999" and inserting "November 17, 1999"; by Public Law 106–105 (113 Stat. 1484) by striking "November 17, 1999" and inserting "November 18, 1999"; and by Public Law 106–106 (113 Stat. 1485) by striking "November 18, 1999" and inserting "December 2, 1999".

[116] Sec. 614(b) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1256) provided:

"(b) In order to carry out the amendment made by subsection (a) regarding section 3(c)(8)(B) of the Export-Import Bank Act of 1945, the first member, other than a member who will serve as Chairman or Vice Chairman of the Bank, appointed by the President of the United States to the Board of Directors of the Export-Import Bank of the United States after the date of the enactment of this section shall be selected from among the small business community and shall represent the interests of small business.".

[117] Sec. 18 of Public Law 99–472 (100 Stat. 1205) added subpara. (E).

(ii) the end of the 6-month period beginning on the date such director's term expires.

(d)[118] (1)(A) There is established an Advisory Committee to consist of 15[119] members who shall be appointed by the Board of Directors on the recommendation of the President of the Bank.

(B)[120] Such members shall be broadly representative of production, commerce, finance, agriculture, labor, services, and State government.

(2) Not less than three members appointed to the Advisory Committee shall be representative of the small business community.

(3) The Advisory Committee shall meet at least once each quarter.

(4) The Advisory Committee shall advise the Bank on its programs, and shall submit, with the report specified in section 2(b)(1)(A) of this Act, its own comments to the Congress on the extent to which the Bank is meeting its mandate to provide competitive financing to expand United States exports, and any suggestions for improvements in this regard.

(e)(1)[121] No director, officer, attorney, agent, or employee of the bank shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting such individual's[122] personal interests, or the interests of any corporation, partnership, or association in which such individual[123] is directly or indirectly personally interested.

(2)[121] The General Counsel of the Bank shall ensure that the directors, officers, and employees of the Bank have available appropriate legal counsel for advise on, and oversight of, issues relating to personnel matters and other administrative law matters by designating an attorney to serve as Assistant General Counsel for Administration, whose duties, under the supervision of the General Counsel, shall be concerned solely or primarily with these issues.

SEC. 4.[124] The Export-Import Bank of the United States shall have a capital stock of $1,000,000,000 subscribed by the United States. Certificates evidencing stock ownership of the United States shall be issued by the Bank to the President of the United States, or to such other person or persons as the President may designate from time to time, to the extent of payments made for the capital stock of the Bank.[125]

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[118] Sec. 613 of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1255) amended and restated subsec. (d).

[119] Sec. 113 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2195) struck out "twelve" and inserted in lieu thereof "15".

[120] Sec. 24(b)(4) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 709) made a technical correction to subpara. (B).

[121] Sec. 6 of Public Law 105–121 (111 Stat. 2529) inserted "(1)" after "(e)" and added subpara. (2).

[122] Sec. 620(b) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1261) struck out "his" and inserted in lieu thereof "such individual's".

[123] Sec. 620(b)(2) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1261) struck out "his" and inserted in lieu thereof "such individual".

[124] 12 U.S.C. 635b.

[125] Sec. 121(b) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2198) struck out several sentences and inserted in lieu thereof this sentence. The deleted text read as follows: "Payments for $1,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the common stock heretofore issued by the Bank and purchased by the United States. Payment for $174,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the preferred stock heretofore issued by the Bank and purchased by the Reconstruction Finance Corporation. Payment for the $825,000,000 balance of

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SEC. 5.[126] The Export-Import Bank of the United States is authorized to issue from time to time for purchase by the Secretary of the Treasury its notes, debentures, bonds or other obligation; but the aggregate amount of such obligations outstanding at any one time shall not exceed $6,000,000,000.[127] Such obligations shall be redeemable at the option of the Bank before maturity in such manner as may be stipulated in such obligations and shall have such maturity as may be determined by the Board of Directors of the Bank with the approval of the Secretary of the Treasury. Each such Bank obligation issued to the Treasury after the enactment of the Export-Import Bank Amendments of 1974 shall bear interest at a rate not less than the current average yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation of the Bank as determined by the Secretary of the Treasury.[128] The Secretary of the Treasury is hereby authorized and directed to purchase any obligations of the Bank issued hereunder and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purpose for which securities may be issued under that Act are extended to include such purpose. Payment under this section of the purchase price of such obligations of the Bank and repayments thereof by the Bank shall be treated as public-debt transactions of the United States.

SEC. 6.[129] AGGREGATE LOAN, GUARANTEE, AND INSURANCE AUTHORITY.

(a)[130] LIMITATION ON OUTSTANDING AMOUNTS.—

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such capital stock shall be subject to call at any time in whole or in part by the Board of Directors of the Bank. For the purpose of making payments of such balance, the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this section of the subscription of the United States to the Bank and repayments thereof shall be treated as public-debt transactions of the United States. Certificates evidencing stock ownership of the United States shall be issued by the Bank to the President of the United States, or to such other person or persons as the President may designate from time to time, to the extent of the common and preferred stock surrendered and other payments made for the capital stock of the Bank under this section.".

[126] 12 U.S.C. 635d. Sec. 121(c)(2) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2199) redesignated sec. 6 as sec. 5. Subsequently, Public Law 82–158 (65 Stat. 637) amended and restated sec. 5.

[127] Public Law 82–158 (65 Stat. 367) struck out "two and one-half" and inserted in lieu thereof "three and one-half". Public Law 83–570 (68 Stat. 678) struck out 'three and one-half times the authorized capital stock of the Bank" and inserted in lieu thereof "$4,000,000,000". Public Law 85–425 (72 Stat. 133) struck out "$4,000,000,000" and inserted in lieu thereof "$6,000,000,000".

[128] Public Law 80–89 (61 Stat. 131) added the second and third sentences of sec. 5. Subsequently, sec. 7 of Public Law 93–646 (88 Stat. 2333 at 2336) amended and restated the third sentence.

[129] 12 U.S.C. 635e. Sec. 121(c)(2) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2199) redesignated sec. 7 as sec. 6. Subsequently, sec. 109(b) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2193) amended and restated sec. 6.

[130] Sec. 5 of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 699) amended and restated subsec. (a).

Previously, sec. 381(a) of the Omnibus Budget Reconciliation Act (Public Law 97–35; 95 Stat. 431) designated subsec. (a) as subsec. (a)(1) and added a new para. (2). Subsequently, sec. 615 of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1256) amended and restated para. (2).

Sec. 17 of Public Law 99–472 (100 Stat. 1205) further amended subsec. (a).

Sec. 1914 of Public Law 95–630 (92 Stat. 3727) further amended subsec. (a).

Previously, Public Law 82–158 (65 Stat. 367) raised the limit on the aggregate amount to 4½ times the authorized capital stock of the bank. Public Law 83–30 (67 Stat. 28) inserted "and insurance". Public Law 83–570 (68 Stat. 578) raised the aggregate amount to $5 billion; Public

(1) IN GENERAL.—The Export-Import Bank of the United States shall not have outstanding at any one time loans, guarantees, and insurance in an aggregate amount in excess of the applicable amount.

(2) APPLICABLE AMOUNT.—In paragraph (1), the term "applicable amount" means—

(A) during fiscal year 2002, $80,000,000,000;
(B) during fiscal year 2003, $85,000,000,000;
(C) during fiscal year 2004, $90,000,000,000;
(D) during fiscal year 2005, $95,000,000,000; and
(E) during fiscal year 2006, $100,000,000,000.

Law 85–424 (72 Stat. 133) increased the aggregate amount to $7 billion; Public Law 88–101 (77 Stat. 128) increased the aggregate amount to $9 billion; Public Law 90–267 (82 Stat. 49) increased the aggregate amount to $13.5 billion; Public Law 92–126 (85 Stat. 345) increased the aggregate amount to $20 billion; Public Law 93–646 (88 Stat. 2333) increased the aggregate amount to $25 billion; sec. 1905 of Public Law 95–630 (92 Stat. 3725) increased the aggregate amount to $40 billion; and sec. 109(b)(2)(B) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2193) increased the aggregate amount to $75 billion.

Division E, Title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102; 119 Stat. 2172), provided the following:

"TITLE I—EXPORT AND INVESTMENT ASSISTANCE

"EXPORT-IMPORT BANK OF THE UNITED STATES

* * * * * * *

"EXPORT-IMPORT BANK PROGRAM ACCOUNT

"The Export-Import Bank of the United States is authorized to make such expenditures within the limits of funds and borrowing authority available to such corporation, and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations, as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out the program for the current fiscal year for such corporation: *Provided,* That none of the funds available during the current fiscal year may be used to make expenditures, contracts, or commitments for the export of nuclear equipment, fuel, or technology to any country, other than a nuclear-weapon state as defined in Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons eligible to receive economic or military assistance under this Act, that has detonated a nuclear explosive after the date of the enactment of this Act: *Provided further,* That notwithstanding section 1(c) of Public Law 103–428, as amended, sections 1(a) and (b) of Public Law 103–428 shall remain in effect through October 1, 2006.

"SUBSIDY APPROPRIATION

"For the cost of direct loans, loan guarantees, insurance, and tied-aid grants as authorized by section 10 of the Export-Import Bank Act of 1945, as amended, $100,000,000, to remain available until September 30, 2009: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That such sums shall remain available until September 30, 2024, for the disbursement of direct loans, loan guarantees, insurance and tied-aid grants obligated in fiscal years 2006, 2007, 2008, and 2009: *Provided further,* That none of the funds appropriated by this Act or any prior Act appropriating funds for foreign operations, export financing, and related programs for tied-aid credits or grants may be used for any other purpose except through the regular notification procedures of the Committees on Appropriations: *Provided further,* That funds appropriated by this paragraph are made available notwithstanding section 2(b)(2) of the Export-Import Bank Act of 1945, in connection with the purchase or lease of any product by any Eastern European country, any Baltic State or any agency or national thereof.

"ADMINISTRATIVE EXPENSES

"For administrative expenses to carry out the direct and guaranteed loan and insurance programs, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109, and not to exceed $30,000 for official reception and representation expenses for members of the Board of Directors, $73,200,000: *Provided,* That the Export-Import Bank may accept, and use, payment or services provided by transaction participants for legal, financial, or technical services in connection with any transaction for which an application for a loan, guarantee or insurance commitment has been made: *Provided further,* That, notwithstanding subsection (b) of section 117 of the Export Enhancement Act of 1992, subsection(a) thereof shall remain in effect until October 1, 2006.".

See also in Public Law 109–102, Title II—Assistance for Individual States of the Former Soviet Union (119 Stat. 2182), sec. 507—Prohibition Against Direct Funding for Certain Countries (119 Stat. 2197); and sec. 513—Commerce and Trade (119 Stat. 2199).

(3) SUBJECT TO APPROPRIATIONS.—All spending and credit authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(b)[131] PRESIDENTIAL DETERMINATION.—

(1)[131] IN GENERAL.—Not later than March 31 of each fiscal year, the President of the United States shall determine whether the authority available to the Bank for such fiscal year will be sufficient to meet the Bank's needs, particularly those needs arising from—

(A) increases in the level of exports unforeseen at the time of the original budget request for such fiscal year;

(B) any increased foreign export credit subsidies; or

(C) the lack of progress in negotiations to reduce or eliminate export credit subsidies.

(2)[132, 133] REQUEST FOR LEGISLATION.—

(A) IN GENERAL.—If the President of the United States finds that the amount of direct loan authority or guarantee authority available to the Bank for the fiscal year involved exceeds the amount which will be necessary to carry out the Bank's functions consistent with the availability of qualified applications and limitations imposed by law during such year, the President of the United States shall promptly transmit to the Congress a request for legislation to eliminate the amount of such excess direct loan, loan guarantee, or insurance authority.

(B)[134] CONTINUED AVAILABILITY OF AUTHORITY.—The Bank shall continue to make remaining amounts of its authority available for the fiscal year involved, in accordance with its practices and the requirements of this Act, unless otherwise directed pursuant to law.

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[131] Sec. 109(b)(3) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2193) redesignated subsec. (a)(2)(A)(i) as subsec. (b). Subsequently, sec. 109(b)(3) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2193) inserted "PRESIDENTIAL DETERMINATION.—" and "(1) IN GENERAL.—", and redesignated subclauses as subparagraphs under para. (1).

Previously, sec. 121 of the Further Continuing Appropriations, Fiscal Year 1992 (Public Law 102–145, as amended by Public Law 102–266) repealed the original subsec. (b), as added by sec. 8 of Public Law 93–646. Subsec. (b) had prohibited loans or financial guarantees, or combination thereof, in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of $300,000,000, with particular restrictions on assistance to the USSR for the development of fossil fuel energy resources. The subsection further provided for a limitation in excess of $300,000,000 if the President determined and reported to the Congress that such higher limitation was in the national interest, and the Congress, in turn, adopted a concurrent resolution approving such determination.

[132] Sec. 1104(a)(3) of Public Law 106–569 struck out para. (2) and redesignated para. (3) as para. (2). The paragraph previously read as follows:

"(2) REPORT.—Not later than April 15 of each year, the President of the United States shall transmit to the Congress a report on such determination.".

Previously, sec. 109(b)(3)(E) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2193) struck out "(2) Not later than" and inserted in lieu thereof "(2) REPORT.—Not later than".

[133] Sec. 109(b)(3)(F) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2193) struck out "(B)(i)" and inserted in lieu thereof "(3) REQUEST FOR LEGISLATION.—" and "(A) IN GENERAL.—".

[134] Sec. 109(b)(3)(G) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2193) struck out "(ii)" and inserted in lieu thereof "(B) CONTINUED AVAILABILITY OF AUTHORITY.—".

SEC. 7.[135] The Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its object and purposes until the close of business on September 30, 2006,[136] but the provisions of this section shall not be construed as preventing the Bank from acquiring obligations prior to such date which mature subsequent to such date or from assuming prior to such date liability as guarantor, endorser, or acceptor of obligations which mature subsequent to such date, or from issuing either prior or subsequent to such date, for purchase by the Secretary of the Treasury or any other purchasers,[137] its notes, debentures, bonds, or other obligations which mature subsequent to such date or from continuing as a corporate agency of the United States and exercising any of its functions subsequent to such date for purposes of orderly liquidation, including the administration of its assets and the collection of any obligations held by the Bank.

SEC. 8.[138] (a) The Export-Import Bank of the United States shall transmit to the Congress annually a complete and detailed report

[135] 12 U.S.C. 635f. Public Law 80–89 (61 Stat. 130) amended and restated sec. 8. Subsequently, sec. 121(c)(2) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2199) redesignated sec. 8 as sec. 7.

[136] Public Law 82–158 (65 Stat. 367) changed the date to June 30, 1958; Public Law 88–101 (77 Stat. 128) changed the date to June 30, 1968; Public Law 90–267 (82 Stat. 49) changed the date to June 30, 1973; Public Law 92–126 (85 Stat. 345) changed the date to June 30, 1974; Public Law 93–331 (88 Stat. 289) changed the date to July 30, 1974; Public Law 93–374 (88 Stat. 445) changed the date to September 30, 1974; Public Law 93–425 (88 Stat. 1166) changed the date to October 15, 1974; Public Law 93–450 (88 Stat. 1368) changed the date to November 15, 1974; Public Law 93–646 (88 Stat. 2333) changed the date to June 30, 1978; Public Law 95–143 (91 Stat. 1211) changed the date to September 30, 1978; Public Law 95–407 (92 Stat. 882) changed the date to December 31, 1978; Public Law 95–630 (92 Stat. 3725) changed the date to September 30, 1983; sec. 6 of Public Law 98–109 (97 Stat. 746) changed the date to October 31, 1983; Public Law 98–143 (97 Stat. 916) changed the date to November 18, 1983; sec. 611 of Public Law 98–181 (97 Stat. 1254) changed the date to September 30, 1986; sec. 14 of Public Law 99–472 (100 Stat. 1204) changed the date to September 30, 1992; sec. 102 of Public Law 102–429 (106 Stat. 2187) changed the date to September 30, 1997; sec. 122 of Public Law 105–46 (111 Stat. 158) changed the date to October 23, 1997; Public Law 105–64 (111 Stat. 1343) changed the date to November 7, 1997; Public Law 105–68 (111 Stat. 1453) changed the date to November 9, 1997; Public Law 105–69 (111 Stat. 1454) changed the date to November 10, 1997; Public Law 105–71 (111 Stat. 1456) changed the date to November 14, 1997; Public Law 105–84 (111 Stat. 1628) changed the date to November 26, 1997; and sec. 2 of Public Law 105–121 (106 Stat. 2528) changed the date to September 30, 2001.

Sec. 588 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2174), provided: "That notwithstanding the dates specified in section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) and section 1(c) of Public Law 103–428, the Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes through March 31, 2002." Subsequently, Sec. 1 of Public Law 107–156 (116 Stat. 117) provided that "Notwithstanding the dates specified in section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) and section 1(c) of Public Law 103–428, the Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes through April 30, 2002.". Sec. 1 of Public Law 107–168 (116 Stat. 131) provided that "Notwithstanding the dates specified in section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) and section 1(c) of Public Law 103–428, the Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes through May 31, 2002.". Sec. 1 of Public Law 107–186 (116 Stat. 589) provided that "Notwithstanding the dates specified in section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) and section 1(c) of Public Law 103–428, the Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes through June 14, 2002.".

Sec. 3 of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 699) changed the date to September 30, 2006.

[137] Public Law 92–126 (85 Stat. 345) inserted "or any other purchasers."

[138] 12 U.S.C. 635g. Sec. 121(c)(2) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2199) redesignated sec. 9 as sec. 8. Sec. 10 of Public Law 93–646 (88 Stat. 2236) changed the reporting requirements from semiannual to annual to be completed as of the end of each fiscal year instead of June 30 and December 31 of each year.

Sec. 8(c) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 701) provided: "The Export-Import Bank of the United States shall include in the annual

Continued

of its operations. The report shall be as of the close of business on the last day of each fiscal year.

(b)[139] (1) The Bank shall include in its annual report to the Congress a report on the allocation of the sums set aside for small business exports pursuant to section 2(b)(1)(E).

(2) Such report shall specify—

(A) the total number and dollar volume of loans made from the sums set aside;

(B) the number and dollar volume of loans made through the consortia program under section 2(b)(1)(E)(vii);

(C) the amount of guarantees and insurance provided for small business exports;

(D) the number of recipients of financing from the sums set aside who have not previously participated in the Bank's programs;

(E) the number of commitments entered into in amounts less than $500,000; and

(F) any recommendations for increasing the participation of banks and other institutions in the programs authorized under section 2(b)(1)(E).

(3) For the purpose of this subsection, the Bank's report shall be transmitted to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.

(c)[140] TECHNOLOGY TO ASSIST SMALL BUSINESSES.—The Bank shall include in its annual report to the Congress under subsection (a) of this section for each of fiscal years 2002 through 2006 a report on the efforts made by the Bank to carry out subparagraphs (E)(x) and (J) of section 2(b)(1) of this Act, and on how the efforts are assisting small business concerns (as defined in section 3(a) of the Small Business Act).

(d)[141] NUMBER OF SMALL BUSINESS SUPPLIERS OF BANK USERS.—The Bank shall estimate on the basis of an annual survey or tabulation the number of entities that are suppliers of users of the Bank and that are small business concerns (as defined in section 3(a) of the Small Business Act) located in the United States, and

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report required by section 8(a) of the Export-Import Bank Act of 1945 for each of fiscal years 2002 through 2006 a report on the efforts made by the Bank to carry out subparagraphs (E)(x) and (J) of section 2(b)(1) of such Act, and on how the efforts are assisting small businesses.".

[139] Sec. 618(b)(2) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1259) added subsec. (b), originally designated as subsec. (c). Subsequently, sec. 1104(a)(4) of Public Law 106–569 struck out subsec. (b), as added by sec. 10 of Public Law 93–646 (88 Stat. 2333 at 2337) and amended by sec. 1907(b) of Public Law 95–630 (92 Stat. 3725), and redesignated subsec. (c) as subsec. (b). Subsec. (b) previously read as follows:

"(b) The report shall contain a description of actions taken by the Bank in pursuance of the policy of aiding, counseling, assisting, and protecting, insofar as is possible, the interests of small business concerns and of the activities of the member of the Board appointed to represent the interests of small business. In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 501 of the Nuclear Non-Proliferation Act of 1978, and section 119 of the Foreign Assistance Act of 1961, as required by section 2(b)(1)(C) of this Act.".

[140] Sec. 12(a) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 704) added subsec. (c).

Previously, sec. 20(b) of Public Law 99–472 (100 Stat. 1209) added subsec. (e). Sec. 1104(a)(4) of Public Law 106–569 (114 Stat. 3031) subsequently struck out subsecs. (b) and (d) and redesignated subsecs. (c) and (e) as subsecs. (b) and (c), respectively. Sec. 1104(a)(4) of Public Law 106–569 further struck out subsec. (b) and redesignated subsec. (c) as subsec. (b).

[141] Sec. 12(b) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 705) added subsec. (d).

shall include the estimate in its annual report to the Congress under subsection (a) of this section.

(e)[142] OUTREACH TO CERTAIN SMALL BUSINESSES.—The Bank shall include in its annual report to the Congress under subsection (a) of this section a description of outreach efforts made by the Bank to any socially and economically disadvantaged small business concerns (as defined in section 8(a)(4) of the Small Business Act), small business concerns (as defined in section 3(a) of the Small Business Act) owned by women, and small business concerns (as defined in section 3(a) of the Small Business Act) employing fewer than 100 employees.

SEC. 9.[143] Notwithstanding the provisions of section 955 of title 18, United States Code, any person, including any individual, partnership, corporation, or association, may act for or participate with the Export-Import Bank of the United States in any operation or transaction, or may acquire any obligation issued in connection with any operation or transaction, engaged in by the Bank.

TIED AID CREDIT PROGRAM AND FUND

SEC. 10.[144] (a) FINDINGS.—The Congress finds that

(1) tied aid and partially untied aid credits offered by other countries are a predatory[145] method of financing exports because of their market-distorting effects;

(2) these distortions have caused the United States to lose export sales, with resulting losses in economic growth and employment;

(3) these practices undermine market mechanisms that would otherwise result in export purchase decisions made on the basis of price, quality, delivery, and other factors directly related to the export, where official financing is not subsidized and would be a neutral factor in the transaction.

(4) support of commercial exports by donor countries with tied aid and partially untied aid credits impedes the growth of developing countries because it diverts development assistance funds from essential developmental purposes;[146]

(5)[146] the Bank has, at a minimum, the following two tasks—

(A)(i) first, the Bank should match foreign export credit agencies and aid agencies when they engage in tiedaid outside the confines of the Arrangement and when they exploit loopholes, such as untied aid;

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[142] Sec. 12(c) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 705) added subsec. (e).

[143] 12 U.S.C. 635h. Sec. 121(c)(3) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2199) redesignated sec. 11 as sec. 9. Previously, Public Law 83–779 (68 Stat. 112) amended and restated sec. 11. Public Law 90–267 struck out "Export-Import Bank of Washington" and inserted in lieu thereof "Export-Import Bank of the United States".

[144] 12 U.S.C. 635i–3. Sec. 121(c)(4) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2199) redesignated sec. 15 as sec. 10. Sec. 19 of the Export-Import Bank Act Amendments of 1986 (Public Law 99–472; 100 Stat. 1205) added the original sec. 15.

[145] Sec. 103(c)(1) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2187) struck out "predacious" at each place such term appeared in sec. 15, and replaced it with "predatory".

[146] Sec. 10(c) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 703) struck out "and" at the end of para. (4), redesignated para. (5) as para. (6), and added a new para. (5).

(ii) such matching is needed to provide the United States with leverage in efforts at the OECD to reduce the overall level of export subsidies;

(iii) only through matching foreign export credit offers can the Bank buttress United States negotiators in theirefforts to bring these loopholes within the disciplines of the Arrangement; and

(iv) in order to bring untied aid within the discipline of the Arrangement, the Bank should consider initiating highly competitive financial support when the Bank learns that foreign untied aid offers will be made; and

(B) second, the Bank should support United States exporters when the exporters face foreign competition that is consistent with the Arrangement and the Subsidies Code of the World Trade Organization, but which places United States exporters at a competitive disadvantage; and

(6)[146] there should be established in the Bank a tied aid program[147] to target the export markets of those countries which make extensive use of tied aid or partially untied aid credits, or untied aid used to promote exports as if it were tied aid,[148] for commercial advantage for the purposes of—[149]

(A) enforcing compliance with the existing Arrangement[150] restricting the use of tied aid and partially untied aid credits for commercial purposes; and

(B) facilitating efforts to negotiate, establish, and enforce new or revised comprehensive international arrangements effectively restricting the use of tied aid and partially untied aid credits ", or untied aid usedto promote exports as if it were tied aid, for commercial purposes;

and such program should be used aggressively for such purposes.

(b) ESTABLISHMENT OF TIED AID CREDIT PROGRAM.—

(1) IN GENERAL.—The[151] Bank shall establish a tied aid credit program under which grants shall be made from funds available in the Tied Aid Credit fund established under subsection (c)—

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[147] Sec. 103(c)(2)(A) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2187) struck out "temporary" before "tied aid program".

[148] Sec. 10(c) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 703) inserted ", or untied aid used to promote exports as if it were tied aid,".

[149] Sec. 101(b)(1) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2494) struck out "for the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, and such program should be aggressively used until such an arrangement is established." and inserted in lieu thereof "for the purposes of—" through end of subsec. (a).

[150] Sec. 103(c)(2)(B) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2187) struck out "existing arrangement" and inserted in lieu thereof "existing Arrangement".

[151] Sec. 103(c)(3)(A) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2187) struck out "To carry out the purposes of subsection (a)(5), the" and inserted in lieu thereof "The".

Previously, sec. 101(b)(2) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2494) amended and restated the first sentence of para. (1). The first sentence of para. (1) formerly read as follows:

"For the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, the Bank shall establish a tied aid and partially untied aid credits for commercial purposes, the Bank shall establish a tied aid credit program under which grants shall be made from funds available in the Tied Aid Credit Fund established under subsection (c)—".

(A) to supplement the financing of a United States export when there is a reasonable expectation that predatory[144] financing will be provided by another country for a sale by a competitor of the United States exporter with respect to such export and with special attention to matching tied aid and partially untied aid credits extended by other governments—

(i) in violation of the Arrangement; or

(ii) in cases in which the Bank determines that United States trade or economic interests justify the matching of tied aid credits extended in compliance with the Arrangement, including grandfathered cases;[152]

(B) to supplement the financing of United States exports to foreign markets which are actual or potential export markets for any country which the Bank determines—

(i) engages in predatory[144] official export financing through the use of tied aid or[153] partially untied aid credits, and impedes negotiations or violates agreements on tied aid to eliminate the use of such credits for commercial purposes; or

(ii) engages in predatory financing practices that seek to circumvent international agreements on tied aid; or

(C) to supplement the financing of United States exports under such other circumstances as the Bank may determine to be appropriate for carrying out the purposes of this section.

(2) ADMINISTRATION OF PROGRAM.—The tied aid credit program shall be administrated by the Bank—

(A)[154] in consultation with the Secretary and in accordance with the principles, process, and standards developed pursuant to paragraph (5) of this subsection and the purposes described in subsection (a)(5);

(B) in cooperation with United States exporters and private financial institutions or entities, and in consultation with other Federal agencies,[155] as appropriate; and

(C) in consultation with the National Advisory Council on International Monetary and Financial Policies.

(3) COORDINATION WITH OTHER EXPORT FINANCING.—Under the tied aid credit program, the Bank may combine grants from the Tied Aid Credit Fund with—

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[152] Sec. 103(c)(3)(B) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2187) inserted text beginning at "and with special attention" in subpara. (A).

[153] Sec. 103(c)(3)(C) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2188) amended and restated clause (i) and (ii) beginning at this point.

[154] Sec. 9(a)(1) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 701) amended and restated subpara. (A). It previously read as follows:

"(A) in consultation with the Secretary and in accordance with the Secretary's recommendations on how such credits could be used most effectively and efficiently to carry out the purposes described in subsection (a)(5);".

Previouly, sec. 101(b)(3) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2494) and sec. 103(c)(4) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2188) amended subpara. (A).

[155] Sec. 103(c)(5) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2188) struck out "private financial institutions or entities", and inserted in lieu thereof "United States exporters and private financial institutions or entities, and in consultation with other Federal agencies".

(A) any guarantee, insurance, or other extension of credit provided by the Bank under this Act;

(B) any export financing provided by any private financial institution or other entity; and

(C) any other type of export financing,

in such manner and under such terms as the Bank determines to be appropriate, including combinations of export financing in the form of blended financing and parallel financing.

(4) INFORMATION ON COUNTRIES WHICH ENGAGE IN OFFICIAL PREDATORY [144] EXPORT FINANCING AND IMPEDE NEGOTIATIONS.—In order to assist the Bank to make the most efficient use of funds available for supplemental financing under paragraph (1)(B), the United States Trade Representative and the Secretary of Commerce may provide information on principal sectors and key markets of countries described in paragraph (1)(B) to the Bank, the Secretary and the National Advisory Council on International Monetary and Financial Policies. The Bank shall also request and take into consideration the views of the private sector on principal sectors and key markets of countries described in paragraph (1)(B).[156]

(5) [157] PRINCIPLES, PROCESS, AND STANDARDS GOVERNING USE OF THE FUND.—

(A) IN GENERAL.—The Secretary and the Bank jointly shall develop a process for, and the principles and standards to be used in, determining how the amounts in the Tied Aid Credit Fund could be used most effectively andefficiently to carry out the purposes of subsection (a)(6).

(B) CONTENT OF PRINCIPLES, PROCESS, AND STANDARDS.—

(i) CONSIDERATION OF CERTAIN PRINCIPLES AND STANDARDS.—In developing the principles and standards referred to in subparagraph (A), the Secretary and the Bank shall consider administering the Tied Aid Credit Fund in accordance with the following principles and standards:

(I) The Tied Aid Credit Fund should be used to leverage multilateral negotiations to restrict the scope for aid-financed trade distortions through new multilateral rules, and to police existing rules.

(II) The Tied Aid Credit Fund will be used to counter a foreign tied aid credit confronted by a United States exporter when bidding for a capital project.

(III) Credible information about an offer of foreign tied aid will be required before the Tied Aid Credit Fund is used to offer specific terms to match such an offer.

(IV) The Tied Aid Credit Fund will be used to enable a competitive United States exporter to

[156] Sec. 103(c)(6) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2188) added the last sentence.

[157] Sec. 9(a)(2) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 701) added para. (5).

pursue further market opportunities on commercial terms made possible by the use of the Fund.

(V) Each use of the Tied Aid Credit Fund will be in accordance with the Arrangement unless a breach of the Arrangement has been committed by a foreign export credit agency.

(VI) The Tied Aid Credit Fund may only be used to defend potential sales by United States companies to a project that is environmentally sound.

(VII) The Tied Aid Credit Fund may be used to preemptively counter potential foreign tied aid offers without triggering foreign tied aid use.

(ii) CONCLUSION.—Once the principles, process and standards referred to in subparagraph (A) are followed, the final case-by-case decisions on the use of the Tied Aid Credit Fund shall be made by the Bank: Provided however, That the Bank shall not approve the extension of a proposed tied aid credit if the President of the United States determines, after consulting with the President of the Bank and the Secretary of the Treasury, that the extension of the tied aid credit would materially impede achieving the purposes described in subsection (a)(6).

(C) INITIAL PRINCIPLES, PROCESS, AND STANDARDS.—As soon as is practicable but not later than 6 months after the date of the enactment of this paragraph, the Secretary and the Bank shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a copy of the principles, process, and standards developed pursuant to subparagraph (A).

(D) TRANSITIONAL PRINCIPLES AND STANDARDS.—The principles and standards set forth in subparagraph (B)(i) shall govern the use of the Tied Aid Credit Fund until the principles, process, and standards required by subparagraph (C) are submitted.

(E) UPDATE AND REVISION.—The Secretary and the Bank jointly should update and revise, as needed, the principles, process, and standards developed pursuant to subparagraph (A), and, on doing so, shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and UrbanAffairs of the Senate a copy of the principles, process, and standards so updated and revised.

(6)[158] RECONSIDERATION OF DECISIONS.—

(A) IN GENERAL.—Taking into consideration the time sensitivity of transactions, the Board of Directors of the Bank shall expeditiously pursuant to paragraph (2) reconsider a decision of the Board to deny an application for the use of the Tied Aid Credit Fund if the applicant submits

[158] Sec. 9(b) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 702) added para. (6).

the request for reconsideration within 3 months of the denial.

(B) PROCEDURAL RULES.—In any such reconsideration, the applicant may be required to provide new information on the application.

(c) TIED AID CREDIT FUND.—

(1) IN GENERAL.—There is hereby established within the Bank a fund to be known as the "Tied Aid Credit Fund" (hereinafter in this section referred to as the "Fund"), consisting of such amounts as may be appropriated to the Fund pursuant to the authorization contained in subsection (e).

(2) EXPENDITURES FROM FUND.—Amounts in the Fund shall be available for grants made by the Bank under the tied aid credit program established pursuant to subsection (b) and to reimburse the Bank for the amount equal to the concessionality level of any tied aid credits authorized by the Bank.[159]

(d) CONSISTENCY WITH ARRANGEMENT.—Any export financing involving the use of a grant under the tied aid credit program shall be consistent with the procedures established by the Arrangement, as in effect at the time such financing is approved.

(e)[160] AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section. Such sums are authorized to remain available until expended.

(f) NONREVIEWABILITY.—No action taken under this section shall be reviewable by any court, except for abuse of discretion.

(g) REPORT TO CONGRESS.—

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[159] Sec. 3(a) of Public Law 105–121 (111 Stat. 2528) struck out "through September 30, 1997".

Previously, Public Law 100–217 (101 Stat. 1454) added a reference to fiscal years 1987 and 1988. Sec. 3302(b) of Public Law 100–418 (102 Stat. 1383) struck out "and 1988" and inserted in lieu thereof "1988, and 1989". Sec. 101(b)(4) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2494) struck out "cost" and inserted in lieu thereof "amount equal to the concessionality level"; and struck out "during fiscal years 1986, 1987, 1988 and 1989" and inserted in lieu thereof "through fiscal year 1991". Sec. 562(d)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513; 104 Stat. 2037), struck out "1991" and inserted in lieu thereof "1992". Sec. 103(a) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2187) struck out "fiscal year 1992" and inserted in lieu thereof "September 30, 1995". Sec. 1(a) of Public Law 104–97 (109 Stat. 984) struck out "1995" and inserted in lieu thereof "1997". Sec. 579(a) of Public Law 104–107 (110 Stat. 751) also struck out "1995" and inserted in lieu thereof "1997".

[160] Sec. 3(b) of Public Law 105–121 struck out "There are authorized to be appropriated to the Fund such sums as may be necessary for each of fiscal years 1996 and 1997." and inserted in lieu thereof "There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section."

Previously, sec. 1(b) of Public Law 104–97 (109 Stat. 984) struck out "There are authorized to be appropriated to the Fund $500,000,000 for each of fiscal years 1993, 1994, and 1995." and inserted in lieu thereof "There are authorized to be appropriated to the Fund such sums as may be necessary for each of fiscal years 1996 and 1997." Sec. 579(b) of Public Law 104–107 (110 Stat. 751) intended to strike out "1993, 1994, and 1995" and insert in lieu thereof "1996 and 1997", an amendment made invalid by the amendment executed by Public Law 104–97.

Previously, sec. 103(b) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2187) amended and restated subsec. (e). Previous to that, subsec. (e) authorized for fiscal years 1987, 1988, and 1989, $300,000,000, for fiscal year 1990, $300,000,000, and for each of fiscal years 1991 and 1992, $500,000,000, and required a determination from the President in the event "that any amount appropriated to the Fund is not required to achieve the purpose of the Fund".

(1)[161] IN GENERAL.—[162] In consultation with the Secretary, shall submit an annual report[163] on tied aid credits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services[164] of the House of Representatives.

(2)[161] CONTENTS OF REPORTS.—Each report required under paragraph (1) shall contain a description of—

(A) the implementation of the Arrangement restricting tied aid and partially untied aid credits for commercial purposes, including the operation of notification and consultation procedures;

(B) all principal offers of tied aid credit financing by foreign countries during the previous 6-month period, including all offers notified by countries participating in the Arrangement, and in particular—

(i) offers grandfathered under the Arrangement; and

(ii) notifications of exceptions under the Arrangement;

(C) any use by the Bank of the Tied Aid Credit Fund to match specific offers, including those that are grandfathered or exceptions under the Arrangement; and

(D) other actions by the United States Government to combat predatory financing practices by foreign governments, including additional negotiations among participating governments in the Arrangement.

(3) CONFIDENTIAL INFORMATION.—To the extent the Bank determines any information required to be included in the report under this subsection should not be made public, such information may be submitted separately on a confidential basis or provided orally, rather than in written form, to the Chairmen and ranking minority Members of the Committees of the Senate and the House of Representatives with jurisdiction over the subject matter of the report.

(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:[165]

(1) TIED AID AND PARTIALLY UNTIED AID CREDIT.—The terms "tied aid credit" and "partially untied aid credit" mean any credit which—

(A) has a grant element greater than zero percent as determined by the Development Assistance Committee of the Organization for Economic Cooperation and Development;

(B) is, in fact or in effect, tied to—

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[161] Sec. 103(c)(7) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2188) amended and restated paras. (1) and (2).

[162] Sec. 1103(d)(2)(A) of Public Law 106–569 (114 Stat. 3031) struck out "On or before October 15, 1992, and every 6 months thereafter, the Bank, in" and inserted in lieu thereof "In".

[163] Sec. 1103(d)(2)(B) (114 Stat. 3031) struck out "a report" and inserted in lieu thereof "an annual report".

[164] Sec. 24(a)(2)(E) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 708) struck out "Banking, Finance and Urban Affairs" and inserted in lieu thereof "Financial Services". Previously, sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

[165] Sec. 103(c)(8)(A) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2188) amended and restated the first sentence of subsec. (h).

(i) the procurement of goods or services from the donor country, in the case of tied aid credit; or

(ii) the procurement of goods or services from a restricted number of countries, in the case of partially united aid credit; and

(C) is financed either exclusively from public funds or partly from public and partly from private funds.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(3) ARRANGEMENT.—The term "Arrangement" means the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization from Economic Cooperation and Development.

(4) BLENDED FINANCING.—The term "blended financing" means financing provided through any combination of official development assistance, official export credits, and private commercial credit which is integrated into a single agreement with a single set of financial terms.

(5) PARALLEL FINANCING.—The term "parallel financing" means financing provided by any combination of official development assistance, official export credits, and private commercial credit which is not integrated into a single agreement and does not have a single set of financial terms.

(6)[166] OFFERS GRANDFATHERED UNDER THE ARRANGEMENT.—The term "offers grandfathered under the Arrangement" means—

(A) financing offers made or lines of credit extended on or before February 15, 1992; or

(B) financing offers extended for subloans under lines of credit referred to in subparagraph (A) made on or before August 15, 1992, or, in the case of Mexico, on or before December 31, 1992.

(7)[167] MARKET WINDOW.—The Bank, in consultation with the Secretary of the Treasury, shall define "market window" for purposes of this section.

SEC. 11.[168] ENVIRONMENTAL POLICY AND PROCEDURES.

(a) ENVIRONMENTAL EFFECTS CONSIDERATION.—

(1) IN GENERAL.—Consistent with the objectives of section 2(b)(1)(A), the Bank shall establish procedures to take into account the potential beneficial and adverse environmental effects of goods and services for which support is requested under its direct lending and guarantee programs. Such procedures shall apply to any transaction involving a project—

(A) for which long-term support of $10,000,000 or more is requested from the Bank;

(B) for which the Bank's support would be critical to its implementation; and

[166] Sec. 103(c)(8)(B) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2189) added para. (6).

[167] Sec. 10(d) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 704) added para. (7).

[168] 12 U.S.C. 635i–5. Sec. 106 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2189) added this sec. as sec. 17. Subsequently, sec. 121(c)(5) of that Act (106 Stat. 2199) redesignated sec. 17 as sec. 11.

(C) which may have significant environmental effects upon the global commons or any country not participating in the project, or may produce an emission, an effluent, or a principal product that is prohibited or strictly regulated pursuant to Federal environmental law.

(2) AUTHORITY TO WITHHOLD FINANCING.—The procedures established under paragraph (1) shall permit the Board of Directors, in its judgment, to withhold financing from a project for environmental reasons or to approve financing after considering the potential environmental effects of a project.

(b) USE OF BANK PROGRAMS TO ENCOURAGE CERTAIN EXPORTS.—(1) IN GENERAL.—[169] The Bank shall encourage the use of its programs to support the export of goods and services that have beneficial effects on the environment or mitigate potential adverse environmental effects (such as exports of products and services used to aid in the monitoring, abatement, control, or prevention of air, water, and ground contaminants or pollution, or which provide protection in the handling of toxic substances, subject to a final determination by the Bank, and products and services for foreign environmental projects dedicated entirely to the prevention, control, or cleanup of air, water, or ground pollution, including facilities to provide for control or cleanup, and used in the retrofitting of facility equipment for the sole purpose of mitigating, controlling, or preventing adverse environmental effects, subject to a final determination by the Bank).[169] The Board of Directors shall name an officer of the Bank to advise the Board on ways that the Bank's programs can be used to support the export of such goods and services. The officer shall act as liaison between the Bank and other Federal Government agencies, including the agencies whose representatives are members of the Environmental Trade Promotion Working Group of the Trade Promotion Coordinating Committee, with respect to overall United States Government policy on the environment.

(2)[169] LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—In addition to other funds available to support the export of goods and services described in paragraph (1), there are authorized to be appropriated to the Bank not more than $35,000,000 for the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990) of supporting such exports. If, in any fiscal year, the funds appropriated in accordance with this paragraph are not fully utilized due to insufficient qualified transactions for the export of such goods and services, such funds may be expended for other purposes eligible for support by the Bank.

(c) INCLUSION IN REPORT TO CONGRESS.—The Bank shall provide in its annual report to the Congress a summary of its activities under subsections (a) and (b).

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[169] Sec. 2(a) of Public Law 103–428 (108 Stat. 4376) inserted "(1) IN GENERAL.—"; inserted "(such as exports of products and services used to aid in the monitoring, abatement, control, or prevention of air, water, and ground contaminants or pollution, or which provide protection in the handling of toxic substances, subject to a final determination by the Bank, and products and services for foreign environmental projects dedicated entirely to the prevention, control, or cleanup of air, water, or ground pollution, including facilities to provide for control or cleanup, and used in the retrofitting of facility equipment for the sole purpose of mitigating, controlling, or preventing adverse environmental effects, subject to a final determination by the Bank)"; and added para. (2).

(d) INTERPRETATION.—Nothing in this section shall be construed to create any cause of action.

SEC. 12.[170] DEBT REDUCTION; ENTERPRISE FOR THE AMERICAS INITIATIVE.

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

(1) the term "eligible country" means a country designated by the President in accordance with subsection [171] (b);

(2) the term "Facility" means the entity established in the Department of the Treasury by section 601 of the Agricultural Trade Development and Assistance Act of 1954; and

(3) the term "IMF" means the International Monetary Fund.

(b) ELIGIBILITY FOR BENEFITS UNDER THE FACILITY.—

(1) REQUIREMENTS.—To be eligible for benefits from the Facility under this section, a country must—

(A) be a Latin American or Caribbean country;

(B) have in effect, have received approval for, or, as appropriate in exceptional circumstances, be making significant progress toward—

(i) an IMF standby arrangement, extended IMF arrangement, or an arrangement under the structural adjustment facility or enhanced structural adjustment facility or, in exceptional circumstances, an IMF monitored program or its equivalent; and

(ii) as appropriate, structural or sectoral adjustment loans from the International Bank for Reconstruction and Development or the International Development Association;

(C) have put in place major investment reforms in conjunction with an Inter-American Development Bank loan or otherwise be implementing, or making significant progress toward, an open investment regime; and

(D) if appropriate, have agreed with its commercial bank lenders on a satisfactory financing program, including, as appropriate, debt or debt service reduction.

(2) ELIGIBILITY DETERMINATIONS.—The President shall determine whether a country is an eligible country for purposes of paragraph (1).

(c) LOANS ELIGIBLE FOR SALE, REDUCTION, OR CANCELLATION.—

(1) AUTHORITY TO SELL, REDUCE, OR CANCEL CERTAIN LOANS.—Notwithstanding any other provision of law, the President may, in accordance with this section, sell to any eligible purchaser any loan or portion thereof made before January 1, 1992, to any eligible country or any agency thereof pursuant to this Act, or, on receipt of payment from an eligible purchaser, reduce or cancel such loan or portion thereof, only for the purpose of facilitating—

(A) debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps; or

[170] 12 U.S.C. 635i–6. Sec. 108 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2191) added this sec. as sec. 18. Subsequently, sec. 121(c)(6) of that Act (106 Stat. 2199) redesignated sec. 18 as sec. 12.

[171] Sec. 24(b)(5) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 709) struck out "section" and inserted in lieu thereof "subsection".

(B) a debt buy-back by an eligible country of its own qualified debt, only if the eligible country uses an additional amount of the local currency of the eligible country, equal to not less than 40 percent of the price paid for such debt by such eligible country, or the difference between the price paid for such debt and the face value of such debt, to support activities that link conservation and sustainable use of natural resources with local community development, and child survival and other child development activities, in a manner consistent with sections 607 through 612 of the Agricultural Trade Development and Assistance Act of 1954, if the sale, reduction, or cancellation would not contravene any term or condition of any prior agreement relating to such loan.

(2) TERMS AND CONDITIONS.—Notwithstanding any other provision of law, the President shall, in accordance with this section, establish the terms and conditions under which loans may be sold, reduced, or canceled pursuant to this section.

(3) TREATMENT UNDER SECURITIES LAWS.—The filing of a registration statement under the Securities Act of 1933 shall not be required with respect to the sale or offer for sale by the Bank of a loan or any interest therein pursuant to this section. For purposes of the Securities Act of 1933, the Bank shall not be deemed to be an issuer or underwriter with respect to any subsequent sale or other disposition of such loan (or any interest therein) or any security received by an eligible purchaser pursuant to any debt-for-equity swap, debt-for-development swap, or debt-for-nature swap.

(4) ADMINISTRATION.—The Facility shall notify the Bank of purchasers that the President has determined to be eligible, and shall direct the Bank to carry out the sale, reduction, or cancellation of a loan pursuant to this section. The Bank shall make an adjustment in its accounts to reflect the sale, reduction, or cancellation.

(5) LIMITATIONS.—The authorities of this subsection may be exercised only to such extent as provided for in advance in appropriations Acts, as necessary to implement the Federal Credit Reform Act of 1990.

(d) DEPOSIT OF PROCEEDS.—The proceeds from the sale, reduction, or cancellation of any loan sold, reduced, or canceled pursuant to this section shall be deposited in the United States Government account or accounts established for the repayment of such loan.

(e) ELIGIBLE PURCHASERS.—A loan may be sold pursuant to subsection (c)(1)(A) only to a purchaser who presents plans satisfactory to the President for using the loan for the purpose of engaging in debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(f) DEBTOR CONSULTATION.—Before the sale to any eligible purchaser, or any reduction or cancellation pursuant to this section, of any loan made to an eligible country, the President shall consult with the country concerning the amount of loans to be sold, reduced, or canceled and their uses for debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(g) AUTHORIZATION OF APPROPRIATIONS.—For the sale, reduction, and cancellation of loans or portions thereof pursuant to this section, there are authorized to be appropriated to the President such sums as may be necessary, which are authorized to remain available until expended.

SEC. 13.[172] COOPERATION ON EXPORT FINANCING PROGRAMS.

The Bank shall, subject to appropriate memoranda of understanding—

(1) provide complete and current information on all of its programs and financing practices to—

(A) the Small Business Administration and other Federal agencies involved in promoting exports and marketing export financing programs; and

(B) State and local export financing organizations that indicate a desire to participate in export promotion; and

(2) consistent with the provisions of section 2301(f)(2) of the Export Enhancement Act of 1988, undertake a program to provide training for personnel designated in such memoranda with respect to such financing programs.

SEC. 14.[173] SPECIAL DEBT RELIEF FOR THE POOREST, MOST HEAVILY INDEBTED COUNTRIES.

(a) DEBT REDUCTION AUTHORITY.—The President may reduce amounts of principal[174] and interest owed by any eligible country to the Bank as a result of loans or guarantees made under this Act.

(b) LIMITATIONS.—

(1) TYPES OF DEBT REDUCTION.—The authority provided by subsection (a) may be exercised only to implement multilateral agreements to reduce the burden of official bilateral debt as set forth in the minutes of the so-called "Paris Club" (also known as "Paris Club Agreed Minutes").

(2) ELIGIBLE COUNTRIES.—

(A) DEFINITION.—As used in subsection (a), the term "eligible country" means any country that—

(i) has excessively burdensome external debt;

(ii) is eligible to borrow from the International Development Association; and

(iii) is not eligible to borrow from the International Bank for Reconstruction and Development.

(B) DETERMINATIONS.—Subject to subparagraph (A), the President may determine whether a country is an eligible country for purposes of subsection (a).

(c) CONDITIONS.—The authority provided by this section may be exercised only with respect to a country whose government—

(1) does not have an excessive level of military expenditures;

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[172] 12 U.S.C. 635i–7. Sec. 115 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2196) added this sec. as sec. 19. Subsequently, sec. 121(c)(7) of that Act (106 Stat. 2199) redesignated sec. 19 as sec. 13.

[173] 12 U.S.C. 635i–8. Sec. 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 1994 (Public Law 103–87; 107 Stat. 970), added this sec. as a second sec. 11. Subsequently, sec. 2(b) of Public Law 103–428 (108 Stat. 4376) redesignated the second sec. 11 as sec. 14.

In a memorandum for the Secretary of the Treasury, June 20, 1994, the President delegated the authority in sec. 14(a) of this Act to the Secretary of the Treasury, to work in consultation with the Secretary of State and the President of the Export-Import Bank (59 F.R. 33413).

[174] Sec. 24(b)(6) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 709) struck out "principle" and inserted in lieu thereof "principal".

(2) has not repeatedly provided support for acts of international terrorism;

(3) is not failing to cooperate on international narcotics control matters; and

(4) (including its military or other security forces) does not engage in a consistent pattern of gross violations of internationally recognized human rights.

(d) APPROPRIATIONS.—The authority provided by subsection (a) may be exercised only in such amounts or to such extent as is provided in advance in appropriations Acts.

SEC. 15.[175] **MARKET WINDOWS.**

(a) ENHANCED TRANSPARENCY.—To ensure that the Bank financing remains fully competitive, the United States should seek enhanced transparency over the activities of market windows in the OECD Export Credit Arrangement. If such transparency indicates that market windows are disadvantaging United States exporters, the United States should seek negotiations for multilateral disciplines and transparency within the OECD Export Credit Arrangement.

(b) AUTHORIZATION.—The Bank may provide financing on terms and conditions that are inconsistent with those permitted under the OECD Export Credit Arrangement—

(1) to match financing terms and conditions that are being offered by market windows on terms that are inconsistent with those permitted under the OECD Export Credit Arrangement, if—

(A) matching such terms and conditions advances the negotiations for multilateral disciplines and transparency within the OECD Export Credit Arrangement; or

(B) transparency verifies that the market window financing is being offered on terms that are more favorable than the terms and conditions that are available from private financial markets; and

(2) when the foreign government-supported institution refuses to provide sufficient transparency to permit the Bankto make a determination under paragraph (1).

(c) DEFINITION.—In this section, the term "OECD" means the Organization for Economic Cooperation and Development.

NOTE.—Sec. 121(c)(1) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2199) repealed several sections of the Export-Import Bank Act:

SEC. 5 (formerly 12 U.S.C. 635c) provided for payments to the Reconstruction Finance Corporation upon the surrender of preferred stock for cancellation;

SEC. 10 (59 Stat. 529) provided for the repeal of sec. 9 of the Act of January 31, 1935 (49 Stat. 4, ch. 2);

[175] 12 U.S.C. 635i–9. Sec. 10(b) of the Export-Import Bank Reauthorization Act of 2002 (Public Law 107–189; 116 Stat. 703) added sec. 15.

SEC. 12 (formerly 12 U.S.C. 635i) provided for the Export-Import Bank of the United States to succeed the Export-Import Bank of Washington;

SEC. 13 (formerly 12 U.S.C. 635i–1) provided for special facilities in support of U.S. exports;

SEC. 14 (formerly 12 U.S.C. 635i–2) required that Congress be notified of certain decreases in capital stock value;

SEC. 16 (formerly 12 U.S.C. 635i–4) provided for the public sales of bank loans.

b. Export-Import Bank Reauthorization Act of 2002

Partial text of Public Law 107–189 [S. 1372], 116 Stat. 698, approved June 14, 2002

AN ACT To reauthorize the Export-Import Bank of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE; TABLE OF CONTENTS.

(a) This Act may be cited as the "Export-Import Bank Reauthorization Act of 2002".

NOTE.—Except for the provisions set out below, for the most part the Export-Import Bank Act of 2002 amended the Export-Import Bank Act of 1945. Those amendments have been incorporated into the relevant sections of that Act.

* * * * * * *

SEC. 4. ADMINISTRATIVE EXPENSES.

(a) REQUIRED BUDGET SUBCATEGORIES.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

"(34) with respect to the amount of appropriations requested for use by the Export-Import Bank of the United States, a separate statement of the amount requested for its program budget, the amount requested for its administrativeexpenses, and of the amount requested for its administrative expenses, the amount requested for technology expenses.".

(b) SENSE OF THE CONGRESS ON THE IMPORTANCE OF TECHNOLOGY IMPROVEMENTS.—

(1) FINDINGS.—The Congress finds that—

(A) the Export-Import Bank of the United States is in great need of technology improvements;

(B) part of the amount budgeted for administrative expenses of the Bank is used for technology initiatives and systems upgrades for computer hardware and software purchases;

(C) the Bank is falling behind its foreign competitor export credit agencies' proactive technology improvements;

[1] 12 U.S.C. 635 note.

(D) small businesses disproportionately benefit from improvements in technology;

(E) small businesses need improvements in Bank technology in order to export transactions quickly, with as little paperwork as possible, and with a quick Bank turnaround time that does not over strain the tight resources of such businesses;

(F) the Bank intends to develop a number of e-commerce initiatives aimed at improving customer service, including web-based application and claim filing procedures which would reduce processing time, speed payment of claims, and increase staff efficiency;

(G) the Bank is beginning the process of moving insurance applications from an outdated mainframe system to a modern, web-enabled database, with new functionality including credit scoring, portfolio management, work flow, and e-commerce features to be added; and

(H) the Bank wants to continue its e-commerce strategy, including developing a website, expanding online applications, and establishing a technology partnership between the public and private sectors.

(2) SENSE OF THE CONGRESS.—It is the sense of the Congress that emphasis should be placed on the importance oftechnology improvements for the Export-Import Bank of the United States, which are of particular importance for smallbusinesses.

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SEC. 8. TECHNOLOGY.

(a) SMALL BUSINESS.—* * *

(b) ELECTRONIC TRACKING OF PENDING TRANSACTIONS.—* * *

(c)[2] REPORTS.—The Export-Import Bank of the United States shall include in the annual report required by section 8(a) of the Export-Import Bank Act of 1945 for each of fiscal years 2002 through 2006 a report on the efforts made by the Bank to carry out subparagraphs (E)(x) and (J) of section 2(b)(1) of such Act, and on how the efforts are assisting small businesses.

* * * * * * *

SEC. 10. EXPANSION OF AUTHORITY TO USE TIED AID CREDIT FUND.

(a)[3] UNTIED AID.—

(1) NEGITATIONS.—The Secretary of the Treasury shall seek to negotiate an OECD Arrangement on Untied Aid. Inthe negotiations, the Secretary should seek agreement on subjecting untied aid to the rules governing the Arrangement,including the rules governing disclosure.

(2) REPORT TO CONGRESS.—Within 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the successes, failures, and obstacles in initiating negotiations, and if negotiations

[2] 12 U.S.C. 635g note.
[3] 12 U.S.C. 635a note.

were initiated, in reaching the agreement described in paragraph (1).

(b) MARKET WINDOWS.—

(1) IN GENERAL.—The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end thefollowing new section: * * *

(2)[4] REPORT.—Within 2 years after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the rationale for seeking or not seeking negotiations for multilateral disciplines and transparency, the successes, failures, and obstacles in initiating negotiations, and if negotiations were initiated, in reaching an agreement.

(c) USE OF TIED AID CREDIT FUND TO COMBAT UNTIED AID.— * * *

(d) DEFINITION OF MARKET WINDOW.—* * *

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SEC. 14.[5] GAO REPORT ON COMPARATIVE RESERVE PRACTICES OF EXPORT CREDIT AGENCIES AND PRIVATE BANKS.

Within 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that examines the reserve ratios of the Export-Import Bank of the United States as compared with the reserve practices of private banks and foreign export credit agencies.

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SEC. 20. SENSE OF THE CONGRESS.

It is the sense of the Congress that, when considering a proposal for assistance for a project the cost of which is $10,000,000 or more, the management of the Export-Import Bank of the United States should have available for review a detailed assessment of the potential human rights impact of the proposed project.

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SEC. 23. SENSE OF THE CONGRESS IN TRIBUTE TO JOHN E. ROBSON.

(a) FINDINGS.—The Congress finds that—

(1) from his appointment in 2001 as President and Chairman of the Export-Import Bank of the United States untilhis death on March 20, 2002, John E. Robson provided powerful leadership for that institution, instilling his spirit of excellence within the Bank and ensuring the Bank's role as a prominent player in the trade and economic policy of the United States; and

(2) during his time at the Export-Import Bank of the United States, John E. Robson served as a role model for all of his colleagues with his dedication to the institution, commitment to excellence, resolute sense of integrity, and desire to leave the Bank a better place than how he found it.

[4] 12 U.S.C. 635i-9 note.
[5] 12 U.S.C. 635 note.

(b) SENSE OF THE CONGRESS.—The Congress is deeply saddened by the death of John E. Robson, President and Chairman of the Board of Directors of the Export-Import Bank of the United States, and expresses to the family of John E. Robson its deep appreciation for the contributions he made and the legacy he leaves behind, and its heartfelt sorrow at his passing.

* * * * * * *

c. Export Expansion/Export Enhancement

(1) Export Enhancement Act of 1999

Partial text of Public Law 106–158 [H.R. 3381], 113 Stat. 1745, approved December 9, 1999

AN ACT To reauthorize the Overseas Private Investment Corporation and the Trade and Development Agency and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Export Enhancement Act of 1999".

SEC. 2.[2] OPIC ISSUING AUTHORITY. * * *

SEC. 3.[3] IMPACT OF OPIC PROGRAMS. * * *

SEC. 4.[4] BOARD OF DIRECTORS AT OPIC. * * *

SEC. 5.[5] TRADE AND DEVELOPMENT AGENCY. * * *

SEC. 6.[6] IMPLEMENTATION OF PRIMARY OBJECTIVES OF TPCC.

The Trade Promotion Coordinating Committee shall—

(1) report on the actions taken or efforts currently underway to eliminate the areas of overlap and duplication identified among Federal export promotion activities;

(2) coordinate efforts to sponsor or promote any trade show or trade fair;

(3) work with all relevant State and national organizations, including the National Governors' Association, that have established trade promotion offices;

(4) report on actions taken or efforts currently underway to promote better coordination between State, Federal, and private sector export promotion activities, including co-location, cost sharing between Federal, State, and private sector export promotion programs, and sharing of market research data; and

(5) by not later than March 20, 2000, and annually thereafter, include the matters addressed in paragraphs (1), (2), (3) and (4) in the annual report required to be submitted under section 2312(f) of the Export Enhancement Act of 1988 (15 U.S.C. 4727(f)).

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[1] 22 U.S.C. 2151 note.

[2] Sec. 2 amended sec. 235(a)(2) of the Foreign Assistance Act of 1961. See *Legislation on Foreign Relations Through 2005*, vol. I–A.

[3] Sec. 3 amended sec. 231A of the Foreign Assistance Act of 1961.

[4] Sec. 4 amended sec. 233(b) of the Foreign Assistance Act of 1961.

[5] Sec. 5 amended sec. 661 of the Foreign Assistance Act of 1961.

[6] 15 U.S.C. 4727a.

SEC. 7.[7] **TIMING OF TPCC REPORTS.** * * *

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[7] Sec. 7 amended sec. 2312(f) of the Export Enhancement Act of 1988.

(2) Fair Trade in Automotive Parts Act of 1998

Title XXXVIII of Public Law 105–261 [Strom Thurmond National Defense Authorization Act, H.R. 3616], approved October 17, 1998

AN ACT To authorize appropriations for fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE XXXVIII—FAIR TRADE IN AUTOMOTIVE PARTS

SEC. 3801.[1] SHORT TITLE.

This title may be cited as the "Fair Trade in Automotive Parts Act of 1998".

SEC. 3802.[2] DEFINITIONS.

In this title:

(1) JAPANESE MARKETS.—The term "Japanese markets" refers to markets, including markets 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.

(2) JAPANESE AND OTHER ASIAN MARKETS.—The term "Japanese and other Asian markets" refers to markets, including markets in the United States, Japan, and other Asian countries, where automotive parts and accessories, both original equipment and aftermarket, are purchased for use in the manufacture or repair of Japanese, United States, or other Asian automobiles.

SEC. 3803.[3] RE-ESTABLISHMENT OF INITIATIVE ON AUTOMOTIVE PARTS SALES TO JAPAN.

(a) IN GENERAL.—The Secretary of Commerce shall re-establish the initiative to increase the sale of United States-made automotive parts and accessories to Japanese markets.

(b) FUNCTIONS.—In carrying out this section, the Secretary shall—

(1) foster increased access for United States-made automotive parts and accessories to Japanese companies, including specific consultations on access to Japanese markets;

(2) facilitate the exchange of information between United States automotive parts manufacturers and the Japanese automobile industry;

[1] 15 U.S.C. 4701 note.
[2] 15 U.S.C. 4705.
[3] 15 U.S.C. 4705a.

(3) collect data and market information on the Japanese automotive 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 facilitate contact between United States automotive 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 automotive 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 automotive parts in Japanese markets; and

(7) transmit to Congress the annual report prepared by the Special Advisory Committee under section 3804(c)(5).

SEC. 3804.[4] ESTABLISHMENT OF SPECIAL ADVISORY COMMITTEE ON AUTOMOTIVE PARTS SALES IN JAPANESE AND OTHER ASIAN MARKETS.

(a) IN GENERAL.—The Secretary of Commerce shall seek the advice of the United States automotive parts industry in carrying out this title.

(b) ESTABLISHMENT OF COMMITTEE.—The Secretary of Commerce shall establish a Special Advisory Committee for purposes of carrying out this title.

(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 automotive parts and accessories in Japanese and other Asian markets;

(2) review and consider data collected on sales of United States-made automotive parts and accessories in Japanese and other Asian markets;

(3) advise the Secretary of Commerce during consultations with other governments on issues concerning sales of United States-made automotive parts in Japanese and other Asian markets;

(4) assist in establishing priorities for the initiative established under section 3803, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and

(5) assist the Secretary in reporting to Congress by submitting an annual written report to the Secretary on the sale of United States-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to this title.

(d) AUTHORITY.—The Secretary of Commerce shall draw on existing budget authority in carrying out this title.

[4] 15 U.S.C. 4705b.

SEC. 3805.[5] EXPIRATION DATE.

The authority under this title shall expire on December 31, 2003.

* * * * * * *

[5] 15 U.S.C. 4705c.

(3) Export Enhancement Act of 1992

Partial text of Public Law 102–429 [H.R. 5739], 106 Stat. 2186, approved October 21, 1992

AN ACT To reauthorize the Export-Import Bank of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Export Enhancement Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows: * * *

TITLE I—REAUTHORIZATION OF EXPORT-IMPORT BANK

SEC. 101.[1] DECLARATION OF POLICY.

The Congress finds that—

(1) as the world's largest economy, the United States has an enormous stake in the future of the global trading system;

(2) exports are a crucial force driving the United States economy;

(3) during 1991, the value of United States exports increased by 7.1 percent from the 1990 level to $421,600,000,000, supporting more than 7,000,000 full-time United States jobs, and affecting the lives of all of the people of the United States;

(4) exports also support the global strategic position of the United States;

(5) a significant part of a country's influence is drawn from the reputation of its goods, its industrial connections with other countries, and the capital it has available for investment, and trade finance is a critical component of this equation;

(6) the growth in United States exports has increased the demand for financing from the Export-Import Bank of the United States;

(7) during 1991, the value of exports assisted by the Export-Import Bank rose 28.7 percent, from $9,700,000,000 to $12,100,000,000, the highest level since 1981;

(8) the Export-Import Bank used its entire budget authority provided for 1991, and still could not meet all of the demand for its financing assistance; and

(9) accordingly, the charter of the Export-Import Bank, which is scheduled to expire on September 30, 1992, must be renewed in order that the Bank continue to arrange competitive and innovative financing for the foreign sales of United States exporters.

[1] 12 U.S.C. 635 note.

SEC. 102. EXTENSION OF AUTHORITY.

Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) is amended by striking "1992" and inserting "1997".

SEC. 103.[2] TIED AID CREDIT FUND EXTENSION. * * *

SEC. 104.[3] USE OF LOAN GUARANTEES. * * *

SEC. 105.[3] EXPANDED USE OF LOAN GUARANTEES. * * *

SEC. 106.[4] ENVIRONMENTAL POLICY. * * *

SEC. 107.[3] INSURANCE-RELATED BUSINESS STEMMING FROM BANK ACTIVITIES. * * *

SEC. 108.[5] DEBT REDUCTION; ENTERPRISE FOR THE AMERICAS INITIATIVE. * * *

SEC. 109.[6] INCREASE IN AGGREGATE LOAN, GUARANTEE, AND INSURANCE AUTHORITY. * * *

SEC. 110.[3] LIMITATION ON FINANCING FOR CERTAIN COUNTRIES. * * *

SEC. 111.[3] CONDITIONAL ALLOWANCE OF ASSISTANCE FOR EXPORTS TO ANGOLA. * * *

SEC. 112.[7] FINANCING OF SALES OF DEFENSE ARTICLES OR SERVICES. * * *

SEC. 113.[8] INCREASE IN ADVISORY COMMITTEE MEMBERSHIP. * * *

SEC. 114.[3] FINANCING OF HIGH TECHNOLOGY EXPORTS TO EMERGING DEMOCRACIES. * * *

SEC. 115.[9] COOPERATION ON EXPORT FINANCING PROGRAMS. * * *

SEC. 116.[3] ASSISTANCE FOR EXPORTS BY SMALL BUSINESSES. * * *

SEC. 117.[10] COMPENSATION OF EMPLOYEES.

(a) IN GENERAL.—The Board of Directors of the Export-Import Bank of the United States may compensate not more than 35 employees of the Bank without regard to the provisions of chapter 51 or subchapter III or VIII of chapter 53 of title 5, United States Code.

(b)[11] SUNSET.—Effective 2 years after the date of enactment of this Act, subsection (a) is hereby repealed.

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[2] Sec. 103 amended the Export-Import Bank Act of 1945 through sec. 15 (subsequently redesignated as sec. 10).

[3] Secs. 104, 105, 107, 109(a), 110, 111, 112(a)–(d), 114, 116, and 121(a) amended sec. 2 of the Export-Import Bank Act of 1945 (12 U.S.C. 635).

[4] Sec. 106 added a new sec. 17 to the Export-Import Bank Act of 1945 (12 U.S.C. 635i–5), subsequently redesignated as sec. 11.

[5] Sec. 108 added a new sec. 18 to the Export-Import Bank Act of 1945 (12 U.S.C. 635i–6), subsequently redesignated as sec. 12.

[6] Sec. 109 amended sec. 2(c)(1) and sec. 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635(c)(1) and (12 U.S.C. 635f), respectively).

[7] Sec. 112 amended sec. 2(b)(6) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(6)) and repealed sec. 32 of the Arms Export Control Act (22 U.S.C. 2772).

[8] Sec. 113 amended sec. 3(d)(1)(A) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(d)(1)(A)).

[9] Sec. 115 added a new sec. 19 to the Export-Import Bank Act of 1945 (12 U.S.C. 635i–7), subsequently redesignated as sec. 13.

[10] 12 U.S.C. 635a note.

[11] Title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102; 119 Stat. 2173), provided the following extension: "* * * *Provided further*, That, notwithstanding subsection (b) of section 117 of the Export Enhancement Act of 1992, subsection (a) thereof shall remain in effect until October 1, 2006.".

Previously, similar extensions of sec. 117(a) had been provided in the following Acts: Public Law 108–199 (118 Stat. 143); Public Law 108–7 (117 Stat. 160); Public Law 107–115 (115 Stat. 2119); Public Law 106–429 (114 Stat. 1900); Public Law 106–113 (113 Stat. 1535); Public Law

Continued

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Export-Import Bank of the United States shall submit a report to the Congress on—

(1) the recruitment and employee retention problems of the Bank;

(2) any relief from such problems afforded by the Office of Personnel Management;

(3) any use of the authority provided in subsection (a); and

(4) the conclusions and recommendations of the Bank with respect to—

(A) whether such problems have been satisfactorily addressed; and

(B) whether or not the authority of subsection (a) should be extended.

SEC. 118.[12] REPORT ON REGIONAL OFFICES.

Not later than 1 year after the date of enactment of this Act, the Export-Import Bank of the United States shall submit a report to the Committee on Banking, Finance and Urban Affairs[13] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the Bank's plan to establish and operate regional offices. In addition, the report shall consider the appropriateness of cooperating with other Federal agencies and State and local organizations in co-locating personnel of such agencies and organizations with personnel of the Bank in such regional offices.

SEC. 119.[14] REPORT ON FINANCING OF SERVICES.

(a) REPORT.—Not later than 1 year after the date of enactment of this Act, the Export-Import Bank of the United States (in this section referred to as the "Bank") shall submit a report to the Committee on Banking, Finance and Urban Affairs and the Committee on Foreign Affairs of the House of Representatives[15] and the Committee on Banking, Housing, and Urban Affairs of the Senate on ways of facilitating the export financing of high technology services.

(b) CONTENTS.—The report required by subsection (a) shall include—

(1) an analysis of the current export financing needs of firms dealing in high technology services;

(2) an identification of the export financing support provided by commercial lenders to finance the sale of high technology services;

(3) an identification of the official export credit programs in support of such exports of countries that are major participants

105–277 (112 Stat. 2681-150); Public Law 105–118 (111 Stat. 2387); Public Law 104–208 (110 Stat. 3009–121); Public Law 104–107 (110 Stat. 705); and Public Law 103–306 (108 Stat. 1623).

[12] 12 U.S.C. 635a note.

[13] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

[14] 12 U.S.C. 635a note.

[15] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives. Sec. 1(a)(5) of that Act provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations.

in the Organization for Economic Cooperation and Development; and

(4) a review of the programs of the Bank to determine how it can meet identified market needs of firms dealing in high technology services.

(c) DEFINITION.—For purposes of this section, the term "high technology services" means industries in which above average percentages of scientists and engineers are employed, and which have the highest direct research and development expenditures per dollar of sales, including—

(1) computer programming and software services;

(2) data processing services; and

(3) computer related services.

SEC. 120.[16] REPORT ON DEMAND FOR TRADE FINANCE FOR THE BALTIC STATES, THE INDEPENDENT STATES OF THE FORMER SOVIET UNION, AND CENTRAL AND EASTERN EUROPE.

(a) FINDINGS.—The Congress finds that—

(1) United States export participation in the emerging markets in the independent States of the former Soviet Union, Central and Eastern Europe, and the Baltic States holds definite potential for preserving and creating jobs in the United States and strengthening the competitiveness of United States exports;

(2) export assistance for United States goods destined for emerging republics is an investment in the development and establishment of their market economies, a critical element in maintaining existing United States businesses which export to the regions in which such republics are located, and a significant factor in the economic future of the United States and such republics;

(3) the Export-Import Bank of the United States (in this section referred to as the "Bank") has a unique opportunity to play a leading role in assisting United States exporters to participate in the rapidly changing and highly competitive markets in the independent States of the former Soviet Union, Central and Eastern Europe, and the Baltic States; and

(4) it is in the interest of the United States for the Bank to—

(A) monitor carefully the export assistance programs and terms offered by foreign governments for competitive exports; and

(B) make every effort to offer United States business export assistance for transactions in the independent States of the former Soviet Union, Central and Eastern Europe, and the Baltic States, that is comparable to the assistance being provided by other governments.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Bank shall transmit to the Congress a report analyzing the present and future demand for loans, guarantees, and insurance for trade between the United States and the Baltic States, between the United States and the independent States of

[16] 12 U.S.C. 635 note.

the former Soviet Union, and between the United States and Central and Eastern Europe, and shall make recommendations regarding the adequacy of financing for trade between the United States and such countries. As used in this section, the term "independent States of the former Soviet Union" includes all successor states (other than the Baltic States) to the Soviet Union.

SEC. 121.[17] ELIMINATION OF OUTDATED PROVISIONS. * * *

TITLE II—EXPORT PROMOTION

SEC. 201.[18] TRADE PROMOTION COORDINATING COMMITTEE. * * *

SEC. 202.[19] ONE-STOP SHOPS. * * *

SEC. 203.[19] COMMERCIAL SERVICE COOPERATION IN FEDERAL FINANCING AND INSURANCE PROGRAMS. * * *

SEC. 204. ENVIRONMENTAL TRADE PROMOTION.

(a)[20] TPCC ACTIVITIES.—* * *

(b)[21] REPORT ON INSURANCE FEASIBILITY.—Not later than 1 year after the date of enactment of this Act, the chairperson of the Trade Promotion Coordinating Committee, after consultation with the appropriate departments and agencies of the United States Government, shall submit a report to the Congress that analyzes—

(1) the extent to which Federal investment insurance and export financing programs sufficiently protect against business failures or default on obligations arising from changes by a foreign government in its environmental laws or regulations; and

(2) the advisability and feasibility of expanding the coverage of such programs, or creating new programs, to address such risks.

SEC. 205.[19] RANK OF COMMERCIAL SERVICE OFFICERS. * * *

SEC. 206.[22] REPORT ON EXPORT POLICY. * * *

SEC. 207.[23] PROVISIONAL REPEAL OF AMENDMENTS.

In the event of the enactment of title II of H.R. 3489, "An Act to reauthorize the Export Administration Act of 1979, and for other purposes", this title and the amendments made by this title are repealed, effective on the date of enactment of title II of H.R. 3489, "An Act to reauthorize the Export Administration Act of 1979, and for other purposes".

SEC. 208.[24] EXPORT PROMOTION AUTHORIZATION. * * *

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[17] Sec. 121 amended several sections of the Export-Import Bank Act of 1945 to eliminate outdated provisions.

[18] Sec. 201 added a new sec. 2312 to the Export Enhancement Act of 1988 (15 U.S.C. 4727).

[19] Secs. 202, 203, and 205 amended sec. 2301 of the Export Enhancement Act of 1988 (15 U.S.C. 4721).

[20] Sec. 204(a) added a new sec. 2313 to the Export Enhancement Act of 1988 (15 U.S.C. 4728).

[21] 15 U.S.C. 4728 note.

[22] Sec. 206 added a new sec. 2314 to the Export Enhancement Act of 1988 (15 U.S.C. 4729).

[23] H.R. 3489, Omnibus Export Amendments Act of 1992, including title II relating to export promotion, was not enacted in the 102d Congress. A conference report on the bill was filed on October 5, 1992, as H. Rept. 102–1025, and printed in the *Congressional Record*, on that date—see page H12184. The Export Administration Act of 1979 was extended by Public Law 103–10 (107 Stat. 40) in the 103d Congress. That law, however, did not enact text relating to export promotion.

[24] Sec. 208 amended sec. 202 of the Export Administration Amendments Act of 1985 (15 U.S.C. 4052) to authorize appropriations for export promotion programs of the Department of Commerce for fiscal years 1993 and 1994.

TITLE III—MISCELLANEOUS

SEC. 301.[25] **JOHN HEINZ COMPETITIVE EXCELLENCE AWARD.** * * *

[25] See 2 U.S.C. 831.

(4) Export Enhancement Act of 1988

Title II of Public Law 100–418 [H.R. 4848], 102 Stat. 1325, approved August 23, 1988; as amended by Public Law 101–240 [International Development and Finance Act of 1989; H.R. 2494], 103 Stat. 2492, approved December 19, 1989; Public Law 102–429 [Export Enhancement Act of 1992; H.R. 5739], 106 Stat. 2186, approved October 21, 1992; Public Law 102–549 [Jobs Through Exports Act of 1992; H.R. 4996], 106 Stat. 3651, approved October 28, 1992; Public Law 103–236 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 108 Stat. 382, approved April 30, 1994; Public Law 103–392 [Jobs Through Trade Expansion Act of 1994; H.R. 4950], 108 Stat. 4098, approved October 22, 1994; Public Law 104–14 [H.R. 1421], 109 Stat. 186, approved June 3, 1995; Public Law 104–66 [Federal Reports Elimination and Sunset Act of 1995; S. 790], 109 Stat. 707, approved December 21, 1995; Public Law 104–288 [United States National Tourism Organization Act of 1996; H.R. 2579], 110 Stat. 3402, approved October 11, 1996; Public Law 105–261 [Strom Thurmond National Defense Authorization Act for Fiscal Year 1999; H.R. 3616], 112 Stat. 1920, approved October 17, 1998; Public Law 106–158 [Export Enhancement Act of 1999; H.R. 3381], 113 Stat. 1745, approved December 9, 1999; and Public Law 107–228 [Foreign Relations Authorization Act, Fiscal Year 2003; H.R. 1646], 116 Stat. 1350, approved September 20, 2002

AN ACT To enhance the competitiveness of American industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a)[1] SHORT TITLE.—This Act may be cited as the "Omnibus Trade and Competitiveness Act of 1988".

(b) TABLE OF CONTENTS.—

Page

TITLE II—EXPORT ENHANCEMENT

Sec. 2001. Short title 1281

SUBTITLE A—TRADE AND FOREIGN POLICY

PART I—RELATIONS WITH CERTAIN COUNTRIES

Sec. 2101. United States-Mexico Framework Agreement on Trade and Investment 1282
Sec. 2102. Relations with countries providing offensive weaponry to belligerent countries in the Persian Gulf region 1282

PART II—FAIR TRADE IN AUTO PARTS

Sec. 2121. Short title 1282
Sec. 2122. Definition 1282
Sec. 2123. Establishment of initiative on auto parts sales to Japan 1282
Sec. 2124. Establishment of special advisory committee on auto parts sales in Japan 1283
Sec. 2125. Expiration date 1284

[1] 19 U.S.C. 2901 note. Other freestanding sections of Public Law 100–418 (102 Stat. 1107) are found in this volume on page 256.

SUBTITLE B—EXPORT ENHANCEMENT

PART I—GENERAL PROVISIONS

Sec. 2201. Commercial personnel at the American Institute of Taiwan 1284
Sec. 2202. Country reports on economic policy and trade practices 1284
Sec. 2203. Overseas Private Investment Corporation 1284
Sec. 2204. Trade and Development Agency 1284
Sec. 2205. Barter and countertrade 1286
Sec. 2206. Protection of United States intellectual property 1288
Sec. 2207. Report on worker rights 1288
Sec. 2208. Japanese importation of manufactured goods from less developed countries 1288
Sec. 2209. Japan and the Arab boycott of Israel 1289
Sec. 2210. Facilitation of jewelry trade 1289

PART II—ASSISTANCE TO POLAND

[See *Legislation on Foreign Relations Through 2005*, vol. I–B]

SUBTITLE C—EXPORT PROMOTION

Sec. 2301. United States and Foreign Commercial Service 1289
Sec. 2302. Commercial Service officers and multilateral development bank procurement [transferred to the International Financial Institutions Act]
Sec. 2303. Market development cooperator program 1293
Sec. 2304. Trade shows 1295
Sec. 2305. Authorization of appropriations for export promotion programs 1296
Sec. 2306. United States and Foreign Commercial Service Pacific Rim initiative 1296
Sec. 2307. Indian tribes export promotion 1296
Sec. 2311. Report on export trading companies 1297
Sec. 2312. Trade Promotion Coordinating Committee 1298
Sec. 2313. Environmental trade promotion 1300
Sec. 2314. Report on export policy 1305

SUBTITLE D—EXPORT CONTROLS

PART I—EXPORT CONTROLS GENERALLY

Sec. 2424. Exports of domestically produced crude oil 1306
Sec. 2425. Procedures for license applications 1308
Sec. 2432. Monitoring of wood exports 1308
Sec. 2433. Study on national security export controls 1308

PART II—MULTILATERAL EXPORT CONTROL ENHANCEMENT

Sec. 2441. Short title 1309
Sec. 2442. Findings 1310
Sec. 2443. Mandatory sanctions against Toshiba and Kongsberg 1310

SUBTITLE E—MISCELLANEOUS PROVISIONS

Sec. 2503. Budget Act 1311

TITLE II—EXPORT ENHANCEMENT

SEC. 2001.[2] SHORT TITLE.

This title may be referred to as the "Export Enhancement Act of 1988".

[2] 15 U.S.C. 4701 note.

SUBTITLE A—TRADE AND FOREIGN POLICY

PART I—RELATIONS WITH CERTAIN COUNTRIES

SEC. 2101. UNITED STATES-MEXICO FRAMEWORK AGREEMENT ON TRADE AND INVESTMENT.

(a) FINDINGS.—The Congress finds that the Bilateral Framework Agreement on Trade and Investment, entered into by the United States and Mexico on November 6, 1987—

(1) provides a useful vehicle for the management of bilateral trade and investment relations, based on shared principles and objectives;

(2) establishes procedures for consultation by the two countries on matters of bilateral trade and investment, and should facilitate resolution of disputes on these matters; and

(3) has led to negotiations between the two countries on important issues, and should continue to facilitate such negotiations.

(b) FURTHER IMPLEMENTATION OF THE AGREEMENT.—Within the context of the Bilateral Framework Agreement on Trade and Investment, the President is urged to continue to pursue consultations with representatives of the Government of Mexico for the purposes of implementing the Agreement and achieving an expansion of mutually beneficial trade and investment.

SEC. 2102. RELATIONS WITH COUNTRIES PROVIDING OFFENSIVE WEAPONRY TO BELLIGERENT COUNTRIES IN THE PERSIAN GULF REGION.

It is the sense of the Congress that the President should use all available appropriate leverage to persuade all countries to desist from any further transfers of offensive weaponry, such as Silkworm missiles, to any belligerent country in the Persian Gulf region.

PART II—FAIR TRADE IN AUTO PARTS

SEC. 2121.[3] SHORT TITLE.

This part may be referred to as the "Fair Trade in Auto Parts Act of 1988".

SEC. 2122.[4] 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.[5] 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 Japanese markets.

(b) FUNCTIONS.—In carrying out this section, the Secretary shall—

[3] 15 U.S.C. 4701 note.
[4] 15 U.S.C. 4701.
[5] 15 U.S.C. 4702.

(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 automotive 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 facilitate 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 long-term, commercial relationships exist between United States auto parts manufacturers and Japanese automobile manufacturers.

SEC. 2124.[6] 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 section; 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.

[6] 15 U.S.C. 4703.

(d) AUTHORITY.—The Secretary of Commerce shall draw on existing budget authority in carrying out this part.

SEC. 2125.[7] EXPIRATION DATE.

The authorities under this part shall expire on December 31, 1998.[8]

SUBTITLE B—EXPORT ENHANCEMENT

PART I—GENERAL PROVISIONS

SEC. 2201.[9] COMMERCIAL PERSONNEL AT THE AMERICAN INSTITUTE OF TAIWAN.

The American Institute of Taiwan shall employ personnel to perform duties similar to those performed by personnel of the United States and Foreign Commercial Service. The number of individuals employed shall be commensurate with the number of United States personnel of the Commercial Service who are permanently assigned to the United States diplomatic mission to South Korea.

SEC. 2202.[10] COUNTRY REPORTS ON ECONOMIC POLICY AND TRADE PRACTICES. * * * [Repealed—2002]

SEC. 2203. OVERSEAS PRIVATE INVESTMENT CORPORATION.

(a) REAFFIRMATION OF SUPPORT FOR OPIC.—The Congress reaffirms its support for the Overseas Private Investment Corporation as a United States Government agency serving important development assistance goals. In order to enhance the Corporation's ability to meet these goals, the Overseas Private Investment Corporation should increase its loan guaranty and direct investment programs.

(b) * * *

(c) * * *

SEC. 2204. TRADE AND DEVELOPMENT PROGRAM.[11]

(a) REAFFIRMATION OF SUPPORT FOR TRADE AND DEVELOPMENT PROGRAM.[11]—The Congress reaffirms its support for the Trade and Development Program,[11] and believes that the Program's[11] ability to support high priority development projects in developing countries would be enhanced by an increase in the funds authorized for the Program[11] as well as by a clarification of the Program's[11] status as a separate component of the International Development Cooperation Agency.

(b) AUTHORIZATION AND USES OF FUNDS; ESTABLISHMENT AS SEPARATE PROGRAM.

(1) * * *

(2) * * *

(3) FUNDING LEVELS.—In addition to funds otherwise available to the President for purposes of section 661 of the Foreign Assistance Act of 1961—

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[7] 15 U.S.C. 4704.

[8] Sec. 510(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 465) extended this date from December 31, 1993.

[9] 22 U.S.C. 3310a.

[10] Sec. 671(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 [Public Law 107–228; 116 Stat. 1407], repealed sec. 2202, which had required the Secretary of State to submit annual reports to Congress on economic policy and trade practices of each country with which the United States had an economic or trade relationship.

[11] Sec. 202(e) of Public Law 102–549 (106 Stat. 3657) provided that "Any reference in any law to the Trade and Development Program shall be deemed to be a reference to the Trade and Development Agency.".

(A) not less than $5,000,000 and not more than $10,000,000 for fiscal year 1988 shall be made available for such purposes, half of which shall be derived from amounts available to carry out section 108 of the Foreign Assistance Act of 1961 for such fiscal year, and half of which shall be derived from amounts available to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 for such fiscal year; and

(B) not less than $5,000,000 and not more than $10,000,000 for fiscal year 1989 shall be made available for such purposes, half of which shall be derived from amounts available to carry out section 108 of the Foreign Assistance Act of 1961 for such fiscal year, and half of which shall be derived from amounts available to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 for such fiscal year.

(4) ADDITIONAL FUNDING.—(A) In addition to the amounts otherwise available to the President for purposes of section 661 of the Foreign Assistance Act of 1961 (including amounts available under paragraph (3) of this subsection) for fiscal years 1988 and 1989, there are authorized to be appropriated $10,000,000 for each such fiscal year for education and training programs undertaken in connection with projects under section 661 of that Act, including the operating expenses incurred in implementing such programs. Particular emphasis shall be placed on including in such programs nationals from the People's Republic of China and the Republic of China (Taiwan). Assistance may be provided for education and training under this paragraph only if there is a reasonable expectation that such education and training will result in increased exports from the United States and will not have a negative impact on employment in the United States.

(B) Of the funds made available to carry out subparagraph (A), 50 percent of such funds shall be available only for education and training programs administered in the United States by small business concerns as defined under section 3 of the Small Business Act (15 U.S.C. 632).

(c) * * *

(d) ADMINISTRATIVE PROVISIONS.—

(1) PAY OF DIRECTOR OF TDP.—Section 5314 of title 5, United States Code, is amended by adding at the end the following: * * *

(2) TRANSITION PROVISIONS.—(A) The Administrator of the Agency for International Development shall transfer to the Director of the Trade and Development Program[11] all records, contracts, applications, and any other documents or information in connection with the functions transferred by virtue of the amendments made by subsection (c)(1).[12]

(B) All determinations, regulations, and contracts—

[12] Subsec. (c)(1) amended the Trade and Development Enhancement Act of 1983 (title VI, Public Law 98–181).

(i) which have been issued, made, granted, or allowed to become effective by the President, the Agency for International Development, or by a court of competent jurisdiction, in the performance of the functions transferred by virtue of the amendments made by subsection (c)(1), and

(ii) which are in effect at the time this section takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the President, the Director of the Trade and Development Program,[11] or other authorized official, by a court of competent jurisdiction, or by operation of law.

(C)(i) The amendments made by subsection (c)(1) shall not affect any proceedings, including notices of proposed rulemaking, or any application for any financial assistance, which is pending on the effective date of this section before the Agency for International Development in the exercise of functions transferred by virtue of the amendments made by subsection (c)(1). Such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued.

(ii) Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Director of the Trade and Development Program[11] or other authorized official, by a court of competent jurisdiction, or by operation of law.

(iii) Nothing in this subparagraph 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.

(iv) The Director of the Trade and Development Program[11] is authorized to issue regulations providing for the orderly transfer to the Trade and Development Program[11] of proceedings continued under this subparagraph.

(D) With respect to any function transferred by virtue of the amendments made by subsection (c)(1) and exercised on or after the effective date of this section, reference in any other Federal law to the Agency for International Development or any officer shall be deemed to refer to the Trade and Development Program[11] or other official to which such function is so transferred.

SEC. 2205.[13] BARTER AND COUNTERTRADE.

(a) INTERAGENCY GROUP.—

(1) ESTABLISHMENT.—The President shall establish an interagency group on countertrade, to be composed of representatives of such departments and agencies of the United States as the President considers appropriate. The Secretary of Commerce shall be the chairman of the interagency group.

[13] 15 U.S.C. 4712.

(2) FUNCTIONS.—It shall be the function of the interagency group to—

(A) review and evaluate—

(i) United States policy on countertrade and offsets, in light of current trends in international countertrade and offsets and the impact of those trends on the United States economy;

(ii) the use of countertrade and offsets in United States exports and bilateral United States foreign economic assistance programs; and

(iii) the need for and the feasibility of negotiating with other countries, through the Organization for Economic Cooperation and Development and other appropriate international organizations, to reach agreements on the use of countertrade and offsets; and

(B) make recommendations to the President and the Congress on the basis of the review and evaluation referred to in subparagraph (A).

(3) SHARING OF INFORMATION.—Other departments and agencies of the United States shall provide to the interagency group such information available to such departments and agencies as the interagency group may request, except that the requirements, including penalties for violation thereof, for preserving the confidentiality of such information which are applicable to the officials, employees, experts, or consultants of such departments and agencies shall apply in the same manner to each member of the interagency group and to any other person performing any function under this subsection.

(b) OFFICE OF BARTER.—

(1) ESTABLISHMENT—There is established, within the International Trade Administration of the Department of Commerce, the Office of Barter (hereafter in this section referred to as the "Office").

(2) DIRECTOR.—There shall be at the head of the Office a Director, who shall be appointed by the Secretary of Commerce.

(3) STAFF.—The Secretary of Commerce shall transfer such staff to the Office as the Secretary determines is necessary to enable the Office to carry out its functions under this section.

(4) FUNCTIONS.—It shall be the function of the Office to—

(A) monitor information relating to trends in international barter;

(B) organize and disseminate information relating to international barter in a manner useful to business firms, educational institutions, export-related Federal, State, and local government agencies, and other interested persons, including publishing periodic lists of known commercial opportunities for barter transactions beneficial to United States enterprises;

(C) notify Federal agencies with operations abroad of instances where it would be beneficial to the United States for the Federal Government to barter Government-owned surplus commodities for goods and services purchased abroad by the Federal Government; and

(D) provide assistance to enterprises seeking barter and countertrade opportunities.

SEC. 2206. PROTECTION OF UNITED STATES INTELLECTUAL PROPERTY.

It is the sense of the Congress that—

(1) the Secretary of State should urge international technical organizations, such as the World Intellectual Property Organization, to provide expertise and cooperate fully in developing effective standards, in the General Agreement on Tariffs and Trade, for the international protection of intellectual property rights; and

(2) development assistance programs administered by the Agency for International Development, especially the reimbursable development program, should, in cooperation with the Copyright Office and the Patent and Trademark Office, include technical training for officials responsible for the protection of patents, copyrights, trademarks, and mask works in those countries that receive such development assistance.

SEC. 2207. REPORT ON WORKER RIGHTS.

The Secretary of State shall conduct an in-depth study with a view to improving the breadth, content, and utility of the annual reports submitted to the Congress pursuant to section 505(c) of the Trade Act of 1974 regarding the status of internationally recognized worker rights in foreign countries. Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit a report to the Congress on the findings of such study and shall include in the report recommendations for upgrading the capacity of the United States Government to monitor and report on other countries' respect for such rights.

SEC. 2208. JAPANESE IMPORTATION OF MANUFACTURED GOODS FROM LESS DEVELOPED COUNTRIES.

(a) FINDINGS.—The Congress finds that—

(1) Japan's merchandise trade surplus rose from $62,000,000,000 in fiscal year 1985 to $101,000,000,000 in fiscal year 1986;

(2) these surpluses pose a grave threat to the free trade system;

(3) Japan's most important contribution to the international trading system would be to commit itself as a nation to import with vigor, just as it has exported with vigor in recent decades;

(4) Japan should particularly increase its imports of manufactured goods; and

(5) Japan's share of the exports of less developed countries has declined from 10.6 percent in 1979 to below 8 percent in 1985.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) by taking its proportionate share of the manufactured exports of developing countries, Japan will promote not only its economic development but the economic conditions conducive to democracy;

(2) expanding markets for the manufactured exports of less developed countries will directly benefit the United States, and, if less developed countries are able to increase exports to

Japan, these countries will be able to earn more of the hard currency needed to service their foreign debt obligations and make the investments necessary to chart a course of solid economic growth; and

(3) if less developed countries are able to export manufactured goods to Japan, they will be under less pressure to divert exports to the United States market.

SEC. 2209. JAPAN AND THE ARAB BOYCOTT OF ISRAEL.

It is the sense of the Congress that the United States should encourage the Government of Japan in its efforts to expand trade relations with Israel and to end compliance by Japanese commercial enterprises with the Arab economic boycott of Israel.

SEC. 2210. FACILITATION OF JEWELRY TRADE.

It is the sense of the Congress that the United States should become a party to the Convention on the Control and Marking of Articles of Precious Metals in order to facilitate the efforts of the United States jewelry industry in penetrating foreign markets.

PART II—ASSISTANCE TO POLAND [14]

* * * * * * *

SUBTITLE C—EXPORT PROMOTION

SEC. 2301.[15] UNITED STATES AND FOREIGN COMMERCIAL SERVICE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of Commerce shall establish, within the International Trade Administration, the United States and Foreign Commercial Service. The Secretary shall, to the greatest extent practicable, transfer to the Commercial Service the functions and personnel of the United States and Foreign Commercial Services.

(2) ASSISTANT SECRETARY OF COMMERCE AND DIRECTOR GENERAL; OTHER PERSONNEL.—The head of the Commercial Service shall be the Assistant Secretary of Commerce and Director General of the Commercial Service, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary of Commerce and Director General of the Commercial Service may appoint Commercial Service Officers and such other personnel as may be necessary to carry out the activities of the Commercial Service.

(3) COORDINATION WITH FOREIGN POLICY OBJECTIVES.—The Secretary shall take the necessary steps to ensure that the activities of the Commercial Service are carried out in a manner consistent with United States foreign policy objectives, and the Secretary shall consult regularly with the Secretary of State in order to comply with this paragraph.

(4) AUTHORITY OF CHIEF OF MISSION.—All activities of the Commercial Service shall be subject to section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

[14] Part II, cited as the "American Aid to Poland Act of 1988", can be found in *Legislation on Foreign Relations Through 2005*, vol. I–B.

[15] 15 U.S.C. 4721.

(b) STATEMENT OF PURPOSE.—The Commercial Service shall place primary emphasis on the promotion of exports of goods and services from the United States, particularly by small businesses and medium-sized businesses, and on the protection of United States business interests abroad by carrying out activities such as—

(1) identifying United States businesses with the potential to export goods and services and providing such businesses with advice and information on establishing export businesses;

(2) providing United States exporters with information on economic conditions, market opportunities, the status of the intellectual property system in such country, and the legal and regulatory environment within foreign countries;

(3) providing United States exporters with information and advice on the necessary adaptation of product design and marketing strategy to meet the differing cultural and technical requirements of foreign countries;

(4) providing United States exporters with actual leads and an introduction to contacts within foreign countries;

(5) assisting United States exporters in locating reliable sources of business services in foreign countries;

(6) assisting United States exporters in their dealings with foreign governments and enterprises owned by foreign governments;[16]

(7) assisting the coordination of the efforts of State and local agencies and private organizations which seek to promote United States business interests abroad so as to maximize their effectiveness and minimize the duplication of efforts;[16]

(8)[16] utilizing district and foreign offices as one-stop shops for United States exporters by providing exporters with information on all export promotion and export finance activities of the Federal Government, assisting exporters in identifying which Federal programs may be of greatest assistance, and assisting exporters in making contact with the Federal programs identified; and

(9)[17] providing United States exporters and export finance institutions with information on all financing and insurance programs of the Export-Import Bank of the United States, the Overseas Private Investment Corporation, the Trade and Development Program,[11] and the Small Business Administration, including providing assistance in completing applications for such programs and working with exporters and export finance institutions to address any deficiencies in such applications that have been submitted.

(c) OFFICES.—

(1) IN GENERAL.—The Commercial Service shall conduct its activities at a headquarters office, district offices located in major United States cities, and foreign offices located in major foreign cities.

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[16] Sec. 202 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2201) struck out "and" at the end of para. (6); struck out a period at the end of para. (7) and inserted in lieu thereof a semicolon; and added para. (8).

[17] Sec. 203(a) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2201) added para. (9).

(2) HEADQUARTERS.—The headquarters of the Commercial Service shall provide such managerial, administrative, research, and other services as the Secretary considers necessary to carry out the purposes of the Commercial Service.

(3) DISTRICT OFFICES.—The Secretary shall establish district offices of the Commercial Service in any United States city in a region in which the Secretary determines that there is a need for Federal Government export assistance.

(4) FOREIGN OFFICES.—(A) The Secretary may, after consultation with the Secretary of State, establish foreign offices of the Commercial Service. These offices shall be located in foreign cities in regions in which the Secretary determines there are significant business opportunities for United States exporters.

(B) The Secretary may, in consultation with the Secretary of State, assign to the foreign offices Commercial Service Officers and such other personnel as the Secretary considers necessary. In employing Commercial Service Officers and such other personnel, the Secretary shall use the Foreign Service personnel system in accordance with the Foreign Service Act of 1980. The Secretary shall designate a Commercial Officer as head of each foreign office.

(C) Upon the request of the Secretary, the Secretary of State shall attach the Commercial Service Officers and other employees of each foreign office to the diplomatic mission of the United States in the country in which that foreign office is located, and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by Foreign Service personnel of comparable rank and salary.

(D) For purposes of official representation, the senior Commercial Service Officer in each country shall be considered to be the senior commercial representative of the United States in that country, and the United States chief of mission in that country shall accord that officer all privileges and responsibilities appropriate to the position of senior commercial representative of other countries.

(E) The Secretary of State is authorized, upon the request of the Secretary, to provide office space, equipment, facilities, and such other administrative and clerical services as may be required for the operation of the foreign offices. The Secretary is authorized to reimburse or advance funds to the Secretary of State for such services.

(F) The authority of the Secretary under this paragraph shall be subject to section 103 of the Diplomatic Security Act (22 U.S.C. 4802).

(d) RANK OF COMMERCIAL SERVICE OFFICERS IN FOREIGN MISSIONS.—

(1) MINISTER-COUNSELOR.—Notwithstanding any other provision of law, the Secretary is authorized to designate up to 16 [18] United States missions abroad at which the senior Commercial

[18] Sec. 205 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2204) struck out "8" and inserted in lieu thereof "16".

Service Officer will be able to use the diplomatic title of Minister-Counselor. The Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Service Officer assigned to a United States mission so designated.

(2) CONSUL GENERAL.—In any United States consulate in which a vacancy occurs in the position of Consul General, the Secretary of State, in consultation with the Secretary, shall consider filling that vacancy with a Commercial Service Officer if the primary functions of the consulate are of a commercial nature and if there are significant business opportunities for United States exporters in the region in which the consulate is located.

(e) INFORMATION DISSEMINATION.—In order to carry out subsection (b)(7), to lessen the cost of distribution of information produced by the Commercial Service, and to make that information more readily available, the Secretary should establish a system for distributing that information in those areas where no district offices of the Commercial Service are located. Distributors of the information should be State export promotion agencies or private export and trade promotion associations. The distribution system should be consistent with cost recovery objectives of the Department of Commerce.

(f)[19] COOPERATION IN FEDERAL FINANCING AND INSURANCE PROGRAMS.—To assist the Commercial Service in carrying out subsection (b)(9), and consistent with the provisions of section 13 of the Export-Import Bank Act of 1945, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, the Trade and Development Program,[11] and the Small Business Administration shall each—

(1) provide to the Commercial Service complete and current information on all of its programs and financing practices; and

(2) undertake a training program regarding such programs and practices for Commercial Service Officers who are designated by the Assistant Secretary of Commerce and Director General of the Commercial Service.

(g)[19] AUDITS.—The Inspector General of the Department of Commerce shall perform periodic audits of the operations of the Commercial Service, but at least once every 3 years. The Inspector General shall report to the Congress the results of each such audit. In addition to an overview of the activities and effectiveness of Commercial Service operations, the audit shall include—

(1) an evaluation of the current placement of domestic personnel and recommendations for transferring personnel among district offices;

(2) an evaluation of the current placement of foreign-based personnel and recommendations for transferring such personnel in response to newly emerging business opportunities for United States exporters; and

(3) an evaluation of the personnel system and its management, including the recruitment, assignment, promotion, and

[19] Sec. 203(b)(1) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2201) redesignated subsecs. (f) through (i) as subsecs. (g) through (j), and sec. 203(b)(2) of that Act added a new subsec. (f).

performance appraisal of personnel, the use of limited appointees, and the "time-in-class" system.

(h)[19] REPORT BY THE SECRETARY.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Congress on the feasibility and desirability, the progress to date, the present status, and the 5-year outlook, of the comprehensive integration of the functions and personnel of the foreign and domestic export promotion operations within the International Trade Administration of the Department of Commerce.

(i)[19] PAY OF ASSISTANT SECRETARY AND DIRECTOR GENERAL.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.".

(j)[19] DEFINITIONS.—For purposes of this section—

(1) the term "Secretary" means the Secretary of Commerce;

(2) the term "Commercial Service" means the United States and Foreign Commercial Service;

(3) the term "United States exporter" means—

(A) a United States citizen;

(B) a corporation, partnership, or other association created under the laws of the United States or of any State; or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B),

that exports, or seeks to export, goods or services produced in the United States;

(4) the term "small business" means any small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632);

(5) the term "State" means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States; and

(6) the term "United States" means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

SEC. 2302.[20] COMMERCIAL SERVICE OFFICERS AND MULTILATERAL DEVELOPMENT BANK PROCUREMENT. * * * [Transferred—1989]

SEC. 2303.[21] 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

[20] Sec. 541(b)(1) of the International Development and Finance Act of 1989 (Public Law 101–240; 103 Stat. 2517) transferred sec. 2302 (15 U.S.C. 4722) to the International Financial Institutions Act, redesignated as sec. 1803 and recodified at 22 U.S.C. 262s–2.

[21] 15 U.S.C. 4723. See also United States Commercial Centers, sec. 401 of the Jobs Through Exports Act of 1992 (Public Law 102–549; 106 Stat. 3661).

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. 2304.[22] TRADE SHOWS.

(a) AUTHORITY OF THE SECRETARY OF COMMERCE.—In order to facilitate exporting by United States businesses, the Secretary of Commerce shall provide assistance for trade shows in the United States which bring together representatives of United States businesses seeking to export goods or services produced in the United States and representatives of foreign companies or governments seeking to buy such goods or services from these United States businesses.

(b) RECIPIENTS OF ASSISTANCE.—Assistance under subsection (a) may be provided to—

(1) nonprofit industry organizations,

(2) trade associations,

(3) foreign trade zones, and

(4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

to provide the services necessary to operate trade shows described in subsection (a).

(c) ASSISTANCE TO SMALL BUSINESSES.—In providing assistance under this section, the Secretary of Commerce shall, in consultation with the Administrator of the Small Business Administration, make special efforts to facilitate participation by small businesses and companies new to export.

(d) USES OF ASSISTANCE.—Funds appropriated to carry out this section shall be used to—

(1) identify potential participants for trade show organizers,

(2) provide information on trade shows to potential participants,

(3) supply language services for participants, and

(4) provide information on trade shows to small businesses and companies new to export.

(e) DEFINITIONS.—As used in this section—

(1) the term "United States business" means—

(A) a United States citizen;

(B) a corporation, partnership, or other association created under the laws of the United States or of any State (including the District of Columbia or any commonwealth, territory, or possession of the United States); or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B); and

[22] 15 U.S.C. 4724.

(2) the term "small business" means any small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

SEC. 2305. AUTHORIZATION OF APPROPRIATIONS FOR EXPORT PROMOTION PROGRAMS.

(a) * * *

(b) AUTHORIZATION OF APPROPRIATIONS.—(1) * * *

(2) In addition to funds otherwise available, there are authorized to be appropriated to the Department of Commerce to carry out sections 2303 and 2304 of this Act $6,000,000 for each of the fiscal years 1988, 1989, and 1990.

SEC. 2306.[23] 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. 2307.[24] INDIAN TRIBES EXPORT PROMOTION.

(a) ASSISTANCE AUTHORIZED.—The Secretary of Commerce is authorized to provide assistance to eligible entities for the development of foreign markets for authentic American Indian arts and crafts. Eligible entities under this section include Indian tribes, tribal organizations, tribal enterprises, craft guilds, marketing cooperatives, and individual Indian-owned businesses.

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[23] 15 U.S.C. 4725.
[24] 15 U.S.C. 4726.

(b) ACTIVITIES ELIGIBLE FOR ASSISTANCE.—Activities eligible for assistance under this section include, but are not limited to, conduct of market surveys, development of promotional materials, financing of trade missions, participation in international trade fairs, direct marketing, and other market development activities.

(c) ADMINISTRATION OF ASSISTANCE.—Assistance under this section shall be administered by the Secretary of Commerce under guidelines developed by the Secretary. Priority shall be given to projects which support the establishment of long term, stable international markets for American Indian arts and crafts and which are designed to provide the greatest economic benefit to American Indian artisans.

(d) TECHNICAL AND OTHER ASSISTANCE.—The Secretary of Commerce shall provide technical assistance and support services to applicants eligible for and entities receiving assistance under this section for the purpose of helping them in identifying and entering appropriate foreign markets, complying with foreign and domestic legal and banking requirements regarding the export and import of arts and crafts, and utilizing import and export financial arrangements, and shall provide such other assistance as may be necessary to support the development of export markets for American Indian arts and crafts.

(e) LIMITATION ON ASSISTANCE.—No assistance shall be provided under this section in support of any activity which includes the sale or marketing of any craft items other than authentic arts and crafts hand made or hand crafted by American Indian artisans.

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SEC. 2311.[25] REPORT ON EXPORT TRADING COMPANIES.

Not later than 18 months after the date of the enactment of this Act, the Secretary of Commerce shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and to the Committee on Banking, Finance and Urban Affairs, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives,[26] on the activities of the Department of Commerce to promote and encourage the formation of new and the operation of existing and new export promotion intermediaries, including export management companies, export trade associations, bank export trading companies, and export trading companies. The report shall include a survey of the activities of export management companies, export trade associations, and those bank export trading companies and export trading companies established pursuant to the amendments made by title II of the Export Trading Company Act of 1982, and pursuant to title III of that Act. The report shall not contain any information subject to the protections from disclosure provided in that Act.

[25] 15 U.S.C. 4011 note.

[26] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives. Sec. 1(a)(5) of that Act further provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations.

SEC. 2312.[27] 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)

[27] 15 U.S.C. 4727. Sec. 201 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2199) added sec. 2312. Sec. 6 of Public Law 106–158 (15 U.S.C. 4727a) added additional TPCC implementation requirements. See page 1269, this volume, for the text of sec. 6.

and eliminates funding for the areas of overlap and duplication identified under paragraph (3);[28]

(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; and[28]

(6)[28] reflect the recommendations of the United States National Tourism Organization to the degree considered appropriate by the TPCC.

(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)[29] 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 International Relations of the House of Representatives, not later than March 30 of each year,[30] a report describing—

(1) the strategic plan developed by the TPCC pursuant to subsection (c), the implementation of such plan, and any revisions thereto; and

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[28] Sec. 8 of Public Law 104–288 (110 Stat. 3407) struck out "and" at the end of para. (4), struck out the period at the end of para. (5) and inserted in lieu thereof "; and", and added a new para. (6).

[29] Sec. 1022(a) of Public Law 104–66 (109 Stat. 713) amended and restated subsec. (f), which formerly read as follows:

"(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.".

[30] Sec. 7 of the Export Enhancement Act of 1999 (Public Law 106–158; 113 Stat. 1745) struck out "September 30, 1995, and annually thereafter," and inserted in lieu thereof "March 30 of each year,".

(2) the implementation of sections 303 and 304 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5823 and 5824) concerning funding for export promotion activities and the interagency working groups on energy of the TPCC.

SEC. 2313.[31] ENVIRONMENTAL TRADE PROMOTION.

(a) STATEMENT OF POLICY.—It is the policy of the United States to foster the export of United States environmental technologies, goods, and services. In exercising their powers and functions, all appropriate departments and agencies of the United States Government shall encourage and support sales of such technologies, goods, and services.

(b) ENVIRONMENTAL TRADE WORKING GROUP OF THE TRADE PROMOTION COORDINATION COMMITTEE.—

(1) ESTABLISHMENT AND PURPOSE.—The President shall establish the Environmental Trade Promotion Working Group (hereafter in this section referred to as the "Working Group") as a subcommittee of the Trade Promotion Coordination Committee (hereafter in this section referred to as the "TPCC"), established under section 2312. The purpose of the Working Group shall be—

(A) to address all issues with respect to the export promotion and export financing of United States environmental technologies, goods, and services; and

(B) to develop a strategy for expanding United States exports of environmental technologies, goods, and services.

(2) MEMBERSHIP.—The members of the Working Group shall be—

(A) representatives of the departments and agencies that are represented on the TPCC, who are designated by the head of their respective departments or agencies to advise the head of such department or agency on ways of promoting the export of United States environmental technologies, goods, and services; and

(B) a representative of the Environmental Protection Agency.

(3) CHAIRPERSON.—The Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall designate the chairperson of the Working Group from among senior employees of the Department of Commerce. The chairperson shall—

(A) assess the effectiveness of United States Government programs for the promotion of exports of environmental technologies, goods, and services;

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[31] 15 U.S.C. 4728. Sec. 204(a) of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2202) added sec. 2313. Sec. 204(b) of that Act (15 U.S.C. 4728 note) provided the following:

"(b) REPORT ON INSURANCE FEASIBILITY.—Not later than 1 year after the date of enactment of this Act, the chairperson of the Trade Promotion Coordinating Committee, after consultation with the appropriate departments and agencies of the United States Government, shall submit a report to the Congress that analyzes—

"(1) the extent to which Federal investment insurance and export financing programs sufficiently protect against business failures or default on obligations arising from changes by a foreign government in its environmental laws or regulations; and

"(2) the advisability and feasibility of expanding the coverage of such programs, or creating new programs, to address such risks.".

(B) recommend improvements to such programs, including regulatory changes or additional authority that may be necessary to improve the promotion of exports of environmental technologies, goods, and services;

(C) ensure that the members of the Working Group coordinate their environmental trade promotion programs, including feasibility studies, technical assistance, training programs, business information services, and export financing; and

(D) assess, jointly with the Working Group representative of the Environmental Protection Agency, the extent to which the environmental trade promotion programs of the Working Group advance the environmental goals established in "Agenda 21" by the United Nations Conference on Environment and Development held at Rio de Janeiro, and in other international environmental agreements.

(4) REPORT TO CONGRESS.—The chairperson of the TPCC shall include a report on the activities of the Working Group as a part of the annual report submitted to the Congress by the TPCC.

(c)[32] ENVIRONMENTAL TECHNOLOGIES TRADE ADVISORY COMMITTEE.—

(1) ESTABLISHMENT AND PURPOSE.—The Secretary, in carrying out the duties of the chairperson of the TPCC, shall establish the Environmental Technologies Trade Advisory Committee (hereafter in this section referred to as the "Committee"). The purpose of the Committee shall be to provide advice and guidance to the Working Group in the development and administration of programs to expand United States exports of environmental technologies, goods, and services and products that comply with United States environmental, safety, and related requirements.

(2) MEMBERSHIP.—The members of the Committee shall be drawn from representatives of—

(A) environmental businesses, including small businesses;

(B) trade associations in the environmental sector;

(C) private sector organizations involved in the promotion of environmental exports, including products that comply with United States environmental, safety, and related requirements;

(D) States (as defined in section 2301(i)(5)) and associations representing the States; and

(E) other appropriate interested members of the public, including labor representatives.

The Secretary shall appoint as members of the Committee at least 1 individual under each of subparagraphs (A) through (E).

(d)[32] EXPORT PLANS FOR PRIORITY COUNTRIES.—

[32] Sec. 402(a)(1) of the Environmental Export Promotion Act of 1994 (title IV of Public Law 103–392; 108 Stat. 4099) struck out subsec. (d), which had provided for the designation of Foreign Commercial Service officers to serve as Environmental Export Assistance Officers abroad. That section further redesignated subsec. (c) of this section as subsec. (e), and added new subsecs. (c) and (d).

(1) PRIORITY COUNTRY IDENTIFICATION.—The Working Group, in consultation with the Committee, shall annually assess which foreign countries have markets with the greatest potential for the export of United States environmental technologies, goods, and services. Of these countries the Working Group shall select as priority countries 5 with the greatest potential for the application of United States Government export promotion resources related to environmental exports.

(2) EXPORT PLANS.—The Working Group, in consultation with the Committee, shall annually create a plan for each priority country selected under paragraph (1), setting forth in detail ways to increase United States environmental exports to such country. Each such plan shall—

(A) identify the primary public and private sector opportunities for United States exporters of environmental technologies, goods, and services in the priority country;

(B) analyze the financing and other requirements for major projects in the priority country which will use environmental technologies, goods, and services, and analyze whether such projects are dependent upon financial assistance from foreign countries or multilateral institutions; and

(C) list specific actions to be taken by the member agencies of the Working Group to increase United States exports to the priority country.

(e)[32] TRADE INFORMATION.—In support of the work of the Working Group, the Secretary shall, as part of the regular market survey and information services activities of the Department of Commerce, make available—

(1) information on existing and emerging markets and market trends for environmental technologies, goods, and services; and

(2) a description of the export promotion programs for environmental technologies, goods, and services of the agencies that are represented on the Working Group.

(f)[33] ENVIRONMENTAL TECHNOLOGIES SPECIALISTS IN THE UNITED STATES AND FOREIGN COMMERCIAL SERVICE.—

(1) ASSIGNMENT OF ENVIRONMENTAL TECHNOLOGIES SPECIALISTS.—The Secretary shall assign a specialist in environmental technologies to the office of the United States and Foreign Commercial Service in each of the 5 priority countries selected under subsection (d)(1), and the Secretary is authorized to assign such a specialist to the office of the United States and Foreign Commercial Service in any country that is a promising market for United States exports of environmental technologies, goods, and services. Such specialist may be an employee of the Department, an employee of any relevant United States Government department or agency assigned on a temporary or limited term basis to the Commerce Department, or a representative of the private sector assigned to the Department of Commerce.

[33] Sec. 402(b) of the Environmental Export Promotion Act of 1994 (title IV of Public Law 103–392; 108 Stat. 4100) added subsecs. (f) through (k).

(2) DUTIES OF ENVIRONMENTAL TECHNOLOGIES SPECIALISTS.—Each specialist assigned under paragraph (1) shall provide export promotion assistance to United States environmental businesses, including, but not limited to—

(A) identifying factors in the country to which the specialist is assigned that affect the United States share of the domestic market for environmental technologies, goods, and services, including market barriers, standards-setting activities, and financing issues;

(B) providing assessments of assistance by foreign governments that is provided to producers of environmental technologies, goods, and services in such countries in order to enhance exports to the country to which the specialist is assigned, the effectiveness of such assistance on the competitiveness of United States products, and whether comparable United States assistance exists;

(C) training Foreign Commercial Service Officers in the country to which the specialist is assigned, other countries in the region, and United States and Foreign Commercial Service offices in the United States, in environmental technologies and the international environmental market;

(D) providing assistance in identifying potential customers and market opportunities in the country to which the specialist is assigned;

(E) providing assistance in obtaining necessary business services in the country to which the specialist is assigned;

(F) providing information on environmental standards and regulations in the country to which the specialist is assigned;

(G) providing information on all United States Government programs that could assist the promotion, financing, and sale of United States environmental technologies, goods, and services in the country to which the specialist is assigned; and

(H) promoting the equal treatment of United States environmental, safety, and related requirements, with those of other exporting countries, in order to promote exports of United States-made products.

(g)[33] ENVIRONMENTAL TRAINING IN ONE-STOP SHOPS.—In addition to the training provided under subsection (f)(2)(C), the Secretary shall establish a mechanism to train—

(1) Commercial Service Officers assigned to the one-stop shops provided for in section 2301(b)(8), and

(2) Commercial Service Officers assigned to district offices in districts having large numbers of environmental businesses, in environmental technologies and in the international environmental marketplace, and ensure that such officers receive appropriate training under such mechanism. Such training may be provided by officers or employees of the Department of Commerce, and other United States Government departments and agencies, with appropriate expertise in environmental technologies and the international environmental workplace, and by appropriate representatives of the private sector.

(h)[33] INTERNATIONAL REGIONAL ENVIRONMENTAL INITIATIVES.—

(1) ESTABLISHMENT OF INITIATIVES.—The TPCC may establish one or more international regional environmental initiatives the purpose of which shall be to coordinate the activities of Federal departments and agencies in order to build environmental partnerships between the United States and the geographic region outside the United States for which such initiative is established. Such partnerships shall enhance environmental protection and promote sustainable development by using in the region technical expertise and financial resources of United States departments and agencies that provide foreign assistance and by expanding United States exports of environmental technologies, goods, and services to that region.

(2) ACTIVITIES.—In carrying out each international regional environmental initiative, the TPCC shall—

(A) support, through the provision of foreign assistance, the development of sound environmental policies and practices in countries in the geographic region for which the initiative is established, including the development of environmentally sound regulatory regimes and enforcement mechanisms;

(B) identify and disseminate to United States environmental businesses information regarding specific environmental business opportunities in that geographic region;

(C) coordinate existing Federal efforts to promote environmental exports to that geographic region, and ensure that such efforts are fully coordinated with environmental export promotion efforts undertaken by the States and the private sector;

(D) increase assistance provided by the Federal Government to promote exports from the United States of environmental technologies, goods, and services to that geographic region, such as trade missions, reverse trade missions, trade fairs, and programs in the United States to train foreign nationals in United States environmental technologies; and

(E) increase high-level advocacy by United States Government officials (including the United States ambassadors to the countries in that geographic region) for United States environmental businesses seeking market opportunities in that geographic region.

(i)[33] ENVIRONMENTAL TECHNOLOGIES PROJECT ADVOCACY CALENDAR AND INFORMATION DISSEMINATION PROGRAM.—The Working Group shall—

(1) maintain a calendar, updated at the end of each calendar quarter, of significant opportunities for United States environmental businesses in foreign markets and trade promotion events, which shall—

(A) be made available to the public;

(B) identify the 50 to 100 environmental infrastructure and procurement projects in foreign markets that have the greatest potential in the calendar quarter for United States exports of environmental technologies, goods, and services; and

(C) include trade promotion events, such as trade missions and trade fairs, in the environmental sector; and

(2) provide, through the National Trade Data Bank and other information dissemination channels, information on opportunities for environmental businesses in foreign markets and information on Federal export promotion programs.

(j)[33] ENVIRONMENTAL TECHNOLOGY EXPORT ALLIANCES.—Subject to the availability of appropriations for such purpose, the Secretary is authorized to use the Market Development Cooperator Program to support the creation on a regional basis of alliances of private sector entities, nonprofit organizations, and universities, that support the export of environmental technologies, goods, and services and promote the export of products complying with United States environmental, safety, and related requirements.

(k)[33] DEFINITION.—For purposes of this section, the term "environmental business" means a business that produces environmental technologies, goods, or services.

SEC. 2314.[34] REPORT ON EXPORT POLICY.

(a) IN GENERAL.—Not later than May 31 of each year, the Secretary of Commerce shall submit to the Congress a report on the international economic position of the United States and, not later than June 30 of each year, shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs[35] of the House of Representatives to testify on issues addressed in that report.

(b) CONTENTS.—

(1) IN GENERAL.—Each report required under subsection (a) shall address—

(A) the state of United States international economic competitiveness, focusing, in particular, on the efforts of the Department of Commerce—

(i) to encourage research and development of technologies and products deemed critical for industrial leadership;

(ii) to promote investment in and improved manufacturing processes for such technologies and products; and

(iii) to increase United States industrial exports of products using the technologies described in clause (i) to those markets where the United States Government has sought to reduce barriers to exports;

(B) the report on the Trade Promotion Coordinating Committee strategic plan submitted to the Congress in accordance with section 2312(f);

(C) other specific recommendations of the Department of Commerce to improve the United States balance of trade;

(D) the effects on the international economic competitiveness of the United States of—

(i) formal and informal trade barriers; and

[34] 15 U.S.C. 4729. Sec. 206 of the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2204) added sec. 2314.

[35] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

(ii) subsidies by foreign countries to their domestic industries;

(E) the efforts of the Department of Commerce to reduce trade barriers;[36]

(F) the adequacy of export financing programs of the United States Government and recommendations for improving such programs;[36]

(G)[36] the status, activities, and effectiveness of the United States commercial centers established under section 401 of the Jobs Through Exports Act of 1992 (15 U.S.C. 4723a);

(H)[36] the implementation of sections 301 and 302 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5821 and 5822) concerning American Business Centers and the Independent States Business and Agriculture Advisory Council;

(I)[36] the programs of other industrialized nations to assist their companies with their efforts to transact business in the independent states of the former Soviet Union; and

(J)[36] the trading practices of other Organization for Economic Cooperation and Development nations, as well as the pricing practices of transitional economies in the independent states, that may disadvantage United States companies.

(2) POLICY BASIS FOR REPORTS.—Portions of each report under this section may incorporate or be based upon relevant reports and testimony produced by the Department of Commerce or other agencies, but the policy views shall be those of the Secretary of Commerce.

SUBTITLE D—EXPORT CONTROLS

PART I—EXPORT CONTROLS GENERALLY

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SEC. 2424. EXPORTS OF DOMESTICALLY PRODUCED CRUDE OIL.

(a) * * *

(b)[37] CRUDE OIL STUDY.—

(1) REVIEW OF EXPORT RESTRICTIONS ON CRUDE OIL.—The Secretary of Commerce, in consultation with the Secretary of Energy, shall undertake a comprehensive review to assess whether existing statutory restrictions on the export of crude oil produced in the contiguous United States are adequate to protect the energy and national security interests of the United States and American consumers. Taking into account exports licensed since 1983 and potential exports of heavy crude oil produced in California, the review shall assess the effect of increased exports of crude oil produced in the contiguous United States on—

[36] Sec. 1022(b) of Public Law 104–66 (109 Stat. 713) struck out "; and" at the end of subpara. (E), struck out the period at the end of subpara. (F) and inserted in lieu thereof a semicolon, and added new subparas. (G) through (J).

[37] 50 U.S.C. app. 2406 note.

(A) the adequacy of domestic supplies of crude oil and refined petroleum products in meeting United States energy and national security needs;

(B) the quantity, quality, and retail price of petroleum products available to consumers in the United States generally and on the West Coast in particular;

(C) the overall trade deficit of the United States;

(D) acquisition costs of crude oil by domestic petroleum refiners;

(E) the financial viability of sectors of the domestic petroleum industry (including independent refiners, distributors, marketers, and pipeline carriers); and

(F) the United States tanker fleet (and the industries that support it), with particular emphasis on the availability of militarily useful tankers to meet anticipated national defense requirements.

(2) PUBLIC HEARING AND COMMENT.—The Secretary of Commerce shall provide notice and a reasonable opportunity for public hearing and comment on the review conducted pursuant to this subsection.

(3) CONSULTATIONS WITH OTHER AGENCIES.—The Secretary of Commerce shall consult with the Secretary of Defense, the Secretary of the Interior, and the Secretary of Transportation, in addition to the Secretary of Energy, in undertaking the review pursuant to this subsection.

(4) FINDINGS, OPTIONS, AND RECOMMENDATIONS.—After taking public comment and consulting with appropriate State and Federal officials, the Secretary of Commerce, in consultation with the Secretary of Energy, shall develop findings, options, and recommendations regarding the adequacy of existing statutory restrictions on the export of crude oil produced in the contiguous United States in protecting the energy and national security interests of the United States and American consumers.

(5) CONSULTATIONS AND REPORT.—In carrying out this subsection, the Secretary of Commerce shall consult with the Committee on Foreign Affairs and the Committee on Energy and Commerce of the House of Representatives[38] and the Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on Energy and Natural Resources of the Senate. Not later than 12 months after the date of the enactment of

[38] Sec. 1(a)(4) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Energy and Commerce of the House of Representatives shall be treated as referring to the Committee on Commerce of the House of Representatives. Sec. 1(c)(1) of that Act (110 Stat. 187) further provided that any reference in any provision of law enacted before January 4, 1995 to the House Committee on Energy and Commerce shall be treated as referring to (1) the Committee on Agriculture in the case of a provision relating to inspection of seafood or seafood products; (2) the Committee on Banking and Financial Services in the case of a provision relating to bank capital markets activities or depository institution securities; or (3) the Committee on Transportation and Infrastructure in the case of a provision relating to railroads and railway labor issues. Sec. 1(a)(5) of that Act further provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

this Act, the Secretary shall transmit to each of those committees a report which contains the results of the review undertaken pursuant to this subsection and the findings, options, and recommendations developed under paragraph (4).

SEC. 2425. PROCEDURES FOR LICENSE APPLICATIONS.

(a) * * *

(b) REPORT BY SECRETARIES OF COMMERCE AND DEFENSE.—The Secretary of Commerce and the Secretary of Defense shall each evaluate and, not later than 4 months after the date of the enactment of this Act, shall jointly prepare and submit a report to the Committee on Foreign Affairs[38] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the review by the Department of Defense, for national security purposes as provided in the Export Administration Act of 1979, of export license applications for exports to countries other than controlled countries under section 5(b)(1) of that Act.

(c) * * *

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SEC. 2432.[39] MONITORING OF WOOD EXPORTS.

The Secretary of Commerce shall, for a period of 2 years beginning on the date of the enactment of this Act, monitor exports of processed and unprocessed wood to all countries of the Pacific Rim. The Secretary shall include the results of such monitoring in monthly reports setting forth, with respect to each item monitored, actual exports, the destination by country, and the domestic and worldwide price, supply, and demand. The Secretary shall transmit such reports to the Committee on Foreign Affairs[40] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 2433.[40] STUDY ON NATIONAL SECURITY EXPORT CONTROLS.

(a) ARRANGEMENTS FOR AND CONTENTS OF STUDY.—

(1) ARRANGEMENTS FOR CONDUCTING STUDY.—The Secretary of Commerce and the Secretary of Defense, not later than 60 days after the date of the enactment of this Act, shall enter into appropriate arrangements with the National Academy of Sciences and the National Academy of Engineering (hereafter in this section referred to as the "Academies") to conduct a comprehensive study of the adequacy of the current export administration system in safeguarding United States national security while maintaining United States international competitiveness and Western technological preeminence.

(2) REQUIREMENTS OF STUDY.—Recognizing the need to minimize the disruption of United States trading interests while preventing Western technology from enhancing the development of the military capabilities of controlled countries, the study shall—

(A) identify those goods and technologies which are likely to make crucial differences in the military capabilities of controlled countries, and identify which of those goods

[39] 50 U.S.C. app. 2406 note.
[40] 50 U.S.C. app. 2404 note.

and technologies controlled countries already possess or are available to controlled countries from other sources;

(B) develop implementable criteria by which to define those goods and technologies;

(C) demonstrate how such criteria would be applied to the control list by the relevant agencies to revise the list, eliminate ineffective controls, and strengthen controls;

(D) develop proposals to improve United States and multilateral assessments of foreign availability of goods and technology subject to export controls; and

(E) develop proposals to improve the administration of the export control program, including procedures to ensure timely, predictable, and effective decision-making.

(b) ADVISORY PANEL.—In conducting the study under subsection (a), the Academies shall appoint an Advisory Panel of not more than 24 members who shall be selected from among individuals in private life who, by virtue of their experience and expertise, are knowledgeable in relevant scientific, business, legal, or administrative matters. No individual may be selected as a member who, at the time of his or her appointment, is an elected or appointed official or employee in the executive, legislative, or judicial branch of the Government. In selecting members of the Advisory Panel, the Academies shall seek suggestions from the President, the Congress, and representatives of industry and the academic community.

(c) EXECUTIVE BRANCH COOPERATION.—The Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Director of the Central Intelligence Agency, and the head of any department or agency that exercises authority in export administration—

(1) shall furnish to the Academies, upon request and under appropriate safeguards, classified or unclassified information which the Academies determine to be necessary for the purposes of conducting the study required by this section; and

(2) shall work with the Academies on such problems related to the study as the Academies consider necessary.

(d) REPORT.—Under the direction of the Advisory Panel, the Academies shall prepare and submit to the President and the Congress, not later than 18 months after entering into the arrangements referred to in subsection (a), a report which contains a detailed statement of the findings and conclusions of the Academies pursuant to the study conducted under subsection (a), together with their recommendations for such legislative or regulatory reforms as they consider appropriate.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $900,000 to carry out this section.

PART II—MULTILATERAL EXPORT CONTROL ENHANCEMENT

SEC. 2441.[41] SHORT TITLE.

This part may be cited as the "Multilateral Export Control Enhancement Amendments Act".

[41] 50 U.S.C. app. 2401 note.

SEC. 2442.[42] 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.[43] 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

[42] 50 U.S.C. app. 2410a note.

[43] Sanctions were imposed by Executive Order 12661 of December 27, 1988, and expired on December 28, 1991.

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).

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SUBTITLE E—MISCELLANEOUS PROVISIONS

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SEC. 2503. BUDGET ACT.

Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this title shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.

d. Expansion of Business Capital Assistance Programs

Partial text of Public Law 101–510 [National Defense Authorization Act for Fiscal Year 1991; H.R. 4739], 104 Stat. 1485 at 1853, approved November 5, 1990; as amended by Public Law 102–190 [National Defense Authorization Act for Fiscal Years 1992 and 1993; H.R. 2100], 105 Stat. 1290, approved December 5, 1991

AN ACT To authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 1991".

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into four divisions as follows:

(1) Division A—Department of Defense Authorizations.

(2) Division B—Military Construction Authorizations.

(3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

(4) Division D—Economic Adjustment, Diversification, Conversion, and Stabilization.

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TITLE XLIII—EXPANSION OF BUSINESS CAPITAL ASSISTANCE PROGRAMS [1]

* * * * * * *

SEC. 4303. EXPANSION OF EXPORT FINANCING FOR GOODS AND SERVICES PRODUCED BY FIRMS AND EMPLOYEES FORMERLY ENGAGED IN DEFENSE PRODUCTION.

(a) EXPORT-IMPORT BANK.—

(1) SENSE OF CONGRESS ON PLAN FOR EXPANSION.—It is the sense of Congress that the United States businesses undergoing transition from defense production to nondefense production will need assistance in seizing export markets overseas. Therefore, in order to provide financial support for such businesses, as well as meeting other normal demands on its resources, the annual direct lending authority of the Export-Import Bank of the United States should be increased by at least 150 percent from the fiscal year 1990 level over the five-year period beginning October 1, 1990.

[1] 10 U.S.C. 2391 note.

(2) REPORT OF FEASIBILITY.—Before September 30, 1990, the President, acting with the assistance of the Committee[2] and after consulting the Board of Directors of the Export-Import Bank of the United States and other experts in government and the private sector, shall transmit to the Congress a report assessing the feasibility and desirability of a program for increasing the amount of direct loan authority in the manner described in paragraph (1) and the factors considered in making such assessment.

(3) TRANSITION TO NONDEFENSE PRODUCTION REQUIRED TO BE CONSIDERED.—In determining whether to provide financial support for an export transaction, the Export-Import Bank of the United States shall take into account, to the extent feasible and in accordance with applicable standards and procedures established by the bank in consultation with the Committee, the fact that the product or service is produced or provided by any business or group of workers which—

(A) was substantially and seriously affected[3] by defense budget reductions; and

(B) is in transition from defense to nondefense production.

(b) SBA USE OF AUTHORITY FOR EXPORT FINANCING ASSISTANCE.—In determining whether to provide financial or other assistance under the Small Business Act, title VIII of the Omnibus Trade and Competitiveness Act of 1988, or any program referred to in section 4301[4] to any small business involved in, or attempting to become involved in, the export of any product or service, the Administrator of the Small Business Administration shall take into account the fact that such product or service is produced by any business or group of workers which—

(1) has been substantially and seriously affected[3] by defense budget reductions; and

(2) is in transition from defense to nondefense production.

(c) COORDINATION AND INTEGRATION OF ACTIVITIES AND ASSISTANCE WITH OTHER AGENCIES.—In providing additional financial assistance pursuant to any increase in loan authority under this division—

(1) Federal agencies concerned with international trade shall participate in the process of coordination conducted by the Committee pursuant to section 4004(c)(1);[5] and

(2) such Federal agencies shall attempt, to the maximum extent practicable, to coordinate and integrate the activities and

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[2] Sec. 4003(2) of Public Law 101–510 (104 Stat. 1848) defined "Committee" as the Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note).

[3] Sec. 4003(5) of Public Law 101–510 (104 Stat. 1848) defined "substantially and seriously affected" as a community with one or more military installations or defense facilities, or near such facilities, and faced with substantial workforce reductions, relative to the community's population size, resulting from changes in Department of Defense programs or requirements; as a business with any defense contract or subcontract which suffers a reduction of 25 percent or more in sales or production, or a reduction in workforce of 80 percent or more, resulting from changes in Department of Defense programs or requirements; or a group of 100 or more workers who are eligible to participate in the newly established defense conversion adjustment program under sec. 325 of the Job Training Partnership Act (29 U.S.C. 1662d).

[4] Business loan program under sec. 7(a) of the Small Business Act of 1958.

[5] Sec. 1062(c)(1) of Public Law 102–190 (105 Stat. 1475) struck out "section 4003(b)" and inserted in lieu thereof "section 4004(c)(1)".

assistance of the agencies in support of exports, including financial assistance in the form of direct loans, loan guarantees, and insurance, general trade promotion, marketing assistance, and marketing and commercial information, in a manner consistent with the purposes of this division (and the amendments made by this division to other provisions of law).

(d) REPORTING.—The annual report made by the Export-Import Bank of the United States and the Administrator of the Small Business Administration and the annual economic stabilization and adjustment report under section 4004(c)(3)[6] of this division shall include a description of the extent to which the bank and the Administrator are—

(1) providing financing described in subsections (a)(2) and (b), respectively, to businesses or groups of workers which were substantially and seriously affected[3] by defense budget reductions; and

(2) coordinating and integrating export support and financing activities with other Federal agencies.

SEC. 4304. BENEFIT INFORMATION FOR BUSINESSES.

(a) INFORMATION REQUIRED TO BE PROVIDED.—The Secretary of Commerce and the Administrator of the Small Business Administration shall provide any business affected by defense budget reductions with a complete description of available programs which provide any business, whether on an industrywide or an individual basis, with any planning assistance, financial, technical, or managerial assistance, worker retraining assistance, or other assistance authorized under this division.

(b) EFFECTIVE NOTIFICATION SYSTEM.—The Secretary of Commerce and the Administrator of the Small Business Administration shall take such action as may be appropriate to ensure, to the maximum extent practicable, that each business affected by defense budget reductions receives the information required to be provided under subsection (a) on a timely basis.

[6] Sec. 1062(c)(2) of Public Law 102–190 (105 Stat. 1475) struck out "section 4003" and inserted in lieu thereof "section 4004(c)(3)".

e. Export-Import Bank and Tied Aid Credit Amendments

Partial text of Title III of Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988

AN ACT To enhance the competitiveness of American industry, and for other purposes.

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TITLE III—INTERNATIONAL FINANCIAL POLICY

* * * * * * *

SUBTITLE D—EXPORT-IMPORT BANK AND TIED AID CREDIT AMENDMENTS

SEC. 3301. SHORT TITLE.

This subtitle may be cited as the "Export-Import Bank and Tied Aid Credit Amendments of 1988".

SEC. 3302. PROVISIONS RELATING TO TIED AID CREDIT.

(a) FINDINGS.—The Congress finds that—

(1) negotiations have led to an international agreement to increase the grant element required in tied aid credit offers;

(2) concern continues to exist that countries party to the agreement may continue to offer tied aid credits that deviate from the agreement;

(3) in such cases, the United States could continue to lose export sales in connection with the aggressive, and in some cases, unfair, tied aid practices of such countries; and

(4) in such cases, the Export-Import Bank of the United States should continue to use the Tied Aid Credit Fund established by section 15(c) of the Export-Import Bank Act of 1945 to discourage the use of such predatory financing practices.

(b) * * *

(c) REPORT.—

(1) IN GENERAL.—On or before December 31, 1988, the President and Chairman of the Export-Import Bank of the United States, in cooperation with other appropriate government agencies, shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a written report identifying and analyzing the tied aid credit practices of other countries and shall make recommendations for dealing with such practices.

(2) CONSULTATION.—In preparing the report described in paragraph (1), the Export-Import Bank shall consult with appropriate international organizations such as the International Bank for Reconstruction and Development, the International Monetary Fund, and the Development Assistance Committee of

the Organization for Economic Cooperation and Development, and with the countries which are party to the Arrangement on Guidelines for Officially Supported Export Credits adopted by the Organization for Economic Cooperation and Development in November 1987.

SEC. 3303. REPORT ON UNITED STATES EXPORTS TO DEVELOPING COUNTRIES.

Within 90 days after the date of the enactment of this Act, the President and Chairman of the Export-Import Bank of the United States shall submit to the Committee on Banking, Finance and Urban Affairs [1] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a written report which contains—

(1) an assessment of the effectiveness of recent program changes in increasing United States exports to developing countries; and

(2) an identification of additional specific policy and program changes which—

(A) would enable the Bank to increase the financing of United States exports to developing countries; and

(B) would encourage greater private sector participation in such financing efforts.

* * * * * * *

[1] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

f. Export-Import Bank Act Amendments of 1986

Partial text of Public Law 99–472 [H.R. 5548], 100 Stat. 1200, approved October 15, 1986

AN ACT To amend the Export-Import Bank Act of 1945.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Export-Import Bank Act Amendments of 1986".

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SEC. 16. REPORT ON ROLE OF PRIVATE INSURANCE.

Not later than October 1, 1987, the Export-Import Bank of the United States and the Office of Management and Budget shall jointly prepare and transmit to the Congress, and the General Accounting Office shall prepare and transmit to the Congress, reports analyzing—

(1) the need for United States Government involvement in export credit insurance, considering the current activities of private insurance companies in this area, private insurance industry trends over the longer term, and ways in which private insurance companies can be encouraged by the Bank to maximize export credit insurance activities;

(2) the need to employ an agent in administering government-supported insurance programs which are determined to be necessary; and

(3) the efficiency and effectiveness of continuing to utilize the Foreign Credit Insurance Association as the Bank's agent (including an analysis of the administrative and economic cost to the government and the Bank of maintaining the Foreign Credit Insurance Association).

* * * * * * *

SEC. 21.[2] POLICY TOWARD UNITED STATES BUSINESS TRANSACTIONS IN ANGOLA. * * *

SEC. 22.[3] OPPOSITION OF MULTILATERAL ASSISTANCE FOR FOREIGN SURPLUS COMMODITIES AND MINERALS.

The Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development, the International Development Association, the

[1] 12 U.S.C. 635 note.

[2] For text of sec. 21, see page 1636.

[3] 22 U.S.C. 262h. Since 1989, similar provisions have been enacted in the annual Foreign Operations, Export Financing, and Related Programs Appropriations Act. For fiscal year 2006, see sec. 514 of Public Law 109–102 (119 Stat. 2200), *Legislation on Foreign Relations Through 2005*, vol. I–A.

International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by such institutions, using funds appropriated or otherwise made available pursuant to any provision of law, for the production or extraction of any commodity or mineral for export, if—

(1) such commodity or mineral, as the case may be, is in surplus on world markets; and

(2) the export of such commodity or mineral, as the case may be, would cause substantial injury to the United States producers of the same, similar, or competing commodity or mineral.

g. Trade and Development Enhancement Act of 1983

Partial text of Title VI of Public Law 98–181 [Supplemental Appropriations Act, 1984; H.R. 3959], 97 Stat. 1153 at 1263, approved November 30, 1983; as amended by Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; and Public Law 102–549 [Jobs Through Exports Act of 1992, H.R. 4996], 106 Stat. 3651, approved October 28, 1992

AN ACT Making supplemental appropriations for the fiscal year ending September 30, 1984, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to provide supplemental appropriations for the fiscal year ending September 30, 1984, and for other purposes, namely:

* * * * * * *

TITLE VI—EXPORT-IMPORT BANK ACT AMENDMENTS OF 1983

SHORT TITLE

SEC. 601. This title may be cited as the "Export-Import Bank Act Amendments of 1983".

* * * * * * *

PART C—TIED AID CREDIT EXPORT SUBSIDIES

SHORT TITLE

SEC. 641. This part may be referred to as the "Trade and Development Enhancement Act of 1983".

STATEMENT OF PURPOSE

SEC. 642.[1] The purpose of this part is—

(1) to expand employment and economic growth in the United States by expanding United States exports to the markets of the developing world;

(2) to stimulate the economic development of countries in the developing world by improving their access to credit for the importation of United States products and services for developmental purposes;

(3) to neutralize the predatory financing engaged in by many nations whose exports compete with United States exports, and thereby restore export competition to a market basis; and

[1] 12 U.S.C. 635o.

(4) to encourage foreign governments to enter into effective and comprehensive agreements with the United States to end the use of tied aid credits for exports, and to limit and govern the use of export credit subsidies generally.

NEGOTIATING MANDATE

SEC. 643.[2] The President shall vigorously pursue negotiations to limit and set rules for the use of tied aid for exports. The negotiating objectives of the United States should include reaching agreements—

(1) to define the various forms of tied aid credit, particularly mixed credits under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development (hereinafter in this part referred to as the "Arrangement");

(2) to phase out the use of government-mixed credits by a date certain;

(3) to set rules governing the use of public-private co-financing, or other forms of mixed financing, which may have the same result as government-mixed credits of drawing on concessional development assistance to produce subsidized export financing;

(4) to raise the threshold for notification of the use of tied aid credit to a 50 per centum level of concessionality;

(5) to improve notification procedures so that advance notification must be given on all uses of tied aid credit; and

(6) to prohibit the use of tied aid credit for production facilities for goods which are in structural over supply in the world.

ESTABLISHMENT OF A TIED AID CREDIT PROGRAM IN THE UNITED STATES EXPORT-IMPORT BANK

SEC. 644.[3] (a)(1) The Chairman of the Export-Import Bank of the United States shall establish, within the Export-Import Bank of the United States, a program of tied aid credits for United States exports.

(2) The program shall be carried out in co-operation with the Trade and Development Agency[4, 5] and with private financial institutions or entities, as appropriate.

(3) The program may include—

(A) the combined use of the credits, loans, or guarantees offered by the Export-Import Bank of the United States with concessional financing or grants made available under section 645(d) of this Act,[5] by methods including the blending of the

[2] 12 U.S.C. 635p.

[3] 12 U.S.C. 635q.

[4] Sec. 202(c)(1) of Public Law 102–549 (106 Stat. 3657) struck out "Trade and Development Program" each place it appeared in secs. 644, 645, and 646, and inserted in lieu thereof "Trade and Development Agency". Subsec. (e) of that section, furthermore, provided that "Any reference in any law to the Trade and Development Program shall be deemed to be a reference to the Trade and Development Agency.".

[5] Sec. 2204(c)(1) of Public Law 100–418 (Omnibus Trade and Competitiveness Act of 1988; 102 Stat. 1330) struck out "Agency for International Development" and inserted in lieu thereof "Trade and Development Program"; struck out "offered by the Agency for International Development" and inserted in lieu thereof "made available under section 645(d) of this Act"; and struck out "subsections (c) and (d) of section 645" and inserted in lieu thereof "section 645(c)".

financing of, or parallel financing by, the Bank and the Trade and Development Agency;[4] and

(B) the combined use of credits, loans, or guarantees offered by the Bank, with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the Bank and private institutions or entities.

(b) The purpose of the tied aid credit program under this section is to offer or arrange for financing for the export of United States goods and services which is substantially as concessional as foreign financing for which there is reasonable proof that such foreign financing is being offered to, or arranged for, a bona fide foreign competitor for a United States export sale.

(c) The Chairman of the Bank is authorized to establish a fund, as necessary, for carrying out the tied aid credit program described in this section.

(d) Concessional financing or grants made available under section 645(d) of this Act[5] for the purposes of the mixed financing program established under this section shall be made available in accordance with the provisions of section 645(c)[5] of this Act.

ESTABLISHMENT OF A TIED AID CREDIT PROGRAM ADMINISTERED BY THE TRADE AND DEVELOPMENT AGENCY[6]

SEC. 645.[6] (a) The Director of the Trade and Development Agency[4] shall carry out[6] a program of tied aid credits for United States

[6] 12 U.S.C. 635r. Sec. 202(c)(2) of the Jobs Through Exports Act of 1992 (Public Law 102–549; 106 Stat. 3658) struck out "TRADE AND DEVELOPMENT PROGRAM" in the section heading and inserted in lieu thereof "TRADE AND DEVELOPMENT AGENCY". Previously, sec. 2204(c)(1)(B) of Public Law 100–418 (102 Stat. 1330) inserted "ADMINISTERED BY THE TRADE AND DEVELOPMENT PROGRAM" in the section heading, and struck out "Administrator of the Agency for International Development shall establish within the Agency" and inserted in lieu thereof "Director of the Trade and Development Program shall carry out". Sec. 2204(d) of that Act further provided:

"(d) ADMINISTRATIVE PROVISIONS.—

"(1) * * *

"(2) TRANSITION PROVISIONS.—(A) The Administrator of the Agency for International Development shall transfer to the Director of the Trade and Development Program all records, contracts, applications, and any other documents or information in connection with the functions transferred by virtue of the amendments made by subsection (c)(1).

"(B) All determinations, regulations, and contracts—

"(i) which have been issued, made, granted, or allowed to become effective by the President, the Agency for International Development, or by a court of competent jurisdiction, in the performance of the functions transferred by virtue of the amendments made by subsection (c)(1), and

"(ii) which are in effect at the time this section takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the President, the Director of the Trade and Development Program, or other authorized official, by a court of competent jurisdiction, or by operation of law.

"(C)(i) The amendments made by subsection (c)(1) shall not affect any proceedings, including notices of proposed rulemaking, or any application for any financial assistance, which is pending on the effective date of this section before the Agency for International Development in the exercise of functions transferred by virtue of the amendments made by subsection (c)(1). Such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued.

"(ii) Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Director of the Trade and Development Program or other authorized official, by a court of competent jurisdiction, or by operation of law.

"(iii) Nothing in this subparagraph 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.

Continued

exports. The program shall be carried out in cooperation with the Export-Import Bank of the United States and with private financial institutions or entities, as appropriate. The program may include—

(1) the combined use of the credits, loans, or guarantees offered by the Bank with concessional financing or grants made available under subsection (d),[7] by methods including the blending of the financing of, or parallel financing, by the Bank and the Trade and Development Agency;[7] and

(2) the combination of concessional financing or grants made available under subsection (d),[7] with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the Trade and Development Agency[7] and private institutions or entities.

(b) These funds may be combined with financing by the Export-Import Bank of the United States or private commercial financing in order to offer, or arrange for, financing for the exportation of United States goods and services which is substantially as concessional as foreign financing for which there is reasonable proof that such foreign financing is being offered to, or arranged for, a bona fide foreign competitor for a United States export sale.

(c)(1) Funds[8] which are used to carry out a tied aid credit program authorized by subsections (a) and (b) shall be offered only to finance United States exports which can reasonably be expected to contribute to the advancement of the development objectives of the importing country or countries, and shall be consistent with the economic, security, and political criteria used to establish country allocations of Economic Support Funds.

(2) The Director of the Trade and Development Agency[4, 5] is authorized to establish a fund, as necessary, for carrying out a tied aid credit financing program as described in this section.

(d)[9] Funds available to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 may be used by the Director of the Trade and Development Agency,[4] with the concurrence of the Secretary of State (as provided under section 531 of the Foreign Assistance Act of 1961), for the purposes for which funds made available under this subsection are authorized to be used in section 644

"(iv) The Director of the Trade and Development Agency is authorized to issue regulations providing for the orderly transfer to the Trade and Development Program of proceedings continued under this subparagraph.

"(D) With respect to any function transferred by virtue of the amendments made by subsection (c)(1) and exercised on or after the effective date of this section, reference in any other Federal law to the Agency for International Development or any officer shall be deemed to refer to the Trade and Development Agency or other official to which such function is so transferred.".

[7] Sec. 2204(c)(1)(B) of Public Law 100–418 (102 Stat. 1331) struck out "offered by the Agency for International Development" and inserted in lieu thereof "made available under subsection (d)"; struck out "Agency for International Development" and inserted in lieu thereof "Trade and Development Program". Subsequently, sec. 202(c)(1) of Public Law 102–549 (106 Stat. 3657) struck out "Trade and Development Program" each place it appeared in secs. 644, 645, and 646, and inserted in lieu thereof "Trade and Development Agency". Subsec. (e) of that section further provided that "Any reference in any law to the Trade and Development Program shall be deemed to be a reference to the Trade and Development Agency.".

[8] Sec. 2204(c)(1)(b) of Public Law 100–418 (102 Stat. 1331) struck out "of the Agency for International Development" which previously appeared at this point.

[9] Sec. 2204(c)(1)(B)(iv) of Public Law 100–418 (102 Stat. 1331) amended and restated subsec. (d). It previously read as follows:

"(d) The Administrator of the Agency for International Development may draw on Economic Support Funds allocated for Commodity Import Programs to finance a tied aid credit activity.".

and this section. The Secretary of State shall exercise his authority in cooperation with the Administrator of the Agency for International Development. Funds made available pursuant to this subsection [10] may be used to finance a tied aid credit activity in any country eligible for tied aid credits under this Act.

IMPLEMENTATION

SEC. 646.[11] (a)(1) The National Advisory Council on International Monetary and Financial Policies shall coordinate the implementation of the tied aid credit programs authorized by sections 644 and 645.

(2) No financing may be approved under the tied aid credit programs authorized by section 644 or section 645 without the unanimous consent of the members of the National Advisory Council on International Monetary and Financial Policies.

(b) [12] The Trade and Development Agency [4] shall be represented at any meetings of the National Advisory Council on International Monetary and Financial Policies for discussion of tied aid credit matters, and the representative of the Trade and Development Agency [4] at any such meeting shall have the right to vote on any decisions of the Advisory Council relating to tied aid credit matters.

DEFINITIONS

SEC. 647.[13] For purposes of this part—

(1) the term "tied aid credit" means credit—

(A) which is provided for development aid purposes;

(B) which is tied to the purchase of exports from the country granting the credit;

(C) which is financed either exclusively from public funds, or, as a mixed credit, partly from public and partly from private funds; and

(D) which has a grant element, as defined by the Development Assistance Committee of the Organization for Economic Cooperation and Development, greater than zero percent;

(2) the term "government-mixed credits" means the combined use of credits, insurance, and guarantees offered by the Export-Import Bank of the United States with concessional financing or grants offered by the Agency for International Development to finance exports;

(3) the term "public-private financing" means the combined use of either official development assistance or official export credit with private commercial credit to finance exports;

(4) the term "blending of financings" means the use of various combinations of official development assistance, official export credit, and private commercial credit. integrated into a single package with a single set of financial terms, to finance exports;

[10] For current appropriations, see the Foreign Operations, Export Finance, and Related Programs Appropriations Act, 2006 (Public Law 109–102; 119 Stat. 2200); *Legislation on Foreign Relations Through 2005*, vol. I–A.

[11] 12 U.S.C. 635s.

[12] Sec. 2204(c)(2) of Public Law 100–418 (102 Stat. 1331) added subsec. (b).

[13] 12 U.S.C. 635t.

(5) the term "parallel financing" means the related use of various combinations of separate lines of official development assistance, official export credits, and private commercial credit, not combined into a single package with a single set of financial terms, to finance exports; and

(6) the term "Bank" means the Export-Import Bank of the United States.

* * * * * * *

h. Export-Import Bank Act Amendments of 1978

Partial text of Public Law 95–630 [H.R. 14279], 92 Stat. 3641 at 3724, approved November 10, 1978; as amended by Public Law 98–181 [Export-Import Bank Act Amendments of 1983; H.R. 3959], 97 Stat. 1153 at 1262, approved November 30, 1983; and Public Law 99–472 [Export-Import Bank Act Amendments of 1986; H.R. 5548], 100 Stat. 1200, approved October 15, 1986

AN ACT To extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Financial Institutions Regulatory and Interest Rate Control Act of 1978".

* * * * * * *

TITLE XIX—EXPORT-IMPORT BANK ACT AMENDMENTS

SEC. 1901.[1] That this title may be cited as the "Export-Import Bank Act Amendments of 1978".

NOTE.—Except for the sections included below, title XIX of this Act contained amendments to the Export-Import Bank Act of 1945.

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EXPORT CREDIT COMPETITION

SEC. 1908.[2] (a) The President is authorized and requested to begin negotiations at the ministerial level with other major exporting countries to end predatory export financing programs and other forms of export subsidies, including mixed credits, in third country markets as well as within the United States. The President shall report to the Congress prior to January 15, 1979, on progress toward meeting the goals of this section.

(b) The Export-Import Bank of the United States is authorized to provide guarantees, insurance, and extensions of credit at rates and terms and other conditions which are, in the opinion of the Board of Directors of the Bank, competitive with those provided by

[1] 12 U.S.C. 635 note.
[2] 12 U.S.C. 635a–1.

the government-supported export credit instrumentalities of other nations.

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SEC. 1911.[3] The Bank shall implement such regulations and procedures as may be appropriate to insure that full consideration is given to the extent to which any loan or financial guarantee is likely to have an adverse effect on industries, including agriculture, and employment in the United States, either by reducing demand for goods produced in the United States or by increasing imports to the United States. To carry out the purposes of this subsection, the Bank shall request, and the United States International Trade Commission shall furnish, a report assessing the impact of the Bank's activities on industries and employment in the United States. Such report shall include an assessment of previous loans or financial guarantees and shall provide recommendations concerning general areas which may adversely affect domestic industries, including agriculture and employment. After October 1, 1983, there are authorized to be appropriated such sums as may by necessary to carry out the provisions of this section.[4] In all cases to which this section applies, the Bank shall consider and address in writing the views of parties or persons who may be substantially adversely affected by the loan or guarantee prior to taking final action on the loan or guarantee. This requirement does not subject the Bank to the provisions of subchapter II of chapter 5 of title 5, United States Code.[5]

SEC. 1912.[6] (a)(1) Upon receipt of information that foreign sales to the United States are being offered involving foreign official export credits which exceed limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed, irrespective of whether these credits are being offered by governments which are signatories to such standstills, minutes, or practices,[7] the Secretary of the Treasury shall immediately conduct an inquiry to determine whether "noncompetitive financing" is being offered. The inquiry, and where appropriate, the determination and authorization to the Export-Import Bank of the United States referred to in this section shall be completed and made within 60 days of the receipt of such information.[8]

(2) If the Secretary determines that such foreign "noncompetitive" financing is being offered, the Secretary[9] shall request the immediate withdrawal of such financing by the foreign official export credit agency involved.

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[3] 12 U.S.C. 635a–2.

[4] Sec. 632 of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1262) added this sentence.

[5] Sec. 12 of the Export-Import Bank Act Amendments of 1986 (Public Law 99–472; 100 Stat. 1204) added the final two sentences of sec. 1911.

[6] 12 U.S.C. 635a–3.

[7] Sec. 15(b) of Public Law 99–472 (100 Stat. 1205) inserted "irrespective of whether these credits are being offered by governments which are signatories to such standstills, minutes, or practices,".

[8] Sec. 631(1) of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1262) added this sentence.

[9] Sec. 633 of the Export-Import Bank Act Amendments of 1983 (title VI of Public Law 98–181; 97 Stat. 1263) struck out "he" and inserted in lieu thereof "the Secretary".

(3) If the offer is not withdrawn or if there is no immediate response to the withdrawal request, the Secretary of the Treasury shall notify the country offering such financing and all parties to the proposed transaction that the Eximbank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity.

(b)[10] The Secretary of the Treasury shall issue such authorization to the Bank to provide guarantees, insurance, and credits to competing United States sellers, unless the Secretary determines that—

(1) the availability of foreign official noncompetitive financing is likely to be a significant factor in the sale; or

(2) the foreign noncompetitive financing has been withdrawn.

(c) Upon receipt of authorization by the Secretary of the Treasury, the Export-Import Bank may provide financing to match that offered by the foreign official export credit entity: *Provided, however,* That loans, guarantees and insurance provided under this authority shall conform to all provisions of the Export-Import Bank Act of 1945, as amended.

SEC. 1913. No environmental rule, regulation, or procedure shall become effective with regard to exports subject to the provisions of 22 U.S.C. 3201 et seq., the Nuclear Non-Proliferation Act of 1978, until such time as the President has reported to Congress on the progress achieved pursuant to section 407 of the Act (42 U.S.C. 2153e) entitled "Protection of the Environment" which requires the President to seek to provide, in agreements required under the Act, for cooperation between the parties in protecting the environment from radioactive, chemical or thermal contaminations arising from peaceful nuclear activities.

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SEC. 1917.[11] This title shall take effect upon enactment.

[10] Sec. 15(a) of Public Law 99–472 (100 Stat. 1204) amended and restated subsec. (b).
[11] 12 U.S.C. 635 note.

i. Export-Import Bank

Executive Order 12166, October 19, 1979, 44 F.R. 60971, 12 U.S.C. 635 note

By the authority vested in me as President of the United States of America by Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(1)(B), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1–101. The function vested in the President by section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(1)(B)), is delegated to the Secretary of State. That function is the authority to determine that a denial by the Export-Import Bank of an application for credit would be in the national interest, where such action could clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights.

1–102. Before making such a determination, the Secretary of State shall consult with the Secretary of Commerce, and the heads of other interested Executive agencies.

1–103. In accord with Section 2(b)(1)(B) of that Act, only in those cases where the Secretary of State has made such a determination should the Export-Import Bank deny an application for credit for nonfinancial or noncommercial considerations.

j. Trade Promotion Coordinating Committee

Executive Order 12870, September 30, 1993, 58 F.R. 51753, 15 U.S.C. 4727 note; as amended by Executive Order 13286, February 28, 2003, 68 F.R. 10617

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Export Enhancement Act of 1992 (Public Law 102–429; 106 Stat. 2186), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Sec. 1. *Establishment.* There is established the "Trade Promotion Coordinating Committee" ("TPCC"). The Committee shall comprise representatives of each of the following:

(a) Department of Commerce;
(b) Department of State;
(c) Department of the Treasury;
(d) Department of Agriculture;
(e) Department of Energy;
(f) Department of Transportation;
(g) Department of Defense;
(h) Department of Labor;
(i) Department of the Interior;
(j)[1] Department of Homeland Security;
(k)[1] Agency for International Development;
(l)[1] Trade and Development Agency;
(m)[1] Environmental Protection Agency;
(n)[1] United States Information Agency;
(o)[1] Small Business Administration;
(p)[1] Overseas Private Investment Corporation;
(q)[1] Export-Import Bank of the United States;
(r)[1] Office of the United States Trade Representative;
(s)[1] Council of Economic Advisers;
(t)[1] Office of Management and Budget;
(u)[1] National Economic Council;
(v)[1] National Security Council; and
(w)[1] At the discretion of the President, such other departments or agencies as may be necessary.

Members of the TPCC shall be appointed by the heads of their respective departments or agencies. Such members, as well as their designated alternatives, shall be individuals who exercise significant decision-making authority in their respective departments or agencies.

Sec. 2. *Chairperson.* The Secretary of Commerce shall be the chairperson of the TPCC.

Sec. 3. *Purpose.* The purpose of the TPCC shall be to provide a unifying framework to coordinate the export promotion and export

[1] Sec. 26 of Executive Order 13286 (68 F.R. 10625) inserted subsec. (j) and redesignated subsecs. (j) through (v) as subsecs. (k) through (w).

financing activities of the United States Government and to develop a governmentwide strategic plan for carrying out such programs.

Sec. 4. *Duties.* The TPCC shall:

(a) coordinate the development of the trade promotion policies and programs of the United States Government;

(b) provide a central source of information for the business community on Federal export promotion and export financing programs;

(c) coordinate official trade promotion efforts to ensure better delivery of services to U.S. businesses, including:

(1) information and counseling on U.S. export promotion and export financing programs and opportunities in foreign markets;

(2) representation of U.S. business interests abroad; and

(3) assistance with foreign business contacts and projects;

(d) prevent unnecessary duplication in Federal export promotion and export financial activities;

(e) assess the appropriate levels and allocation of resources among agencies in support of export promotion and export financing and provide recommendations, through the Director of the Office of Management and Budget to the President, based on its assessment; and

(f) carry out such other duties as are deemed to be appropriate, consistent with the purpose of the TPCC.

Sec. 5. *Strategic Plan.* To carry out section 4 of this order, the TPCC shall develop and implement a governmentwide strategic plan for Federal trade promotion efforts. Such plan shall:

(a) establish a set of priorities for Federal activities in support of U.S. exports and explain the rationale for the priorities;

(b) review current Federal programs designed to promote the sale of U.S. exports in light of the priorities established under paragraph (a) of this section and develop a plan to bring such activities unto line with those priorities and to improve coordination of such activities;

(c) identify areas of overlap and duplication among Federal export promotion activities and propose means of eliminating them;

(d) propose, through the Director of the Office of Management and Budget, to the President an annual unified Federal trade promotion budget that supports the plan for priority activities and improved coordination established under paragraph (b) of this section and eliminates funding for the areas of overlap and duplication identified under paragraph (c) of this section; and

(e) review efforts by the States to promote U.S. 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.

Sec. 6. *Report.* The chairperson of the TPCC, with the approval of the President, shall prepare and submit to the Committee on

Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs[1] 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 section 5 of this order, the implementation of such a plan, and any revisions to the plan.

[1] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

3. Export Expansion

a. Improving the U.S. Balance of Payments

Public Law 90–390 [H.R. 16162], 82 Stat. 296, approved July 7, 1968; as amended by Public Law 96–470 [Congressional Reports Elimination Act of 1980; H.R. 6686], 94 Stat. 2237, approved October 19, 1980

AN ACT To enable the Export-Import Bank of the United States to approve extension of certain loans, guarantees, and insurance in connection with exports from the United States in order to improve the balance of payments and foster the long-term commercial interests of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] (a) It is the policy of the Congress that the Export-Import Bank of the United States should facilitate through loans, guarantees, and insurance (including coinsurance and reinsurance) those export transactions which, in the judgment of the Board of Directors of the Bank, offer sufficient likelihood of repayment to justify the Bank's support in order to actively foster the foreign trade and long-term commercial interest of the United States.

(b) The Bank shall specially designate loans, guarantees, and insurance on the books of the Bank made under authority of this Act. In connection with guarantees and insurance, not less than 25 per centum of the related contractual liability of the Bank shall be taken into account for the purpose of applying the limitation imposed by section 7 of the Export-Import Bank Act of 1945, as amended; but the full amount of the related contractual liability of such guarantees and insurance shall be taken into account for the purpose of applying the limitation in section 2(c)(1) of that Act, concerning the amount of guarantees and insurance the Bank may have outstanding at any one time thereunder. The aggregate amount of loans plus 25 per centum of the contractual liability of guarantees and insurance outstanding at any one time under this Act shall not exceed $500,000,000.

(c)[2] * * * [Repealed—1980]

SEC. 2.[3] In the event of any losses, as determined by the Board of Directors of the Bank, incurred on loans, guarantees, and insurance extended under this Act, the first $100,000,000 of such losses shall be borne by the Bank; the second $100,000,000 of such losses shall be borne by the Secretary of the Treasury; and any losses in excess thereof shall be borne by the Bank. Reimbursement of the Bank by the Secretary of the Treasury of the amount of losses which are to be borne by the Secretary of the Treasury as aforesaid shall be from funds made available pursuant to section 3 of this

[1] 12 U.S.C. 635j.

[2] Sec. 115 of Public Law 96–470 (94 Stat. 2240) repealed subsec. (c), which had required the Board of Directors of the Bank to submit a quarterly report to Congress on all actions taken under authority of this Act.

[3] 12 U.S.C. 635k.

Act. All guarantees and insurance issued by the Bank shall be considered contingent obligations backed by the full faith and credit of the Government of the United States of America.

SEC. 3.[4] There are hereby authorized to be appropriated to the Secretary of the Treasury without fiscal year limitation $100,000,000 to cover the amount of any losses which are to be borne by the Secretary of the Treasury as provided in section 2 hereof.

SEC. 4.[5] Nothing in this Act shall be construed as a limitation on the powers of the Bank under the Export-Import Bank Act of 1945, as amended; and except as to the standard of reasonable assurance of repayment required under section 2(b)(1) of that Act, all loans, guarantees, and insurance extended hereunder shall be subject to the provisions of said Export-Import Bank Act of 1945, as amended, and to the policies of the Bank with respect to terms of repayment, interest rates, fees, and premiums applicable to loans, guarantees, and insurance extended under that Act.

SEC. 5.[6] The Bank shall not extend loans, guarantees, or insurance under this Act in connection with the sale of defense articles or defense services.

[4] 12 U.S.C. 635*l*.
[5] 12 U.S.C. 635m.
[6] 12 U.S.C. 635n.

b. Establishing the Export Expansion Advisory Committee

Executive Order 11420, July 31, 1968, 33 F.R. 10997, 12 U.S.C. 635j note

Whereas foreign trade is an essential and continuing element in sustaining the growth, strength, and prosperity of our economy, contributes to the improvement of our balance of payments, and fosters the long-term commercial interest of the United States; and

Whereas, on March 20, 1968, I requested the Congress to empower the Export-Import Bank of the United States to use up to $500,000,000 of its loan, guarantee, and insurance authority to finance a broadened program to sell American goods in foreign markets; and

Whereas the Congress has authorized the Bank to extend loans, guarantees, and insurance which, in the judgment of the Board of Directors of the Bank, offer sufficient likelihood of repayment to justify the Bank's support in order to actively foster the foreign trade and long-term commercial interest of the United States; and

Whereas it is desirable and appropriate that guidance concerning the commercial interests and the balance of payments objectives of the United States be provided to the Board of Directors of the Bank in the use of such loan, guarantee, and insurance authority allocated to finance export expansion, and I have stated that I would establish an Export Expansion Advisory Committee to provide such guidance to the Board of Directors of the Bank:

Now, therefore, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

Section 1. Establishment of Advisory Committee. (a) There is hereby established the Export Expansion Advisory Committee (hereinafter referred to as "the Committee").

(b) The Committee shall be composed of the following members: the Secretary of Commerce, who shall be Chairman of the Committee, the Secretary of the Treasury, the Secretary of State, and the President and Chairman of the Board of the Export-Import Bank of the United States.

Sec. 2. Functions of the Committee. The Committee shall review and make recommendations concerning applications and proposals for loans, guarantees, and insurance to be charged against allocations made to finance export expansion and shall provide guidance to the Board of Directors of the Bank concerning the use of such allocations with the view to fostering the foreign trade and long-term commercial interest of the United States.

Sec. 3. Construction. Nothing in this order shall be construed to abrogate, modify, or restrict any function vested by law in, or assigned pursuant to law to, any Federal agency, or any officer thereof or to any Federal interagency council or committee. As used

herein the term "any Federal agency" includes any executive department and any other executive agency.

4. Export Administration

a. Export Administration Act of 1979 [1]

Public Law 96–72 [S. 737], 93 Stat. 503, approved September 29, 1979; as amended by Public Law 96–533 [International Security and Development Cooperation Act of 1980; H.R. 6942], 94 Stat. 3131, approved December 16, 1980; Public Law 97–145 [Export Administration Act of 1981; H.R. 3567], 95 Stat. 1727, approved December 29, 1981; Public Law 98–108 [H.R. 3962], 97 Stat. 744, approved October 1, 1983; Public Law 98–207 [H.R. 4476], 97 Stat. 1391, approved December 5, 1983; Public Law 98–222 [H.R. 4956], 98 Stat. 36, approved February 29, 1984; Public Law 99–64 [Export Administration Amendments Act of 1985; S. 883], 99 Stat. 120, approved July 12, 1985; Public Law 99–399 [Omnibus Diplomatic Security and Antiterrorism Act of 1986; H.R. 4151], 100 Stat. 853, approved August 27, 1986; Public Law 99–633 [S. 2245], 100 Stat. 3522, approved November 7, 1986; Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 100–449 [United States-Canada Free-Trade Agreement Implementation Act of 1988; H.R. 5090], 102 Stat. 1851, approved September 28, 1988; Public Law 101–222 [Anti-Terrorism and Arms Export Amendments Act of 1989; H.R. 91], 103 Stat. 1892, approved December 12, 1989; Public Law 101–510 [National Defense Authorization Act for Fiscal Year 1991; H.R. 4739], 104 Stat. 1485, approved November 5, 1990; Public Law 102–138 [Foreign Relations Authorization Act, Fiscal Years 1992 and 1993; H.R. 1415], 105 Stat. 647, approved October 28, 1991; Public Law 102–182 [H.R. 1724], 105 Stat. 1233, approved December 4, 1991; Public Law 103–10 [H.R. 750], 107 Stat. 40, approved March 27, 1993; Public Law 103–199 [FRIENDSHIP Act; H.R. 3000], 107 Stat. 2317, approved December 17, 1993; Public Law 103–236 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 108 Stat. 382, approved April 30, 1994; Public Law 103–277 [H.R. 4635], 108 Stat. 1407, approved July 5, 1994; Public Law 104–316 [General Accounting Office Act of 1996; H.R. 3864], 110 Stat. 3826, approved October 19, 1996; Public Law 105–277 [Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; H.R. 4328], 111 Stat. 2681, approved October 21, 1998; Public Law 106–508 [H.R. 5239], 114 Stat. 2360, approved November 13, 2000; and Public Law 108–458 [Intelligence Reform and Terrorism Prevention Act of 2004; S. 2845], 118 Stat. 3638, approved December 17, 2004

NOTE.—The Export Administration Act of 1979 replaced the Export Administration Act of 1969, as amended, which expired on September 30, 1979. The Export Administration Amendments Act of 1985 [Public Law 99–64; 99 Stat. 120] comprehensively amended the Export Administration Act of 1979.

AN ACT To provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1.[1] This Act may be cited as the "Export Administration Act of 1979".

FINDINGS

SEC. 2.[2] The Congress makes the following findings:

(1) The ability of the United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by earning foreign exchange, thereby contributing favorably to the trade balance. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, consistent with the economic, security, and foreign policy objectives of the United States.

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

(6) Uncertainty of export control policy can inhibit the efforts of United States business and work to the detriment of the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential

[1] 50 U.S.C. app. 2401 note.
[2] 50 U.S.C. app. 2401.

of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to a positive contribution to the balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

(10) It is important that the administration of export controls imposed for foreign policy purposes give special emphasis to the need to control exports of goods and substances hazardous to the public health and the environment which are banned or severely restricted for use in the United States, and which, if exported, could affect the international reputation of the United States as a responsible trading partner.

(11)[3] Availability to controlled countries of goods and technology from foreign sources is a fundamental concern of the United States and should be eliminated through negotiations and other appropriate means whenever possible.

(12)[3] Excessive dependence of the United States, its allies, or countries sharing common strategic objectives with the United States, on energy and other critical resources from potential adversaries can be harmful to the mutual and individual security of all those countries.

DECLARATION OF POLICY

SEC. 3.[4] The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A)[5] to restrict the export of goods and technology which would make a significant contribution to the military po-

[3] Sec. 201(a) of the FRIENDSHIP Act (Public Law 103–199; 107 Stat. 2320) struck out para. (11), and redesignated paras. (12) and (13) as paras. (11) and (12), respectively. Para. (11) formerly read as follows:

"(11) The acquisition of national security sensitive goods and technology by the Soviet Union and other countries the actions or policies of which run counter to the national security interests of the United States, has led to the significant enhancement of Soviet bloc military-industrial capabilities. This enhancement poses a threat to the security of the United States, its allies, and other friendly nations, and places additional demands on the defense budget of the United States.".

[4] 50 U.S.C. app. 2402.

[5] Sec. 1701 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1738) provided the following:

"SEC. 1701. POLICY.

"It should be the policy of the United States to take all appropriate measures—

"(1) to discourage the proliferation, development, and production of the weapons, material, and technology necessary to produce or acquire missiles that can deliver weapons of mass destruction;

tential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments or common strategic objectives.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States—

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with rep-

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"(2) to discourage countries and private persons in other countries from aiding and abetting any states from acquiring such weapons, material, and technology;

"(3) to strengthen United States and existing multilateral export controls to prohibit the flow of materials, equipment, and technology that would assist countries in acquiring the ability to produce or acquire missiles that can deliver weapons of mass destruction, including missiles, warheads and weaponization technology, targeting technology, test and evaluation technology, and range and weapons effect measurement technology; and

"(4) with respect to the Missile Technology Control Regime ('MTCR') and its participating governments—

"(A) to improve enforcement and seek a common and stricter interpretation among MTCR members of MTCR principles;

"(B) to increase the number of countries that adhere to the MTCR; and

"(C) to increase information sharing among United States agencies and among governments on missile technology transfer, including export licensing, and enforcement activities.".

resentatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make reasonable and prompt efforts to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before imposing export controls. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments or common strategic objectives in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments, or common strategic objectives, and to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so involves sustaining the ability of scientists and other scholars freely to communicate research findings, in accordance with applicable provisions of law, by means of publication, teaching, conferences, and other forms of scholarly exchange.

(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States

as well as to the credibility of the United States as a responsible trading partner.

(14) It is the policy of the United States to cooperate with countries which are allies of the United States and countries which share common strategic objectives with the United States in minimizing dependence on imports of energy and other critical resources from potential adversaries and in developing alternative supplies of such resources in order to minimize strategic threats posed by excessive hard currency earnings derived from such resource exports by countries with policies adverse to the security interests of the United States.[6]

GENERAL PROVISIONS

SEC. 4.[7] (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.[9] 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

[6] Sec. 201(b)(2) of the FRIENDSHIP Act (Public Law 103–199; 107 Stat. 2321) repealed para. (15) which formerly read as follows:

"(15) It is the policy of the United States, particularly in light of the Soviet massacre of innocent men, women, and children aboard Korean Air Lines flight 7, to continue to object to exceptions to the International Control List for the Union of Soviet Socialist Republics, subject to periodic review by the President.".

Congress stated findings in support of this repeal at sec. 201(b)(1) of Public Law 103–199 (107 Stat. 2320; 50 U.S.C. app. 2402 note).

[7] 50 U.S.C. app. 2403.

[8] Sec. 2412(1) of Public Law 100–418 (102 Stat. 1347) inserted ", except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China".

creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

(B) A comprehensive 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 foreign 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)[9] 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 outside 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

[9] Sec. 2412(2) of Public Law 100–418 (102 Stat. 1347) inserted "(except the People's Republic of China)".

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)[10] FEES.—No fee may be charged in connection with the submission or processing of an export license application.

NATIONAL SECURITY CONTROLS

SEC. 5.[11] (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.[12] 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.

[10] Sec. 2411 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1347) added subsec. (g).

[11] 50 U.S.C. app. 2404.

[12] Sec. 2413 of Public Law 100–418 (102 Stat. 1347) inserted "For purposes of the preceding sentence, the term 'affiliates' includes both governmental entities and commercial entities that are controlled in fact by controlled countries.".

(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)[13] (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 con-

[13] Sec. 2414 of Public Law 100–418 (102 Stat. 1347) added para. (4).

tains 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)[14] 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)[15] (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 of the group known as the Coordinating Com-

[14] Sec. 2425(b) of Public Law 100–418 (102 Stat. 1360) required the following:

"(b) REPORT BY SECRETARIES OF COMMERCE AND DEFENSE.—The Secretary of Commerce and the Secretary of Defense shall each evaluate and, not later than 4 months after the date of the enactment of this Act [August 23, 1988], shall jointly prepare and submit a report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the review by the Department of Defense, for national security purposes as provided in the Export Administration Act of 1979, of export license applications for exports to countries other than controlled countries under section 5(b)(1) of that Act.".

[15] Sec. 2415(a) of Public Law 100–418 (102 Stat. 1348) amended and restated para. (2).

mittee 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 and 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)[16] 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.

[16] Sec. 2415(b) of Public Law 100–418 (102 Stat. 1349) added para. 3.

(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.[17]

(3)[18] 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)[19] 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

[17] Sec. 2416(a) of Public Law 100–418 (102 Stat. 1349) struck out "If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution." and inserted in lieu thereof the final four sentences of para. (2).

[18] Sec. 2416(b) of Public Law 100–418 (102 Stat. 1349) amended and restated para. (3).

[19] Sec. 2416(b)(3) of Public Law 100–418 (102 Stat. 1350) added para. (4).

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)[20] (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)[20] (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)[21] 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;

[20] Sec. 2416(c) of Public Law 100–418 (102 Stat. 1350) added paras. (5) and (6).
[21] Sec. 2416(c)(3) of Public Law 100–418 (102 Stat. 1351) added para. (7).

(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[22] 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 any goods 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 licenses 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;

[22] Sec. 2416(b)(2) of Public Law 100–418 (102 Stat. 1350) struck out "at least annually" and inserted in lieu thereof "on an ongoing basis".

(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 (l) 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 overlap, 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)[23] 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)[24] 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 outside 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

[23] Sec. 2417 of Public Law 100–418 (102 Stat. 1351) added para. (6).
[24] Sec. 2418(a) of Public Law 100–418 (102 Stat. 1352) amended and restated subsec. (f).

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 preceding sentence shall not apply if the President deter-

mines 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 notice 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 concur-

rence 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[25] 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

[25] Sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives. Sec. 1(a)(5) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations.

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[26] 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 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.

[26] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

(10) AVAILABILITY DEFINED.—For purposes of this subsection and subsections (f) and (h), the term "available in fact to controlled 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)[27] 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)[27] (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

[27] Sec. 2419(1) of Public Law 100–418 (102 Stat. 1357) inserted "(1)" before the first sentence and added a new para. (2).

(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 subsection (h) of this section, shall determine whether to make such revision, 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)[28] revisions of the control list (as provided in subsection (c)(4)), including proposed revisions of multilateral controls in which the United States participates, (E)[28] the issuance of regulations, and (F)[28] 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

[28] Sec. 2420(a) of Public Law 100–418 (102 Stat. 1357) redesignated clause (E) as clause (F), struck out clause (D), and inserted new clauses (D) and (E). Previously, clause (D) read as follows: "(D) exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls, and".

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 export 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 Sec-

retary 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.[29]

(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[30] 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)[31] 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.

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[29] Sec. 2418(b) of Public Law 100–418 (102 Stat. 1357) added this sentence.

[30] Sec. 2421(a) of Public Law 100–418 (102 Stat. 1358) struck out "The President" and inserted in lieu thereof "Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President".

[31] Sec. 2446 of Public Law 100–418 (102 Stat. 1369) amended and restated para. (1).

(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.[32]

(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

[32] Sec. 2421(b) of Public Law 100–418 (102 Stat. 1358) added this sentence.

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 Munitions List, or the military use of any item on the International Control List of the Coordinating Committee.

(m)[33] 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

[33] Sec. 2422 of Public Law 100–418 (102 Stat. 1358) amended and restated subsec. (m).

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.

FOREIGN POLICY CONTROLS

SEC. 6.[34] (a) AUTHORITY.—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.

(3) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (f). Any such extension and any subsequent extension shall not be for a period of more than a year.

(4) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(5) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

(6)[35] Before imposing, expanding, or extending export controls under this section on exports to a country which can use goods,

[34] 50 U.S.C. app. 2405.
[35] Sec. 2423(a) of Public Law 100–418 (102 Stat. 1358) added para. (6).

technology, or information available from foreign sources and so incur little or no economic costs as a result of the controls, the President should, through diplomatic means, employ alternatives to export controls which offer opportunities of distinguishing the United States from, and expressing the displeasure of the United States with, the specific actions of that country in response to which the controls are proposed. Such alternatives include private discussions with foreign leaders, public statements in situations where private diplomacy is unavailable or not effective, withdrawal of ambassadors, and reduction of the size of the diplomatic staff that the country involved is permitted to have in the United States.

(b) CRITERIA.—(1) Subject to paragraph (2) of this subsection, the President may impose, extend, or expand export controls under this section only if the President determines that—

(A) such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that foreign policy purpose cannot be achieved through negotiations or other alternative means;

(B) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

(C) the reaction of other countries to the imposition, extension, or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests;

(D) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

(E) the United States has the ability to enforce the proposed controls effectively.

(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985, the President, in determining whether to extend those controls, as required by subsection (a)(3) of this section, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls.

(c) CONSULTATION WITH INDUSTRY.—The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 before imposing any export control under this section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b)(1) and such other matters as the Secretary considers appropriate.

(d) CONSULTATION WITH OTHER COUNTRIES.—When imposing export controls under this section, the President shall, at the earliest appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate, with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.

(e) ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

(f) CONSULTATION WITH THE CONGRESS.—(1) The president may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on Foreign Affairs[36] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The President may not impose, expand, or extend export controls under this section until the President has submitted to the Congress a report—

(A) specifying the purpose of the controls;

(B) specifying the determinations of the President (or, in the case of those export controls described in subsection (b)(2), the considerations of the President) with respect to each of the criteria set forth in subsection (b)(1), the bases for such determinations (or considerations), and any possible adverse foreign policy consequences of the controls;

(C) describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.

(3) To the extent necessary to further the effectiveness of the export controls portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act.[37]

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[36] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[37] Sec. 128(c) of Public Law 104–316 (110 Stat. 3841) struck out a sentence at this point that read as follows: "Each such report shall, at the same time it is submitted to the Congress, also be submitted to the General Accounting Office for the purpose of assessing the report's full compliance with the intent of this subsection.".

(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3)(A) of this Act.

(5) In addition to any written report required, under this section, the Secretary, not less frequently than annually, shall present in oral testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs[36] of the House of Representatives a report on policies and actions taken by the Government to carry out the provisions of this section.

(g) EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES AND FOR CERTAIN FOOD EXPORTS.—This section does not authorize export controls on medicine or medical supplies. This section also does not authorize export controls on donations of goods (including, but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) that are intended to meet basic human needs. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Administrator of the Agency for International Development[38] in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Administrator[38] with respect to developing countries, shall determine whether the proposed export control on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interest of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Director of the United States International Development Cooperation Agency, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. The subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act. This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985. Notwithstanding

[38] Sec. 1422(b)(7) of Public Law 105–277 (112 Stat. 2681–793) struck out "Director of the United States International Development Cooperation Agency" and inserted in lieu thereof "Administrator of the Agency for International Development", and struck out "Director" and inserted in lieu thereof "Administrator".

the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of section 3 of this Act.

(h) FOREIGN AVAILABILITY.—(1) In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

(2) Before extending any export control pursuant to subsection (a)(3) of this section, the President shall evaluate the results of his actions under paragraph (1) of this subsection and shall include the results of that evaluation in his report to the Congress pursuant to subsection (f) of this section.

(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (1) of this section if the Secretary determines that such action is appropriate.

(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this Act.

(i) INTERNATIONAL OBLIGATIONS.—The provisions of subsections (b), (c), (d), (e), (g), and (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

(j)[39] COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—(1) A validated license shall be required for the export of goods or tech-

[39] Sec. 4 of Public Law 101–222 (103 Stat. 1897) amended and restated subsec. (j).

In Department of State Public Notice 1878 of August 12, 1993 (58 F.R. 52523), the Secretary of State stated: "In accordance with section 6(j) of the Export Administration Act (50 U.S.C. App.

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nology to a country if the Secretary of State has made the following determinations:

(A) The government of such country has repeatedly provided support for acts of international terrorism.

(B) The export of such goods or technology could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(2) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs[36] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license required by paragraph (1).

(3) Each determination of the Secretary of State under paragraph (1)(A), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.

(4) A determination made by the Secretary of State under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of

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2405(j)), I hereby determine that Sudan is a country which has repeatedly provided support for acts of international terrorism.".

In Department of State Public Notice 4863 of October 7, 2004 (69 F.R. 61702), the Secretary of State stated: "In accordance with Section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), I hereby rescind the Determination of September 13, 1990 (Public Notice 1264) that Iraq is a country which has repeatedly provided support for acts of international terrorism.".

The list of sec. 6(j) countries as of December 31, 2005, included Cuba, Iran, Libya, North Korea, Sudan, and Syria.

Sec. 527 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102; 119 Stat. 2205), provided the following:

"PROHIBITION ON BILATERAL ASSISTANCE TO TERRORIST COUNTRIES

"SEC. 527. (a) Funds appropriated for bilateral assistance under any heading of this Act and funds appropriated under any such heading in a provision of law enacted prior to enactment of this Act, shall not be made available to any country which the President determines—

"(1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or

"(2) otherwise supports international terrorism.

"(b) The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and, at least 15 days before the waiver takes effect, shall notify the Committees on Appropriations of the waiver (including the justification for the waiver) in accordance with the regular notification procedures of the Committees on Appropriations.

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"PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

"SEC. 542. (a) None of the funds appropriated or otherwise made available by this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of section 6(j) of the Export Administration Act. The prohibition under this section with respect to a foreign government shall terminate 12 months after that government ceases to provide such military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after October 1, 1997.

"(b) Assistance restricted by subsection (a) or any other similar provision of law, may be furnished if the President determines that furnishing such assistance is important to the national interests of the United States.

"(c) Whenever the waiver authority of subsection (b) is exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such assistance. Any such report shall include a detailed explanation of the assistance to be provided, including the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests.".

the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(5)[40] (A) As used in paragraph (1), the term "repeatedly provided support for acts of international terrorism" shall include the recurring use of any part of the territory of the country as a sanctuary for terrorists or terrorist organizations.

(B) In this paragraph—

(i) the term "territory of a country" means the land, waters, and airspace of the country; and

(ii) the term "sanctuary" means an area in the territory of a country—

(I) that is used by a terrorist or terrorist organization—

(aa) to carry out terrorist activities, including training, financing, and recruitment; or

(bb) as a transit point; and

(II) the government of which expressly consents to, or with knowledge, allows, tolerates, or disregards such use of its territory.

(6)[40] The Secretary and the Secretary of State shall include in the notification required by paragraph (2)—

(A) a detailed description of the goods or services to be offered, including a brief description of the capabilities of any article for which a license to export is sought;

(B) the reasons why the foreign country or international organization to which the export or transfer is proposed to

[40] Sec. 7102(c)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3776) redesignated para. (5) as para. (6) and added a new para. (5). Sec. 736 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 506) added para. (6), as redesignated.

Sec. 7102(c) of such Act further provided that:

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection or the amendments made by this subsection shall be construed as affecting any determination made by the Secretary of State pursuant to section 6(j) of the Export Administration Act of 1979 with respect to a country prior to the date of enactment of this Act.

"(3) IMPLEMENTATION.—The President shall implement the amendments made by paragraph (1) by exercising the authorities of the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).".

be made needs the goods or services which are the subject of such export or transfer and a description of the manner in which such country or organization intends to use such articles, services, or design and construction services;

(C) the reasons why the proposed export or transfer is in the national interest of the United States;

(D) an analysis of the impact of the proposed export or transfer on the military capabilities of the foreign country or international organization to which such export or transfer would be made;

(E) an analysis of the manner in which the proposed export would affect the relative military strengths of countries in the region to which the goods or services which are the subject of such export would be delivered and whether other countries in the region have comparable kinds and amounts of articles, services, or design and construction services; and

(F) an analysis of the impact of the proposed export or transfer on the United States relations with the countries in the region to which the goods or services which are the subject of such export would be delivered.

(k)[41] NEGOTIATIONS WITH OTHER COUNTRIES.—

(1) COUNTRIES PARTICIPATING IN CERTAIN AGREEMENTS.—The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with those countries participating in the groups known as the Coordinating Committee, the Missile Technology Control Regime, the Australia Group, and the Nuclear Suppliers' Group, regarding their cooperation in restricting the export of goods and technology in order to carry out—

(A) the policy set forth in section 3(2)(B) of this Act, and

(B) United States policy opposing the proliferation of chemical, biological, nuclear, and other weapons and their delivery systems, and effectively restricting the export of dual use components of such weapons and their delivery systems, in accordance with this subsection and subsections (a) and (l).

Such negotiations shall cover, among other issues, which goods and technology should be subject to multilaterally agreement export restrictions, and the implementation of the restrictions consistent with the principles identified in section 5(b)(2)(C) of this Act.

(2) OTHER COUNTRIES.—The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with countries and groups of countries not referred to in paragraph (1) regarding their cooperation in restricting the export of goods and technology consistent with purposes set forth in paragraph (1). In cases where such negotiations produce agreement on export re-

[41] Sec. 1702(a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1739) redesignated subsecs. (k) through (p) as subsecs. (m) through (r), and added subsecs. (k) and (l).

strictions that the Secretary, in consultation with the Secretary of State and the Secretary of Defense, determines to be consistent with the principles identified in section 5(b)(2)(C) of this Act, the Secretary may treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports are treated to countries that are MTCR adherents.

(3) REVIEW OF DETERMINATIONS.—The Secretary shall annually review any determination under paragraph (2) with respect to a country. For each country which the Secretary determines is not meeting the requirements of an effective export control system in accordance with section 5(b)(2)(C), the Secretary shall restrict or eliminate any preferential licensing treatment for exports to that country provided under this subsection.

(l)[41] MISSILE TECHNOLOGY.—

(1) DETERMINATION OF CONTROLLED ITEMS.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies—

(A) shall establish and maintain, as part of the control list established under this section, a list of all dual use goods and technology on the MTCR Annex; and

(B) may include, as part of the control list established under this section, goods and technology that would provide a direct and immediate impact on the development of missile delivery systems and are not included in the MTCR Annex but which the United States is proposing to the other MTCR adherents to have included in the MTCR Annex.

(2) REQUIREMENT OF INDIVIDUAL VALIDATED LICENSES.—The Secretary shall require an individual validated license for—

(A) any export of goods or technology on the list established under paragraph (1) to any country; and

(B) any export of goods or technology that the exporter knows is destined for a project or facility for the design, development, or manufacture of a missile in a country that is not an MTCR adherent.

(3) POLICY OF DENIAL OF LICENSES.—(A) Licenses under paragraph (2) should in general be denied if the ultimate consignee of the goods or technology is a facility in a country that is not an adherent to the Missile Technology Control Regime and the facility is designed to develop or build missiles.

(B) Licenses under paragraph (2) shall be denied if the ultimate consignee of the goods or technology is a facility in a country the government of which has been determined under subsection (j) to have repeatedly provided support for acts of international terrorism.

(4) CONSULTATION WITH OTHER DEPARTMENTS.—(A) A determination of the Secretary to approve an export license under paragraph (2) for the export of goods or technology to a country of concern regarding missile proliferation may be made only after consultation with the Secretary of Defense and the Secretary of State for a period of 20 days. The countries of concern

referred to in the preceding sentence shall be maintained on a classified list by the Secretary of State, in consultation with the Secretary and the Secretary of Defense.

(B) Should the Secretary of Defense disagree with the determination of the Secretary to approve an export license to which subparagraph (A) applies, the Secretary of Defense shall so notify the Secretary within the 20 days provided for consultation on the determination. The Secretary of Defense shall at the same time submit the matter to the President for resolution of the dispute. The Secretary shall also submit the Secretary's recommendation to the President on the license application.

(C) The President shall approve or disapprove the export license application within 20 days after receiving the submission of the Secretary of Defense under subparagraph (B).

(D) Should the Secretary of Defense fail to notify the Secretary within the time period prescribed in subparagraph (B), the Secretary may approve the license application without awaiting the notification by the Secretary of Defense. Should the President fail to notify the Secretary of his decision on the export license application within the time period prescribed in subparagraph (C), the Secretary may approve the license application without awaiting the President's decision on the license application.

(E) Within 10 days after an export license is issued under this subsection, the Secretary shall provide to the Secretary of Defense and the Secretary of State the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary indicates the need to receive such application and documents.

(5) INFORMATION SHARING.—The Secretary shall establish a procedure for information sharing with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, and other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

(m)[41, 42] CHEMICAL AND BIOLOGICAL WEAPONS.—

(1) ESTABLISHMENT OF LIST.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons, the licensing of which would be effective in barring acquisition or enhancement of such capability.

[42] Sec. 1702(a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1739) redesignated subsecs. (m) through (r), as redesignated, as subsecs. (n) through (s), respectively. Sec. 504(b) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title V of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993; Public Law 102–138; 105 Stat. 724) added a new subsec. (m).

Subsequently, sec. 309(a) of Public Law 102–182 (105 Stat. 1258) repealed title V of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138), and the amendments made by that title, including these subsection redesignations. However, sec. 304(b) of Public Law 102–182 (105 Stat. 1246) made the same redesignations and inserted a new subsec. (m). This second new subsec. (m) is identical to that earlier added by Public Law 102–138.

(2) REQUIREMENT FOR VALIDATED LICENSES.—The Secretary shall require a validated license for any export of goods or technology on the list established under paragraph (1) to any country of concern.

(3) COUNTRIES OF CONCERN.—For purposes of paragraph (2), the term "country of concern" means any country other than—

(A) a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of goods or technology on the list established under paragraph (1); and

(B) such other countries as the Secretary of State, in consultation with the Secretary and the Secretary of Defense, shall designate consistent with the purposes of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

(n)[41, 42] CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act—

(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (1) of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act,

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

(o)[41, 42] CONTROL LIST.—The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made pe-

riodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

(p)[41, 42] EFFECT ON EXISTING CONTRACTS AND LICENSES.—The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information—

(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology, or other information, or

(2) under a validated license or other authorization issued under this Act,

unless and until the President determines and certifies to the Congress that—

(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

(C) the export controls will continue only so long as the direct threat persists.

(q)[41, 42] EXTENSION OF CERTAIN CONTROLS.—Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

(r)[41, 42] EXPANDED AUTHORITY TO IMPOSE CONTROLS.—(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee 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.

(2) For purposes of this subsection, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress, having received on a determination of the President under section 6(o)(1) of the Export Ad-

ministration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.", with the date of the receipt of the determination and report inserted in the blank.

(3) In the computation of the periods of 30 days referred to in paragraph (1), 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.

(s)[42, 43] SPARE PARTS.—(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts for parts in goods subject to such export controls.

(2) With respect to export controls imposed under this section before the date of the enactment of this subsection, an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

SHORT SUPPLY CONTROLS

SEC. 7.[44] (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

[43] Sec. 2423(b) of Public Law 100–418 (102 Stat. 1359) added subsec. (s), as redesignated by Public Law 101–510, and further redesignated by sec. 304(b)(1) of Public Law 102–182.

[44] 50 U.S.C. app. 2406.

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 controls, 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 paragraph (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)[45] 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 that 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) may

[45] Sec. 305 of the United States-Canada Free Trade Agreement Implementation Act of 1988 (Public Law 100–449; 102 Stat. 1876) amended and restated para. (1).

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 or 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.[46]

(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 ex-

[46] Sec. 2424(a) of Public Law 100–418 (102 Stat. 1359) struck out para. (4), which previously read as follows:

"(4) Notwithstanding the provisions of section 20 of this Act, the provisions of this subsection shall expire on September 30, 1990.".

porter, 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[47] 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 ex-

[47] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

port 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,[47] 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 that 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 esti-

mated 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.

FOREIGN BOYCOTTS

SEC. 8.[48] (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 requirement 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, invest-

[48] 50 U.S.C. app. 2407.

ment, 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 require-

ments 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 action 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 regu-

lation 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.

PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

SEC. 9.[49] (a) FILING OF PETITIONS.—Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) DECISION OF THE SECRETARY.—Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

(c) FACTORS TO BE CONSIDERED.—For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

[49] 50 U.S.C. app. 2408.

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS; OTHER INQUIRIES

SEC. 10.[50] (a) PRIMARY RESPONSIBILITY OF THE SECRETARY.—(1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign polices and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

(b) INITIAL SCREENING.—Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to this applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case of such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilat-

[50] 50 U.S.C. app. 2409.

eral agreement, formal or informal, to which the United States is a part and, if so inform the applicant of this requirement.

(c) ACTION ON CERTAIN APPLICATIONS.—Except as provided in subsection (o), in each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within 60 days after a properly completed application has been submitted pursuant to this section.

(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—Except in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 20 days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

Notwithstanding the 10-day period set forth in subsection (b), in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, immediately upon receipt of the properly completed application, refer the application to such department or agency for its review. Such review shall be concurrent with that of the Department of Commerce.

(e) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application. The information or recommendations shall be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (o), before the expiration of the time periods permitted by that subsection. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2)(A) Except in the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 20-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(B) In the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary, before the expiration of the 15-day period provided in subsection (o)(1), that more time is required for review by such department or agency, the Secretary shall notify the applicant, pursuant to subsection (o)(1)(C), that additional time is required to consider the application, and such department or agency shall have additional time to consider the application within the limits permitted by subsection (o)(2). If such department or agency does not submit its recommendations within the time periods permitted under subsection (o), it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) ACTION BY THE SECRETARY.—(1) Within 60 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 60-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant in writing of the specific questions raised and any such negative considerations or recommendations. Before a final determination with respect to the application in made, the applicant shall be entitled—

(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and

(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations.

The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of—

(A) the determination,

(B) the statutory basis for the proposed denial,

(C) the policies set forth in section 3 of this Act which would be furthered by the proposed denial,

(D) what if any modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with export controls imposed under this Act,

(E) which officers and employees of the Department of Commerce who are familiar with the application will be made rea-

sonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate,

(F) to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the determination to deny the application, and

(G) the availability of appeal procedures.

The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 20 days after notification of the request, shall—

(A) recommend to the President and the Secretary[51] that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

[51] Sec. 2425(a)(1) of Public Law 100–418 (102 Stat. 1360) inserted "and the Secretary".

(B) notify the Secretary that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary that the export of goods or technology be approved.

Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense.[52] If the President notifies the Secretary, with 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country. If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification.[53]

(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.[54]

(h) MULTILATERAL CONTROLS.—In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 40 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 40-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral

[52] Sec. 2425(a)(2) of Public Law 100–418 (102 Stat. 1360) added this sentence.

[53] Sec. 2425(a)(3) of Public Law 100–418 (102 Stat. 1360) added this sentence.

[54] Sec. 2425(a)(4) of Public Law 100–418 (102 Stat. 1360) struck out para. (4), which previously read as follows:

"(4) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense.".

review. At the end of every 40-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) RECORDS.—The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

(j) APPEAL AND COURT ACTION.—(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

(k) CHANGES IN REQUIREMENTS FOR APPLICATIONS.—Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

(l) OTHER INQUIRIES.—(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the control list, the Secretary shall, within 10 working days after receipt of the request, inform the person making the request of the proper classification.

(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under this Act to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receipt of the

request, reply with that information to the person making the request.

(m) SMALL BUSINESS ASSISTANCE.—Not later than 120 days after the date of the enactment of this subsection, the Secretary shall develop and transmit to the Congress a plan to assist small businesses in the export licensing application process under this Act. The plan shall include, among other things, arrangements for counseling small businesses on filing applications and identifying goods or technology on the control list, proposals for seminars and conferences to educate small businesses on export controls and licensing procedures, and the preparation of informational brochures. The Secretary shall, not later than 120 days after the date of the enactment of the Export Enhancement Act of 1988, report to the Congress on steps taken to implement the plan developed under this subsection to assist small businesses in the export licensing application process.[55]

(n) REPORTS ON LICENSE APPLICATIONS.—(1) Not later than 180 days after the date of the enactment of this subsection, and not later than the end of each 3-month period thereafter, the Secretary shall submit to the Committee on Foreign Affairs[56] of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate a report listing—

(A) all applications on which action was completed during the preceding 3-month period and which required a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, before notification of a decision to approve or deny the application was sent to the applicant; and

(B) in a separate section, all applications which have been in process for a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, and upon which final action has not been taken.

(2) With regard to each application, each listing shall identify—

(A) the application case number;

(B) the value of the goods or technology to which the application relates;

(C) the country of destination of the goods or technology;

(D) the date on which the application was received by the Secretary;

(E) the date on which the Secretary approved or denied the application;

(F) the date on which the notification of approval or denial of the application was sent to the applicant; and

(G) the total number of days which elapsed between receipt of the application, in its properly completed form, and the earlier of the last day of the 3-month period to which the report relates, or the date on which notification of approval or denial of the application was sent to the applicant.

(3) With respect to an application which was referred to other departments or agencies, the listing shall also include—

[55] Sec. 2425(c) of Public Law 100–418 (102 Stat. 1361) added this sentence.

[56] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

(A) the departments or agencies to which the application was referred;

(B) the date or dates of such referral; and

(C) the date or dates on which recommendations were received from those departments or agencies.

(4) With respect to an application referred to any other department or agency which did not submit or has not submitted its recommendations on the application within the period permitted under subsection (e) of this section to submit such recommendations, the listing shall also include—

(A) the office responsible for processing the application and the position of the officer responsible for the office; and

(B) the period of time that elapsed before the recommendations were submitted or that has elapsed since referral of the application, as the case may be.

(5) Each report shall also provide an introduction which contains—

(A) summary of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, grouped according to—

(i) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, as follows: 61 to 75 days, 76 to 90 days, 91 to 105 days, 106 to 120 days, and more than 120 days; and

(ii) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, beyond the period permitted under subsection (c), (f)(1), or (h) of this section for the processing of applications, as follows: not more than 15 days, 16 to 30 days, 31 to 45 days, 46 to 60 days, and more than 60 days; and

(B) a summary by country of destination of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in applications, on which action was not completed within 60 days.

(o) EXPORTS TO MEMBERS OF COORDINATING COMMITTEE.—(1) Fifteen working days after the date of formal filing with the Secretary of an individual validated license application for the export of goods or technology to a country that maintains export controls on such goods or technology pursuant to the agreement of the governments participating in the group known as the coordinating Committee, 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—

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval;

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied; or

(C) the Secretary requires additional time to consider the application and the applicant has been so informed.

(2) In the event that the Secretary notifies an applicant pursuant to paragraph (1)(C) that the Secretary notifies an applicant pursuant to paragraph (1)(C) that more time is required to consider an individual validated license application, 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 30 working days after the date that such license application was formally filed with the Secretary unless—

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval; or

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied.

(3) In reviewing an individual license application subject to this subsection, the Secretary shall evaluate the information set forth in the application and the reliability of the end-user.

(4) Nothing in this subsection shall affect the scope or availability of licenses authorizing multiple exports set forth in section 4(a)(2) of this Act.

(5) The provisions of this subsection shall take effect 4 months after the date of the enactment of the Export Administration Amendments Act of 1985.

VIOLATIONS

SEC. 11.[57] (a) IN GENERAL.—Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) WILLFUL VIOLATIONS.—(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was

[57] 50 U.S.C. app. 2410.

issued, willfully fails to report such use of the Secretary of Defense—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology—

(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act or any regulation, order, or license issued with respect to such control, or

(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act.

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order, or license issued under this act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed $100,000.

(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this Act which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs[55] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

(d) PAYMENT OF PENALTIES.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) REFUNDS.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c), or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g), shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty imposed pursuant to subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) ACTIONS FOR RECOVERY OF PENALTIES.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c) a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under section 5 of this Act (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

(h) PRIOR CONVICTIONS.—(1)[58] No person convicted of a violation of this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act,[58] section 793, 794, or 798 of title 18, United States Code, section 4(b) on the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

(2)[58] The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in section 13(c) of this Act.

(i) OTHER AUTHORITIES.—Nothing in subsection (c), (d), (f), (g), or (h) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle, administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

MULTILATERAL EXPORT CONTROL VIOLATIONS

SEC. 11A.[59] (a) DETERMINATION BY THE PRESIDENT.—The President, subject to subsection (c), shall apply sanctions under sub-

[58] Sec. 2426 of Public Law 100–418 (102 Stat. 1361) inserted "(1)", inserted "this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act,", and added para. (2).

[59] 50 U.S.C. app. 2410a. Sec. 2444 of Public Law 100–418 (102 Stat. 1366) added sec. 11A.

section (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 effect 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)[60] 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.[61] (a) VIOLATIONS BY UNITED STATES PERSONS.—

(1)[62] 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,[63] 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).

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[60] As enrolled; should probably read "(2)".

[61] 50 U.S.C. app. 2410b. Sec. 1702(b) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1741) added sec. 11B. In a memorandum of June 15, 1993 (58 F.R. 33182), the President delegated authorities and duties outlined in sec. 11B to the Secretary of Commerce, with the following exceptions:

—sec. 11B(b)(1)(A) (insofar as such section authorizes determinations with respect to violations by U.S. persons of the AECA), sec. 11B(b)(1) (insofar as such section authorizes determinations regarding activities by foreign persons, and sec. 11B(b)(5)—delegated to Secretary of State;

—sec. 11B(a)(3), 11B(b)(6), 11B(b)(7)(A) (findings)—Secretary of Defense;

—sec. 11B(b)(6) (waivers)—Secretary of State shall transmit to Congress, with notification to Secretary of the Treasury;

—sec. 11B(b)(1) (pursuant to determination made by Secretary of State to prohibit certain imports), and sec. 11B(b)(7) (exceptions)—Secretary of the Treasury.

[62] See Presidential Memorandum of June 25, 1991 (56 F.R. 31041; July 8, 1991), delegating authority regarding missile technology proliferation.

[63] For text, see *Legislation on Foreign Relations Through 2005*, vol. I–A.

(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 is 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 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)[64] SANCTIONS.—(A) Subject to paragraph (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,

[64] Public Notice 3513 (November 17, 2000; 65 F.R. 79441) imposed sanctions pursuant to this paragraph on the Shahid Hemmat Industrial Group (SHIG) (Iran) and the SANAM Industrial Group (Iran). Subsequently, other sanctions were imposed pursuant to this paragraph on the National Development Complex (Pakistan) and the China Metallurgical Equipment Corporation (China) by Public Notice 3774 (September 1, 2001; 66 F.R. 47256); on the Changgwang Sinyong Corporation (North Korea) by Public Notice 4106 (August 16, 2002; 67 F.R. 54693), Public Notice 4326 (March 24, 2003; 63 F.R. 16113) and Public Notice 4418 (July 25, 2003; 68 F.R. 44136); on Mickhail Pavlovich Vladov (Moldovan person), Cuanta S.A. (Moldova) and Computer and Communicatii SRL (Moldova) by Public Notice 4374 (May 9, 2003; 68 F.R. 31740); on the China North Industries Corporation (China) by Public Notice 4493 (September 19, 2003; 68 F.R. 54930); on Blagoja Samakoski (Macedonian national) and Mikrosam (Macedonia) by Public Notice 4574 (December 24, 2003; 68 F.R. 74692); and on the Federal Research and Production Complex Altay (Russia) by Public Notice 4771 (July 22, 2004; 69 F.R. 43875).

or if the President has made a determination with respect to a foreign person, under section 73(a) of the Arms Export Control Act,[63] 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 engages 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 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.

(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, 19887, 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.[65] (a)[66] 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,[67] 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

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[65] 50 U.S.C. app. 2410c. Sec. 505(a) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title V of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993; Public Law 102–138; 105 Stat. 724) added sec. 11C. Subsequently, sec. 309(a) of Public Law 102–182 (105 Stat. 1258) repealed title V of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, and all the amendments therein, including this new sec. 11C. However, sec. 305(a) of Public Law 102–182 (105 Stat. 1247) amended this Act by inserting a new sec. 11C at this point.

Executive Order 12851 of June 11, 1993 (58 F.R. 33181) delegated the authority in sec. 11C to the Secretary of State with the following exceptions:

—sec. 11C(c)(1)(A), pursuant to a determination made by the Secretary of State under sec. 81(a)(1) of the AECA or sec. 11C(a)(1) of this Act, as well as the authority and duties provided for in sec. 81(c)(2) of the AECA and sec. 11C(c)(2) of this Act—Secretary of Defense;

—sec. 11C(c)(1)(B), pursuant to a determination made by the Secretary of State under sec. 81(a)(1) of the AECA, or sec. 11C(a)(1) of this Act, and the obligation to implement the exceptions provided for in sec. 81(c)(2) of the AECA or sec. 11C(c)(2) of this Act, insofar as the exceptions affect imports of goods into the United States—Secretary of the Treasury.

[66] Sanctions pursuant to sec. 11C, announced in Public Notice 4071 (July 9, 2002; 67 F.R. 48696), were placed on the following companies and individuals, their successors, parents, or subsidiaries: Jiangsu Yongli Chemicals and Technology Import and Export Corporation (China), Q.C. Chen (China), China Machinery and Equipment Import Export Corporation (China), CMEC Machinery and Electric Equipment Import Export Company Ltd. (China), CMEC Machinery and Electrical Import Export Company, Ltd. (China), China Machinery and Electric Equipment Import and Export Company (China), Wha Cheong Tai Company Ltd. (China), China Shipbuilding Trading Company (China), and Hans Raj Shiv (previously residing in India, and last believed to be in the Middle East).

Sanctions pursuant to sec. 11C, announced in Public Notice 4280 (February 4, 2003; 68 F.R. 8068) were also placed on the following companies and individuals, their successors, parents, or subsidiaries: NEC Engineers Private, Ltd. (company originally based in India, but now also operating in the Middle East and Eurasia), Hans Raj Shiv (previously residing in India, and believed to be in the Middle East).

Sanctions pursuant to sec. 11C, announced in Public Notice 4435 (August 7, 2003; 67 F.R. 48696), were also placed on the following companies and individuals, their successors, parents, or subsidiaries: Mohammed al-Khatib (Jordan).

[67] Sec. 309(b)(1) of Public Law 102–182 (105 Stat. 1258) deemed this date of enactment to be the date of enactment of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138), October 28, 1991.

(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 WHICH 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 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 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.

ENFORCEMENT

SEC. 12.[68] (a) GENERAL AUTHORITY.—(1) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department of agency (and such officers or employees) may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act.

(2)(A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize goods or technology at those ports of entry or exit from the United States where officers

[68] 50 U.S.C. app. 2411.

of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act:

(i) Stop, search, and examine a vehicle, vessel, aircraft, or person on which or whom such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft, or person, or in such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act.

(iv) Make arrests without warrant for any violation of this Act committed in his or her presence or view or if the officer has probable cause to believe that the person to be arrested has committed or is committing such a violation.

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws. The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3). In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export license authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.[69]

(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of section 8 of this Act and, in the enforcement of the other provisions of this Act, the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

[69] Sec. 2427 of Public Law 100–418 (102 Stat. 1361) added the final two sentences of this paragraph.

(B) The Secretary may designate any employee of the Office of Export Enforcement of the Department of Commerce to do the following in carrying out enforcement authority under this Act:

(i) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act.

(ii) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.

(iii) Carry firearms in carrying out any activity described in clause (i) or (ii).

(4) The authorities first conferred by the Export Administration Amendments Act of 1985 under paragraph (3) shall be exercised pursuant to guidelines approved by the Attorney General. Such guidelines shall be issued not later than 120 days after the date of the enactment of the Export Administration Amendments Act of 1985.

(5) All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 11(c) of this Act, or to the Attorney General for criminal action in accordance with this Act.

(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act not more than $12,000,000 in the fiscal year 1985 and not more than $14,000,000 in the fiscal year 1986.

(7) Not later than 90 days after the date of the enactment of the Export Administration Amendments Act of 1985, the Secretary, with the concurrence of the Secretary of the Treasury, shall publish in the Federal Register procedures setting forth, in accordance with this subsection, the responsibilities of the Department of Commerce and the United States Customs Service in the enforcement of this Act. In addition, the Secretary, with the concurrence of the Secretary of the Treasury, may publish procedures for the sharing of information in accordance with subsection (c)(3) of this section, and procedures for the submission to the appropriate departments and agencies by private persons of information relating to the enforcement of this Act.

(8) For purposes of this section, a reference to the enforcement of this Act or to a violation of this Act includes a reference to the enforcement or a violation of any regulation, order, or license issued under this Act.

(b) IMMUNITY.—No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) CONFIDENTIALITY.—(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United

States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office.[70] All information at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act, 1921, be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office [70] who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office [70] shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) Any department or agency which obtains information which is relevant to the enforcement of this Act, including information pertaining to any investigation, shall furnish such information to each department or agency with enforcement responsibilities under this Act to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in sub-

[70] Sec. 8(b) of the GAO Human Capital Reform Act of 2004 (Public Law 108–271; 118 Stat. 814) provided: "Any reference to the General Accounting Office in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Government Accountability Office.".

section (b) of section 6103 of the Internal Revenue Code of 1986,[71] may be disclosed only as authorized by such section. The Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

(d) REPORTING REQUIREMENTS.—In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) SIMPLIFICATION OF REGULATIONS.—The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 13.[72] (a) EXEMPTION.—Except as provided in section 11(c)(2) and subsection (c) of this section, the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

(c) PROCEDURES RELATING TO CIVIL PENALTIES AND SANCTIONS.—(1) In any case in which a civil penalty or other civil sanction (other than a temporary denial order or a penalty or sanction for a violation of section 8) is sought under section 11 of this Act, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Subject to the provisions of this subsection, any such hearing shall be conducted in ac-

[71] Sec. 2 of the Tax Reform Act of 1986 (Public Law 99–514; 100 Stat. 2095) struck out "Internal Revenue Code of 1954" and inserted in lieu thereof "Internal Revenue Code of 1986", wherever it is cited in any law.

[72] 50 U.S.C. app. 2412.

cordance with sections 556 and 557 of title 5, United States Code. With the approval of the administrative law judge, the Government may present evidence in camera in the presence of the charged party or his or her representative. After the hearing, the administrative law judge shall make findings of fact and conclusions of law in a written decision, which shall be referred to the Secretary. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after receiving the decision. The order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3).[73]

(2) The proceedings described in paragraph (1) shall be concluded within a period of 1 year after the complaint is submitted, unless the administrative law judge extends such period for good cause shown.

(3)[73] The order of the Secretary under paragraph (1) shall be final, except that the charged party may, within 15 days after the order is issued, appeal the order in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may, while the appeal is pending, stay the order of the Secretary. The court may review only those issues necessary to determine liability for the civil penalty or other sanction involved. In an appeal filed under this paragraph, the court shall set aside any finding of fact for which the court finds there is not substantial evidence on the record and any conclusion of law which the court finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(4)[73] An administrative law judge referred to in this subsection shall be appointed by the Secretary from among those considered qualified for selection and appointment under section 3105 of title 5, United States Code. Any person who, for at least 2 of the 10 years immediately preceding the date of the enactment of the Export Administration Amendments Act of 1985, has served as a hearing commissioner of the Department of Commerce shall be included among these considered as qualified for selection and appointment to such position.

(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act, the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a "temporary denial order") to a person. A temporary denial order may be effective no longer than 180[74] days unless renewed in writing by the Secretary for additional 180-day[74] periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

(2) A temporary denial order shall define the imminent violation and state why the temporary denial order was granted without a hearing. The person or persons subject to the issuance or renewal

[73] Sec. 2428(a)(1) of Public Law 100–418 (102 Stat. 1361) inserted ", except as provided in paragraph (3)", redesignated para. (3) as para. (4), and added a new para. (3).

[74] Sec. 2428(b) of Public Law 100–418 (102 Stat. 1362) struck out "60" and inserted in lieu thereof "180".

of a temporary denial order may file an appeal of the issuance or renewal of the temporary denial order with an administrative law judge who shall, within 10 working days after the appeal is filed, recommend that the temporary denial order be affirmed, modified, or vacated. Parties may submit briefs and other material to the judge. The recommendation of the administrative law judge shall be submitted to the Secretary who shall either accept, reject, or modify the recommendation by written order within 5 working days after receiving the recommendation. The written order of the Secretary under the preceding sentence shall be final and is not subject to judicial review, except as provided in paragraph (3).[75] The temporary denial order shall be affirmed only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act. All materials submitted to the administrative law judge and the Secretary shall constitute the administrative record for purposes of review by the courts.[75]

(3)[75] An order of the Secretary affirming, in whole or in part, the issuance of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the standard for issuing the temporary denial order has been met. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(e) APPEALS FROM LICENSE DENIALS.—A determination of the Secretary, under section 10(f) of this Act, to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge under this subsection and all materials filed before such judge in the proceedings shall be reviewed by the Secretary, who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. The Secretary's written decision shall be final and is not subject to judicial review. Subject to the limitations provided in section 12(c) of this Act, the Secretary's decision shall be published in the Federal Register.

ANNUAL REPORT

SEC. 14.[76] (a) CONTENTS.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3;

[75] Sec. 2428(a)(2) of Public Law 100–418 (102 Stat. 1362) inserted ", except as provided in paragraph (3)", added the last sentence of para. (2), and added para. (3).
[76] 50 U.S.C. app. 2413.

(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

(5) actions taken to carry our section 5(d);

(6) changes in categories of items under export control referred to in section 5(e);

(7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(6);[77]

(9) the operation of the indexing system under section 5(g);

(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

(11) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

(12) export controls and monitoring under section 7;

(13) the information contained in the reports required by section 7(b)(2), together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(16) delegations of authority by the President as provided in section 4(e) of this Act;

(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

[77] Sec. 2418(c) of Public Law 100–418 (102 Stat. 1357) struck out "5(f)(5)" and inserted in lieu thereof "5(f)(6)".

(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d), and any action taken, on the basis of the review required by section 12(e), to simplify regulations issued under this Act;

(19) violations under section 11 and enforcement activities under section 12; and

(20) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).

(b) REPORT ON CERTAIN EXPORT CONTROLS.—To the extent that the President determines that the policies set forth in section 3 of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

(c) REPORT ON NEGOTIATIONS.—The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i), until such negotiations are concluded.

(d) REPORT ON EXPORTS TO CONTROLLED COUNTRIES.—The Secretary shall include in each annual report a detailed report which lists every license for exports to controlled countries which was approved under this Act during the preceding fiscal year. Such report shall specify to whom the license was granted, the type of goods or technology exported, and the country receiving the goods or technology. The information required by this subsection shall be subject to the provisions of section 12(c) of this Act.

(e) REPORT ON DOMESTIC ECONOMIC IMPACT OF EXPORTS TO CONTROLLED COUNTRIES.—The Secretary shall include in each annual report a detailed description of the extent of injury to United States industry and the extent of job displacement caused by United States exports of goods and technology to controlled countries. The annual report shall also include a full analysis of the consequences of exports of turnkey plants and manufacturing facilities to controlled countries which are used by such countries to produce goods for export to the United States or to compete with United States products in export markets.

(f)[78] ANNUAL REPORT OF THE PRESIDENT.—The President shall submit an annual report to the Congress estimating the additional defense expenditures of the United States arising from illegal technology transfers, focusing on estimated defense costs arising from illegal technology transfers that resulted in a serious adverse impact on the strategic balance of forces. These estimates shall be based on assessment by the intelligence community of any technology transfers that resulted in such serious adverse impact. This report may have a classified annex covering any information of a sensitive nature.

[78] Sec. 2445 of Public Law 100–418 (102 Stat. 1369) added subsec. (f).

ADMINISTRATIVE AND REGULATORY AUTHORITY

SEC. 15.[79] (a) UNDER SECRETARY OF COMMERCE.—The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act and such other statutes that relate to national security[80] which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985, and such other functions under this Act which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

(b) ISSUANCE OF REGULATIONS.—The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or (8)(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of section 5, or of section 4(a) for the purpose of administering the provisions of section 5, may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, such other departments and agencies as the Secretary considers appropriate, and the appropriate technical advisory committee.[81] The preceding sentence does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

(c) AMENDMENTS TO REGULATIONS.—If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs[82] of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the technical advisory committees authorized under section 5(h) of this Act in formulating or amending regulations issued under this Act. The procedures defined by regulations in effect on January 1, 1984, with respect to sections 4 and 5 of this Act, shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors.

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[79] 50 U.S.C. app. 2414.

[80] Sec. 2429 of Public Law 100–418 (102 Stat. 1362) inserted "and such other statutes that relate to national security".

[81] Sec. 2420(b)(1) of Public Law 100–418 (102 Stat. 1358) struck out "and" which previously appeared at this point, and inserted in lieu thereof "and the appropriate technical advisory committee".

[82] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

DEFINITIONS

SEC. 16.[83] As used in this Act—

(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) the term "good" means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

(4) the term "technology" means the 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, but not the goods themselves;

(5) the term "export" means—

(A) an actual shipment, transfer, or transmission of goods or technology out of the United States;

(B) a transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

(C) a transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

(6) the term "controlled country" means a controlled country under section 5(b)(1) of this Act;

(7) the term "United States" means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(8) the term "Secretary" means the Secretary of Commerce.

EFFECT ON OTHER ACTS

SEC. 17.[84] (a) IN GENERAL.—Except as otherwise provided in this Act, nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

[83] 50 U.S.C. app. 2415.
[84] 50 U.S.C. app. 2416.

(b) COORDINATION OF CONTROLS.—The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product (1) which is standard equipment certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act.

(d) NONPROLIFERATION CONTROLS.—(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611–1613d), is superseded.

(f) AGRICULTURAL ACT OF 1970.—Nothing in this Act shall affect the provisions of the last sentence of section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c–3).

AUTHORIZATION OF APPROPRIATIONS

SEC. 18.[85] (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—(1) Notwithstanding any other provisions of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may be obligated or expended only if—

(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1985; or

(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1985 which spe-

[85] 50 U.S.C. app. 2417.

cifically repeals, modifies, or supersedes the provisions of this subsection.

(b)[86] AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

(1) $42,813,000 for the fiscal year 1993;

(2) such sums as may be necessary for the fiscal year 1994; and

(3) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

EFFECTIVE DATE

SEC. 19.[87] (a) EFFECTIVE DATE.—This Act shall take effect upon the expiration of the Export Administration Act of 1969.

(b) ISSUANCE OF REGULATIONS.—(1) Regulations implementing the provisions of section 10 of this Act shall be issued and take effect not later than July 1, 1980.

(2) Regulations implementing the provisions of section 7(c) of this Act shall be issued and take effect not later than January 1, 1980.

TERMINATION DATE

SEC. 20.[88] The authority granted by this Act terminates on August 20, 2001.[89]

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[86] Sec. 1 of Public Law 103–10 (107 Stat. 40) amended and restated subsec. (b), which previously read as follows:

"(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

"(1) $35,935,000 for the fiscal year 1988, of which $12,746,000 shall be available only for enforcement, $2,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, and $21,189,000 shall be available for all other activities under this Act;

"(2) $46,913,000 for the fiscal year 1989, of which $15,000,000 shall be available only for enforcement, $5,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, $4,000,000 shall be available only for regional export control assistance centers, and $22,913,000 shall be available for all other activities under this Act; and

"(3) such additional amounts for each of the fiscal years 1988 and 1989 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.".

[87] 50 U.S.C. app. 2418.

[88] 50 U.S.C. app. 2419.

[89] Sec. 2431 of Public Law 100–418 (102 Stat. 1362) extended the termination date from 1989 to 1990. The Act expired on September 30, 1990. Sec. 2 of Public Law 103–10 (107 Stat. 40) subsequently renewed the authority of the Act on March 27, 1993, by striking "September 30, 1990" and inserting in lieu thereof "June 30, 1994". For the intervening period of September 30, 1990 to March 27, 1993, authority of the Act was continued by Executive Order 12730 of September 30, 1990 (55 F.R. 40373), and further extended by Notice of September 25, 1992 (57 F.R. 44649). Public Law 103–277 (108 Stat. 1407) extended the termination day by striking out "June 30, 1994" and inserting in lieu thereof "August 20, 1994". On November 13, 2000, Public Law 106–508 (114 Stat. 2360) extended the authority of the Act to August 20, 2001.

For the intervening period from August 20, 1994 through August 20, 2001, the authority of the Act was extended pursuant to Executive Order 12924 of August 19, 1994 (59 F.R. 43437), and further extended by Notice of August 15, 1995 (60 F.R. 42767); Notice of August 14, 1996 (61 F.R. 42525); Notice of August 13, 1997 (62 F.R. 43269); Notice of August 13, 1998 (63 F.R. 44119); Notice of August 10, 1999 (64 F.R. 44101); and Notice of August 3, 2000 (65 F.R. 48347).

In Executive Order 13206 of April 4, 2001 (66 F.R. 18397), in view of the reauthorization and extension of the Act by Public Law 106–508, the President revoked Executive Order 12924.

In light of the expiration of the Act on August 20, 2001, in Executive Order 13222 of August 17, 2001 (66 F.R. 44025), the President continued the authority of the Act, effective midnight August 21, 2001. The authority of the Act was further continued by Notice of August 14, 2002

Continued

SAVINGS PROVISIONS

SEC. 21.[90] (a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

TECHNICAL AMENDMENTS

SEC. 22.[91] * * *

INTERNATIONAL INVESTMENT SURVEY ACT AUTHORIZATIONS

SEC. 23.[92] * * *

MISCELLANEOUS

SEC. 24.[93] * * *

(67 F.R. 53719); Notice of August 7, 2003 (68 F.R. 47831); Notice of August 6, 2004 (69 F.R. 48763); and Notice of August 2, 2005 (70 F.R. 45273).

[90] 50 U.S.C. app. 2420.

[91] Sec. 22 amended the Arms Export Control Act, the Energy Policy and Conservation Act and the Internal Revenue Code of 1954 [1986].

[92] Sec. 23 provided authorization of funds for fiscal years 1980 and 1981 for the International Investment and Trade in Services Survey Act.

[93] Sec. 24 amended the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480).

b. China Satellite Provision

Partial text of Public Law 109–108 [Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006; H.R. 2862], 119 Stat. 2290 at 2319

AN ACT Making appropriations for Science, the Departments of State, Justice, and Commerce, and related agencies for the fiscal year ending September 30, 2006, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2006, and for other purposes, namely:

* * * * * * *

TITLE IV—DEPARTMENT OF STATE AND RELATED AGENCY

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

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* * * *Provided further,* That no funds may be obligated or expended for processing licenses for the export of satellites of United States origin (including commercial satellites and satellite components) to the People's Republic of China, unless, at least 15 days in advance, the Committees on Appropriations of the House of Representatives and the Senate are notified of such proposed action: * * *

* * * * * * *

c. Export Controls on High Performance Computers

Partial text of Public Law 105–85 [National Defense Authorization Act for Fiscal Year 1998; H.R. 1119], 111 Stat. 1629, approved November 18, 1997; as amended by Public Law 105–261 [Strom Thurmond National Defense Authorization Act for Fiscal Year 1999; H.R. 3616], 112 Stat. 2180, approved October 17, 1998; Public Law 106–38 [National Missile Defense Act of 1999; H.R. 4], 113 Stat. 205, approved July 22, 1999; Public Law 106–65 [National Defense Authorization Act for Fiscal Year 2000; S. 1059], 113 Stat. 774, approved October 5, 1999; and Public Law 106–398 [National Defense Authorization, Fiscal Year 2001; H.R. 4015], 112 Stat. 1654, approved October 30, 2000

AN ACT To authorize appropriations for fiscal year 2001 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE XII—MATTERS RELATING TO OTHER NATIONS

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Subtitle B—Export Controls on High Performance Computers

SEC. 1211.[1] EXPORT APPROVALS FOR HIGH PERFORMANCE COMPUTERS.

(a) PRIOR APPROVAL OF EXPORTS AND REEXPORTS.—The President shall require that no digital computer with a composite theoretical performance level of more than 2,000 millions of theoretical operations per second (MTOPS) or with such other composite theoretical performance level as may be established subsequently by the President under subsection (d), may be exported or reexported without a license to a country specified in subsection (b) if the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, or the Director of the Arms Control and Disarmament Agency objects, in writing, to such export or reexport. Any person proposing to export or reexport such a digital computer shall so notify the Secretary of Commerce, who, within 24 hours after receiving the notification, shall transmit the notification to the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency.

(b) COVERED COUNTRIES.—For purposes of subsection (a), the countries specified in this subsection are the countries listed as

[1] 50 U.S.C. app. 2404 note.

"Computer Tier 3" eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997, subject to modification by the President under subsection (e).

(c) TIME LIMIT.—Written objections under subsection (a) to an export or reexport shall be raised within 10 days after the notification is received under subsection (a). If such a written objection to the export or reexport of a computer is raised, the computer may be exported or reexported only pursuant to a license issued by the Secretary of Commerce under the Export Administration Regulations of the Department of Commerce, without regard to the licensing exceptions otherwise authorized under section 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997. If no objection is raised within the 10-day period, the export or reexport is authorized.

(d) ADJUSTMENT OF COMPOSITE THEORETICAL PERFORMANCE.—The President, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency, may establish a new composite theoretical performance level for purposes of subsection (a). Such new level shall not take effect until 60[2] days after the President submits to the congressional committees designated in section 1215 a report setting forth the new composite theoretical performance level and the justification for such new level. Each report shall, at a minimum—

(1) address the extent to which high performance computers of a composite theoretical level between the level established in subsection (a) or such level as has been previously adjusted pursuant to this section and the new level, are available from other countries;

(2) address all potential uses of military significance to which high performance computers at the new level could be applied; and

(3) assess the impact of such uses on the national security interests of the United States.

(e) ADJUSTMENT OF COVERED COUNTRIES.—

(1) IN GENERAL.—The President, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Energy, the Secretary of State, and the Director of the Arms Control and Disarmament Agency, may add a country to or remove a country from the list of covered countries in subsection (b), except that a country may be removed from the list only in accordance with paragraph (2).

(2) DELETIONS FROM LIST OF COVERED COUNTRIES.—The removal of a country from the list of covered countries under subsection (b) shall not take effect until 120 days after the President submits to the congressional committees designated

[2] Sec. 1234 of Public Law 106–38 (114 Stat. 1654A–330) struck out "180" and inserted in lieu thereof "60". Sec. 314 of the Legislative Branch Appropriations Act, 2001 (Appendix B of Public Law 106–554; 114 Stat. 2763A–123) provided that:

"SEC. 314. REVIEW OF PROPOSED CHANGES TO EXPORT THRESHOLDS FOR COMPUTERS. Not more than 50 days after the date of the submission of the report referred to in subsection (d) of section 1211 of the National Defense Authorization Act for Fiscal Year 1998 (50 U.S.C. app. 2404 note), the Comptroller General of the United States shall submit an assessment to Congress which contains an analysis of the new computer performance levels being proposed by the President under such section.".

in section 1215 a report setting forth the justification for the deletion.

(3) EXCLUDED COUNTRIES.—A country may not be removed from the list of covered countries under subsection (b) if—

(A) the country is a "nuclear-weapon state" (as defined by Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons) and the country is not a member of the North Atlantic Treaty Organization; or

(B) the country is not a signatory of the Treaty on the Non-Proliferation of Nuclear Weapons and the country is listed on Annex 2 to the Comprehensive Nuclear Test-Ban Treaty.

(f) CLASSIFICATION.—Each report under subsections (d) and (e) shall be submitted in an unclassified form and may, if necessary, have a classified supplement.

(g)[3] DELEGATION OF OBJECTION AUTHORITY WITHIN THE DEPARTMENT OF DEFENSE.—For the purposes of the Department of Defense, the authority to issue an objection referred to in subsection (a) shall be executed for the Secretary of Defense by an official at the Assistant Secretary level within the office of the Undersecretary of Defense for Policy. In implementing subsection (a), the Secretary of Defense shall ensure that Department of Defense procedures maximize the ability of the Department of Defense to be able to issue an objection within the 10-day period specified in subsection (c).

(h)[4] CALCULATION OF THE 60-DAY PERIOD.—The 60-day period referred to in subsection (d) shall be calculated by excluding the days on which either House of Congress is not in session because of an adjournment of the Congress sine die.

SEC. 1212. REPORT ON EXPORTS OF HIGH PERFORMANCE COMPUTERS.

(a) REPORT.—Not later than 60 days after the date of the enactment of this Act, the President shall provide to the congressional committees specified in section 1215 a report identifying all exports of digital computers with a composite theoretical performance of more than 2,000 millions of theoretical operations per second (MTOPS) to all countries since January 25, 1996. For each export, the report shall identify—

(1) whether an export license was applied for and whether one was granted;

(2) the date of the transfer of the computer;

(3) the United States manufacturer and exporter of the computer;

(4) the MTOPS level of the computer; and

(5) the recipient country and end user.

(b) ADDITIONAL INFORMATION ON EXPORTS TO CERTAIN COUNTRIES.—In the case of exports to countries specified in subsection (c), the report under subsection (a) shall identify the intended end

[3] Public Law 105–261 (112 Stat. 1920) added subsec. (g).

[4] Sec. 1234(a)(2) of Public Law 106–398 (114 Stat. 1654A–330) added subsec. (h). Sec. 1234(b) of Public Law 106–398 (114 Stat. 1654A–331) further provided the following:

"(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to any new composite theoretical performance level established for purposes of section 1211(a) of the National Defense Authorization Act for Fiscal Year 1998 that is submitted by the President pursuant to section 1211(d) of that Act on or after the date of the enactment of this Act.".

use for the exported computer and the assessment by the executive branch of whether the end user is a military end user or an end user involved in activities relating to nuclear, chemical, or biological weapons or missile technology. Information provided under this subsection may be submitted in classified form if necessary.

(c) COVERED COUNTRIES.—For purposes of subsection (b), the countries specified in this subsection are—

(1) the countries listed as "Computer Tier 3" eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997; and

(2) the countries listed in section 740.7(e) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997.

SEC. 1213. POST-SHIPMENT VERIFICATION OF EXPORT OF HIGH PERFORMANCE COMPUTERS.

(a) REQUIRED POST-SHIPMENT VERIFICATION.—The Secretary of Commerce shall conduct post-shipment verification of each digital computer with a composite theoretical performance of more than 2,000 millions of theoretical operations per second (MTOPS) that is exported from the United States, on or after the date of the enactment of this Act, to a country specified in subsection (b).

(b) COVERED COUNTRIES.—For purposes of subsection (a), the countries specified in this subsection are the countries listed as "Computer Tier 3" eligible countries in section 740.7 of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997, subject to modification by the President under section 1211(e).

(c) ANNUAL REPORT.—The Secretary of Commerce shall submit to the congressional committees specified in section 1215 an annual report on the results of post-shipment verifications conducted under this section during the preceding year. Each such report shall include a list of all such items exported from the United States to such countries during the previous year and, with respect to each such export, the following:

(1) The destination country.

(2) The date of export.

(3) The intended end use and intended end user.

(4) The results of the post-shipment verification.

(d) EXPLANATION WHEN VERIFICATION NOT CONDUCTED.—If a post-shipment verification has not been conducted in accordance with subsection (a) with respect to any such export during the period covered by a report, the Secretary shall include in the report for that period a detailed explanation of the reasons why such a post-shipment verification was not conducted.

SEC. 1214. GAO STUDY ON CERTAIN COMPUTERS; END USER INFORMATION ASSISTANCE.

(a) IN GENERAL.—The Comptroller General of the United States shall submit to the congressional committees specified in section 1215 a study of the national security risks relating to the sale of computers with a composite theoretical performance of between 2,000 and 7,000 millions of theoretical operations per second (MTOPS) to end users in countries specified in subsection (c). The study shall also analyze any foreign availability of computers described in the preceding sentence and the impact of such sales on United States exporters.

(b) END USER INFORMATION ASSISTANCE TO EXPORTERS.—The Secretary of Commerce shall establish a procedure by which exporters may seek information on questionable end users in countries specified in subsection (c) who are seeking to obtain computers described in subsection (a).

(c) COVERED COUNTRIES.—For purposes of subsections (a) and (b), the countries specified in this subsection are the countries listed as "Computer Tier 3" eligible countries in section 740.7(d) of title 15 of the Code of Federal Regulations, as in effect on June 10, 1997.

SEC. 1215. CONGRESSIONAL COMMITTEES.

For purposes of sections 1211(d), 1212(a), 1213(c), and 1214(a) the congressional committees specified in those sections are the following:

(1) The Committee on Banking, Housing, and Urban Affairs and the Committee on Armed Services of the Senate.

(2) The Committee on International Relations and the Committee on Armed Services[5] of the House of Representatives.

[5] Sec. 1067(4) of Public Law 106–65 (113 Stat. 774) struck out "Committee on National Security" and inserted in lieu thereof "Committee on Armed Services".

d. Export Administration Amendments Act of 1985

Partial text of Public Law 99–64 [S. 883], 99 Stat. 120, approved July 12, 1985; as amended by Public Law 99–441 [Defense Production Act Amendments of 1986; H.R. 5480], 100 Stat. 1117, approved October 3, 1986; Public Law 99–633 [Export Administration Act of 1979, Authorization; S. 2245], 100 Stat. 3522, approved October 7, 1986; Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 102–429 [Export Enhancement Act of 1992; H.R. 5739], 106 Stat. 2186, approved October 21, 1992; and Public Law 103–392 [Jobs Through Trade Expansion Act of 1994; H.R. 4950], 108 Stat. 4098, approved October 22, 1994

AN ACT To reauthorize the Export Administration Act of 1979, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AMENDMENTS TO EXPORT ADMINISTRATION ACT OF 1979 [1]

* * * * * * *

SEC. 126. ALASKAN OIL STUDY.

(a) REVIEW OF ALASKAN OIL POLICY.—

(1) IN GENERAL.—The President shall undertake a comprehensive review of the issues and related data concerning possible changes in the existing incentives to produce crude oil from the North Slope of Alaska (including changes in Federal and State taxation, pipeline tariffs, and Federal leasing policies) and possible changes in the existing distribution of crude oil from the North Slope of Alaska (including changes in export restrictions which would permit exports at free market levels and at levels of 50,000 barrels per day, 100,000 barrels per day, 200,000 barrels per day, and 500,000 barrels per day), as well as the appropriateness of continuing existing controls. Such review shall include, but not be limited to, a study of—

(A) the effect of such changes on the energy and national security of the United States and its allies;

(B) the role of such changes in United States foreign policymaking, including international energy policymaking;

(C) the impact of such changes on employment levels in the maritime industry, the oil industry, and other industries;

(D) the impact of such changes on the refiners and on consumers;

(E) the impact of such changes on the revenues and expenditures of the Federal Government and the government of Alaska;

[1] 50 U.S.C. app. 2401 note.

(F) the effect of such changes on incentives for oil and gas exploration and development in the United States; and

(G) the effect of such changes on the overall trade deficit of the United States, and the trade deficit of the United States with respect to particular countries, including the effect of such changes on trade barriers of other countries.

(2) FINDINGS, OPTIONS, AND RECOMMENDATIONS.—The President shall develop, after consulting with appropriate State and Federal officials and other persons, findings, options, and recommendations regarding the production and distribution of crude oil from North Slope of Alaska.

(b) CONSULTATION AND REPORT.—In carrying out subsection (a), the President shall consult with the Committees on Foreign Affairs and Energy and Commerce of the House of Representatives and the appropriate committees of the Senate. Not later than 9 months after the date of the enactment of this Act, the President shall transmit to each of those committees a report which contains the results of the review under subsection (a)(1), and the findings, options, and recommendations developed under subsection (a)(2).

TITLE II—EXPORT PROMOTION PROGRAMS

SEC. 201.[2] REQUIREMENT OF PRIOR AUTHORIZATION.

(a) GENERAL RULE.—Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out any export promotion program may be obligated or expended only if—

(1) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of this Act; or

(2) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(b) EXCEPTION FOR LATER LEGISLATION AUTHORIZING OBLIGATIONS OR EXPENDITURES.—To the extent that legislation enacted after the making of an appropriation to carry out an export promotion program authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) shall have no effect.

(c) PROVISIONS MUST BE SPECIFICALLY SUPERSEDED.—The provisions of this section shall not be superseded except by a provision of law enacted after the date of the enactment of this Act which specifically repeals, modifies, or supersedes the provisions of this section.

(d) EXPORT PROMOTION PROGRAM DEFINED.—For purposes of this title, the term "export promotion program" means any activity of the Department of Commerce designed to stimulate or assist United States businesses in marketing their goods and services abroad competitively with businesses from other countries, including, but not limited to—

(1) trade development (except for the trade adjustment assistance program) and dissemination of foreign marketing opportunities and other marketing information to United States

[2] 15 U.S.C. 4051.

producers of goods and services, including the expansion of foreign markets for United States textiles and apparel and any other United States products;

(2) the development of regional and multilateral economic policies which enhance United States trade and investment interests, and the provision of marketing services with respect to foreign countries and regions;

(3) the exhibition of United States goods in other countries;[3]

(4) the operations of the United States and Foreign Commercial Service, or any successor agency; and[3]

(5)[3] the Market Development Cooperator Program established under section 2303 of the Export Enhancement Act of 1988, and assistance for trade shows provided under section 2304 of that Act.

(e)[4] PRINTING OUTSIDE THE UNITED STATES.—(1) Notwithstanding the provisions of section 501 of title 44, United States Code, and consistent with other applicable law, the Secretary of Commerce, in carrying out any export promotion program, may authorize—

(A) the printing, distribution, and sale of documents outside the contiguous United States, if the Secretary finds that the implementation of such export promotion program would be more efficient, and if such documents will be distributed primarily and sold exclusively outside the United States; and

(B) the acceptance of private notices and advertisements in connection with the printing and distribution of such documents.

(2) Any fees received by the Secretary pursuant to paragraph (1) shall be deposited in a separate account or accounts which may be used to defray directly the costs incurred in conducting activities authorized by paragraph (1) or to repay or make advances to appropriations or other funds available for such activities.

SEC. 202.[5] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Commerce to carry out export promotion programs such sums as are necessary for fiscal years 1995 and 1996.

SEC. 203.[6] 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, submit 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

[3] Sec. 2305(a) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1344) struck out "and" after the semicolon in para. (3), struck out a period at the end of para. (4), inserted in lieu thereof "; and", and added para. (5).

[4] Sec. 2308 of Public Law 100–418 (102 Stat. 1346) added subsec. (e).

[5] 15 U.S.C. 4052. Sec. 301 of the Jobs Through Trade Expansion Act of 1994 (Public Law 103–392; 108 Stat. 4099) amended and restated sec. 202. Previous authorizations for export promotion programs were: fiscal years 1985 and 1986—$113,273,000; fiscal years 1987 and 1988—$123,922,000 (Public Law 99–663); fiscal year 1988—$123,922,000 (Public Law 100–418); fiscal years 1989 and 1990—$146,400,000 (Public Law 100–418); fiscal year 1993—$190,000,000; and fiscal year 1994—$200,000,000 (and $5,500,000 for each of those years to carry out sec. 2303 of the Export Enhancement Act of 1988).

[6] 15 U.S.C. 4053.

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 materials 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.

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e. Offsets in Military-Related Exports: Annual Report

Title 50, Appendix, United States Code

§ 2099.[1] Annual report on impact of offsets

(a) ANNUAL REPORT ON IMPACT OF OFFSETS.—

(1) REPORT REQUIRED.—Not later than 18 months after the date of the enactment of the Defense Production Act Amendments of 1984[2] and annually thereafter, the President[3] shall submit to the Committee on Financial Services of the House of Representatives[4] and the Committee on Banking, Housing, and Urban Affairs of the Senate, a detailed report on the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States.

(2) DUTIES OF THE SECRETARY OF COMMERCE.—The Secretary of Commerce (hereafter in this subsection referred to as "the Secretary") shall—

(A) prepare the report required by paragraph (1);

(B) consult with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative in connection with the preparation of such report; and

(C) function as the President's Executive Agent for carrying out this section.

(b)[5] INTERAGENCY STUDIES AND RELATED DATA.—

(1) PURPOSE OF REPORT.—Each report required under subsection (a) shall identify the cumulative effects of offset agreements on—

(A) the full range of domestic defense productive capability (with special attention paid to the firms serving as lower-tier subcontractors or suppliers); and

(B) the domestic defense technology base as a consequence of the technology transfers associated with such offset agreements.

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[1] Sec. 2099 was enacted as sec. 309 of the Defense Production Act Amendments of 1984 (Public Law 98–265; 98 Stat. 152). Sec. 124 of the Defense Production Act Amendments of 1992 (Public Law 102–558; 106 Stat. 4207) amended and restated subsecs. (a) and (b), and added new subsecs. (c) through (e). See also sec. 123 of that Act.

[2] Enacted April 17, 1984.

[3] Executive Order 12521 of June 24, 1985, 50 F.R. 26335 (Offsets in Military Related Exports), delegated preparation and submission of reports to the Director of the Office of Management and Budget (OMB).

[4] Sec. 4(5) of the Defense Production Act Amendments of 2001 (Public Law 107–47; 115 Stat. 260) struck out "Committee on Banking, Finance and Urban Affairs of the House of Representatives" and inserted in lieu thereof "Committee on Financial Services of the House of Representatives".

Previously, sec. 1(a)(2) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives.

[5] Sec. 4(3) of the Defense Production Act Amendments of 1986 (Public Law 99–441; 100 Stat. 1117) added subsec. (b). Subsequently, sec. 124 of Defense Production Act Amendments of 1992 (Public Law 102–558; 106 Stat. 4207) amended and restated subsec. (b).

(2) USE OF DATA.—Data developed or compiled by any agency while conducting any interagency study or other independent study or analysis shall be made available to the Secretary to facilitate the execution of the Secretary's responsibilities with respect to trade offset and countertrade policy development.

(c) NOTICE OF OFFSET AGREEMENTS.—

(1) IN GENERAL.—If a United States firm enters into a contract for the sale of a weapons system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset agreement exceeding $5,000,000 in value, such firm shall furnish to the official designated in the regulations promulgated pursuant to paragraph (2) information concerning such sale.

(2) REGULATIONS.—The information to be furnished under paragraph (1) shall be prescribed in regulations promulgated by the Secretary. Such regulations shall provide protection from public disclosure for such information, unless public disclosure is subsequently specifically authorized by the firm furnishing the information.

(d) CONTENTS OF REPORT.—

(1) IN GENERAL.—Each report under subsection (a) shall include—

(A) a net assessment of the elements of the industrial base and technology base covered by the report;

(B) recommendations for appropriate remedial action under the authority of this Act, or other law or regulations;

(C) a summary of the findings and recommendations of any interagency studies conducted during the reporting period under subsection (b);

(D) a summary of offset arrangements concluded during the reporting period for which information has been furnished pursuant to subsection (c); and

(E) a summary and analysis of any bilateral and multilateral negotiations relating to the use of offsets completed during the reporting period.

(2) ALTERNATIVE FINDINGS AND RECOMMENDATIONS.—Each report required under this section shall include any alternative findings or recommendations offered by any departmental Secretary, agency head, or the United States Trade Representative to the Secretary.

(e) UTILIZATION OF ANNUAL REPORT IN NEGOTIATIONS.—The findings and recommendations of the reports required by subsection (a), and any interagency reports and analyses shall be considered by representatives of the United States during bilateral and multilateral negotiations to minimize the adverse effects of offsets.

f. Declaration and Report on Offset Policy

Partial text of Public Law 102–558 [Defense Production Act Amendments of 1992; S. 347], 106 Stat. 4198, approved October 28, 1992

AN ACT To amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Defense Production Act Amendments of 1992".

(b) TABLE OF CONTENTS.—* * *

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SEC. 123.[1] DECLARATION OF OFFSET POLICY.

(a) IN GENERAL.—Recognizing that certain offsets for military exports are economically inefficient and market distorting, and mindful of the need to minimize the adverse effects of offsets in military exports while ensuring that the ability of United States firms to compete for military export sales is not undermined, it is the policy of the Congress that—

(1) no agency of the United States Government shall encourage, enter directly into, or commit United States firms to any offset arrangement in connection with the sale of defense goods or services to foreign governments;

(2) United States Government funds shall not be used to finance offsets in security assistance transactions, except in accordance with policies and procedures that were in existence on March 1, 1992;

(3) nothing in this section shall prevent agencies of the United States Government from fulfilling obligations incurred through international agreements entered into before March 1, 1992; and

(4) the decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements reside with the companies involved.

(b) PRESIDENTIAL APPROVAL OF EXCEPTIONS.—It is the policy of the Congress that the President may approve an exception to the policy stated in subsection (a) after receiving the recommendation of the National Security Council.

(c) CONSULTATION.—It is the policy of the Congress that the President shall designate the Secretary of Defense to lead, in coordination with the Secretary of State, an interagency team to consult with foreign nations on limiting the adverse effects of offsets in defense procurement. The President shall transmit an annual

[1] 50 U.S.C. app. 2099 note.

report on the results of these consultations to the Congress as part of the report required under section 309(a) of the Defense Production Act of 1950.[2]

[2] 50 U.S.C. app. 2099.

g. Export Administration Amendments Act of 1981

Partial text of Public Law 97–145 [H.R. 3567], 95 Stat. 1727, approved December 29, 1981

AN ACT To authorize appropriations for the fiscal years 1982 and 1983 to carry out the purposes of the Export Administration Act of 1979, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Export Administration Amendments Act of 1981".

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SEC. 7.[1] Notwithstanding any other provision of law, no provision of the Export Administration Act of 1979, as amended by this Act, or of any other Act shall be construed to prohibit the exercise of authorities contained in the Export Administration Act of 1979 to impose a total embargo in the event of Soviet or Warsaw Pact military action against Poland.

[1] 50 U.S.C. app. 2405 note.

h. Continuation of Export Control Regulations

Executive Order 13222,[1] August 17, 2001, 59 F.R. 43437, 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to section 203 of the International Emergency Economic Powers Act ("Act") (50 U.S.C. 1702), I, GEORGE W. BUSH, President of the United States of America, find that the unrestricted access of foreign parties to U.S. goods and technology and the existence of certain boycott practices of foreign nations, in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*), constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and hereby declare a national emergency with respect to that threat.

Accordingly, in order (a) to exercise the necessary vigilance over exports and activities affecting the national security of the United States; (b) to further significantly the foreign policy of the United States, including its policy with respect to cooperation by U.S. persons with certain foreign boycott activities, and to fulfill its international responsibilities; and (c) to protect the domestic economy from the excessive drain of scarce materials and reduce the serious economic impact of foreign demand, it is hereby ordered as follows:

Section 1. To the extent permitted by law, the provisions of the Export Administration Act of 1979, as amended, and the provisions for administration of the Export Administration Act of 1979, as amended, shall be carried out under this order so as to continue in full force and effect and amend, as necessary, the export control

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[1] The Export Administration Act of 1979 expired on September 30, 1990. To continue export control regulations governed by the Act, the President issued Executive Order 12730 (September 30, 1990; 55 F.R. 40373), which in turn was extended by a Presidential Notice of September 26, 1991 (56 F.R. 49385), and further extended by Notice of September 25, 1992 (57 F.R. 44649).

Sec. 2 of Public Law 103–10 (107 Stat. 40) renewed the authority of the Act through June 30, 1994, effective March 27, 1993, and authorized funds for fiscal years 1993 and 1994. Subsequently, sec. 1 of Executive Order 12867 of September 30, 1993 (58 F.R. 51747) rescinded Executive Order 12730.

On the day the Act was once again set to expire, June 30, 1994, the President issued Executive Order 12923 (59 F.R. 34551) to continue the provisions of the Act and provisions for its administration. Subsequently, Public Law 103–277 (108 Stat. 1407; enacted July 5, 1994) renewed the authority of the Export Administration Act through August 20, 1994. Near that expiration, the President issued Executive Order 12924 (August 19, 1994; 59 F.R. 43437) to continue the authorities in the Act and to revoke Executive Order 12923.

Executive Order 12924 was continued beyond August 19, 1995, by a Notice of August 15, 1995 (60 F.R. 42767); Notice of August 14, 1996 (61 F.R. 42527); Notice of August 13, 1997 (62 F.R. 43629); Notice of August 13, 1998 (63 F.R. 44119); Notice of August 10, 1999 (64 F.R. 44101); and by Notice of August 3, 2000 (65 F.R. 48347).

The Export Administration Act of 1979 was extended to August 20, 2001 by Public Law 106–508. The President, in issuing Executive Order 13206 of April 4, 2001 (66 F.R. 18397) revoked Executive Order 12924. The Act subsequently expired; the President issued this Executive Order to continue its authority.

In light of the expiration of the Act on August 20, 2001, in Executive Order 13222 of August 17, 2001 (66 F.R. 44025), the President continued the authority of the Act, effective midnight August 21, 2001. The authority of the Act was further continued by Notice of August 14, 2002 (67 F.R. 53719); Notice of August 7, 2003 (68 F.R. 47831); Notice of August 6, 2004 (69 F.R. 48763); and by Notice of August 2, 2005 (70 F.R. 45273).

system heretofore maintained by the Export Administration regulations issued under the Export Administration Act of 1979, as amended. The delegations of authority set forth in Executive Order No. 12002 of July 7, 1977, as amended, by Executive Order No. 12755 of March 12, 1991, and Executive Order 13026 of November 15, 1996; Executive Order No. 12214 of May 2, 1980; Executive Order No. 12735 of November 16, 1990; and Executive Order 12851 of June 11, 1993, shall be incorporated in this order and shall apply to the exercise of authorities under this order. All actions under this order shall be in accordance with Presidential directives relating to the export control system heretofore issued and not revoked.

Sec. 2. All rules and regulations issued or continued in effect by the Secretary of Commerce under the authority of the Export Administration Act of 1979, as amended, including those published in Title 15, Subtitle B, Chapter VII, Subchapter C, of the Code of Federal Regulations, Parts 730 through 774, and all orders, regulations, licenses, and other forms of administrative action issued, taken, or continued in effect pursuant thereto, shall, until amended or revoked by the Secretary of Commerce, remain in full force and effect as if issued or taken pursuant to this order, except that the provisions of sections 203(b)(2) and 206 of the Act (50 U.S.C. 1702(b)(2) and 1705) shall control over any inconsistent provisions in the regulations. Nothing in this section shall affect the continued applicability of administrative sanctions provided for by the regulations described above.

Sec. 3. Provisions for administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this order also shall constitute authority for the issuance and continuation in full force and effect of all rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative actions issued, taken, or continued in effect pursuant thereto, relating to the administration of section 38(e).

Sec. 4. This order shall be effective as of midnight between August 20, 2001 and August 21, 2001, eastern daylight time.

i. Administration of Export Controls on Encryption Products

Executive Order 13026, November 15, 1996, 61 F.R. 58767, 50 U.S.C. app. 2403 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and in order to take additional steps with respect to the national emergency described and declared in Executive Order 12924 of August 19, 1994, and continued on August 15, 1995, and on August 14, 1996, I, WILLIAM J. CLINTON, President of the United States of America, have decided that the provisions set forth below shall apply to administration of the export control system maintained by the Export Administration Regulations, 15 CFR Part 730 *et seq.* ("the EAR"). Accordingly, it is hereby ordered as follows:

Section 1. *Treatment of Encryption Products.* In order to provide for appropriate controls on the export and foreign dissemination of encryption products, export controls of encryption products that are or would be, on this date, designated as defense articles in Category XIII of the United States Munitions List and regulated by the United States Department of State pursuant to the Arms Export Control Act, 22 U.S.C. 2778 *et seq.* ("the AECA"), but that subsequently are placed on the Commerce Control List in the EAR, shall be subject to the following conditions: (a) I have determined that the export of encryption products described in this section could harm national security and foreign policy interests even where comparable products are or appear to be available from sources outside the United States, and that facts and questions concerning the foreign availability of such encryption products cannot be made subject to public disclosure or judicial review without revealing or implicating classified information that could harm United States national security and foreign policy interests. Accordingly, sections 4(c) and 6(h)(2)–(4) of the Export Administration Act of 1979 ("the EAA"), 50 U.S.C. App. 2403(c) and 2405(h)(2)–(4), as amended and as continued in effect by Executive Order 12924 of August 19, 1994, and by notices of August 15, 1995, and August 14, 1996, all other analogous provisions of the EAA relating to foreign availability, and the regulations in the EAR relating to such EAA provisions, shall not be applicable with respect to export controls on such encryption products. Notwithstanding this, the Secretary of Commerce ("Secretary") may, in his discretion, consider the foreign availability of comparable encryption products in determining whether to issue a license in a particular case or to remove controls on particular products, but is not required to issue licenses in particular cases or to remove controls on particular products based on such consideration;

(b) Executive Order 12981, as amended by Executive Order 13020 of October 12, 1996, is further amended as follows: * * *[1]

(c) Because the export of encryption software, like the export of other encryption products described in this section, must be controlled because of such software's functional capacity, rather than because of any possible informational value of such software, such software shall not be considered or treated as "technology," as that term is defined in section 16 of the EAA (50 U.S.C. App. 2415) and in the EAR (61 Fed. Reg. 12714, March 25, 1996);

(d) With respect to encryption products described in this section, the Secretary shall take such actions, including the promulgation of rules, regulations, and amendments thereto, as may be necessary to control the export of assistance (including training) to foreign persons in the same manner and to the same extent as the export of such assistance is controlled under the AECA, as amended by section 151 of Public Law 104–164 (110 Stat. 1437);

(e) Appropriate controls on the export and foreign dissemination of encryption products described in this section may include, but are not limited to, measures that promote the use of strong encryption products and the development of a key recovery management infrastructure; and

(f) Regulation of encryption products described in this section shall be subject to such further conditions as the President may direct.

Sec. 2. *Effective Date.* The provisions described in section 1 shall take effect as soon as any encryption products described in section 1 are placed on the Commerce Control List in the EAR.

Sec. 3. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and to ensure the implementation of appropriate controls on the export and foreign dissemination of encryption products. It is not intended to, and does not, create any rights to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

[1] For Executive Order 12981 as amended, see page 1444.

j. Administration of Export Controls

Executive Order 12981, December 5, 1995, 60 F.R. 62981, 50 U.S.C. app 2403 note; amended by Executive Order 13020, October 12, 1996, 61 F.R. 54079; Executive Order 13026, November 15, 1996, 61 F.R. 58767; and Executive Order 13117, March 31, 1999, 64 F.R. 16591

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et. seq.*) ("the Act"), and in order to take additional steps with respect to the national emergency described and declared in Executive Order No. 12924 of August 19, 1994, and continued on August 15, 1995, I, WILLIAM J. CLINTON, President of the United States of America, find that it is necessary for the procedures set forth below to apply to export license applications submitted under the Act and the Export Administration Regulations (15 C.F.R. Part 730 *et. seq.*) ("the Regulations") or under any renewal of, or successor to, the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et. seq.*) ("the Export Administration Act"), and the Regulations. Accordingly, it is hereby ordered as follows:

Section 1. *License Review.* To the extent permitted by law and consistent with Executive Order No. 12924 of August 19, 1994, the power, authority, and discretion conferred upon the Secretary of Commerce ("the Secretary") under the Export Administration Act to require, review, and make final determinations with regard to export licenses, documentation, and other forms of information submitted to the Department of Commerce pursuant to the Act and the Regulations or under any renewal of, or successor to, the Export Administration Act and the Regulations, with the power of successive redelegation, shall continue. The Departments of State, Defense, and Energy[1] each shall have the authority to review any export license application submitted to the Department of Commerce pursuant to the Act and the Regulations or under any renewal of, or successor to, the Export Administration Act and the Regulations. The Secretary may refer license applications to other United States Government departments or agencies for review as appropriate. In the event that a department or agency determines that certain types of applications need not be referred to it, such department or agency shall notify the Department of Commerce as to the specific types of such applications that it does not wish to review. All departments or agencies shall promptly respond, on a case-by-case basis, to requests from other departments or agencies for historical information relating to past license applications.

Sec. 2. *Determinations.* (a) All license applications submitted under the Act and the Regulations or any renewal of, or successor

[1] Sec. 1 of Executive Order 13117 (March 31, 1999, 64 F.R. 16591) struck out ", and the Arms Control and Disarmament Agency".

to, the Export Administration Act and the Regulations, shall be resolved or referred to the President no later than 90 calendar days after registration of the completed license application.

(b) The following actions related to processing a license application submitted under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations shall not be counted in calculating the time periods prescribed in this order:

(1) *Agreement of the Applicant.* Delays upon which the Secretary and the applicant mutually agree.

(2) *Prelicense Checks.* Prelicense checks through government channels that may be required to establish the identity and reliability of the recipient of items controlled under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, provided that:

(A) the need for such prelicense check is established by the Secretary, or by another department or agency if the request for prelicense check is made by such department or agency;

(B) the Secretary requests the prelicense check within 5 days of the determination that it is necessary; and

(C) the Secretary completes the analysis of the result of the prelicense check within 5 days.

(3) *Requests for Government-To-Government Assurances.* Requests for government-to-government assurances of suitable end-use of items approved for export under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, when failure to obtain such assurances would result in rejection of the application, provided that:

(A) the request for such assurances is sent to the Secretary of State within 5 days of the determination that the assurances are required;

(B) the Secretary of State initiates the request of the relevant government within 10 days thereafter; and

(C) the license is issued within 5 days of the Secretary's receipt of the requested assurances. Whenever such prelicense checks and assurances are not requested within the time periods set forth above, they must be accomplished within the time periods established by this section.

(4) *Multilateral Reviews.* Multilateral review of a license application as provided for under the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations, as long as multilateral review is required by the relevant multilateral regime.

(5) *Consultations.* Consultation with other governments, if such consultation is provided for by a relevant multilateral regime or bilateral arrangement as a precondition for approving a license.

Sec. 3. *Initial Processing.* Within 9 days of registration of any license application, the Secretary shall, as appropriate:

(a) request additional information from the applicant. The time required for the applicant to supply the additional information shall not be counted in calculating the time periods prescribed in this section.

(b) refer the application and pertinent information to agencies or departments as stipulated in section 1 of this order, and forward to the agencies any relevant information submitted by the applicant that could not be reduced to electronic form.

(c) assure that the stated classification on the application is correct; return the application if a license is not required; and, if referral to other departments or agencies is not required, grant the application or notify the applicant of the Secretary's intention to deny the application.

Sec. 4. *Department or Agency Review.* (a) Each reviewing department or agency shall specify to the Secretary, within 10 days of receipt of a referral as specified in subsection 3(b), any information not in the application that would be required to make a determination, and the Secretary shall promptly request such information from the applicant. If, after receipt of the information so specified or other new information, a reviewing department or agency concludes that additional information would be required to make a determination, it shall promptly specify that additional information to the Secretary, and the Secretary shall promptly request such information from the applicant. The time that may elapse between the date the information is requested by the reviewing department or agency and the date the information is received by the reviewing department or agency shall not be counted in calculating the time periods prescribed in this order. Such information specified by reviewing departments or agencies is in addition to any information that may be requested by the Department of Commerce on its own initiative during the first 9 days after registration of an application.

(b) Within 30 days of receipt of a referral and all required information, a department or agency shall provide the Secretary with a recommendation either to approve or deny the license application. As appropriate, such recommendation may be with the benefit of consultation and discussions in interagency groups established to provide expertise and coordinate interagency consultation. A recommendation that the Secretary deny a license shall include a statement of the reasons for such recommendation that are consistent with the provisions of the Act and the Regulations or any renewal of, or successor to, the Export Administration Act and the Regulations and shall cite both the statutory and the regulatory bases for the recommendation to deny. A department or agency that fails to provide a recommendation within 30 days with a statement of reasons and the statutory and regulatory bases shall be deemed to have no objection to the decision of the Secretary.

Sec. 5. *Interagency Dispute Resolution.* (a) *Committees.* (1)(A) *Export Administration Review Board.* The Export Administration Review Board ("the Board"), which was established by Executive Order No. 11533 of June 4, 1970, and continued in Executive Order No. 12002 of July 7, 1977, is hereby continued. The Board shall have as its members, the Secretary, who shall be Chair of the Board, the Secretary of State, the Secretary of Defense and the

Secretary of Energy.[2] The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence shall be nonvoting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any member department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the departments or agencies represented by the Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

(B) The Secretary may, from time to time, refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, the domestic economy, and concerns about the proliferation of armaments, weapons of mass destruction, missile delivery systems, and advanced conventional weapons and shall make recommendations thereon to the Secretary.

(2) *Advisory Committee on Export Policy.* An Advisory Committee on Export Policy ("ACEP") is established and shall have as its members the Assistant Secretary of Commerce for Export Administration, who shall be Chair of the ACEP, and Assistant Secretary-level representatives of the Departments of State, Defense, and Energy.[3] Appropriate representatives of the Joint Chiefs of Staff and of the Nonproliferation Center of the Central Intelligence Agency shall be nonvoting members of the ACEP. Representatives of the departments or agencies shall be the appropriate Assistant Secretary or equivalent (or appropriate acting Assistant Secretary or equivalent in lieu of the Assistant Secretary or equivalent) of the concerned department or agency, or appropriate Deputy Assistant Secretary or equivalent (or the appropriate acting Deputy Assistant Secretary or equivalent in lieu of the Deputy Assistant Secretary or equivalent) of the concerned department or agency. Regardless of the department or agency representative's rank, such representative shall speak and vote at the ACEP on behalf of the appropriate Assistant Secretary or equivalent of such department or agency. The ACEP may invite Assistant Secretary-level representatives of other United States Government departments or agencies, other than the departments and agencies represented by the ACEP members, to participate in the activities of the ACEP when matters of interest to such departments or agencies are under consideration.

(3)(A) *Operating Committee.* An Operating Committee ("OC") of the ACEP is established. The Secretary shall appoint its Chair,

[2] Sec. 3 of Executive Order 13117 (March 31, 1999; 64 F.R. 16591) inserted "and" after "the Secretary of Defense" and before "the Secretary of Energy", and struck out ", and the Director of the Arms Control and Disarmament Agency".

[3] Sec. 4 of Executive Order 13117 (March 31, 1999; 64 F.R. 16591) struck out ", and the Arms Control and Disarmament Agency".

who shall also serve as Executive Secretary of the ACEP. Its other members shall be representatives of appropriate agencies in the Departments of Commerce, State, Defense, and Energy, and the Arms Control and Disarmament Agency. The appropriate representatives of the Joint Chiefs of Staff and the Nonproliferation Center of the Central Intelligence Agency shall be nonvoting members of the OC. The OC may invite representatives of other United States Government departments or agencies, other than the departments and agencies represented by the OC members, to participate in the activities of the OC when matters of interest to such departments or agencies are under consideration.

(B)[4] The OC shall review all license applications on which the reviewing departments and agencies are not in agreement. The Chair of the OC shall consider the recommendations of the reviewing departments and agencies and inform them of his or her decision on any such matters within 14 days after the deadline for receiving department and agency recommendations. However, for license applications concerning commercial communication satellites and hot-section technologies for the development, production, and overhaul of commercial aircraft engines that are transferred from the regulations issued by the Departments of Commerce and State after the date of this order, the Chair of the OC shall inform reviewing departments and agencies of the majority vote decision of the OC. As described below, any reviewing department or agency may appeal the decision of the Chair of the OC, or the majority vote decision of the OC in cases concerning the commercial communication satellites and hot-section technologies described above, to the Chair of the ACEP. In the absence of a timely appeal, the Chair's decision (or the majority vote decision in the case of license applications concerning the commercial communication satellites and hot-section technologies described above) will be final.

(b) *Resolution Procedures.* (1)[5] If any department or agency disagrees with a licensing determination of the Department of Commerce made through the Chair of the OC (or a majority vote decision of the OC in the case of license applications concerning the

[4] Sec. 1(a) of Executive Order 13020 (October 12, 1996; 61 F.R. 54079) amended and restated subpara. (B). Subpara. (B) formerly read as follows:

"(B) The OC shall review all license applications on which the reviewing departments and agencies are not in agreement. The Chair of the OC shall consider the recommendations of the reviewing departments and agencies and inform them of his or her decision on any such matters within 14 days after the deadline for receiving department and agency recommendations. As described below, any reviewing department or agency may appeal the decision of the Chair of the OC to the Chair of the ACEP. In the absence of a timely appeal, the Chair's decision will be final.".

[5] Sec. 1(b) of Executive Order 13020 (October 12, 1996; 61 F.R. 54079) amended and restated para. (1). Para. (1) formerly read as follows: "(1) If any department or agency disagrees with a licensing determination of the Department of Commerce made through the OC, it may appeal the matter to the ACEP for resolution. A department or agency must appeal a matter within 5 days of such a decision. Appeals must be in writing from an official appointed by the President by and with the advice and consent of the Senate, or an officer properly acting in such capacity, and must cite both the statutory and the regulatory bases for the appeal. The ACEP shall review all departments' and agencies' information and recommendations, and the Chair of the ACEP shall inform the reviewing departments and agencies of the majority vote decision of the ACEP within 11 days from the date of receiving notice of the appeal. Within 5 days of the majority vote decision, any dissenting department or agency may appeal the decision by submitting a letter from the head of the department or agency to the Secretary in his or her capacity as the Chair of the Board. Such letter shall cite both the statutory and the regulatory bases for the appeal. Within the same period of time, the Secretary may call a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the majority vote decision of the ACEP shall be final.".

commercial communication satellites and the hot-section technologies described in section 5(a)(3)(B)), it may appeal the matter to the ACEP for resolution. A department or agency must appeal a matter within 5 days of such a decision. Appeals must be in writing from an official appointed by the President, by and with the advice and consent of the Senate, or an officer properly acting in such capacity, and must cite both the statutory and the regulatory bases for the appeal. The ACEP shall review all departments' and agencies' information and recommendations, and the Chair of the ACEP shall inform the reviewing departments and agencies of the majority vote decision of the ACEP within 11 days from the date of receiving notice of the appeal. Within 5 days of the majority vote decision, any dissenting department or agency may appeal the decision by submitting a letter from the head of the department or agency to the Secretary in his or her capacity as the Chair of the Board. Such letter shall cite both the statutory and the regulatory bases for the appeal. Within the same 5-day period, the Secretary may call a meeting on his or her own initiative to consider a license application. In the absence of a timely appeal, the majority vote decision of the ACEP shall be final.

(2) The Board shall review all departments' and agencies' information and recommendations, and such other export control matters as may be appropriate. The Secretary shall inform the reviewing departments and agencies of the majority vote of the Board within 11 days from the date of receiving notice of appeal. Within 5 days of the decision, any department or agency dissenting from the majority vote decision of the Board may appeal the decision by submitting a letter from the head of the dissenting department or agency to the President. In the absence of a timely appeal, the majority vote decision of the Board shall be final.

Sec. 6.[6] *Encryption Products.* In conducting the license review described in section 1 above, with respect to export controls of encryption products that are or would be, on November 15, 1996, designated as defense articles in Category XIII of the United States Munitions List and regulated by the United States Department of State pursuant to the Arms Export Control Act, 22 U.S.C. 2778 et seq., but that subsequently are placed on the Commerce Control List in the Export Administration Regulations, the Departments of State, Defense, Energy, and Justice shall have the opportunity to review any export license application submitted to the Department of Commerce.[7] The Department of Justice shall, with respect to such encryption products, be a voting member of the Export Administration Review Board described in section 5(a)(1) of this order and of the Advisory Committee on Export Policy described in section 5(a)(2) of this order. The Department of Justice shall be a full member of the Operating Committee of the ACEP described in section 5(a)(3) of this order, and of any other committees and consultation groups reviewing export controls with respect to such encryption products.

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[6] Sec. 1(b) of Executive Order 13026 (November 15, 1996; 61 F.R. 58767) redesignated secs. 6 and 7 as secs. 7 and 8, and added a new sec. 6.

[7] Sec. 5 of Executive Order 13117 (March 31, 1999; 64 F.R. 16591) struck out ", and the Arms Control and Disarmament Agency".

Sec. 7.[6] The license review process in this order shall take effect beginning with those license applications registered by the Secretary 60 days after the date of this order and shall continue in effect to the extent not inconsistent with any renewal of the Export Administration Act, or with any successor to that Act.

Sec. 8.[6] *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any rights to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

k. Administration of the Export Administration Act of 1979

Executive Order 12214, May 2, 1980, 45 F.R. 29783, 50 U.S.C. app. 2403 note

By the authority vested in me as President of the United States of America by Section 4(e) of the Export Administration Act of 1979 (Public Law 96–72; 50 U.S.C. App. 2403(e)), is it hereby ordered as follows;

1–101. Except as provided in Section 1–102, the functions conferred upon the President by the provisions of the Export Administration Act of 1979, hereinafter referred to as the Act (Public Law 96–72; 50 U.S.C. App. 2401 *et seq.*), are delegated to the Secretary of Commerce.

1–102. (a) The functions conferred upon the President by Sections 4(e), 5(c), 5(f)(1), 5(h)(6), 6(k), 7(d)(2), 10(g) and 20 of the Act are reserved to the President.

(b) The functions conferred upon the President by Sections 5(f)(4), 5(i), and 6(g) of the Act are delegated to the Secretary of State.

1–103. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued or otherwise taken under, or continued in existence by, Section 21 of the Act or Executive Order No. 12002, and not revoked administratively or legislatively, shall remain in full force and effect until amended, modified, or terminated by proper authority. This Order does not supersede or otherwise affect Executive Order No. 12002.

1–104. Except to the extent inconsistent with this Order, all actions previously taken pursuant to any function delegated or assigned by this Order shall be deemed to have been taken and authorized by this Order.

l. The President's Export Council

Executive Order 12131,[1] May 4, 1979, 44 F.R. 26841; as amended by Executive Order 12551, February 21, 1986, 51 F.R. 6509; and Executive Order 12991, March 6, 1995, 61 F.R. 9587

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to expand the membership of the President's Export Council, in accord with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

1–1. Establishment and Membership.

1–101. There is established the President's Export Council.

1–102. The membership of the Council shall be as follows:

(a) The heads of the following Executive agencies or their representatives:

(1) Department of State.

(2) Department of the Treasury.

(3) Department of Agriculture.

(4) Department of Commerce.

(5) Department of Labor.

(6) Office of the Special Representative for Trade Negotiations.

(7) Export-Import Bank of the United States.

(8)[2] Small Business Administration.

(b)[3] Five members of the United States Senate, designated by the President of the Senate, and five members of the United States House of Representatives designated by the Speaker of the House to serve for a two-year term.

(c) Not to exceed 28 citizens appointed by the President. These individuals shall be selected from those who are not full-time Federal officers or employees. They shall include representatives of business and industry, agriculture, and labor.

1–103. The President shall designate a Chairman and a Vice Chairman from among the members appointed by the President.

1–104. The Secretary of Commerce, with the concurrence of the Chairman, shall appoint an Executive Director.

1–2. Functions.

1–201. The Council shall serve as a national advisory body on matters relating to United States export trade, including advice on the implementation of the President's National Export Policy, which was announced on September 26, 1978. It shall, through the

[1] 50 U.S.C. app. 2401 note.

[2] Executive Order 12991 (61 F.R. 9587) added para. (8).

[3] Executive Order 12551 (51 F.R. 6509) increased membership from each House of Congress from three to five and specified that members serve for a 2-year term.

Secretary of Commerce, report to the President on its activities and on its recommendations for expanding United States exports.

1–202. The Council should survey and evaluate the export expansion activities of the communities represented by the membership. It should identify and examine specific problems which business, industrial, and agricultural practices may cause for export trade, and examine the needs of business, industry, and agriculture to expand their efforts. The Council should recommend specific solutions to these problems and needs.

1–203. The Council may act as liaison among the communities represented by the membership; and, may provide a forum for those communities on current and emerging problems and issues in the field of export expansion. The Council should encourage the business, industrial, and agricultural communities to enter new foreign markets and to expand existing export programs.

1–204. The Council shall provide advice on Federal plans and actions that affect export expansion policies which have an impact on those communities represented by the membership.

1–205. The Council may establish, with the concurrence of the Secretary of Commerce, an executive committee and such other subordinate committees it considers necessary for the performance of its functions. The Chairman of a subordinate committee shall be designated, with the concurrence of the Secretary of Commerce, by the Chairman of the Council from among the membership of the Council. Members of subordinate committees shall be appointed by the Secretary of Commerce.

1–3. Administrative Provisions.

1–301. The Secretary of Commerce shall, to the extent permitted by law, provide the Council, including its executive and subordinate committees, with administrative and staff services, support and facilities as may be necessary for the effective performance of its functions.

1–302. Each member of the Council, including its executive and subordinate committees, who is not otherwise paid a salary by the Federal Government, shall receive no compensation from the United States by virtue of their service on the Council, but all members may receive the transportation and travel expenses, including per diem in lieu of subsistence, authorized by law (5 U.S.C. 5702 and 5703).

1–4. General Provisions.

1–401. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Council, shall be performed by the Secretary of Commerce in accordance with guidelines and procedures established by the Administrator of General Services.

1–402. Executive Order No. 11753 is revoked; however, nothing in this Order shall be deemed to require new charters for the Council, including its executive and subordinate committees, which were current immediately prior to the issuance of this Order.

1–403. The Council shall terminate on December 31, 1980, unless sooner extended.[4]

[4] The Council was continued until December 31, 1982 by sec. 1(l) of Executive Order 12258, December 31, 1980, 46 F.R. 1251; until September 30, 1984, by sec. 1(k) of Executive Order 12398, December 31, 1982, 48 F.R. 377; until September 30, 1985 by sec. 1(k) of Executive Order 12489, September 28, 1984, 49 F.R. 38927; until September 30, 1987 by sec. 1(l) of Executive Order 12534, September 30, 1985, 50 F.R. 40319; until September 30, 1989, by sec. 1(j) of Executive Order 12610, September 10, 1987, 52 F.R. 36901; until September 30, 1991, by sec. 1(j) of Executive Order 12692, September 29, 1989, 54 F.R. 40627; until September 30, 1993, by sec. (1)(i) of Executive Order 12774, September 27, 1991, 56 F.R. 49835; until September 30, 1995 by sec. 1(i) of Executive Order 12869, September 30, 1993, 58 F.R. 51751; until September 30, 1997 by sec. 1(m) of Executive Order 12974, September 29, 1995, 60 F.R. 51875; until September 30, 1999, by sec. 1(m) of Executive Order 13062, September 29, 1997, 62 F.R. 51755; until September 30, 2001 by Executive Order 13138, September 30, 1999, 64 F.R. 53879; until September 30, 2003 by sec. 1(l) of Executive Order 13225, September 28, 2001, 66 F.R. 50291; until September 30, 2005 by sec. 1(l) of Executive Order 13316, September 17, 2003, 68 F.R. 55255; and until September 30, 2007 by sec. 1(n) of Executive Order 13385, September 29, 2005, 70 F.R. 57989.

m. Administration of the Export Administration Act of 1969, as amended [1]

Executive Order 12002, July 7, 1977, 42 F.R. 35623; as amended by Executive Order 12755, March 12, 1991, 56 F.R. 11057; and Executive Order 13286, February 28, 2003, 68 F.R. 10619

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), and as President of the United States of America, it is hereby ordered as follows:

Section 1. Except as provided in Section 2, the power, authority, and discretion conferred upon the President by the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.) hereinafter referred to as the Act, are delegated to the Secretary of Commerce, with the power of successive redelegation.

Sec. 2. (a) The power, authority and discretion conferred upon the President in Sections 4(h) and 4(l) of the Act are retained by the President.

(b) The power, authority and discretion conferred upon the President in Section 3(8) of the Act, which directs that every reasonable effort be made to secure the removal of reduction of assistance by foreign countries to international terrorists through cooperation

[1] When the Export Administration Act of 1969 expired on September 30, 1979, it was replaced by the Export Administration Act of 1979. Sec. 21 of the 1979 Act provided that all orders (which would include this Executive Order) issued under the 1969 Act and which were in force on the effective date of the 1979 Act, would continue in effect until modified, superseded, set aside, or revoked. Executive Order 12214 was issued on May 2, 1980, providing for the administration of the Export Administration Act of 1979. However, the new Executive Order stated that it did not supersede or otherwise affect Executive Order 12002.

Authority of the Export Administration Act of 1979 expired on September 30, 1990, pursuant to sec. 20 of that Act. Executive Order 12730 of September 30, 1990, provided for the continuation of export control regulations until passage of an extension of the 1979 Act. Public Law 103–10 (107 Stat. 40; March 27, 1993) renewed the authority of the Act through June 30, 1994, effective March 27, 1993, and authorized funds for fiscal years 1993 and 1994. Executive Order 12730 subsequently was rescinded by sec. 1 of Executive Order 12867 of September 30, 1993 (58 F.R. 51747).

On the day the Act was once again set to expire, June 30, 1994, the President issued Executive Order 12923 (59 F.R. 34551) to continue the provisions of the Act and provisions for its administration. Subsequently, Public Law 103–277 (108 Stat. 1407; enacted July 5, 1994) renewed the authority of the Export Administration Act through August 20, 1994. Near that expiration, the President issued Executive Order 12924 (August 19, 1994; 59 F.R. 43437) to continue the authorities in the Act.

Executive Order 12924 was continued beyond August 19, 1995, by a Notice of August 15, 1995 (60 F.R. 42767); by Notice of August 14, 1996 (61 F.R. 42527); by Notice of August 13, 1997 (62 F.R. 43629); by Notice of August 13, 1998 (63 F.R. 44119); by Notice of August 10, 1999 (64 F.R. 44101); and by Notice of August 3, 2000 (65 F.R. 48347).

The Export Administration Act of 1979 was extended to August 20, 2001 by Public Law 106–508. The President, in issuing Executive Order 13206 of April 4, 2001 (66 F.R. 18397) revoked Executive Order 12924. The Act subsequently expired.

In light of the expiration of the Act on August 20, 2001, in Executive Order 13222 of August 17, 2001 (66 F.R. 44025), the President continued the authority of the Act, effective midnight August 21, 2001. The authority of the Act was further continued by Notice of August 14, 2002 (67 F.R. 53719); by Notice of August 7, 2003 (68 F.R. 47831); by Notice of August 6, 2004 (69 F.R. 48763); and by Notice of August 2, 2005 (70 F.R. 45273).

and agreement, are delegated to the Secretary of State, with the power of successive redelegation.

Sec. 3.[2] The Export Administration Review Board, hereinafter referred to as the Board, which was established by Executive Order No. 11533 of June 4, 1970, as amended, is hereby continued. The Board shall continue to have as its members, the Secretary of Commerce, who shall be Chairman of the Board, the Secretary of State, and the Secretary of Defense. The Secretary of Energy, the Secretary of Homeland Security,[3] and the Director of the United States Arms Control and Disarmament Agency shall be members of the Board, and shall participate in meetings that consider issues involving nonproliferation of armaments and other issues within their respective statutory and policy-making authorities. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence shall be non-voting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the agencies represented by Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.".

Sec. 4. The Secretary of Commerce may from time to time refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary of Commerce shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or of the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, concerns about the nonproliferation of armaments,[4] and the domestic economy, and shall make recommendation thereon to the Secretary of Commerce.

Sec. 5. The President may at any time (a) prescribe rules and regulations applicable to the power, authority, and discretion referred to in this Order, and (b) communicate to the Secretary of Commerce such specific directives applicable thereto as the President shall determine. The Secretary of Commerce shall from time to time report to the President upon the administration of the Act and, as the Secretary deems necessary, may refer to the President recommendations made by the Board under Section 4 of this Order. Neither the provisions of this section nor those of Section 4 shall be construed as limiting the provisions of Section 1 of this Order.

Sec. 6. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under, or continued in existence by, the Executive orders revoked in Section 7 of this Order, and not revoked administratively or legislatively, shall remain in full force and effect under this

[2] Sec. 1 of Executive Order 12755 of March 12, 1991 (56 F.R. 11057) amended and restated sec. 3.

[3] Sec. 54 of Executive Order 13286 inserted ", the Secretary of Homeland Security,".

[4] Sec. 2 of Executive Order 12755 of March 12, 1991 (56 F.R. 11057) inserted "concerns about the nonproliferation of armaments,".

Order until amended, or terminated by proper authority. The revocations in Section 7 of this Order shall not affect any violation of any rules, regulations, orders, licenses or other forms of administrative action under those Orders during the period those Orders were in effect.

Sec. 7. Executive Order No. 11533 of June 4, 1970, Executive Order No. 11683 of August 29, 1972, Executive Order No. 11798 of August 14, 1974, Executive Order No. 11818 of November 5, 1974, Executive Order No. 11907 of March 1, 1976, and Executive Order No. 11940 of September 30, 1976, are hereby revoked.

5. International Economic Sanctions [1]

a. Trading With the Enemy Act, as amended

Partial text of Public Law 65–91 [H.R. 4960], 40 Stat. 411, approved October 6, 1917; as amended by Public Law 65–217 [H.R. 12923], 40 Stat. 966, approved September 24, 1918; Public Law 73–1 [H.R. 1491], 48 Stat. 1, approved March 9, 1933; Public Resolution 76–69 [S.J. Res. 252], 54 Stat. 179, approved May 7, 1940; Public Law 77–354 [H.R. 6233], 55 Stat. 839, approved December 18, 1941; Presidential Proclamation 2695, effective July 4, 1946, 60 Stat. 1352; Public Law 95–223 [International Emergency Economic Powers Act; H.R. 7738], 91 Stat. 1625, approved December 28, 1977; Public Law 99–93 [Foreign Relations Authorization Act, Fiscal Years 1986 and 1987; H.R. 2068], 99 Stat. 449, approved August 16, 1985; Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 102–393 [Treasury, Postal Service, and General Government Appropriations Act, 1993; H.R. 5488], 106 Stat. 1729, approved October 6, 1992; Public Law 102–484 [National Defense Authorization Act for Fiscal Year 1993; H.R. 5006], 106 Stat. 2315, approved October 23, 1992; Public Law 103–236 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 108 Stat. 382, approved April 30, 1994; and Public Law 104–114 [Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996; H.R. 927], 110 Stat. 785, approved March 12, 1996

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [2] this Act shall be known as the "Trading with the enemy [3] Act".

SEC. 2.[4] That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if

[1] In previous years this section has included legislation and Executive Orders relating to proliferation sanctions. The proliferation/nonproliferation legislation is consolidated in *Legislation on Foreign Relations Through 2005*, vol. II–B.

[2] 50 U.S.C. app. 1.

[3] So in original.

[4] 50 U.S.C. app. 2.

he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which the Congress has declared or shall declare war or the existence of a state of war.

The words "end of the war," as used herein shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words "to trade," as used herein, shall be deemed to mean—

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or endorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with.

SEC. 3.[5] That it shall be unlawful—

(a) For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix] to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

(b) For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

(c) For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: *Provided, however,* That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

(d) Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country. Any person who willfully evades or attempts to evade the submission of any such communication to such censorship or willfully uses or attempts to use any code or other device

[5] 50 U.S.C. app. 3.

for the purpose of concealing from such censorship the intended meaning of such communication shall be punished as provided in section sixteen of this Act.

* * * * * * *

SEC. 5. (a) * * *

(b)[6] (1) During the time of war,[7] 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

[6] 50 U.S.C. app. 5(b). Subsec. (b) is also classified to 12 U.S.C. 95a (Banks and Banking). Sec. 301 of Public Law 77–354 (55 Stat. 839) amended and restated subsec. (b).

[7] Sec. 101(a) of Public Law 95–223 (91 Stat. 1625) struck out "or during any other period of national emergency declared by the President" which previously appeared at this point. Secs. 101 (b) and (c) of the same Act further stipulated:

"(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.".

Each year since 1977, the President has utilized authority granted his office pursuant to the National Emergencies Act to extend certain authorities being exercised prior to July 1, 1977, under sec. 5(b) of the Trading with the Enemy Act. The most recent action, Presidential Determination No. 2005–35 of September 12, 2005 extends until September 14, 2006, the exercise of those authorities with respect to countries affected by the Foreign Assets Control Regulations (31 CFR Part 500), the Transaction Control Regulations (31 CFR Part 505), and the Cuban Assets Control Regulations (31 CFR Part 515).

Previous extensions have been issued as a memorandum of September 8, 1978 (43 F.R. 40449); memorandum of September 12, 1979 (44 F.R. 553153); memorandum of September 8, 1980 (45 F.R. 59549); memorandum of September 10, 1981 (46 F.R. 45321); memorandum of September 8, 1982 (47 F.R. 39797); memorandum of September 7, 1983 (48 F.R. 40695); memorandum of September 11, 1984 (49 F.R. 35927); memorandum of September 5, 1985 (5 F.R. 36563); memorandum of August 20, 1986 (51 F.R. 30201); memorandum of August 27, 1987 (52 F.R. 33397); Presidential Determination No. 88–22 of September 8, 1988 (53 F.R. 35289); Presidential Determination No. 89–25 of August 28, 1989 (54 F.R. 37089); Presidential Determination No. 90–38 of September 5, 1990 (55 F.R. 37309); Presidential Determination No. 91–52 of September 13, 1991 (56 F.R. 48415); Presidential Determination No. 92–45 of August 28, 1992 (57 F.R. 43125); Presidential Determination No. 93–38 of September 13, 1993 (58 F.R. 51209); Presidential Determination No. 94–46 of September 8, 1994 (59 F.R. 47229); Presidential Determination No. 95–41 of September 8, 1995 (60 F.R. 47659); Presidential Determination No. 96–43 of August 27, 1996 (61 F.R. 46529); Presidential Determination 97–32 of September 12, 1997 (62 F.R. 48729); Presidential Determination No. 98–35 of September 11, 1998 (63 F.R. 50455; Presidential Determination No. 99–36 of September 10, 1999 (64 F.R. 51885); Presidential Determination No. 2000–29 of September 12, 2000 (65 F.R. 55881); Presidential Determination No. 2001–26 of September 12, 2001 (66 F.R. 47941); Presidential Determination No. 02–31 of September 13, 2002 (67 F.R. 58679); Presidential Determination No. 2003–36 of September 12, 2003 (68 F.R. 54325); Presidential Determination No. 2004–45 of September 10, 2004 (69 F.R. 55497); and as President Determination No. 2005–35 of September 12, 2005 (70 F.R. 54605).

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, 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 subdivision, 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.[8]

(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:[9] *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.[10] As used in this subdivision the

[8] Sec. 102(2) of Public Law 95–223 (91 Stat. 1625) struck out "; and the President may, in the manner hereinabove provided, take other or further measures not inconsistent herewith for the enforcement of this subdivision" which previously appeared at this point.

[9] Pursuant to the authority of the 1946 Proclamation No. 2695, which is set out as a note under sec. 1394 of Title 22, Foreign Relations and Intercourse, and in which the President proclaimed the independence of the Philippines, the words "including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas" which previously appeared at this point, have been omitted.

[10] Sec. 103(b) of Public Law 95–223 (91 Stat. 1626) struck out the following sentence which previously appeared at this point:

term "person" means an individual, partnership, association, or corporation.

(4)[11] The authority granted to the President by 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.

* * * * * * *

SEC. 16.[12] (a) Whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than $1,000,000, or, if a natural person, be fined not more than $100,000, or imprisoned for not more than ten years, or both; and

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"Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, 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.".

[11] Sec. 525(b)(1) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 474), amended and restated para. (4). Sec. 525(b)(2) of that Act further provided:

"(2) 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 amended by paragraph (1) of this subsection, may not be regulated or prohibited.".

Sec. 525(a) of that Act further stated the following:

"(a) SENSE OF CONGRESS.—It is the sense of the Congress that the President should not restrict travel or exchanges for informational, educational, religious, cultural, or humanitarian purposes or for public performances or exhibitions, between the United States and any other country.".

[12] 50 U.S.C. app. 16. Sec. 628 of Public Law 102–393 (106 Stat. 1772) amended and restated sec. 16, as amended by sec. 103(a) of Public Law 95–223). Sec. 16 previously read as follows:

"SEC. 16. That whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.".

Sec. 1710(c)(1) of Public Law 102–484 (106 Stat. 2580) struck out "That whoever" and inserted in lieu thereof "(a) Whoever", an amendment that was not executable given the earlier amendment in Public Law 102–393.

Sec. 102(d)(3)(A) of Public Law 104–114 (110 Stat. 793) inserted the section designation "SEC. 16." before "(a)".

the officer, director, or agent of any corporation who knowingly participates[13] in such violation shall, upon conviction, be fined not more than $100,000 or imprisoned for not more than ten years or both.

(b)[14] (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.

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[13] Sec. 102(d)(3)(B) of Public Law 104–114 (110 Stat. 793) struck out "participants" and inserted in lieu thereof "participates".

[14] Sec. 102(d) of Public Law 104–114 (110 Stat. 793) amended and restated subsec. (b). Previously, sec. 628 of Public Law 102–393 had struck out a second subsec. (b) that had been added by sec. 1710(c)(2) of Public Law 102–484 (106 Stat. 2580). The language added by sec. 628 formerly 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) 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.".

Subsec. (b) as added by sec. 1710(c)(2) of Public Law 102–484 formerly read as follows:

"(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 penalties imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.".

Sec. 1710 of Public Law 102–484 (106 Stat. 2581) further provided:

"(d) APPLICABILITY OF PENALTIES.—The penalties set forth in section 16 of the Trading With the Enemy Act shall apply to violations of this title [Cuban Democracy 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 title [Cuban Democracy Act].".

(c) Upon conviction, any property, funds, securities, papers, or other articles or documents, or any vessel, together with tackle, apparel, furniture, and equipment, concerned in any violation of subsection (a) may be forfeited to the United States.

* * * * * * *

b. International Emergency Economic Powers Act, as amended

Partial text of Public Law 95–223 [H.R. 7738], 91 Stat. 1625, approved December 28, 1977; as amended by Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 102–393 [Treasury, Postal Service, and General Government Appropriations Act, 1993; H.R. 5488], 106 Stat. 1729, approved October 6, 1992; Public Law 102–396 [Department of Defense Appropriations Act, 1993; H.R. 5504], 106 Stat. 1876, approved October 6, 1992; Public Law 103–236 [Foreign Relations Authorization Act, Fiscal Years 1994 and 1995; H.R. 2333], 108 Stat. 382, approved April 30, 1994; Public Law 104–201 [National Defense Authorization Act for Fiscal Year 1997; H.R. 3230], 110 Stat. 2725, approved September 23, 1996; and Public Law 107–56 [Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001; H.R. 3162], 115 Stat. 272, approved October 26, 2001

AN ACT With respect to the powers of the President in time of war or national emergency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

NOTE.—Except for the provisions reproduced below, this Act consisted of amendments to the Trading With the Enemy Act (Public Law 65–91; 40 Stat. 411) and the Export Administration Act of 1969 (Public Law 96–72; 93 Stat. 503).

TITLE I—AMENDMENTS TO THE TRADING WITH THE ENEMY ACT

REMOVAL OF NATIONAL EMERGENCY POWERS UNDER THE TRADING WITH THE ENEMY ACT

SEC. 101. (a) * * *

(b)[1] 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.

[1] 50 U.S.C. app. 5 note.

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.[2]

(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.

(d) Paragraph (1) of section 502(a) of the National Emergencies Act is repealed.

WARTIME AUTHORITIES

SEC. 102. * * *
SEC. 103. * * *

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TITLE II—INTERNATIONAL EMERGENCY ECONOMIC POWERS

SHORT TITLE

SEC. 201.[3] This title may be cited as the "International Emergency Economic Powers Act".

SITUATIONS IN WHICH AUTHORITIES MAY BE EXERCISED

SEC. 202.[4] (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 econ-

[2] Each year since 1977, the President has utilized authority granted his office pursuant to the National Emergencies Act to extend certain authorities being exercised prior to July 1, 1977, under sec. 5(b) of the Trading With the Enemy Act. The most recent action, Presidential Determination No. 2005–35 of September 12, 2005 (70 F.R. 54605), extends until September 14, 2006, the exercise of those authorities with respect to countries affected by the Foreign Assets Control Regulations (31 CFR Part 500), the Transaction Control Regulations (31 CFR Part 505), and the Cuban Assets Control Regulations (31 CFR Part 515).

Previous extensions have been issued as a memorandum of September 8, 1978 (43 F.R. 40449); memorandum of September 12, 1979 (44 F.R. 553153); memorandum of September 8, 1980 (45 F.R. 59549); memorandum of September 10, 1981 (46 F.R. 45321); memorandum of September 8, 1982 (47 F.R. 39797); memorandum of September 7, 1983 (48 F.R. 40695); memorandum of September 11, 1984 (49 F.R. 35927); memorandum of September 5, 1985 (5 F.R. 36563); memorandum of August 20, 1986 (51 F.R. 30201); memorandum of August 27, 1987 (52 F.R. 33397); Presidential Determination No. 88–22 of September 8, 1988 (53 F.R. 35289); Presidential Determination No. 89–25 of August 28, 1989 (54 F.R. 37089); Presidential Determination No. 90–38 of September 5, 1990 (55 F.R. 37309); Presidential Determination No. 91–52 of September 13, 1991 (56 F.R. 48415); Presidential Determination No. 92–45 of August 28, 1992 (57 F.R. 43125); Presidential Determination No. 93–38 of September 13, 1993 (58 F.R. 51209); Presidential Determination No. 94–46 of September 8, 1994 (59 F.R. 47229); Presidential Determination No. 95–41 of September 8, 1995 (60 F.R. 47659); Presidential Determination No. 96–43 of August 27, 1996 (61 F.R. 46529); Presidential Determination 97–32 of September 12, 1997 (62 F.R. 48729); Presidential Determination No. 98–35 of September 11, 1998 (63 F.R. 50455; Presidential Determination No. 99–36 of September 10, 1999 (64 F.R. 51885); Presidential Determination No. 2000–29 of September 12, 2000 (65 F.R. 55881); Presidential Determination No. 2001–26 of September 12, 2001 (66 F.R. 47941); Presidential Determination No. 02–31 of September 13, 2002 (67 F.R. 58679); Presidential Determination No. 2003–36 of September 12, 2003 (68 F.R. 54325); and as Presidential Determination No. 2004–45 of September 10, 2004 (69 F.R. 55497).

[3] 50 U.S.C. 1701 note.

[4] 50 U.S.C. 1701.

omy 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.

GRANTS OF AUTHORITIES

SEC. 203.[5] (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) transfer 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,[6] by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation,[7] 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[8]

C)[9] when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms di-

[5] 50 U.S.C. 1702.

[6] Sec. 106(1)(A) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 115 Stat. 277) struck out "; and", inserted in lieu thereof a comma, and added the text following this through the end of subpara. (A).

[7] Sec. 106(1)(B)(i) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 115 Stat. 277) inserted ", block during the pendency of an investigation".

[8] Sec. 106(1)(B)(ii) and (iii) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 115 Stat. 277) struck out "interest;", inserted in lieu thereof "interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and", and struck out "by any person, or with respect to any property, subject to the jurisdiction of the United States." which previously appeared at this point.

[9] Sec. 106(1)(D) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 115 Stat. 277) added subpara. (C).

rected by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shallbe 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.

(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, memorandums, 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 obligations 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; [10]

(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) or 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 [10]

[10] Sec. 2502(b)(1) of Public Law 100–418 (102 Stat. 1371) struck out "or" at the end of para. (1), and struck out "." and inserted in lieu thereof "; or" at the end of para. (2). Sec. 2502(b)(2) of that Act also stated that:

"(2) The amendments made by paragraph (1) apply to actions taken by the President under section 203 of the International Emergency Economic Powers Act before the date of the enactment of this Act which are in effect on such date of enactment, and to actions taken under such section on or after such date of enactment.".

(3)[11] 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)[11] 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.

(c)[12] CLASSIFIED INFORMATION.—In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.

CONSULTATION AND REPORTS

SEC. 204.[13] (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;

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[11] Sec. 525(c)(1) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 108 Stat. 474), struck out para. (3) and inserted new paras. (3) and (4). Para. (3), which had been added by sec. 2502(b)(1) of Public Law 100–418 (102 Stat. 1371), previously read as follows:

"(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 or with respect to which no acts are prohibited by chapter 37 of title 18, United States Code.".

Sec. 525(c)(2) and (3) of that Act further provided the following:

"(2) The amendments made by paragraph (1) to section 203(b)(3) of the International Emergency Economic Powers Act apply 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.

"(3) Section 203(b)(4) of the International Emergency Economic Powers Act (as added by paragraph (1)) 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.".

[12] Sec. 106(2) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 115 Stat. 277) added subsec. (c).

[13] 50 U.S.C. 1703.

(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 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.[14] 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.[15] (a) A civil penalty of not to exceed $10,000[16] may be imposed on any person who violates, or attempts to violate,[17] any license, order or regulation issued under this title.

(b) Whoever willfully violates, or willfully attempts to violate,[18] 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.[19] (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

[14] 50 U.S.C. 1704.

[15] 50 U.S.C. 1705.

[16] Sec. 629 of the Treasury, Postal Service, and General Government Appropriations Act, 1993 (Public Law 102–393; 106 Stat. 1773) struck out "$10,000" and inserted in lieu thereof "$50,000". Sec. 9155 of the Department of Defense Appropriations Act, 1993 (Public Law 102–396; 106 Stat. 1943), however, struck out "$50,000" and inserted in lieu thereof "$10,000".

[17] Sec. 1422(1) of Public Law 104–201 (110 Stat. 2725) inserted "or attempts to violate".

[18] Sec. 1422(2) of Public Law 104–201 (110 Stat. 2725) inserted "or willfully attempts to violate".

[19] 50 U.S.C. 1706.

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 determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country of 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 supersede 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.[20] If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby.

TITLE III—AMENDMENTS TO THE EXPORT ADMINISTRATION ACT OF 1969

AUTHORITY TO REGULATE EXTRATERRITORIAL EXPORTS

* * * * * * *

[20] 50 U.S.C. 1701 note.

c. National Emergencies Act, as amended

Public Law 94–412 [H.R. 3884], 90 Stat. 1255, approved September 14, 1976; as amended by Public Law 95–223 [International Emergency Economic Powers Act, H.R. 7738], 91 Stat. 1625, approved December 28, 1977; and Public Law 99–93 [Foreign Relations Authorization Act, Fiscal Years 1986 and 1987; H.R. 2068], 99 Stat. 448, approved August 16, 1985

AN ACT To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101.[1] (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201.[2] (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted

[1] 50 U.S.C. 1601.
[2] 50 U.S.C. 1621.

after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) there is enacted into law a joint[3] resolution terminating the emergency; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any joint[3] resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint[3] resolution to determine whether that emergency shall be terminated.

(c)(1) A joint[3] resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such joint[3] resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any joint[3] resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a joint[3] resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

[3] 50 U.S.C. 1622. Sec. 801 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Public Law 99–93; 99 Stat. 448) struck out "concurrent" and inserted in lieu thereof "joint".

(4) In the case of any disagreement between the two Houses of Congress with respect to a joint[3] resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint[3] resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, 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 the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; with

(B) 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.

(d) Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

TITLE III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

SEC. 301.[4] When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

TITLE IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SEC. 401.[5] (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for

[4] 50 U.S.C. 1631.
[5] 50 U.S.C. 1641.

maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declarations, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

TITLE V—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

SEC. 501. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 148(a)) is amended—

(1) at the end of paragraph (9), by striking out "; or" and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of title 10 of the United States Code is amended—

(1) by inserting "and" at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) and (4).

(c) The joint resolution entitled "Joint resolution to authorize the temporary continuation of regulation of consumer credit", approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 as amended (16 U.S.C. 831d(m)) is repealed.

(e) Section 1383 of title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled "An Act to amend the Public Health Service Act is regard to certain matters of personnel and administration, and for other purposes", approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal;

SEC. 502.[6] (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) * * * [Repealed—2002][7]

(2) * * * [Repealed—1977][8]

(1)[8] Act of June 30, 1949 (41 U.S.C. 252);

(2)[8] Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(3)[8] Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(4)[8] Public Law 85–804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431 et seq.);[9]

(5)[8] Section 2304(a)(1) of title 10, United States Code;[10]

(8) * * * [Repealed—1980][11]

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

[6] 50 U.S.C. 1651.

[7] Sec. 101(d) of Public Law 95–223 (91 Stat. 1625) repealed para. (1) which had contained a reference to sec. 5(b) of the Trading With the Enemy Act.

[8] Sec. 1062(o)(1) of Public Law 107–314 (116 Stat. 2652) repealed para. (2) which had contained a reference to the Act of April 28, 1942 (40 U.S.C. 278b), and redesignated paras. (3) through (7) as paras. (1) through (5), respectively.

[9] Sec. 901(r)(2) of Public Law 105–362 (112 Stat. 3291) struck out "1431–1435" and inserted in lieu thereof "1431 et seq.". The semicolon should probably be "; and".

[10] The semicolon probably should be a period.

[11] Sec. 507(b) of Public Law 96–513 (94 Stat. 2919) repealed para. (8) which had contained a reference to 10 U.S.C. 3313, 6386(c), and 8313.

d. Denial of Foreign Tax Credit, etc., with Respect to Certain Foreign Countries

Partial text of the Internal Revenue Code of 1986 (26 U.S.C. 901), Public Law 83–736 of August 16, 1954 [Internal Revenue Code of 1954, 68A Stat. 1]; as amended by Public Law 99–509 [Omnibus Budget Reconciliation Act of 1986, H.R. 5300], 100 Stat. 1874, approved October 21, 1986; Public Law 99–514 [Tax Reform Act of 1986, H.R. 3838], 100 Stat. 2085, approved October 22, 1986; Public Law 100–203 [Budget Reconciliation Act of 1987, H.R. 3545], 101 Stat. 1330, approved December 22, 1987; Public Law 103–149 [South African Democratic Transition Support Act of 1993, H.R. 3225], 107 Stat. 1503, approved November 23, 1993; and Public Law 106–200 [Trade and Development Act of 2000, H.R. 434], 114 Stat. 251, approved May 18, 2000

AN ACT To reform the internal revenue laws of the United States.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress here assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

(a) SHORT TITLE.—This Act may be cited as the "Tax Reform Act of 1986".

(b) TABLE OF CONTENTS.—* * *

* * * * * * *

SEC. 901.[1] TAXES OF FOREIGN COUNTRIES AND OF POSSESSIONS OF UNITED STATES.

* * * * * * *

(j) DENIAL OF FOREIGN TAX CREDIT, ETC., WITH RESPECT TO CERTAIN FOREIGN COUNTRIES

(1) IN GENERAL.—Notwithstanding any other provision of this part—

(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any country if such taxes are with respect to income attributable to a period during which this subsection applies to such country, and

(B) * * *

(2) COUNTRIES TO WHICH THIS SUBSECTION APPLIES.

(A) IN GENERAL.—This subsection shall apply to any foreign country—

(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act.

(ii) with respect to which the United States has severed diplomatic relations,

[1] 26 U.S.C. 901.

(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorism.

(B) PERIOD FOR WHICH SUBSECTION APPLIES.—This subsection shall apply to any foreign country described in subparagraph (A) during the period—

(i) beginning on the later of —

(I) January 1, 1987, or

(II) 6 months after such country becomes a country described in subparagraph (A), and

(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

(C)[2] * * * [Repealed, 1993]

(3) TAXES ALLOWED AS A DEDUCTION, ETC.—* * *

(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations which treat income paid through 1 or more entities as derived from a foreign country to which this subsection applies if such income was, without regard to such entities, derived from such country.

(5)[3] WAIVER OF DENIAL.

(A) IN GENERAL.—Paragraph (1) shall not apply with respect to taxes paid or accrued to a country if the President—

(i) determines that a waiver of the application of such paragraph is in the national interest of the United States and will expand trade and investment opportunities for United States companies in such country; and

(ii) reports such waiver under subparagraph (B).

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[2] Sec. 4(b)(4)(a) of Public Law 103–149 (107 Stat. 1505) deleted subpara. (C), which had been added by sec. 10231(a) of Public Law 100–203. Subpara. (C) previously read as follows:

"(C) SPECIAL RULE FOR SOUTH AFRICA.—

"(i) IN GENERAL.—In addition to any period during which this subsection would otherwise apply to South Africa, this subsection shall apply to South Africa during the period—

"(I) beginning on January 1, 1988, and

"(II) ending on the date the Secretary of State certifies to the Secretary of the Treasury that South Africa meets the requirements of section 311(a) of the Comprehensive Anti-Apartheid Act of 1986 (as in effect on the date of the enactment of this subparagraph).

"(ii) SOUTH AFRICA DEFINED.—For purposes of clause (i), the term 'South Africa' has the meaning given to such term by paragraph (6) of section 3 of the Comprehensive Anti-Apartheid Act of 1986 (as so in effect).".

Sec. 4(b)(8)(B) of Public Law 103–149 (107 Stat. 1505) provided that the repeal of subsec. (C) should not be construed as affecting any of the transitional rules contained in Revenue Ruling 92–62 which applied by reason of the termination of the period for which subsec. (j) was applicable in South Africa.

[3] Sec. 601 of Public Law 106–200 (114 Stat. 601) added para. (5). Sec. 601(b) of that Act provided that "The amendment made by this section shall apply on or after February 1, 2001."

(B) REPORT.—Not less than 30 days before the date on which a waiver is granted under this paragraph, the President shall report to the Congress—

(i) the intention to grant such waiver; and

(ii) the reason for the determination under subparagraph (A)(i).

* * * * * * *

e. Trade Sanctions Reform and Export Enhancement Act of 2000

Partial text of Public Law 106–387 [H.R. 4461], 114 Stat. 1549, enacted October 28, 2000; as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 [Public Law 107–56; H.R. 3162], 115 Stat. 272, approved October 26, 2001

AN ACT Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and related agencies for the fiscal year ending September 30, 2001, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress here assembled,

SECTION 1.

(a) The provisions of H.R. 5426 of the 106th Congress, as introduced on October 6, 2000, are hereby enacted into law.

* * * * * * *

Appendix—H.R. 5426

* * * * * * *

TITLE IX—TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT [1]

SEC. 901.[2] SHORT TITLE.

This title may be cited as the "Trade Sanctions Reform and Export Enhancement Act of 2000".

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[1] Sec. 221(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 115 Stat. 292) provided the following:

"(b) APPLICATION OF THE TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT.—Nothing in the Trade Sanctions Reform and Export Enhancement Act of 2000 shall limit the application or scope of any law establishing criminal or civil penalties, including any Executive order or regulation promulgated pursuant to such laws (or similar or successor laws), for the unlawful export of any agricultural commodity, medicine, or medical device to—

"(1) a foreign organization, group, or person designated pursuant to Executive Order No. 12947 of January 23, 1995, as amended;

"(2) a Foreign Terrorist Organization pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132);

"(3) a foreign organization, group, or person designated pursuant to Executive Order No. 13224 (September 23, 2001);

"(4) any narcotics trafficking entity designated pursuant to Executive Order No. 12978 (October 21, 1995) or the Foreign Narcotics Kingpin Designation Act (Public Law 106–120); or

"(5) any foreign organization, group, or persons subject to any restriction for its involvement in weapons of mass destruction or missile proliferation.".

Sec. 807 of the same Act (115 Stat. 378) further provided:

"SEC. 807. TECHNICAL CLARIFICATION RELATING TO PROVISION OF MATERIAL SUPPORT TO TERRORISM.

"No provision of the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX of Public Law 106-387) shall be construed to limit or otherwise affect section 2339A or 2339B of title 18, United States Code.".

[2] 22 U.S.C. 7201 note.

SEC. 902.[3] **DEFINITIONS.**

In this title:

(1) AGRICULTURAL COMMODITY.—The term "agricultural commodity" has the meaning given the term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(2) AGRICULTURAL PROGRAM.—The term "agricultural program" means—

(A) any program administered under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.);

(B) any program administered under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431);

(C) any program administered under the Agricultural Trade Act of 1978 (7 U.S.C. 5601 et seq.);

(D) the dairy export incentive program administered under section 153 of the Food Security Act of 1985 (15 U.S.C. 713a–14);

(E) any commercial export sale of agricultural commodities; or

(F) any export financing (including credits or credit guarantees) provided by the United States Government for agricultural commodities.

(3) JOINT RESOLUTION.—The term "joint resolution" means—

(A) in the case of section 903(a)(1), only a joint resolution introduced within 10 session days of Congress after the date on which the report of the President under section 903(a)(1) is received by Congress, the matter after the resolving clause of which is as follows: "That Congress approves the report of the President pursuant to section 903(a)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000, transmitted on _____.", with the blank completed with the appropriate date; and

(B) in the case of section 906(1), only a joint resolution introduced within 10 session days of Congress after the date on which the report of the President under section 906(2) is received by Congress, the matter after the resolving clause of which is as follows: "That Congress approves the report of the President pursuant to section 906(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000, transmitted on _____.", with the blank completed with the appropriate date.

(4) MEDICAL DEVICE.—The term "medical device" has the meaning given the term "device" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(5) MEDICINE.—The term "medicine" has the meaning given the term "drug" in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(6) UNILATERAL AGRICULTURAL SANCTION.—The term "unilateral agricultural sanction" means any prohibition, restriction, or condition on carrying out an agricultural program with respect to a foreign country or foreign entity that is imposed by

[3] 22 U.S.C. 7201.

the United States for reasons of foreign policy or national security, except in a case in which the United States imposes the measure pursuant to—

(A) a multilateral regime and the other member countries of that regime have agreed to impose substantially equivalent measures; or

(B) a mandatory decision of the United Nations Security Council.

(7) UNILATERAL MEDICAL SANCTION.—The term "unilateral medical sanction" means any prohibition, restriction, or condition on exports of, or the provision of assistance consisting of, medicine or a medical device with respect to a foreign country or foreign entity that is imposed by the United States for reasons of foreign policy or national security, except in a case in which the United States imposes the measure pursuant to—

(A) a multilateral regime and the other member countries of that regime have agreed to impose substantially equivalent measures; or

(B) a mandatory decision of the United Nations Security Council.

SEC. 903.[4] RESTRICTION.

(a) NEW SANCTIONS.—Except as provided in sections 904 and 905 and notwithstanding any other provision of law, the President may not impose a unilateral agricultural sanction or unilateral medical sanction against a foreign country or foreign entity, unless—

(1) not later than 60 days before the sanction is proposed to be imposed, the President submits a report to Congress that—

(A) describes the activity proposed to be prohibited, restricted, or conditioned; and

(B) describes the actions by the foreign country or foreign entity that justify the sanction; and

(2) there is enacted into law a joint resolution stating the approval of Congress for the report submitted under paragraph (1).

(b) EXISTING SANCTIONS.—The President shall terminate any unilateral agricultural sanction or unilateral medical sanction that is in effect as of the date of enactment of this Act.

SEC. 904.[5] EXCEPTIONS.

Section 903 shall not affect any authority or requirement to impose (or continue to impose) a sanction referred to in section 903—

(1) against a foreign country or foreign entity—

(A) pursuant to a declaration of war against the country or entity;

(B) pursuant to specific statutory authorization for the use of the Armed Forces of the United States against the country or entity;

(C) against which the Armed Forces of the United States are involved in hostilities; or

[4] 22 U.S.C. 7202.
[5] 22 U.S.C. 7203.

(D) where imminent involvement by the Armed Forces of the United States in hostilities against the country or entity is clearly indicated by the circumstances; or

(2) to the extent that the sanction would prohibit, restrict, or condition the provision or use of any agricultural commodity, medicine, or medical device that is—

(A) controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778);

(B) controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 et seq.); or

(C)[6] used to facilitate the design, development, or production of chemical or biological weapons, missiles, or weapons of mass destruction.

SEC. 905.[7] TERMINATION OF SANCTIONS.

Any unilateral agricultural sanction or unilateral medical sanction that is imposed pursuant to the procedures described in section 903(a) shall terminate not later than 2 years after the date on which the sanction became effective unless—

(1) not later than 60 days before the date of termination of the sanction, the President submits to Congress a report containing—

(A) the recommendation of the President for the continuation of the sanction for an additional period of not to exceed 2 years; and

(B) the request of the President for approval by Congress of the recommendation; and

(2) there is enacted into law a joint resolution stating the approval of Congress for the report submitted under paragraph (1).

SEC. 906.[8] STATE SPONSORS OF INTERNATIONAL TERRORISM.

(a) REQUIREMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of this title (other than section 904), the export of agricultural commodities, medicine, or medical devices to Cuba, the Taliban or the territory of Afghanistan controlled by the Taliban,[9] or to the government of a country that has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)), or to any other entity in such a country, shall

[6] Sec. 221(a)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 115 Stat. 292) amended and restated subpara. (C). It previously read as follows:

"(C) used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.".

[7] 22 U.S.C. 7204.

[8] 22 U.S.C. 7205.

[9] Sec. 221(a)(2)(A) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 115 Stat. 292) inserted ", the Taliban or the territory of Afghanistan controlled by the Taliban,".

only be made pursuant to 1-year licenses issued by the United States Government for contracts entered into during the 1-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract, except that the requirements of such 1-year licenses shall be no more restrictive than license exceptions administered by the Department of Commerce or general licenses administered by the Department of the Treasury, except that procedures shall be in place to deny licenses for exports to any entity within such country, or in the territory of Afghanistan controlled by the Taliban,[10] promoting international terrorism.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to the export of agricultural commodities, medicine, or medical devices to the Government of Syria or to the Government of North Korea, or to any other entity in Syria or North Korea.[11]

(b) QUARTERLY REPORTS.—The applicable department or agency of the Federal Government shall submit to the appropriate congressional committees on a quarterly basis a report on any activities undertaken under subsection (a)(1) during the preceding calendar quarter.

(c) BIENNIAL REPORTS.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the applicable department or agency of the Federal Government shall submit a report to the appropriate congressional committees on the operation of the licensing system under this section for the preceding 2-year period, including—

(1) the number and types of licenses applied for;

(2) the number and types of licenses approved;

(3) the average amount of time elapsed from the date of filing of a license application until the date of its approval;

(4) the extent to which the licensing procedures were effectively implemented; and

(5) a description of comments received from interested parties about the extent to which the licensing procedures were effective, after the applicable department or agency holds a public 30-day comment period.

SEC. 907.[12] CONGRESSIONAL PROCEDURES.

(a) REFERRAL OF REPORT.—A report described in section 903(a)(1) or 905(1) shall be referred to the appropriate committee or committees of the House of Representatives and to the appropriate committee or committees of the Senate.

(b) REFERRAL OF JOINT RESOLUTION.—

(1) IN GENERAL.—A joint resolution introduced in the Senate shall be referred to the Committee on Foreign Relations, and a joint resolution introduced in the House of Representatives shall be referred to the Committee on International Relations.

[10] Sec. 221(a)(2)(B) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 115 Stat. 292) inserted ", or in the territory of Afghanistan controlled by the Taliban,".

[11] Sec. 221(a)(3) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 115 Stat. 292) inserted ", or to any other entity in Syria or North Korea".

[12] 22 U.S.C. 7206.

(2) REPORTING DATE.—A joint resolution referred to in paragraph (1) may not be reported before the eighth session day of Congress after the introduction of the joint resolution.

SEC. 908.[13] PROHIBITION ON UNITED STATES ASSISTANCE AND FINANCING.

(a) PROHIBITION ON UNITED STATES ASSISTANCE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, no United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees shall be available for exports to Cuba or for commercial exports to Iran, Libya, North Korea, or Sudan.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to alter, modify, or otherwise affect the provisions of section 109 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6039) or any other provision of law relating to Cuba in effect on the day before the date of the enactment of this Act.

(3) WAIVER.—The President may waive the application of paragraph (1) with respect to Iran, Libya, North Korea, and Sudan to the degree the President determines that it is in the national security interest of the United States to do so, or for humanitarian reasons.

(b) PROHIBITION ON FINANCING OF AGRICULTURAL SALES TO CUBA.—

(1) IN GENERAL.—No United States person may provide payment or financing terms for sales of agricultural commodities or products to Cuba or any person in Cuba, except in accordance with the following terms (notwithstanding part 515 of title 31, Code of Federal Regulations, or any other provision of law):

(A) Payment of cash in advance.

(B) Financing by third country financial institutions (excluding United States persons or Government of Cuba entities), except that such financing may be confirmed or advised by a United States financial institution.

Nothing in this paragraph authorizes payment terms or trade financing involving a debit or credit to an account of a person located in Cuba or of the Government of Cuba maintained on the books of a United States depository institution.

(2) PENALTIES.—Any private person or entity that violates paragraph (1) shall be subject to the penalties provided in the Trading With the Enemy Act for violations under that Act.

(3) ADMINISTRATION AND ENFORCEMENT.—The President shall issue such regulations as are necessary to carry out this section, except that the President, in lieu of issuing new regulations, may apply any regulations in effect on the date of the enactment of this Act, pursuant to the Trading With the Enemy Act, with respect to the conduct prohibited in paragraph (1).

(4) DEFINITIONS.—In this subsection—

[13] 22 U.S.C. 7207.

(A) the term "financing" includes any loan or extension of credit;

(B) the term "United States depository institution" means any entity (including its foreign branches or subsidiaries) organized under the laws of any jurisdiction within the United States, or any agency, office or branch located in the United States of a foreign entity, that is engaged primarily in the business of banking (including a bank, savings bank, savings association, credit union, trust company, or United States bank holding company); and

(C) the term "United States person" means the Federal Government, any State or local government, or any private person or entity of the United States.

SEC. 909.[14] PROHIBITION ON ADDITIONAL IMPORTS FROM CUBA.

Nothing in this title shall be construed to alter, modify, or otherwise affect the provisions of section 515.204 of title 31, Code of Federal Regulations, relating to the prohibition on the entry into the United States of 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.

SEC. 910.[15] REQUIREMENTS RELATING TO CERTAIN TRAVEL-RELATED TRANSACTIONS WITH CUBA.

(a) AUTHORIZATION OF TRAVEL RELATING TO COMMERCIAL SALE OF AGRICULTURAL COMMODITIES.—The Secretary of the Treasury shall promulgate regulations under which the travel-related transactions listed in subsection (c) of section 515.560 of title 31, Code of Federal Regulations, may be authorized on a case-by-case basis by a specific license for travel to, from, or within Cuba for the commercial export sale of agricultural commodities pursuant to the provisions of this title.

(b) PROHIBITION ON TRAVEL RELATING TO TOURIST ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law or regulation, the Secretary of the Treasury, or any other Federal official, may not authorize the travel-related transactions listed in subsection (c) of section 515.560 of title 31, Code of Federal Regulations, either by a general license or on a case-by-case basis by a specific license for travel to, from, or within Cuba for tourist activities.

(2) DEFINITION.—In this subsection, the term "tourist activities" means any activity with respect to travel to, from, or within Cuba that is not expressly authorized in subsection (a) of this section, in any of paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations, or in any section referred to in any of such paragraphs (1) through (12) (as such sections were in effect on June 1, 2000).

SEC. 911. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title shall take effect on the date of enactment of this Act, and shall apply thereafter in any fiscal year.

[14] 22 U.S.C. 7208.
[15] 22 U.S.C. 7209.

(b) EXISTING SANCTIONS.—In the case of any unilateral agricultural sanction or unilateral medical sanction that is in effect as of the date of enactment of this Act, this title shall take effect 120 days after the date of enactment of this Act, and shall apply thereafter in any fiscal year.

f. Economic Relations with Narcotics Traffickers

(1) Foreign Narcotics Kingpin Designation Act

Partial text of Public Law 106–120 [Intelligence Authorization Act for Fiscal Year 2000, H.R. 13333], 113 Stat. 1606, approved December 3, 1999; as amended by Public Law 107–108 [Intelligence Authorization Act for Fiscal Year 2002; H.R. 2883], 115 Stat. 1394, approved December 28, 2001

AN ACT To authorize appropriations for fiscal year 2000 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Intelligence Authorization Act for Fiscal Year 2000".

* * * * * * *

TITLE VIII—INTERNATIONAL NARCOTICS TRAFFICKING

SEC. 801.[1] SHORT TITLE.

This title may be cited as the "Foreign Narcotics Kingpin Designation Act".

SEC. 802.[2] FINDINGS AND POLICY.

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

(1) Presidential Decision Directive 42, issued on October 21, 1995, ordered agencies of the executive branch of the United States Government to, inter alia, increase the priority and resources devoted to the direct and immediate threat international crime presents to national security, work more closely with other governments to develop a global response to this threat, and use aggressively and creatively all legal means available to combat international crime.

(2) Executive Order No. 12978 of October 21, 1995, provides for the use of the authorities in the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.) to target and apply sanctions to four international narcotics traffickers and their organizations that operate from Colombia.

(3) IEEPA was successfully applied to international narcotics traffickers in Colombia and based on that successful case study, Congress believes similar authorities should be applied worldwide.

[1] 21 U.S.C. 1901 note.
[2] 21 U.S.C. 1901.

(4) There is a national emergency resulting from the activities of international narcotics traffickers and their organizations that threatens the national security, foreign policy, and economy of the United States.

(b) POLICY.—It shall be the policy of the United States to apply economic and other financial sanctions to significant foreign narcotics traffickers and their organizations worldwide to protect the national security, foreign policy, and economy of the United States from the threat described in subsection (a)(4).

SEC. 803.[3] PURPOSE.

The purpose of this title is to provide authority for the identification of, and application of sanctions on a worldwide basis to, significant foreign narcotics traffickers, their organizations, and the foreign persons who provide support to those significant foreign narcotics traffickers and their organizations, whose activities threaten the national security, foreign policy, and economy of the United States.

SEC. 804.[4] PUBLIC IDENTIFICATION OF SIGNIFICANT FOREIGN NARCOTICS TRAFFICKERS AND REQUIRED REPORTS.

(a) PROVISION OF INFORMATION TO THE PRESIDENT.—The Secretary of the Treasury, the Attorney General, the Secretary of Defense, the Secretary of State, and the Director of Central Intelligence shall consult among themselves and provide the appropriate and necessary information to enable the President to submit the report under subsection (b). This information shall also be provided to the Director of the Office of National Drug Control Policy.

(b) PUBLIC IDENTIFICATION AND SANCTIONING OF SIGNIFICANT FOREIGN NARCOTICS TRAFFICKERS.—Not later than June 1, 2000, and not later than June 1 of each year thereafter, the President shall submit a report to the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives; and to the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate

(1) identifying publicly the foreign persons that the President determines are appropriate for sanctions pursuant to this title; and

(2) detailing publicly the President's intent to impose sanctions upon these significant foreign narcotics traffickers pursuant to this title.

The report required in this subsection shall not include information on persons upon which United States sanctions imposed under this title, or otherwise on account of narcotics trafficking, are already in effect.

(c) UNCLASSIFIED REPORT REQUIRED.—The report required by subsection (b) shall be submitted in unclassified form and made available to the public.

(d) CLASSIFIED REPORT.—(1) Not later than July 1, 2000, and not later than July 1 of each year thereafter, the President shall provide the Permanent Select Committee on Intelligence of the House

[3] 21 U.S.C. 1902.
[4] 21 U.S.C. 1903.

of Representatives and the Select Committee on Intelligence of the Senate with a report in classified form describing in detail the status of the sanctions imposed under this title, including the personnel and resources directed towards the imposition of such sanctions during the preceding fiscal year, and providing background information with respect to newly-identified significant foreign narcotics traffickers and their activities.

(2) Such classified report shall describe actions the President intends to undertake or has undertaken with respect to such significant foreign narcotics traffickers.

(3) The report required under this subsection is in addition to the President's obligations to keep the intelligence committees of Congress fully and currently informed pursuant to the provisions of the National Security Act of 1947.

(e) EXCLUSION OF CERTAIN INFORMATION.—

(1) INTELLIGENCE.—Notwithstanding any other provision of this section, the reports described in subsections (b) and (d) shall not disclose the identity of any person, if the Director of Central Intelligence determines that such disclosure could compromise an intelligence operation, activity, source, or method of the United States.

(2) LAW ENFORCEMENT.—Notwithstanding any other provision of this section, the reports described in subsections (b) and (d) shall not disclose the name of any person if the Attorney General, in coordination as appropriate with the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, and the Secretary of the Treasury, determines that such disclosure could reasonably be expected to—

(A) compromise the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis;

(B) jeopardize the integrity or success of an ongoing criminal investigation or prosecution;

(C) endanger the life or physical safety of any person; or

(D) cause substantial harm to physical property.

(f) NOTIFICATION REQUIRED.—(1) Whenever either the Director of Central Intelligence or the Attorney General makes a determination under subsection (e), the Director of Central Intelligence or the Attorney General shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and explain the reasons for such determination.

(2) The notification required under this subsection shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate not later than July 1, 2000, and on an annual basis thereafter.

(g) DETERMINATIONS NOT TO APPLY SANCTIONS.—(1) The President may waive the application to a significant foreign narcotics trafficker of any sanction authorized by this title if the President determines that the application of sanctions under this title would significantly harm the national security of the United States.

(2) When the President determines not to apply sanctions that are authorized by this title to any significant foreign narcotics trafficker, the President shall notify the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives, and the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate not later than 21 days after making such determination.

(h) CHANGES IN DETERMINATIONS TO IMPOSE SANCTIONS.—

(1) ADDITIONAL DETERMINATIONS.—

(A) If at any time after the report required under subsection (b) the President finds that a foreign person is a significant foreign narcotics trafficker and such foreign person has not been publicly identified in a report required under subsection (b), the President shall submit an additional public report containing the information described in subsection (b) with respect to such foreign person to the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives, and the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate.

(B) The President may apply sanctions authorized under this title to the significant foreign narcotics trafficker identified in the report submitted under subparagraph (A) as if the trafficker were originally included in the report submitted pursuant to subsection (b) of this section.

(C) The President shall notify the Secretary of the Treasury of any determination made under this paragraph.

(2) REVOCATION OF DETERMINATION.—

(A) Whenever the President finds that a foreign person that has been publicly identified as a significant foreign narcotics trafficker in the report required under subsection (b) or this subsection no longer engages in those activities for which sanctions under this title may be applied, the President shall issue public notice of such a finding.

(B) Not later than the date of the public notice issued pursuant to subparagraph (A), the President shall notify, in writing and in classified or unclassified form, the Permanent Select Committee on Intelligence, and the Committees on the Judiciary, International Relations, Armed Services, and Ways and Means of the House of Representatives, and the Select Committee on Intelligence, and the Committees on the Judiciary, Foreign Relations, Armed Services, and Finance of the Senate of actions taken under this paragraph and a description of the basis for such actions.

SEC. 805.[5] BLOCKING ASSETS AND PROHIBITING TRANSACTIONS.

(a) APPLICABILITY OF SANCTIONS.—A significant foreign narcotics trafficker publicly identified in the report required under subsection (b) or (h)(1) of section 804 and foreign persons designated by the Secretary of the Treasury pursuant to subsection (b) of this section shall be subject to any and all sanctions as authorized by this title. The application of sanctions on any foreign person pursuant to subsection (b) or (h)(1) of section 804 or subsection (b) of this section shall remain in effect until revoked pursuant to section 804(h)(2) or subsection (e)(1)(A) of this section or waived pursuant to section 804(g)(1).

(b) BLOCKING OF ASSETS.—Except to the extent provided in regulations, orders, instructions, licenses, or directives issued pursuant to this title, and notwithstanding any contract entered into or any license or permit granted prior to the date on which the President submits the report required under subsection (b) or (h)(1) of section 804, there are blocked as of such date, and any date thereafter, all such property and interests in property within the United States, or within the possession or control of any United States person, which are owned or controlled by—

(1) any significant foreign narcotics trafficker publicly identified by the President in the report required under subsection (b) or (h)(1) of section 804;

(2) any foreign person that the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, designates as materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a significant foreign narcotics trafficker so identified in the report required under subsection (b) or (h)(1) of section 804, or foreign persons designated by the Secretary of the Treasury pursuant to this subsection;

(3) any foreign person that the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, designates as owned, controlled, or directed by, or acting for or on behalf of, a significant foreign narcotics trafficker so identified in the report required under subsection (b) or (h)(1) of section 804, or foreign persons designated by the Secretary of the Treasury pursuant to this subsection; and

(4) any foreign person that the Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, designates as playing a significant role in international narcotics trafficking.

[5] 21 U.S.C. 1904.

(c) PROHIBITED TRANSACTIONS.—Except to the extent provided in regulations, orders, instructions, licenses, or directives issued pursuant to this title, and notwithstanding any contract entered into or any license or permit granted prior to the date on which the President submits the report required under subsection (b) or (h)(1) of section 804, the following transactions are prohibited:

(1) Any transaction or dealing by a United States person, or within the United States, in property or interests in property of any significant foreign narcotics trafficker so identified in the report required pursuant to subsection (b) or (h)(1) of section 804, and foreign persons designated by the Secretary of the Treasury pursuant to subsection (b) of this section.

(2) Any transaction or dealing by a United States person, or within the United States, that evades or avoids, or has the effect of evading or avoiding, and any endeavor, attempt, or conspiracy to violate, any of the prohibitions contained in this title.

(d) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES UNAFFECTED.—Nothing in this title prohibits or otherwise limits the authorized law enforcement or intelligence activities of the United States, or the law enforcement activities of any State or subdivision thereof.

(e) IMPLEMENTATION.—(1) The Secretary of the Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, is authorized to take such actions as may be necessary to carry out this title, including—

(A) making those designations authorized by paragraphs (2), (3), and (4) of subsection (b) of this section and revocation thereof;

(B) promulgating rules and regulations permitted under this title; and

(C) employing all powers conferred on the Secretary of the Treasury under this title.

(2) Each agency of the United States shall take all appropriate measures within its authority to carry out the provisions of this title.

(3) Section 552(a)(3) of title 5, United States Code, shall not apply to any record or information obtained or created in the implementation of this title.

(f) * * * [Repealed–2001] [6]

SEC. 806. [7] **AUTHORITIES.**

(a) IN GENERAL.—To carry out the purposes of this title, the Secretary of the Treasury may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(1) investigate, regulate, or prohibit—

(A) any transactions in foreign exchange, currency, or securities; and

[6] Sec. 307 of the Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107–108; 115 Stat. 1399) struck out subsec. (f). It previously read as follows:

"(f) JUDICIAL REVIEW.—The determinations, identifications, findings, and designations made pursuant to section 804 and subsection (b) of this section shall not be subject to judicial review.".

[7] 21 U.S.C. 1905.

(B) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interests of any foreign country or a national thereof; and

(2) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent, or prohibit any acquisition, holding, withholding, use, transfer, withdrawal, transportation, placement into foreign or domestic commerce 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.

(b) RECORDKEEPING.—Pursuant to subsection (a), the Secretary of the Treasury may require recordkeeping, reporting, and production of documents to carry out the purposes of this title.

(c) DEFENSES.—

(1) Full and actual compliance with any regulation, order, license, instruction, or direction issued under this title shall be a defense in any proceeding alleging a violation of any of the provisions of this title.

(2) 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.

(d) RULEMAKING.—The Secretary of the Treasury may issue such other regulations or orders, including regulations prescribing recordkeeping, reporting, and production of documents, definitions, licenses, instructions, or directions, as may be necessary for the exercise of the authorities granted by this title.

SEC. 807.[8] ENFORCEMENT.

(a) CRIMINAL PENALTIES.—(1) Whoever willfully violates the provisions of this title, or any license rule, or regulation issued pursuant to this title, or willfully neglects or refuses to comply with any order of the President issued under this title shall be—

(A) imprisoned for not more than 10 years,

(B) fined in the amount provided in title 18, United States Code or, in the case of an entity, fined not more than $10,000,000, or both.

(2) Any officer, director, or agent of any entity who knowingly participates in a violation of the provisions of this title shall be imprisoned for not more than 30 years, fined not more than $5,000,000, or both.

(b) CIVIL PENALTIES.—A civil penalty not to exceed $1,000,000 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 title.

(c) JUDICIAL REVIEW OF CIVIL PENALTY.—Any penalty imposed under subsection (b) shall be subject to judicial review only to the extent provided in section 702 of title 5, United States Code.

[8] 21 U.S.C. 1906.

SEC. 808.[9] DEFINITIONS.

As used in this title:

(1) ENTITY.—The term "entity" means a partnership, joint venture, association, corporation, organization, network, group, or subgroup, or any form of business collaboration.

(2) FOREIGN PERSON.—The term "foreign person" means any citizen or national of a foreign state or any entity not organized under the laws of the United States, but does not include a foreign state.

(3) NARCOTICS TRAFFICKING.—The term "narcotics trafficking" means any illicit activity to cultivate, produce, manufacture, distribute, sell, finance, or transport narcotic drugs, controlled substances, or listed chemicals, or otherwise endeavor or attempt to do so, or to assist, abet, conspire, or collude with others to do so.

(4) NARCOTIC DRUG; CONTROLLED SUBSTANCE; LISTED CHEMICAL.—The terms "narcotic drug", "controlled substance", and "listed chemical" have the meanings given those terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(5) PERSON.—The term "person" means an individual or entity.

(6) UNITED STATES PERSON.—The term "United States person" means any United States citizen or national, permanent resident alien, an entity organized under the laws of the United States (including its foreign branches), or any person within the United States.

(7) SIGNIFICANT FOREIGN NARCOTICS TRAFFICKER.—The term "significant foreign narcotics trafficker" means any foreign person that plays a significant role in international narcotics trafficking, that the President has determined to be appropriate for sanctions pursuant to this title, and that the President has publicly identified in the report required under subsection (b) or (h)(1) of section 804.

SEC. 809.[10] EXCLUSION OF PERSONS WHO HAVE BENEFITED FROM ILLICIT ACTIVITIES OF DRUG TRAFFICKERS. * * *

SEC. 810.[11] JUDICIAL REVIEW COMMISSION ON FOREIGN ASSET CONTROL.

(a) ESTABLISHMENT.—There is established a commission to be known as the 'Judicial Review Commission on Foreign Asset Control' (in this section referred to as the 'Commission').

(b) MEMBERSHIP AND PROCEDURAL MATTERS.—(1) The Commission shall be composed of five members, as follows:

(A) One member shall be appointed by the Chairman of the Select Committee on Intelligence of the Senate.

(B) One member shall be appointed by the Vice Chairman of the Select Committee on Intelligence of the Senate.

(C) One member shall be appointed by the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives.

[9] 21 U.S.C. 1907.

[10] Sec. 809 amends sec. 212(a)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(C)).

[11] 21 U.S.C. 1908.

(D) One member shall be appointed by the Ranking Minority Member of the Permanent Select Committee on Intelligence of the House of Representatives.

(E) One member shall be appointed jointly by the members appointed under subparagraphs (A) through (D).

(2) Each member of the Commission shall, for purposes of the activities of the Commission under this section, possess or obtain an appropriate security clearance in accordance with applicable laws and regulations regarding the handling of classified information.

(3) The members of the Commission shall choose the chairman of the Commission from among the members of the Commission.

(4) The members of the Commission shall establish rules governing the procedures and proceedings of the Commission.

(c) DUTIES.—The Commission shall have as its duties the following:

(1) To conduct a review of the current judicial, regulatory, and administrative authorities relating to the blocking of assets of foreign persons by the United States Government.

(2) To conduct a detailed examination and evaluation of the remedies available to United States persons affected by the blocking of assets of foreign persons by the United States Government.

(d) POWERS.—(1) The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this section.

(2) The Commission may secure directly from any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this section. Each such department, agency, bureau, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request of the chairman of the Commission. The Commission shall handle and protect all classified information provided to it under this section in accordance with applicable statutes and regulations.

(3) The Attorney General and the Secretary of the Treasury shall provide to the Commission, on a nonreimbursable basis, such administrative services, funds, facilities, and other support services as are necessary for the performance of the Commission's duties under this section.

(4) The Commission shall receive the full and timely cooperation of any official, department, or agency of the United States Government whose assistance is necessary for the fulfillment of the duties of the Commission under this section, including the provision of full and current briefings and analyses.

(5) No department or agency of the Government may withhold information from the Commission on the grounds that providing the information to the Commission would constitute the unauthorized disclosure of classified information or information relating to intelligence sources or methods.

(6) The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(e) STAFF.—(1) Subject to paragraph (2), the chairman of the Commission, in accordance with rules agreed upon by the Commission, shall appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III or chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of such title.

(2)(A) Any employee of a department or agency referred to in subparagraph (B) may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(B) The departments and agencies referred to in this subparagraph are as follows:

(i) The Department of Justice.

(ii) The Department of the Treasury.

(iii) The Central Intelligence Agency.

(3) All staff of the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(f) COMPENSATION AND TRAVEL EXPENSES.—(1)(A) Except as provided in subparagraph (B), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission under this section.

(B) Members of the Commission who are officers or employees of the United States shall receive no additional pay by reason of their service on the Commission.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(g) REPORT.—(1) Not later than 1 year after the date of the enactment of this Act, the Commissions shall submit to the committees of Congress referred to in paragraph (4) a report on the activities of the Commission under this section, including the findings, conclusions, and recommendations, if any, of the Commission as a result of the review under subsection (c)(1) and the examination and evaluation under subsection (c)(2).

(2) The report under paragraph (1) shall include any additional or dissenting views of a member of the Commission upon the request of the member.

(3) The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(4) The committees of Congress referred to in this paragraph are the following:

(A) The Select Committee on Intelligence and the Committees on Foreign Relations and the Judiciary of the Senate.

(B) The Permanent Select Committee on Intelligence and the Committees on International Relations and the Judiciary of the House of Representatives.

(h) TERMINATION.—The Commission shall terminate at the end of the 60-day period beginning on the date on which the report required by subsection (g) is submitted to the committees of Congress referred to in that subsection.

(i) INAPPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.—(1) The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission under this section.

(2) The provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), shall not apply to the activities, records, and proceedings of the Commission under this title.

(j) FUNDING.—The Attorney General shall, from amounts authorized to be appropriated to the Attorney General by this Act, make available to the Commission $1,000,000 for purposes of the activities of the Commission under this section. Amounts made available to the Commission under the preceding sentence shall remain available until expended

SEC. 811.[12] EFFECTIVE DATE.

This title shall take effect on the date of the enactment of this Act.

[12] 21 U.S.C. 1901 note.

(2) Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers

Executive Order 12978, October 21, 1995, 60 F.R. 54579, 50 U.S.C. 1701 note; as amended by Executive Order 13286, February 28, 2003, 68 F.R. 10619

By the authority vested in me as President by the Constitution and the laws of the United States of america, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that the actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause in the United States and abroad, constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.[1]

Section 1. Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, I hereby order blocked all property and interests in property that are or hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, of:

(a) the foreign persons listed in the Annex to this order;

(b) foreign persons determined by the Secretary of the Treasury, in consultation with the Attorney General, the Secretary of Homeland Security,[2] and the Secretary of State:

(i) to play a significant role in international narcotics trafficking centered in Colombia; or

(ii) materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and

(c) persons determined by the Secretary of the Treasury, in consultation with the Attorney General, the Secretary of Homeland Security,[2] and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to this order.

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[1] Continuation of the national emergency was contained in the following: Notice of the President, October 16, 1996 (61 F.R. 29455); Notice of the President, October 17, 1997 (62 F.R. 54561); Notice of the President, October 19, 1998 (63 F.R. 56079); Notice of the President, October 19, 1999 (64 F.R. 56667; Notice of the President, October 19, 2000 (65 F.R. 63193); Notice of the President, October 16, 2001 (66 F.R. 53073); Notice of the President, October 16, 2002 (67 F.R. 64307); Notice of the President, October 16, 2003 (68 F.R. 60021); Notice of the President, October 19, 2004 (69 F.R. 61733); and Notice of the President, October 19, 2005 (70 F.R. 61209).

[2] Sec. 22 of Executive Order 13286 (68 F.R. 10624) inserted ", the Secretary of Homeland Security,".

Sec. 2.[3] Further, except to the extent provided in section 203(b) of IEEPA and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit gran ted prior to the effective date, I hereby prohibit the following:

(a) any transaction or dealing by United States persons or within the United States in property or interests in property of the persons designated in or pursuant to this order;

(b) any transaction by any United States person or within the United States that evades or avoids, or has the purposes of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 3. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, corporation, or other organization, group or subgroup;

(c) the term "United States person" means any United States citizen or national, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States:

(d) the term "foreign person" means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the united States) or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state; and

(e) the term "narcotics trafficking" means any activity undertaken illicitly to cultivate, produce, manufacture, distribute, sell, finance or transport, or otherwise assist, abet, conspire, or collude with others in illicit activities relating to, narcotic drugs, including, but not limited to, cocaine.

Sec. 4. The Secretary of the Treasury, in consultation with the Attorney General, the Secretary of Homeland Security,[2] and the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out this order.

Sec. 5. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 6. (a) This order is effective at 12:01 a.m. Eastern Daylight Time on October 22, 1995.

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[3] The Department of the Treasury issued notices of blocking assets for a list of specially designated narcotics traffickers effective October 23, 1995 (60 F.R. 54582). Amendments or additions to the list were issued on: November 24, 1995 (60 F.R. 61288); March 5, 1996 (61 F.R. 9523); June 26, 1996 (61 F.R. 32936); January 15, 1997 (62 F.R. 2903); April 17, 1997 (62 F.R. 19500); June 27, 1997 (62 F.R. 34934); July 30, 1997 (62 F.R. 41850); September 9, 1997 (62 F.R. 48177); May 26, 1998 (63 F.R. 28896); June 25, 1999 (64 F.R. 34984); March 29, 2000 (65 F.R. 17590); November 28, 2000 (65 F.R. 75628); December 19, 2000 (65 F.R. 80749); and February 12, 2003 (68 F.R. 7168).

(b) This order shall be transmitted to the Congress and published in the Federal Register.

ANNEX

Gilberto Rodriguez Orejuela
Miiguel Angel Rodriguez Orejuela
José Santacruz Londoño
Helmer Herrera Buitrago

g. Prohibitions on Economic Relations With Terrorists

(1) Clarification of Certain Executive Orders Blocking Property and Prohibiting Certain Transactions

Executive Order 13372, February 16, 2005, 70 F.R. 8499, 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, in order to clarify the steps taken in Executive Order 12947 of January 23, 1995, as amended by Executive Order 13099 of August 20, 1998; and Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, in particular with respect to the implementation of section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), hereby order:

Section 1.[1] * * *

Sec. 2.[2] * * *

Sec. 3. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

(b) Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations.

(c) Amendments to Executive Orders made by this order shall take effect as of the date of this order.

Sec. 4. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Sec. 5. This order shall be transmitted to the Congress and published in the Federal Register.

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[1] Sec. 1 amended sec. 4 of Executive Order 13224.

[2] Sec. 2 amended sec. 3 of Executive Order 12947.

(2) Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism

Executive Order 13224, September 23, 2001, 66 F.R. 49079, 50 U.S.C. 1701 note; as amended by Executive Order 13268, July 2, 2002, 67 F.R. 44751; Executive Order 13284, January 23, 2003, 68 F.R. 4075; and Executive Order 13372, February 16, 2005, 70 F.R. 8499

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution (UNSCR) 1214 of December 8, 1998, UNSCR 1267 of October 15, 1999, UNSCR 1333 of December 19, 2000, and the multilateral sanctions contained therein, and UNSCR 1363 of July 30, 2001, establishing a mechanism to monitor the implementation of UNSCR 1333,

I, GEORGE W. BUSH, President of the United States of America, find that grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, acts recognized and condemned in UNSCR 1368 of September 12, 2001, and UNSCR 1269 of October 19, 1999, and the continuing and immediate threat of further attacks on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and in furtherance of my proclamation of September 14, 2001, Declaration of National Emergency by Reason of Certain Terrorist Attacks, hereby declare a national emergency to deal with that threat. I also find that because of the pervasiveness and expansiveness of the financial foundation of foreign terrorists, financial sanctions may be appropriate for those foreign persons that support or otherwise associate with these foreign terrorists. I also find that a need exists for further consultation and cooperation with, and sharing of information by, United States and foreign financial institutions as an additional tool to enable the United States to combat the financing of terrorism.

I hereby order:

Section 1. Except to the extent required by section 203(b) of IEEPA (50 U.S.C. 1702(b)), or provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons that are in the United States or that hereafter come within the United States, or that

hereafter come within the possession or control of United States persons are blocked:

(a) foreign persons listed in the Annex to this order;

(b) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security,[1] and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(c) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security,[1] and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order;

(d) except as provided in section 5 of this order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security,[1] and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security,[1] and the Attorney General;

(i) to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to this order or determined to be subject to this order; or

(ii) to be otherwise associated with those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order.

Sec. 2. Except to the extent required by section 203(b) of IEEPA (50 U.S.C. 1702(b)), or provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date:

(a) any transaction or dealing by United States persons or within the United States in property or interests in property blocked pursuant to this order is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the Annex to this order or determined to be subject to this order;

(b) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited; and

(c) any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For purposes of this order:

(a) the term "person" means an individual or entity;

[1] Sec. 4 of Executive Order 13284 (68 F.R. 4075) inserted ",the Secretary of Homeland Security,".

(b) the term "entity" means a partnership, association, corporation, or other organization, group, or subgroup;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

(d) the term "terrorism" means an activity that—

(i) involves a violent act or an act dangerous to human life, property, or infrastructure; and

(ii) appears to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

Sec. 4.[2] I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of, any persons determined to be subject to this order would seriously impair my ability to deal with the national emergency declared in this order, and would endanger Armed Forces of the United States that are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances, and I hereby prohibit such donations as provided by section 1 of this order. Furthermore, I hereby determine that the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX, Public Law 106–387) shall not affect the imposition or the continuation of the imposition of any unilateral agricultural sanction or unilateral medical sanction on any person determined to be subject to this order because imminent involvement of the Armed Forces of the United States in hostilities is clearly indicated by the circumstances.

Sec. 5. With respect to those persons designated pursuant to subsection 1(d) of this order, the Secretary of the Treasury, in the exercise of his discretion and in consultation with the Secretary of State, the Secretary of Homeland Security,[1] and the Attorney General, may take such other actions than the complete blocking of property or interests in property as the President is authorized to take under IEEPA and UNPA if the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security,[1] and the Attorney General, deems such other actions to be consistent with the national interests of the United States, considering such factors as he deems appropriate.

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[2] Sec. 1 of Executive Order 13372 (70 F.R. 8499) amended and restated sec. 4. It previously read as follows:

"**Sec. 4.** I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by United States persons to persons determined to be subject to this order would seriously impair my ability to deal with the national emergency declared in this order, and would endanger Armed Forces of the United States that are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances, and hereby prohibit such donations as provided by section 1 of this order. Furthermore, I hereby determine that the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, Public Law 106-387) shall not affect the imposition or the continuation of the imposition of any unilateral agricultural sanction or unilateral medical sanction on any person determined to be subject to this order because imminent involvement of the Armed Forces of the United States in hostilities is clearly indicated by the circumstances.".

Sec. 6. The Secretary of State, the Secretary of the Treasury, and other appropriate agencies shall make all relevant efforts to cooperate and coordinate with other countries, including through technical assistance, as well as bilateral and multilateral agreements and arrangements, to achieve the objectives of this order, including the prevention and suppression of acts of terrorism, the denial of financing and financial services to terrorists and terrorist organizations, and the sharing of intelligence about funding activities in support of terrorism.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security,[1] and the Attorney General, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 8. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 9. Nothing contained in this order is intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees or any other person.

Sec. 10. For those persons listed in the Annex to this order or determined to be subject to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 11. (a) This order is effective at 12:01 a.m. eastern daylight time on September 24, 2001.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

ANNEX

Al Qaida/Islamic Army
Abu Sayyaf Group
Armed Islamic Group (GIA)
Harakat ul-Mujahidin (HUM)
Al-Jihad (Egyptian Islamic Jihad)
Islamic Movement of Uzbekistan (IMU)
Asbat al-Ansar
Salafist Group for Call and Combat (GSPC)

Libyan Islamic Fighting Group
Al-Itihaad al-Islamiya (AIAI)
Islamic Army of Aden
Usama bin Laden
Muhammad Atif (aka, Subhi Abu Sitta, Abu Hafs Al Masri)
Sayf al-Adl
Shaykh Sai'id (aka, Mustafa Muhammad Ahmad)
Abu Hafs the Mauritanian (aka, Mahfouz Ould al-Walid, Khalid Al-Shanqiti)
Ibn Al-Shaykh al-Libi
Abu Zubaydah (aka, Zayn al-Abidin Muhammad Husayn, Tariq)
Abd al-Hadi al-Iraqi (aka, Abu Abdallah)
Ayman al-Zawahiri
Thirwat Salah Shihata
Tariq Anwar al-Sayyid Ahmad (aka, Fathi, Amr al-Fatih)
Muhammad Salah (aka, Nasr Fahmi Nasr Hasanayn)
Makhtab Al-Khidamat/Al Kifah
Wafa Humanitarian Organization
Al Rashid Trust
Mamoun Darkazanli Import-Export Company
Mohammed Omar (aka, Amir al-Mumineen [Commander of the Faithful])[3]
The Taliban.[3]

[3] Sec. 1 of Executive Order 13268 (67 F.R. 44751) added Mohammed Omar and the Taliban to the Annex list.

Sec. 2 of Executive Order 13268 further provided that "For the purposes of this order and Executive Order 13224 of September 23, 2001, the term 'the Taliban' is also known as the 'Taleban,' 'Islamic Movement of Taliban,' 'the Taliban Islamic Movement,' 'Talibano Islami Tahrik,' and 'Tahrike Islami'a Taliban'. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby authorized to modify the definition of the term 'the Taliban,' as appropriate.".

(3) Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process

Executive Order 12947, January 23, 1995, 60 F.R. 5079, 50 U.S.C. 1701 note; as amended by Executive Order 13099, August 20, 1998, 63 F.R. 45167; and Executive Order 13372, February 16, 2005, 70 F.R. 8499

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.[1]

I hereby order:

Section 1. Except to the extent provided in section 203(b)(3) and (4) of IEEPA (50 U.S.C. 1702(b)(3) and (4)) and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date: (a) all property and interests in property of:

(i) the persons listed in the Annex to this order;

(ii) foreign persons designated by the Secretary of State, in coordination with the Secretary of the Treasury and the Attorney General, because they are found;

(A) to have committed, or to pose a significant risk of committing, acts of violence that have the purpose or effect of disrupting the Middle East peace process, or

(B) to assist in, sponsor, or provide financial, material, or technological support for, or services in support of, such acts of violence; and

(iii) persons determined by the Secretary of the Treasury, in coordination with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any of the foregoing persons, that are in the United States, that hereafter come within the United States, or that hereafter come within the possession or control of United States persons, are blocked;

[1] In a notice of January 18, 1996 (61 F.R. 1695), the President stated that this national emergency must continue in effect beyond January 23, 1996. The national emergency was continued again by a notice from the President on January 21, 1997 (62 F.R. 3439); on January 21, 1998 (63 F.R. 3445); on January 20, 1999 (64 F.R. 3393); on January 19, 2000 (65 F.R. 3581); on January 19, 2001 (66 F.R. 7369); on January 18, 2002 (67 F.R. 3031); on January 20, 2003 (68 F.R. 3159); on January 16, 2004 (69 F.R. 2989), and on January 17, 2005 (70 F.R. 3277).

(b) any transaction or dealing by United States persons or within the United States in property or interests in property of the persons designated in or pursuant to this order is prohibited, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of such persons;

(c) any transaction by any United states person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order, is prohibited.

Sec. 2. For the purposes of this order: (a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, corporation, or other organization, group, or subgroup;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

(d) the term "foreign person" means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States) or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.

Sec. 3.[2] I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of, any person whose property or interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1.

Sec. 4. (a) The Secretary of the Treasury, in consultation with the Secretary of State and, as appropriate, the Attorney General, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

(b) Any investigation emanating from a possible violation of this order, or of any license, order, or regulation issued pursuant to this order, shall first be coordinated with the Federal Bureau of Investigation (FBI), and any matter involving evidence of a criminal violations shall be referred to the FBI for further investigation. The FBI shall timely notify the Department of the Treasury of any action it takes on such referrals.

Sec. 5. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against

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[2] Sec. 2 of Executive Order 13372 (70 F.R. 8499) amended and restated sec. 3. It previously read as follows:

"**Sec. 3.** I hereby determine that the making of donations of the type specified in section 203(b)(2)(A) of IEEPA (50 U.S.C. 1702(b)(2)(A)) by United States persons to persons designated in or pursuant to this order would seriously impair my ability to deal with the national emergency declared in this order, and hereby prohibit such donations as provided by section 1 of this order.".

the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 6. (a) This order is effective at 12:01 a.m., eastern standard time on January 24, 1995.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

ANNEX

TERRORISTS WHO THREATEN TO DISRUPT THE MIDDLE EAST PEACE PROCESS[3]

Abu Hafs al-Masri
Abu Nidal Organization (ANO)
Democratic Front for the Liberation of Palestine (DFLP)
Hizballah
Islamic Army (a.k.a. Al-Qaida, Islamic Salvation Foundation, The Islamic Army for the Liberation of the Holy Places, The World Islamic Front for Jihad Against Jews and Crusaders, and The Group for the Preservation of the Holy Sites)
Islamic Gama'at (IG)
Islamic Resistance Movement (HAMAS)
Jihad
Kach
Kahane Chai
Palestinian Islamic Jihad-Shiqaqi faction (PIJ)
Palestine Liberation Front-Abu Abbas faction (PLF-Abu Abbas)
Popular Front for the Liberation of Palestine (PPLF)
Popular Front for the Liberation of Palestine-General Command (PPLF–GC)
Rifa'i Ahmad Taha Musa
Usama bin Muhammad bin Awad bin Ladin (a.k.a. Usama bin Ladin)

[3] Executive Order 13099 (63 F.R. 45167) amended the title of the Annex of Executive Order 12947 and added the following people and organizations: Islamic Army (a.k.a. Al-Qaida, Islamic Salvation Foundation, The Islamic Army for the Liberation of the Holy Places, The World Islamic Front for Jihad Against Jews and Crusaders, and The Group for the Preservation of the Holy Sites), Abu Hafs al-Masri, and Rifa'i Ahmad Taha Musa. The Annex title originally read, "TERRORIST ORGANIZATIONS WHICH THREATEN TO DISRUPT THE MIDDLE EAST PEACE PROCESS".

On March 25, 2002, the Secretary of State determined (Public Notice No. 3955; 67 F.R. 14761) that certain organizations either used currently, or had used aliases. The additional names were included in the designations of organizations pursuant to the executive order.

On October 10, 2003, the Deputy Secretary of State determined (Public Notice No. 4511; 68 F.R. 53738) "that the Al-Aqsa Martyrs Brigade (also known as the Al-Aqsa Martyrs Battalion) has committed, or poses a serious risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.".

On January 25, 2005, the Secretary of State amended (Public Notice No. 4979; 70 F.R. 4185) the designation made under the authority of sec. 1(a)(ii)(A) "to revoke Kahane.net as an alias of Kahane Chai (also known as Kach, Kahane.org, and the other aliases listed above) based on a finding that circumstances have changed in such a manner as to warrant revocation. This revocation is made by amending the referenced designation and is effective on the date of publication of this notice. In all other respects, the designation under the authority of section 1(a)(ii)(A) of Executive Order 12947 (as amended by Executive Order 13099) of Kahane Chai (also known as Kach, Kahane.org, and the other aliases listed above) is maintained.".

h. Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters

Executive Order 13382, June 28, 2005, 70 F.R. 38567, 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code,

I, George W. Bush, President of the United States of America, in order to take additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them, and the measures imposed by that order, as expanded by Executive Order 13094 of July 28, 1998, hereby order:

Section 1. (a) Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order;

(ii) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern;

(iii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in paragraph (a)(ii) of this section, or any person whose property and interests in property are blocked pursuant to this order; and

(iv) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by,

or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) Any transaction or dealing by a United States person or within the United States in property or interests in property blocked pursuant to this order is prohibited, including, but not limited to, (i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of, any person whose property and interests in property are blocked pursuant to this order, and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

(c) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(d) Any conspiracy formed to violate the prohibitions set forth in this order is prohibited.

Sec. 2. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 3. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of, any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in Executive Order 12938, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 4.[1] * * *

Sec. 5. For those persons whose property and interests in property are blocked pursuant to section 1 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12938, as amended, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and

[1] Sec. 4 amended sec. 4(a) of Executive Order 12938.

agencies of the United States Government, consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1 of this order.

Sec. 8. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 9. (a) This order is effective at 12:01 a.m. eastern daylight time on June 29, 2005.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

ANNEX

Korea Mining Development Trading Corporation
Tanchon Commercial Bank
Korea Ryonbong General Corporation
Aerospace Industries Organization
Shahid Hemmat Industrial Group
Shahid Bakeri Industrial Group
Atomic Energy Organization of Iran
Scientific Studies and Research Center

i. Economic Relations With Cuba

(1) Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

Public Law 104–114 [H.R. 927], 110 Stat. 785, approved March 12, 1996; as amended by Public Law 105–277 [Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; H.R. 4328], 112 Stat. 2681

AN ACT To seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

	Page
Sec. 1. Short title; table of contents	1515
Sec. 2. Findings	1516
Sec. 3. Purposes	1519
Sec. 4. Definitions	1519
Sec. 5. Severability	1522
TITLE I—STRENGTHENING INTERNATIONAL SANCTIONS AGAINST THE CASTRO GOVERNMENT	
Sec. 101. Statement of policy	1522
Sec. 102. Enforcement of the economic embargo of Cuba	1523
Sec. 103. Prohibition against indirect financing of Cuba	1524
Sec. 104. United States opposition to Cuban membership in international financial institutions	1524
Sec. 105. United States opposition to termination of the suspension of the Cuban Government from participation in the Organization of American States	1525
Sec. 106. Assistance by the independent states of the former Soviet Union for the Cuban Government	1525
Sec. 107. Television broadcasting to Cuba	1526
Sec. 108. Reports on commerce with, and assistance to, Cuba from other foreign countries	1526
Sec. 109. Authorization of support for democratic and human rights groups and international observers	1527
Sec. 110. Importation safeguard against certain Cuban products	1528
Sec. 111. Withholding of foreign assistance from countries supporting Juragua nuclear plant in Cuba	1529
Sec. 112. Reinstitution of family remittances and travel to Cuba	1531
Sec. 113. Expulsion of criminals from Cuba	1531
Sec. 114. News bureaus in Cuba	1531
Sec. 115. Effect of Act on lawful United States Government activities	1532
Sec. 116. Condemnation of Cuban attack on American aircraft	1532

[1] 22 U.S.C. 6021 note.

TITLE II—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

Sec. 201. Policy toward a transition government and a democratically elected government in Cuba 1533
Sec. 202. Assistance for the Cuban people 1535
Sec. 203. Coordination of assistance program; implementation and reports to Congress; reprogramming 1537
Sec. 204. Termination of the economic embargo of Cuba 1539
Sec. 205. Requirements and factors for determining a transition government 1540
Sec. 206. Requirements for determining a democratically elected government 1542
Sec. 207. Settlement of outstanding United States claims to confiscated property in Cuba 1542

TITLE III—PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS

Sec. 301. Findings 1543
Sec. 302. Liability for trafficking in confiscated property claimed by United States nationals 1544
Sec. 303. Proof of ownership of claims to confiscated property 1549
Sec. 304. Exclusivity of Foreign Claims Settlement Commission certification procedure 1550
Sec. 305. Limitation of actions 1550
Sec. 306. Effective date 1550

TITLE IV—EXCLUSION OF CERTAIN ALIENS

Sec. 401. Exclusion from the United States of aliens who have confiscated property of United States nationals or who traffic in such property 1552

SEC. 2.[2] FINDINGS.

The Congress makes the following findings:

(1) The economy of Cuba has experienced a decline of at least 60 percent in the last 5 years as a result of—

(A) the end of its subsidization by the former Soviet Union of between 5 billion and 6 billion dollars annually;

(B) 36 years of communist tyranny and economic mismanagement by the Castro government;

(C) the extreme decline in trade between Cuba and the countries of the former Soviet bloc; and

(D) the stated policy of the Russian Government and the countries of the former Soviet bloc to conduct economic relations with Cuba on strictly commercial terms.

(2) At the same time, the welfare and health of the Cuban people have substantially deteriorated as a result of this economic decline and the refusal of the Castro regime to permit free and fair democratic elections in Cuba.

(3) The Castro regime has made it abundantly clear that it will not engage in any substantive political reforms that would lead to democracy, a market economy, or an economic recovery.

(4) The repression of the Cuban people, including a ban on free and fair democratic elections, and continuing violations of fundamental human rights, have isolated the Cuban regime as the only completely nondemocratic government in the Western Hemisphere.

(5) As long as free elections are not held in Cuba, the economic condition of the country and the welfare of the Cuban people will not improve in any significant way.

[2] 22 U.S.C. 6021.

(6) The totalitarian nature of the Castro regime has deprived the Cuban people of any peaceful means to improve their condition and has led thousands of Cuban citizens to risk or lose their lives in dangerous attempts to escape from Cuba to freedom.

(7) Radio Marti and Television Marti have both been effective vehicles for providing the people of Cuba with news and information and have helped to bolster the morale of the people of Cuba living under tyranny.

(8) The consistent policy of the United States towards Cuba since the beginning of the Castro regime, carried out by both Democratic and Republican administrations, has sought to keep faith with the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime.

(9) The United States has shown a deep commitment, and considers it a moral obligation, to promote and protect human rights and fundamental freedoms as expressed in the Charter of the United Nations and in the Universal Declaration of Human Rights.

(10) The Congress has historically and consistently manifested its solidarity and the solidarity of the American people with the democratic aspirations of the Cuban people.

(11) The Cuban Democracy Act of 1992 calls upon the President to 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 that Act.

(12) Amendments to the Foreign Assistance Act of 1961 made by the FREEDOM Support Act require that the President, in providing economic assistance to Russia and the emerging Eurasian democracies, take into account the extent to which they are acting to "terminate support for the communist regime in Cuba, including removal of troops, closing military facilities, and ceasing trade subsidies and economic, nuclear, and other assistance".

(13) The Cuban Government engages in the illegal international narcotics trade and harbors fugitives from justice in the United States.

(14) The Castro government threatens international peace and security by engaging in acts of armed subversion and terrorism such as the training and supplying of groups dedicated to international violence.

(15) The Castro government has utilized from its inception and continues to utilize torture in various forms (including by psychiatry), as well as execution, exile, confiscation, political imprisonment, and other forms of terror and repression, as means of retaining power.

(16) Fidel Castro has defined democratic pluralism as "pluralistic garbage" and continues to make clear that he has no intention of tolerating the democratization of Cuban society.

(17) The Castro government holds innocent Cubans hostage in Cuba by no fault of the hostages themselves solely because relatives have escaped the country.

(18) Although a signatory state to the 1928 Inter-American Convention on Asylum and the International Covenant on Civil and Political Rights (which protects the right to leave one's own country), Cuba nevertheless surrounds embassies in its capital by armed forces to thwart the right of its citizens to seek asylum and systematically denies that right to the Cuban people, punishing them by imprisonment for seeking to leave the country and killing them for attempting to do so (as demonstrated in the case of the confirmed murder of over 40 men, women, and children who were seeking to leave Cuba on July 13, 1994).

(19) The Castro government continues to utilize blackmail, such as the immigration crisis with which it threatened the United States in the summer of 1994, and other unacceptable and illegal forms of conduct to influence the actions of sovereign states in the Western Hemisphere in violation of the Charter of the Organization of American States and other international agreements and international law.

(20) The United Nations Commission on Human Rights has repeatedly reported on the unacceptable human rights situation in Cuba and has taken the extraordinary step of appointing a Special Rapporteur.

(21) The Cuban Government has consistently refused access to the Special Rapporteur and formally expressed its decision not to "implement so much as one comma" of the United Nations Resolutions appointing the Rapporteur.

(22) The United Nations General Assembly passed Resolution 47–139 on December 18, 1992, Resolution 48–142 on December 20, 1993, and Resolution 49–200 on December 23, 1994, referencing the Special Rapporteur's reports to the United Nations and condemning violations of human rights and fundamental freedoms in Cuba.

(23) Article 39 of Chapter VII of the United Nations Charter provides that the United Nations Security Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . ., to maintain or restore international peace and security.".

(24) The United Nations has determined that massive and systematic violations of human rights may constitute a "threat to peace" under Article 39 and has imposed sanctions due to such violations of human rights in the cases of Rhodesia, South Africa, Iraq, and the former Yugoslavia.

(25) In the case of Haiti, a neighbor of Cuba not as close to the United States as Cuba, the United States led an effort to obtain and did obtain a United Nations Security Council embargo and blockade against that country due to the existence of a military dictatorship in power less than 3 years.

(26) United Nations Security Council Resolution 940 of July 31, 1994, subsequently authorized the use of "all necessary means" to restore the "democratically elected government of Haiti", and the democratically elected government of Haiti was restored to power on October 15, 1994.

(27) The Cuban people deserve to be assisted in a decisive manner to end the tyranny that has oppressed them for 36 years, and the continued failure to do so constitutes ethically improper conduct by the international community.

(28) For the past 36 years, the Cuban Government has posed and continues to pose a national security threat to the United States.

SEC. 3.[3] PURPOSES.

The purposes of this Act are—

(1) to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere;

(2) to strengthen international sanctions against the Castro government;

(3) to provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from United States nationals by the Castro government, and the political manipulation by the Castro government of the desire of Cubans to escape that results in mass migration to the United States;

(4) to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers;

(5) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba; and

(6) to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.

SEC. 4.[4] DEFINITIONS.

As used in this Act, the following terms have the following meanings:

(1) AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE.—The term "agency or instrumentality of a foreign state" has the meaning given that term in section 1603(b) of title 28, United States Code.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(3) COMMERCIAL ACTIVITY.—The term "commercial activity" has the meaning given that term in section 1603(d) of title 28, United States Code.

(4) CONFISCATED.—As used in titles I and III, the term "confiscated" refers to—

[3] 22 U.S.C. 6022.
[4] 22 U.S.C. 6023.

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959—

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(5) CUBAN GOVERNMENT.—(A) The term "Cuban Government" includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

(B) For purposes of subparagraph (A), 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".

(6) DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.—The term "democratically elected government in Cuba" means a government determined by the President to have met the requirements of section 206.

(7) ECONOMIC EMBARGO OF CUBA.—The term "economic embargo of Cuba" refers to—

(A) the economic embargo (including all restrictions on trade or transactions with, and travel to or from, Cuba, and all restrictions on transactions in property in which Cuba or nationals of Cuba have an interest) that was imposed against Cuba pursuant to section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following), or any other provision of law; and

(B) the restrictions imposed by section 902(c) of the Food Security Act of 1985.

(8) FOREIGN NATIONAL.—The term "foreign national" means—

(A) an alien; or

(B) any corporation, trust, partnership, or other juridical entity not organized under the laws of the United States,

or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(9) KNOWINGLY.—The term "knowingly" means with knowledge or having reason to know.

(10) OFFICIAL OF THE CUBAN GOVERNMENT OR THE RULING POLITICAL PARTY IN CUBA.—The term "official of the Cuban Government or the ruling political party in Cuba" refers to any member of the Council of Ministers, Council of State, central committee of the Communist Party of Cuba, or the Politburo of Cuba, or their equivalents.

(11) PERSON.—The term "person" means any person or entity, including any agency or instrumentality of a foreign state.

(12) PROPERTY.—(A) The term "property" means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

(B) For purposes of title III of this Act, the term "property" does not include real property used for residential purposes unless, as of the date of the enactment of this Act—

(i) the claim to the property is held by a United States national and the claim has been certified under title V of the International Claims Settlement Act of 1949; or

(ii) the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

(13) TRAFFICS.—(A) As used in title III, and except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally—

(i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,

(ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.

(B) The term "traffics" does not include—

(i) the delivery of international telecommunication signals to Cuba;

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who

is not an official of the Cuban Government or the ruling political party in Cuba.

(14) TRANSITION GOVERNMENT IN CUBA.—The term "transition government in Cuba" means a government that the President determines is a transition government consistent with the requirements and factors set forth in section 205.

(15) UNITED STATES NATIONAL.—The term "United States national" means—

(A) any United States citizen; or

(B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

SEC. 5.[5] SEVERABILITY.

If any provision of this Act or the amendments made by this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, the amendments made by this Act, or the application thereof to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

TITLE I—STRENGTHENING INTERNATIONAL SANCTIONS AGAINST THE CASTRO GOVERNMENT

SEC. 101.[6] STATEMENT OF POLICY.

It is the sense of the Congress that—

(1) the acts of the Castro government, including its massive, systematic, and extraordinary violations of human rights, are a threat to international peace;

(2) the President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek within the Security Council, a mandatory international embargo against the totalitarian Cuban Government pursuant to chapter VII of the Charter of the United Nations, employing efforts similar to consultations conducted by United States representatives with respect to Haiti;

(3) any resumption of efforts by any independent state of the former Soviet Union to make operational any nuclear facilities in Cuba, and any continuation of intelligence activities by such a state from Cuba that are targeted at the United States and its citizens will have a detrimental impact on United States assistance to such state; and

(4) in view of the threat to the national security posed by the operation of any nuclear facility, and the Castro government's continuing blackmail to unleash another wave of Cuban refugees fleeing from Castro's oppression, most of whom find their way to United States shores, further depleting limited humanitarian and other resources of the United States, the President should do all in his power to make it clear to the Cuban Government that—

[5] 22 U.S.C. 6024.
[6] 22 U.S.C. 6031.

(A) the completion and operation of any nuclear power facility, or

(B) any further political manipulation of the desire of Cubans to escape that results in mass migration to the United States,

will be considered an act of aggression which will be met with an appropriate response in order to maintain the security of the national borders of the United States and the health and safety of the American people.

SEC. 102.[7] 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)[8] TRADING WITH THE ENEMY ACT.—* * *

(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) COVERAGE OF DEBT-FOR-EQUITY SWAPS BY ECONOMIC EMBARGO OF CUBA.—Section 1704(b)(2) of the Cuban Democracy Act of 1992 (22 U.S.C. 6003(b)(2)) is amended—* * *

(g) TELECOMMUNICATIONS SERVICES.—Section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)) is amended * * *

(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.

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[7] 22 U.S.C. 6032.

[8] Subsec. (d) amended sec. 16 of the Trading With the Enemy Act.

SEC. 103.[9] PROHIBITION AGAINST INDIRECT FINANCING OF CUBA.

(a) PROHIBITION.—Notwithstanding any other provision of law, no loan, credit, or other financing may be extended knowingly by a United States national, a permanent resident alien, or a United States agency to any person for the purpose of financing transactions involving any confiscated property the claim to which is owned by a United States national as of the date of the enactment of this Act, except for financing by the United States national owning such claim for a transaction permitted under United States law.

(b) SUSPENSION AND TERMINATION OF PROHIBITION.—

(1) SUSPENSION.—The President is authorized to suspend the prohibition contained in subsection (a) upon a determination made under section 203(c)(1) that a transition government in Cuba is in power.

(2) TERMINATION.—The prohibition contained in subsection (a) shall cease to apply on the date on which the economic embargo of Cuba terminates as provided in section 204.

(c) PENALTIES.—Violations of subsection (a) shall be punishable by such civil penalties as are applicable to violations of the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) DEFINITIONS.—As used in this section—

(1) the term "permanent resident alien" means an alien lawfully admitted for permanent residence into the United States; and

(2) the term "United States agency" has the meaning given the term "agency" in section 551(1) of title 5, United States Code.

SEC. 104.[10] UNITED STATES OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.

(a) CONTINUED OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose the admission of Cuba as a member of such institution until the President submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power.

(2) TRANSITION GOVERNMENT.—Once the President submits a determination under section 203(c)(1) that a transition government in Cuba is in power—

(A) the President is encouraged to take steps to support the processing of Cuba's application for membership in any international financial institution, subject to the membership taking effect after a democratically elected government in Cuba is in power, and

[9] 22 U.S.C. 6033.
[10] 22 U.S.C. 6034.

(B) the Secretary of the Treasury is authorized to instruct the United States executive director of each international financial institution to support loans or other assistance to Cuba only to the extent that such loans or assistance contribute to a stable foundation for a democratically elected government in Cuba.

(b) REDUCTION IN UNITED STATES PAYMENTS TO INTERNATIONAL FINANCIAL INSTITUTIONS.—If any international financial institution approves a loan or other assistance to the Cuban Government over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to such institution an amount equal to the amount of the loan or other assistance, with respect to either of the following types of payment:

(1) The paid-in portion of the increase in capital stock of the institution.

(2) The callable portion of the increase in capital stock of the institution.

(c) DEFINITION.—For purposes of this section, the term "international financial institution" means the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank.

SEC. 105.[11] UNITED STATES OPPOSITION TO TERMINATION OF THE SUSPENSION OF THE CUBAN GOVERNMENT FROM PARTICIPATION IN THE ORGANIZATION OF AMERICAN STATES.

The President should instruct the United States Permanent Representative to the Organization of American States to oppose and vote against any termination of the suspension of the Cuban Government from participation in the Organization until the President determines under section 203(c)(3) that a democratically elected government in Cuba is in power.

SEC. 106.[12] ASSISTANCE BY THE INDEPENDENT STATES OF THE FORMER SOVIET UNION FOR THE CUBAN GOVERNMENT.

(a) REPORTING REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report detailing progress toward the withdrawal of personnel of any independent state of the former Soviet Union (within the meaning of section 3 of the FREEDOM Support Act (22 U.S.C. 5801)), including advisers, technicians, and military personnel, from the Cienfuegos nuclear facility in Cuba.

(b) * * *

(c) * * *

(d) FACILITIES AT LOURDES, CUBA.—

(1) DISAPPROVAL OF CREDITS.—The Congress expresses its strong disapproval of the extension by Russia of credits equivalent to $200,000,000 in support of the intelligence facility at Lourdes, Cuba, in November 1994.

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[11] 22 U.S.C. 6035.

[12] 22 U.S.C. 6036. For text of the Foreign Assistance Act of 1961 as amended by subsecs. (b), (c), and (d)(2) of this section, see *Legislation on Foreign Relations Through 2005*, vol. I–A.

(2) REDUCTION IN ASSISTANCE.—Section 498A of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a) is amended * * *

SEC. 107.[13] TELEVISION BROADCASTING TO CUBA.

(a) CONVERSION TO UHF.—The Director of the International Broadcasting Bureau[14] shall implement a conversion of television broadcasting to Cuba under the Television Marti Service to ultra high frequency (UHF) broadcasting.

(b) PERIODIC REPORTS.—Not later than 45 days after the date of the enactment of this Act, and every three months thereafter until the conversion described in subsection (a) is fully implemented, the Director of the International Broadcasting Bureau[15] shall submit a report to the appropriate congressional committees on the progress made in carrying out subsection (a).

(c) TERMINATION OF BROADCASTING AUTHORITIES.—Upon transmittal of a determination under section 203(c)(3), the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa and following) and the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 and following) are repealed.

SEC. 108.[15] REPORTS ON COMMERCE WITH, AND ASSISTANCE TO, CUBA FROM OTHER FOREIGN COUNTRIES.

(a) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and by January 1 of each year thereafter until the President submits a determination under section 203(c)(1), the President shall submit a report to the appropriate congressional committees on commerce with, and assistance to, Cuba from other foreign countries during the preceding 12-month period.

(b) CONTENTS OF REPORTS.—Each report required by subsection (a) shall, for the period covered by the report, contain the following, to the extent such information is available:

(1) A description of all bilateral assistance provided to Cuba by other foreign countries, including humanitarian assistance.

(2) A description of Cuba's commerce with foreign countries, including an identification of Cuba's trading partners and the extent of such trade.

(3) A description of the joint ventures completed, or under consideration, by foreign nationals and business firms involving facilities in Cuba, including an identification of the location of the facilities involved and a description of the terms of agreement of the joint ventures and the names of the parties that are involved.

(4) A determination as to whether or not any of the facilities described in paragraph (3) is the subject of a claim against Cuba by a United States national.

(5) A determination of the amount of debt of the Cuban Government that is owed to each foreign country, including—

(A) the amount of debt exchanged, forgiven, or reduced under the terms of each investment or operation in Cuba involving foreign nationals; and

[13] 22 U.S.C. 6037.

[14] Sec. 1335(r) of Public Law 105–277 (112 Stat. 2681–790) amended sec. 107 by striking out "Director of the United States Information Agency" where it appeared, and inserting in lieu thereof "Director of the International Broadcasting Bureau".

[15] 22 U.S.C. 6038.

(B) the amount of debt owed the foreign country that has been exchanged, forgiven, or reduced in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

(6) A description of the steps taken to assure that raw materials and semifinished or finished goods produced by facilities in Cuba involving foreign nationals do not enter the United States market, either directly or through third countries or parties.

(7) An identification of countries that purchase, or have purchased, arms or military supplies from Cuba or that otherwise have entered into agreements with Cuba that have a military application, including—

(A) a description of the military supplies, equipment, or other material sold, bartered, or exchanged between Cuba and such countries,

(B) a listing of the goods, services, credits, or other consideration received by Cuba in exchange for military supplies, equipment, or material, and

(C) the terms or conditions of any such agreement.

SEC. 109.[16] AUTHORIZATION OF SUPPORT FOR DEMOCRATIC AND HUMAN RIGHTS GROUPS AND INTERNATIONAL OBSERVERS.

(a) AUTHORIZATION.—Notwithstanding any other provision of law (including section 102 of this Act), except for section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1) and comparable notification requirements contained in any Act making appropriations for foreign operations, export financing, and related programs, the President is authorized to furnish assistance and provide other support for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba, including the following:

(1) Published and informational matter, such as books, videos, and cassettes, on transitions to democracy, human rights, and market economies, to be made available to independent democratic groups in Cuba.

(2) Humanitarian assistance to victims of political repression, and their families.

(3) Support for democratic and human rights groups in Cuba.

(4) Support for visits and permanent deployment of independent international human rights monitors in Cuba.

(b) OAS EMERGENCY FUND.—

(1) FOR SUPPORT OF HUMAN RIGHTS AND ELECTIONS.—The President shall take the necessary steps to encourage the Organization of American States to create a special emergency fund for the explicit purpose of deploying human rights observers, election support, and election observation in Cuba.

(2) ACTION OF OTHER MEMBER STATES.—The President should instruct the United States Permanent Representative to the Organization of American States to encourage other member

[16] 22 U.S.C. 6039.

states of the Organization to join in calling for the Cuban Government to allow the immediate deployment of independent human rights monitors of the Organization throughout Cuba and on-site visits to Cuba by the Inter-American Commission on Human Rights.

(3) VOLUNTARY CONTRIBUTIONS FOR FUND.—Notwithstanding section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227) or any other provision of law limiting the United States proportionate share of assistance to Cuba by any international organization, the President should provide not less than $5,000,000 of the voluntary contributions of the United States to the Organization of American States solely for the purposes of the special fund referred to in paragraph (1).

(c) DENIAL OF FUNDS TO THE CUBAN GOVERNMENT.—In implementing this section, the President shall take all necessary steps to ensure that no funds or other assistance is provided to the Cuban Government.

SEC. 110.[17] 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) ASSURANCE REGARDING SUGAR PRODUCTS.—Protection of essential security interests of the United States requires assurances

[17] 22 U.S.C. 6040.

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.

SEC. 111.[18] WITHHOLDING OF FOREIGN ASSISTANCE FROM COUNTRIES SUPPORTING JURAGUA NUCLEAR PLANT IN CUBA.

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

(1) President Clinton stated in April 1993 that the United States opposed the construction of the Juragua nuclear power plant because of the concerns of the United States about Cuba's ability to ensure the safe operation of the facility and because of Cuba's refusal to sign the Nuclear Non-Proliferation Treaty or ratify the Treaty of Tlatelolco.

(2) Cuba has not signed the Treaty on the Non-Proliferation of Nuclear Weapons or ratified the Treaty of Tlatelolco, the latter of which establishes Latin America and the Caribbean as a nuclear weapons-free zone.

(3) The State Department, the Nuclear Regulatory Commission, and the Department of Energy have expressed concerns about the construction and operation of Cuba's nuclear reactors.

(4) In a September 1992 report to the Congress, the General Accounting Office outlined concerns among nuclear energy experts about deficiencies in the nuclear plant project in Juragua, near Cienfuegos, Cuba, including—

(A) a lack in Cuba of a nuclear regulatory structure;

(B) the absence in Cuba of an adequate infrastructure to ensure the plant's safe operation and requisite maintenance;

(C) the inadequacy of training of plant operators;

(D) reports by a former technician from Cuba who, by examining with x-rays weld sites believed to be part of the auxiliary plumbing system for the plant, found that 10 to 15 percent of those sites were defective;

(E) since September 5, 1992, when construction on the plant was halted, the prolonged exposure to the elements, including corrosive salt water vapor, of the primary reactor components; and

(F) the possible inadequacy of the upper portion of the reactors' dome retention capability to withstand only 7 pounds of pressure per square inch, given that normal atmospheric pressure is 32 pounds per square inch and United States reactors are designed to accommodate pressures of 50 pounds per square inch.

(5) The United States Geological Survey claims that it had difficulty determining answers to specific questions regarding earthquake activity in the area near Cienfuegos because the Cuban Government was not forthcoming with information.

(6) The Geological Survey has indicated that the Caribbean plate, a geological formation near the south coast of Cuba, may pose seismic risks to Cuba and the site of the power plant, and may produce large to moderate earthquakes.

[18] 22 U.S.C. 6041.

(7) On May 25, 1992, the Caribbean plate produced an earthquake numbering 7.0 on the Richter scale.

(8) According to a study by the National Oceanic and Atmospheric Administration, summer winds could carry radioactive pollutants from a nuclear accident at the power plant throughout all of Florida and parts of the States on the coast of the Gulf of Mexico as far as Texas, and northern winds could carry the pollutants as far northeast as Virginia and Washington, D.C.

(9) The Cuban Government, under dictator Fidel Castro, in 1962 advocated the Soviets' launching of nuclear missiles to the United States, which represented a direct and dangerous provocation of the United States and brought the world to the brink of a nuclear conflict.

(10) Fidel Castro over the years has consistently issued threats against the United States Government, most recently that he would unleash another perilous mass migration from Cuba upon the enactment of this Act.

(11) Despite the various concerns about the plant's safety and operational problems, a feasibility study is being conducted that would establish a support group to include Russia, Cuba, and third countries with the objective of completing and operating the plant.

(b) WITHHOLDING OF FOREIGN ASSISTANCE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President shall withhold from assistance allocated, on or after the date of the enactment of this Act, for any country an amount equal to the sum of assistance and credits, if any, provided on or after such date of enactment by that country or any entity in that country in support of the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba.

(2) EXCEPTIONS.—The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

(B) democratic political reform or rule of law activities;

(C) the creation of private sector or nongovernmental organizations that are independent of government control;

(D) the development of a free market economic system;

(E) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160); or

(F) assistance under the secondary school exchange program administered by the United States Information Agency.

(3) DEFINITION.—As used in paragraph (1), the term "assistance" means assistance under the Foreign Assistance Act of 1961, credits, sales, guarantees of extensions of credit, and other assistance under the Arms Export Control Act, assistance under titles I and III of the Agricultural Trade Development and Assistance Act of 1954, assistance under the FREEDOM Support Act, and any other program of assistance or credits provided by the United States to other countries under other provisions of law.

SEC. 112.[19] REINSTITUTION OF FAMILY REMITTANCES AND TRAVEL TO CUBA.

It is the sense of the Congress that the President should—

(1)(A) before considering the reinstitution of general licenses for family remittances to Cuba, insist that, prior to such reinstitution, the Cuban Government permit the unfettered operation of small businesses fully empowered with the right to hire others to whom they may pay wages and to buy materials necessary in the operation of the businesses, and with such other authority and freedom as are required to foster the operation of small businesses throughout Cuba; and

(B) if licenses described in subparagraph (A) are reinstituted, require a specific license for remittances described in subparagraph (A) in amounts of more than $500; and

(2) before considering the reinstitution of general licenses for travel to Cuba by individuals resident in the United States who are family members of Cuban nationals who are resident in Cuba, insist on such actions by the Cuban Government as abrogation of the sanction for departure from Cuba by refugees, release of political prisoners, recognition of the right of association, and other fundamental freedoms.

SEC. 113.[20] EXPULSION OF CRIMINALS FROM CUBA.

The President shall instruct all United States Government officials who engage in official contacts with the Cuban Government to raise on a regular basis the extradition of or rendering to the United States all persons residing in Cuba who are sought by the United States Department of Justice for crimes committed in the United States.

SEC. 114.[21] NEWS BUREAUS IN CUBA.

(a) ESTABLISHMENT OF NEWS BUREAUS.—The President is authorized to establish and implement an exchange of news bureaus between the United States and Cuba, if the exchange meets the following conditions:

(1) The exchange is fully reciprocal.

(2) The Cuban Government agrees not to interfere with the establishment of news bureaus or with the movement in Cuba of journalists of any United States-based news organizations, including Radio Marti and Television Marti.

(3) The Cuban Government agrees not to interfere with decisions of United States-based news organizations with respect to individuals assigned to work as journalists in their news bureaus in Cuba.

(4) The Department of the Treasury is able to ensure that only accredited journalists regularly employed with a news gathering organization travel to Cuba under this subsection.

(5) The Cuban Government agrees not to interfere with the transmission of telecommunications signals of news bureaus or with the distribution within Cuba of publications of any United States-based news organization that has a news bureau in Cuba.

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[19] 22 U.S.C. 6042.
[20] 22 U.S.C. 6043.
[21] 22 U.S.C. 6044.

(b) ASSURANCE AGAINST ESPIONAGE.—In implementing this section, the President shall take all necessary steps to ensure the safety and security of the United States against espionage by Cuban journalists it believes to be working for the intelligence agencies of the Cuban Government.

(c) FULLY RECIPROCAL.—As used in subsection (a)(1), the term "fully reciprocal" means that all news services, news organizations, and broadcasting services, including such services or organizations that receive financing, assistance, or other support from a governmental or official source, are permitted to establish and operate a news bureau in the United States and Cuba.

SEC. 115.[22] EFFECT OF ACT ON LAWFUL UNITED STATES GOVERNMENT ACTIVITIES.

Nothing in this Act prohibits any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency, or of an intelligence agency, of the United States.

SEC. 116.[23] CONDEMNATION OF CUBAN ATTACK ON AMERICAN AIRCRAFT.

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

(1) Brothers to the Rescue is a Miami-based humanitarian organization engaged in searching for and aiding Cuban refugees in the Straits of Florida, and was engaged in such a mission on Saturday, February 24, 1996.

(2) The members of Brothers to the Rescue were flying unarmed and defenseless planes in a mission identical to hundreds they have flown since 1991 and posed no threat whatsoever to the Cuban Government, the Cuban military, or the Cuban people.

(3) Statements by the Cuban Government that Brothers to the Rescue has engaged in covert operations, bombing campaigns, and commando operations against the Government of Cuba have no basis in fact.

(4) The Brothers to the Rescue aircraft notified air traffic controllers as to their flight plans, which would take them south of the 24th parallel and close to Cuban airspace.

(5) International law provides a nation with airspace over the 12-mile territorial sea.

(6) The response of Fidel Castro's dictatorship to Saturday's afternoon flight was to scramble 2 fighter jets from a Havana airfield.

(7) At approximately 3:24 p.m., the pilot of one of the Cuban MiGs received permission and proceeded to shoot down one Brothers to the Rescue airplane more than 6 miles north of the Cuban exclusion zone, or 18 miles from the Cuban coast.

(8) Approximately 7 minutes later, the pilot of the Cuban fighter jet received permission and proceeded to shoot down the second Brothers to the Rescue airplane almost 18.5 miles north of the Cuban exclusion zone, or 30.5 miles from the Cuban coast.

(9) The Cuban dictatorship, if it truly felt threatened by the flight of these unarmed aircraft, could have and should have

[22] 22 U.S.C. 6045.
[23] 22 U.S.C. 6046.

pursued other peaceful options as required by international law.

(10) The response chosen by Fidel Castro, the use of lethal force, was completely inappropriate to the situation presented to the Cuban Government, making such actions a blatant and barbaric violation of international law and tantamount to cold-blooded murder.

(11) There were no survivors of the attack on these aircraft, and the crew of a third aircraft managed to escape this criminal attack by Castro's Air Force.

(12) The crew members of the destroyed planes, Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandre, were United States citizens from Miami flying with Brothers to the Rescue on a voluntary basis.

(13) It is incumbent upon the United States Government to protect the lives and livelihoods of United States citizens as well as the rights of free passage and humanitarian missions.

(14) This premeditated act took place after a week-long wave of repression by the Cuban Government against Concilio Cubano, an umbrella organization of human rights activists, dissidents, independent economists, and independent journalists, among others.

(15) The wave of repression against Concilio Cubano, whose membership is committed to peaceful democratic change in Cuba, included arrests, strip searches, house arrests, and in some cases sentences to more than 1 year in jail.

(b) STATEMENTS BY THE CONGRESS.—(1) The Congress strongly condemns the act of terrorism by the Castro regime in shooting down the Brothers to the Rescue aircraft on February 24, 1996.

(2) The Congress extends its condolences to the families of Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandre, the victims of the attack.

(3) The Congress urges the President to seek, in the International Court of Justice, indictment for this act of terrorism by Fidel Castro.

TITLE II—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

SEC. 201.[24] POLICY TOWARD A TRANSITION GOVERNMENT AND A DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.

The policy of the United States is as follows:

(1) To support the self-determination of the Cuban people.

(2) To recognize that the self-determination of the Cuban people is a sovereign and national right of the citizens of Cuba which must be exercised free of interference by the government of any other country.

(3) To encourage the Cuban people to empower themselves with a government which reflects the self-determination of the Cuban people.

[24] 22 U.S.C. 6061.

(4) To recognize the potential for a difficult transition from the current regime in Cuba that may result from the initiatives taken by the Cuban people for self-determination in response to the intransigence of the Castro regime in not allowing any substantive political or economic reforms, and to be prepared to provide the Cuban people with humanitarian, developmental, and other economic assistance.

(5) In solidarity with the Cuban people, to provide appropriate forms of assistance—

(A) to a transition government in Cuba;

(B) to facilitate the rapid movement from such a transition government to a democratically elected government in Cuba that results from an expression of the self-determination of the Cuban people; and

(C) to support such a democratically elected government.

(6) Through such assistance, to facilitate a peaceful transition to representative democracy and a market economy in Cuba and to consolidate democracy in Cuba.

(7) To deliver such assistance to the Cuban people only through a transition government in Cuba, through a democratically elected government in Cuba, through United States Government organizations, or through United States, international, or indigenous nongovernmental organizations.

(8) To encourage other countries and multilateral organizations to provide similar assistance, and to work cooperatively with such countries and organizations to coordinate such assistance.

(9) To ensure that appropriate assistance is rapidly provided and distributed to the people of Cuba upon the institution of a transition government in Cuba.

(10) Not to provide favorable treatment or influence on behalf of any individual or entity in the selection by the Cuban people of their future government.

(11) To assist a transition government in Cuba and a democratically elected government in Cuba to prepare the Cuban military forces for an appropriate role in a democracy.

(12) To be prepared to enter into negotiations with a democratically elected government in Cuba either to return the United States Naval Base at Guantanamo to Cuba or to renegotiate the present agreement under mutually agreeable terms.

(13) To consider the restoration of diplomatic recognition and support the reintegration of the Cuban Government into Inter-American organizations when the President determines that there exists a democratically elected government in Cuba.

(14) To take steps to remove the economic embargo of Cuba when the President determines that a transition to a democratically elected government in Cuba has begun.

(15) To assist a democratically elected government in Cuba to strengthen and stabilize its national currency.

(16) To pursue trade relations with a free, democratic, and independent Cuba.

SEC. 202.[25] **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;

[25] 22 U.S.C. 6062.

(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)[26] 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

[26] The President submitted "Support for a Democratic Transition in Cuba: Report to the Congress" to the House Committees on Appropriations and International Relations, and the Senate Committees on Appropriations and Foreign Relations, on January 28, 1997.

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 Representatives 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.[27] 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.

[27] 22 U.S.C. 6063.

(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.[28] 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.[29]

(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

[28] 22 U.S.C. 6064.
[29] 7 U.S.C. 1446g note.

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.

SEC. 205.[30] REQUIREMENTS AND FACTORS FOR DETERMINING A TRANSITION GOVERNMENT.

(a) REQUIREMENTS.—For the purposes of this Act, a transition government in Cuba is a government that—

(1) has legalized all political activity;

(2) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(3) has dissolved the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades; and

(4) has made public commitments to organizing free and fair elections for a new government—

(A) to be held in a timely manner within a period not to exceed 18 months after the transition government assumes power;

(B) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time

[30] 22 U.S.C. 6065.

for such access and the times of day such allotments are given; and

(C) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other election monitors;

(5) has ceased any interference with Radio Marti or Television Marti broadcasts;

(6) makes public commitments to and is making demonstrable progress in—

(A) establishing an independent judiciary;

(B) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;

(C) allowing the establishment of independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, and political associations;

(7) does not include Fidel Castro or Raul Castro; and

(8) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people.

(b) ADDITIONAL FACTORS.—In addition to the requirements in subsection (a), in determining whether a transition government in Cuba is in power, the President shall take into account the extent to which that government—

(1) is demonstrably in transition from a communist totalitarian dictatorship to representative democracy;

(2) has made public commitments to, and is making demonstrable progress in—

(A) effectively guaranteeing the rights of free speech and freedom of the press, including granting permits to privately owned media and telecommunications companies to operate in Cuba;

(B) permitting the reinstatement of citizenship to Cuban-born persons returning to Cuba;

(C) assuring the right to private property; and

(D) taking appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;

(3) has extradited or otherwise rendered to the United States all persons sought by the United States Department of Justice for crimes committed in the United States; and

(4) has permitted the deployment throughout Cuba of independent and unfettered international human rights monitors.

SEC. 206.[31] REQUIREMENTS FOR DETERMINING A DEMOCRATICALLY ELECTED GOVERNMENT.

For purposes of this Act, a democratically elected government in Cuba, in addition to meeting the requirements of section 205(a), is a government which—

(1) results from free and fair elections—

(A) conducted under the supervision of internationally recognized observers; and

(B) in which—

(i) opposition parties were permitted ample time to organize and campaign for such elections; and

(ii) all candidates were permitted full access to the media;

(2) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;

(3) is substantially moving toward a market-oriented economic system based on the right to own and enjoy property;

(4) is committed to making constitutional changes that would ensure regular free and fair elections and the full enjoyment of basic civil liberties and human rights by the citizens of Cuba;

(5) has made demonstrable progress in establishing an independent judiciary; and

(6) has made demonstrable progress in returning to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or providing full compensation for such property in accordance with international law standards and practice.

SEC. 207.[32] SETTLEMENT OF OUTSTANDING UNITED STATES CLAIMS TO CONFISCATED PROPERTY IN CUBA.

(a) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall provide a report to the appropriate congressional committees containing an assessment of the property dispute question in Cuba, including—

(1) an estimate of the number and amount of claims to property confiscated by the Cuban Government that are held by United States nationals in addition to those claims certified under section 507 of the International Claims Settlement Act of 1949;

(2) an assessment of the significance of promptly resolving confiscated property claims to the revitalization of the Cuban economy;

(3) a review and evaluation of technical and other assistance that the United States could provide to help either a transition government in Cuba or a democratically elected government in Cuba establish mechanisms to resolve property questions;

[31] 22 U.S.C. 6066.

[32] 22 U.S.C. 6067. The Department of State submitted a report on September 27, 1996, in accordance with this section.

(4) an assessment of the role and types of support the United States could provide to help resolve claims to property confiscated by the Cuban Government that are held by United States nationals who did not receive or qualify for certification under section 507 of the International Claims Settlement Act of 1949; and

(5) an assessment of any areas requiring legislative review or action regarding the resolution of property claims in Cuba prior to a change of government in Cuba.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the satisfactory resolution of property claims by a Cuban Government recognized by the United States remains an essential condition for the full resumption of economic and diplomatic relations between the United States and Cuba.

TITLE III—PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS

SEC. 301.[33] FINDINGS.

The Congress makes the following findings:

(1) Individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution.

(2) The wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development.

(3) Since Fidel Castro seized power in Cuba in 1959—

(A) he has trampled on the fundamental rights of the Cuban people; and

(B) through his personal despotism, he has confiscated the property of—

(i) millions of his own citizens;

(ii) thousands of United States nationals; and

(iii) thousands more Cubans who claimed asylum in the United States as refugees because of persecution and later became naturalized citizens of the United States.

(4) It is in the interest of the Cuban people that the Cuban Government respect equally the property rights of Cuban nationals and nationals of other countries.

(5) The Cuban Government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets some of which were confiscated from United States nationals.

(6) This "trafficking" in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States—

(A) to bring democratic institutions to Cuba through the pressure of a general economic embargo at a time when

[33] 22 U.S.C. 6081.

the Castro regime has proven to be vulnerable to international economic pressure; and

(B) to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.

(7) The United States Department of State has notified other governments that the transfer to third parties of properties confiscated by the Cuban Government "would complicate any attempt to return them to their original owners".

(8) The international judicial system, as currently structured, lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property.

(9) International law recognizes that a nation has the ability to provide for rules of law with respect to conduct outside its territory that has or is intended to have substantial effect within its territory.

(10) The United States Government has an obligation to its citizens to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies.

(11) To deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures.

SEC. 302.[34] LIABILITY FOR TRAFFICKING IN CONFISCATED PROPERTY CLAIMED BY UNITED STATES NATIONALS.

(a) CIVIL REMEDY.—

(1) LIABILITY FOR TRAFFICKING.—(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of—

(i) the amount which is the greater of—

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest;

(II) the amount determined under section 303(a)(2), plus interest; or

(III) the fair market value of that property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater; and

(ii) court costs and reasonable attorneys' fees.

(B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of title 28, United States Code, computed by the court from the date of confiscation of the property

[34] 22 U.S.C. 6082.

involved to the date on which the action is brought under this subsection.

(2) PRESUMPTION IN FAVOR OF THE CERTIFIED CLAIMS.—There shall be a presumption that the amount for which a person is liable under clause (i) of paragraph (1)(A) is the amount that is certified as described in subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) INCREASED LIABILITY.—(A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, be liable for damages computed in accordance with subparagraph (C).

(B) If the claimant in an action under this subsection (other than a United States national to whom subparagraph (A) applies) provides, after the end of the 3-month period described in paragraph (1) notice to—

(i) a person against whom the action is to be initiated, or

(ii) a person who is to be joined as a defendant in the action,

at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30-day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

(C) Damages for which a person is liable under subparagraph (A) or subparagraph (B) are money damages in an amount equal to the sum of—

(i) the amount determined under paragraph (1)(A)(ii), and

(ii) 3 times the amount determined applicable under paragraph (1)(A)(i).

(D) Notice to a person under subparagraph (B)—

(i) shall be in writing;

(ii) shall be posted by certified mail or personally delivered to the person; and

(iii) shall contain—

(I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons therefor;

(II) a demand that the unlawful trafficking in the claimant's property cease immediately; and

(III) a copy of the summary statement published under paragraph (8).

(4) APPLICABILITY.—(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with

respect to property confiscated before, on, or after the date of the enactment of this Act.

(B) In the case of property confiscated before the date of the enactment of this Act, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before such date of enactment.

(C) In the case of property confiscated on or after the date of the enactment of this Act, a United States national who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim under this section.

(5) TREATMENT OF CERTAIN ACTIONS.—(A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section.

(B) In the case of any action brought under this section by a United States national whose underlying claim in the action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.

(C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on the date of the enactment of this Act.

(D) An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified.

(6) INAPPLICABILITY OF ACT OF STATE DOCTRINE.—No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1).

(7) LICENSES NOT REQUIRED.—(A) Notwithstanding any other provision of law, an action under this section may be brought and may be settled, and a judgment rendered in such action may be enforced, without obtaining any license or other permission from any agency of the United States, except that this paragraph shall not apply to the execution of a judgment against, or the settlement of actions involving, property blocked under the authorities of section 5(b) of the Trading with the Enemy Act that were being exercised 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.

(B) Notwithstanding any other provision of law, and for purposes of this title only, any claim against the Cuban Government shall not be deemed to be an interest in property the transfer of which to a United States national required before the enactment of this Act, or requires after the enactment of this Act, a license issued by, or the permission of, any agency of the United States.

(8)[35] PUBLICATION BY ATTORNEY GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Attorney General shall prepare and publish in the Federal Register a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title.

(b) AMOUNT IN CONTROVERSY.—An action may be brought under this section by a United States national only where the amount in controversy exceeds the sum or value of $50,000, exclusive of interest, costs, and attorneys' fees. In calculating $50,000 for purposes of the preceding sentence, the applicable amount under subclause (I), (II), or (III) of subsection (a)(1)(A)(i) may not be tripled as provided in subsection (a)(3).

(c) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in this title, the provisions of title 28, United States Code, and the rules of the courts of the United States apply to actions under this section to the same extent as such provisions and rules apply to any other action brought under section 1331 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action under this section, service of process on an agency or instrumentality of a foreign state in the conduct of a commercial activity, or against individuals acting under color of law, shall be made in accordance with section 1608 of title 28, United States Code.

(d) ENFORCEABILITY OF JUDGMENTS AGAINST CUBAN GOVERNMENT.—In an action brought under this section, any judgment against an agency or instrumentality of the Cuban Government shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(e) CERTAIN PROPERTY IMMUNE FROM EXECUTION.—Section 1611 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.".

(f) ELECTION OF REMEDIES.—

[35] The Department of Justice published a summary of title III in AG Order No. 2029–96, effective May 17, 1996 (61 F.R. 24955).

(1) ELECTION.—Subject to paragraph (2)—

(A) any United States national that brings an action under this section may not bring any other civil action or proceeding under the common law, Federal law, or the law of any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States, that seeks monetary or nonmonetary compensation by reason of the same subject matter; and

(B) any person who brings, under the common law or any provision of law other than this section, a civil action or proceeding for monetary or nonmonetary compensation arising out of a claim for which an action would otherwise be cognizable under this section may not bring an action under this section on that claim.

(2) TREATMENT OF CERTIFIED CLAIMANTS.—(A) In the case of any United States national that brings an action under this section based on a claim certified under title V of the International Claims Settlement Act of 1949—

(i) if the recovery in the action is equal to or greater than the amount of the certified claim, the United States national may not receive payment on the claim under any agreement entered into between the United States and Cuba settling claims covered by such title, and such national shall be deemed to have discharged the United States from any further responsibility to represent the United States national with respect to that claim;

(ii) if the recovery in the action is less than the amount of the certified claim, the United States national may receive payment under a claims agreement described in clause (i) but only to the extent of the difference between the amount of the recovery and the amount of the certified claim; and

(iii) if there is no recovery in the action, the United States national may receive payment on the certified claim under a claims agreement described in clause (i) to the same extent as any certified claimant who does not bring an action under this section.

(B) In the event some or all actions brought under this section are consolidated by judicial or other action in such manner as to create a pool of assets available to satisfy the claims in such actions, including a pool of assets in a proceeding in bankruptcy, every claimant whose claim in an action so consolidated was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 shall be entitled to payment in full of its claim from the assets in such pool before any payment is made from the assets in such pool with respect to any claim not so certified.

(g) DEPOSIT OF EXCESS PAYMENTS BY CUBA UNDER CLAIMS AGREEMENT.—Any amounts paid by Cuba under any agreement entered into between the United States and Cuba settling certified claims under title V of the International Claims Settlement Act of 1949 that are in excess of the payments made on such certified

claims after the application of subsection (f) shall be deposited into the United States Treasury.

(h) TERMINATION OF RIGHTS.—

(1) IN GENERAL.—All rights created under this section to bring an action for money damages with respect to property confiscated by the Cuban Government—

(A) may be suspended under section 204(a); and

(B) shall cease upon transmittal to the Congress of a determination of the President under section 203(c)(3) that a democratically elected government in Cuba is in power.

(2) PENDING SUITS.—The suspension or termination of rights under paragraph (1) shall not affect suits commenced before the date of such suspension or termination (as the case may be), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension or termination had not occurred.

(i) IMPOSITION OF FILING FEES.—The Judicial Conference of the United States shall establish a uniform fee that shall be imposed upon the plaintiff or plaintiffs in each action brought under this section. The fee should be established at a level sufficient to recover the costs to the courts of actions brought under this section. The fee under this subsection is in addition to any other fees imposed under title 28, United States Code.

SEC. 303.[36] PROOF OF OWNERSHIP OF CLAIMS TO CONFISCATED PROPERTY.

(a) EVIDENCE OF OWNERSHIP.—

(1) CONCLUSIVENESS OF CERTIFIED CLAIMS.—In any action brought under this title, the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).

(2) CLAIMS NOT CERTIFIED.—If in an action under this title a claim has not been so certified by the Foreign Claims Settlement Commission, the court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of the claim. Such determinations are only for evidentiary purposes in civil actions brought under this title and do not constitute certifications under title V of the International Claims Settlement Act of 1949.

(3) EFFECT OF DETERMINATIONS OF FOREIGN OR INTERNATIONAL ENTITIES.—In determining the amount or ownership of a claim in an action under this title, the court shall not accept as conclusive evidence any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that declare the value of or invalidate the claim, unless the declaration of value or invalidation was found pursuant to binding international arbitration

[36] 22 U.S.C. 6083.

to which the United States or the claimant submitted the claim.

(b) AMENDMENT OF THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949.—Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following) is amended by adding at the end the following new section: * * *[37]

(c) RULE OF CONSTRUCTION.—Nothing in this Act or in section 514 of the International Claims Settlement Act of 1949, as added by subsection (b), shall be construed—

(1) to require or otherwise authorize the claims of Cuban nationals who became United States citizens after their property was confiscated to be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiation and espousal of claims with a friendly government in Cuba when diplomatic relations are restored; or

(2) as superseding, amending, or otherwise altering certifications that have been made under title V of the International Claims Settlement Act of 1949 before the date of the enactment of this Act.

SEC. 304. EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE.

Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following), as amended by section 303, is further amended by adding at the end the following new section: * * *[38]

SEC. 305.[39] LIMITATION OF ACTIONS.

An action under section 302 may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur.

SEC. 306.[40] EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsections (b) and (c), this title and the amendments made by this title shall take effect on August 1, 1996.

(b)[41] SUSPENSION AUTHORITY.—

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[37] See *Legislation on Foreign Relations Through 2005*, vol. IV.

[38] See *Legislation on Foreign Relations Through 2005*, vol. IV.

[39] 22 U.S.C. 6084.

[40] 22 U.S.C. 6085.

[41] The President "determine[d] and report[ed] to the Congress that suspension for 6 months beyond August 1 [1996] of the right to bring an action under Title III of the Act is necessary to the national interests of the United State and will expedite a transition to democracy in Cuba," in letters to congressional committees ("Statement on Action on Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995, July 16, 1996" in *Weekly Compilation of Presidential Documents*, p. 1265). The President extended the suspension beyond August 1, 1997, in similar letters on July 16, 1997 (House Document 105–107, 105th Congress, 1st session, July 17, 1997); January 16, 1998 (*Weekly Compilation of Presidential Documents*, p. 81); July 16, 1998 (*Weekly Compilation of Presidential Documents*, p. 1398); January 25, 1999 (*Weekly Compilation of Presidential Documents*, p. 63); July 16, 1999 (*Weekly Compilation of Presidential Documents*, p. 1384); January 21, 2000 (*Weekly Compilation of Presidential Documents*, p. 89); July 14, 2000 (*Weekly Compilation of Presidential Documents*, p. 1651); January 16, 2001 (*Weekly Compilation of Presidential Documents*, p. 137); July 22, 2001 (*Weekly Compilation of Presidential Documents*, p. 1048); January 16, 2002 (*Weekly Compilation of Presidential Documents*, p. 77); July 22, 2002 (*Weekly Compilation of Presidential Documents*, p. 1212); January 16, 2003 (*Weekly Compilation of Presidential Documents*, p. 80); July 18, 2003 (*Weekly Compilation of Presidential Documents*, p. 925); January 16, 2004 (*Weekly Compilation of Presidential Documents*, p. 91); July 16, 2004 (*Weekly Compilation of Presidential Documents*, p. 1323); January 13, 2005 (*Weekly Compilation of Presidential Documents*, p. 31); and July 15, 2005 (*Weekly Compilation of Presidential Documents*, p. 1175).

(1) SUSPENSION AUTHORITY.—The President may suspend the effective date under subsection (a) for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before such effective date that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(2) ADDITIONAL SUSPENSIONS.—The President may suspend the effective date under subsection (a) for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(c) OTHER AUTHORITIES.—

(1) SUSPENSION.—After this title and the amendments of this title have taken effect—

(A) no person shall acquire a property interest in any potential or pending action under this title; and

(B) the President may suspend the right to bring an action under this title with respect to confiscated property for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the suspension takes effect that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(2) ADDITIONAL SUSPENSIONS.—The President may suspend the right to bring an action under this title for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

(3) PENDING SUITS.—The suspensions of actions under paragraph (1) shall not affect suits commenced before the date of such suspension, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension had not occurred.

(d) RESCISSION OF SUSPENSION.—The President may rescind any suspension made under subsection (b) or (c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

TITLE IV—EXCLUSION OF CERTAIN ALIENS

SEC. 401.[42] EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY.

(a) GROUNDS FOR EXCLUSION.—The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act—

(1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national;

(2) traffics in confiscated property, a claim to which is owned by a United States national;

(3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or

(4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(b) DEFINITIONS.—As used in this section, the following terms have the following meanings:

(1) CONFISCATED; CONFISCATION.—The terms "confiscated" and "confiscation" refer to—

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property—

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(2) TRAFFICS.—(A) Except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally—

[42] 22 U.S.C. 6091. "Department of State Guidelines for Implementation of Title IV of the LIBERTAD Act" were printed as Department of State Public Notice 2403, effective June 17, 1996 (61 F.R. 30655).

(i)(I) transfers, distributes, dispenses, brokers, or otherwise disposes of confiscated property,

(II) purchases, receives, obtains control of, or otherwise acquires confiscated property, or

(III) improves (other than for routine maintenance), invests in (by contribution of funds or anything of value, other than for routine maintenance), or begins after the date of the enactment of this Act to manage, lease, possess, use, or hold an interest in confiscated property,

(ii) enters into a commercial arrangement using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.

(B) The term "traffics" does not include—

(i) the delivery of international telecommunication signals to Cuba;

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(c) EXEMPTION.—This section shall not apply where the Secretary of State finds, on a case by case basis, that the entry into the United States of the person who would otherwise be excluded under this section is necessary for medical reasons or for purposes of litigation of an action under title III.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—This section applies to aliens seeking to enter the United States on or after the date of the enactment of this Act.

(2) TRAFFICKING.—This section applies only with respect to acts within the meaning of "traffics" that occur on or after the date of the enactment of this Act.

(2) Declaration of a National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Presidential Proclamation 6867 of March 1, 1996, 61 F.R. 8843, 50 U.S.C. 191 note

By the President of the United States of America

A Proclamation

WHEREAS, on February 24, 1996, Cuban military aircraft intercepted and destroyed two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba;

WHEREAS the Government of Cuba has demonstrated a ready and reckless willingness to use excessive force, including deadly force, in the ostensible enforcement of its sovereignty;

WHEREAS, on July 13, 1995, persons in U.S.-registered vessels who entered into Cuban territorial waters suffered injury as a result of the reckless use of force against them by the Cuban military; and

WHEREAS the entry of U.S.-registered vessels into Cuban territorial waters could again result in injury to, or loss of life of, persons engaged in that conduct, due to the potential use of excessive force, including deadly force, against them by the Cuban military, and could threaten a disturbance in international relations;

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 1 of title II of Public Law 65–24, ch. 30, June 15, 1917, as amended (50 U.S.C. 191), sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code, find and do hereby proclaim that a national emergency does exist by reason of a disturbance or threatened disturbance of international relations. In order to address this national emergency and to secure the observance of the rights and obligations of the United States, I hereby authorize and direct the Secretary of Transportation (the "Secretary") to make and issue such rules and regulations as the Secretary may find appropriate to regulate the anchorage and movement of vessels, and delegate to the Secretary my authority to approve such rules and regulations, as authorized by the Act of June 15, 1917.

Section 1. The Secretary may make rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions and threaten a disturbance of international relations. Any rule or regulation issued pursuant to this proclamation may be effective immediately

upon issuance as such rule or regulation shall involve a foreign affairs function of the United States.

Sec. 2. The Secretary is authorized to inspect any vessel, foreign or domestic, in the territorial waters of the United States, at any time; to place guards on any such vessel; and, with my consent expressly hereby granted, take full possession and control of any such vessel and remove the officers and crew, and all other persons not specifically authorized by the Secretary to go or remain on board the vessel when necessary to secure the rights and obligations of the United States.

Sec. 3. The Secretary may request assistance from such departments, agencies, officers, or instrumentalities of the United States as the Secretary deems necessary to carry out the purposes of this proclamation. Such departments, agencies, officers, or instrumentalities shall, consistent with other provisions of law and to the extent practicable, provide requested assistance.

Sec. 4. The Secretary may seek assistance from State and local authorities in carrying out the purposes of this proclamation. Because State and local assistance may be essential for an effective response to this emergency, I urge all State and local officials to cooperate with Federal authorities and to take all actions within their lawful authority necessary to prevent the unauthorized departure of vessels intending to enter Cuban territorial waters.

Sec. 5. All powers and authorities delegated by this proclamation to the Secretary may be delegated by the Secretary to other officers and agents of the United States Government unless otherwise prohibited by law.

Sec. 6.[1] This proclamation shall be immediately transmitted to the Congress and published in the Federal Register.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

[1] This proclamation was continued by notice of the President on February 27, 1997 (62 F.R. 9347); February 26, 1998 (63 F.R. 9923); February 26, 1999 (64 F.R. 9903); February 20, 2000 (65 F.R. 10929); February 27, 2001 (66 F.R. 12839); February 26, 2002 (67 F.R. 9387); February 27, 2003 (68 F.R. 9847); February 26, 2004 (69 F.R. 9513); and February 18, 2005 (70 F.R. 8919).

(3) Cuban Democracy Act of 1992

Partial text of Public Law 102–484 [National Defense Authorization Act for Fiscal Year 1993; H.R. 5006], 106 Stat. 2315, approved October 23, 1992; as amended by Public Law 104–114 [Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996; H.R. 927], 110 Stat. 785, approved March 12, 1996

AN ACT To authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to provide for defense conversion, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

TITLE XVII—CUBAN DEMOCRACY ACT OF 1992

SEC. 1701.[1] SHORT TITLE.

This title may be cited as the "Cuban Democracy Act of 1992".

SEC. 1702.[2] 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

[1] 22 U.S.C. 6001 note.
[2] 22 U.S.C. 6001.

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 unwillingness 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.[3] 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

[3] 22 U.S.C. 6002.

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.[4, 5] 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 title.

(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;[5]

(B)[6] 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)[6] does not include—

(i) donations of food to nongovernmental organizations or individuals in Cuba, or

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[4] 22 U.S.C. 6003. Sec. 2 of Executive Order 12854 (58 F.R. 36587; July 4, 1993) delegated authority in this section to the Secretary of State.

[5] Sec. 204 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104–114; 110 Stat. 810) authorized the President to take steps to suspend the economic embargo of Cuba upon submitting a determination to the appropriate congressional committees that a transition government is in power in Cuba. The section, furthermore, repealed the following sections of law upon the issuance of a Presidential determination that a democratically elected government is in power in Cuba:

(1) sec. 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a));

(2) sec. 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) with respect to the "Republic of Cuba";

(3) secs. 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005); and

(4) sec. 902(c) of the Food Security Act of 1985.

Congress, until such a transition to democracy in Cuba is attained, reaffirmed the intent of sec. 1704, and other sections, of the Cuban Democracy Act. See Public Law 104–114.

[6] Sec. 102(f) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104–114; 110 Stat. 793) struck out "and" at the end of subpara. (A); redesignated subpara. (B) as subpara. (C); inserted a new subpara. (B); and added the flush sentence at the end of para. (2).

(ii) exports of medicines or medical supplies, instruments, or equipment that would be permitted under section 1705(c).

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".[6]

(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 1708(a).

SEC. 1705.[7] 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 nongovernmental 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) Subparagraph (A) does not apply to donations to nongovernmental organizations in Cuba of medicines for humanitarian purposes.

[7] 22 U.S.C. 6004. Sec. 3 of Executive Order 12854 (58 F.R. 36587; July 4, 1993) delegated authority in subsecs. (b) through (e), as such subsections pertain to transactions with Cuba, to the Secretary of the Treasury. Sec. 4 of that Order delegated authority in subsecs. (b) through (e) pertaining to exportation to Cuba to the Secretary of Commerce.

(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 title, 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)[8] 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)[8] 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

[8] Sec. 102(g) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104–114; 110 Stat. 793) added paras. (5) and (6).

nongovernmental organizations, for the support of individuals and organizations to promote nonviolent democratic change in Cuba.

SEC. 1706.[5, 9] **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.

(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;

(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)); and

(C) 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.

(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.

[9] 22 U.S.C. 6005. Sec. 3 of Executive Order 12854 (58 F.R. 36587; July 4, 1993) delegated authority in this section pertaining to transactions with Cuba to the Secretary of the Treasury.

(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 1705 or section 1707 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.[10] 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[11] 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.[12] POLICY TOWARD A DEMOCRATIC CUBAN GOVERNMENT.

(a) WAIVER OF RESTRICTIONS.—The President may waive the requirements of section 1706 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.

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[10] 22 U.S.C. 6006. Sec. 2 of Executive Order 12854 (58 F.R. 36587; July 4, 1993) delegated authority in this section to the Secretary of State.

[11] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

[12] 22 U.S.C. 6007. Sec. 2 of Executive Order 12854 (58 F.R. 36587; July 4, 1993) delegated authority in this section to the Secretary of State.

(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.[13] EXISTING CLAIMS NOT AFFECTED.

Except as provided in section 1705(a), nothing in this title affects the provisions of section 620(a)(2) of the Foreign Assistance Act of 1961.

SEC. 1710.[14] ENFORCEMENT.

(a) ENFORCEMENT AUTHORITY.—The authority to enforce this title 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 title. In carrying out this subsection, the Secretary of the Treasury shall take the necessary steps to ensure that activities permitted under section 1705 are carried out for the purposes set forth in this title 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 title.

(c) PENALTIES UNDER THE TRADING WITH THE ENEMY ACT.—Section 16 of the Trading With the Enemy Act (50 U.S.C. App. 16) is amended—

(1) by striking "That whoever" and inserting "(a) 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.

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[13] 22 U.S.C. 6008.
[14] 22 U.S.C. 6009.

"(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 title 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 title.

SEC. 1711.[15] DEFINITION.

As used in this title, 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.[16] EFFECTIVE DATE.

This title shall take effect on the date of the enactment of this Act.

[15] 22 U.S.C. 6010.
[16] 22 U.S.C. 6001 note.

(4) Implementation of the Cuban Democracy Act

Executive Order 12854 of July 4, 1993, 58 F.R. 36587, 22 U.S.C. 6001 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Trading With the Enemy Act, as amended (50 U.S.C. App. 1–6, 7–39, 41–44), the Cuban Democracy Act of 1992 (Public Law 102–484, sections 1701–1712, October 23, 1992, 106 Stat. 2575) (the "Act"), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

Section 1. *Implementation of the Act.* All agencies are hereby directed to take all appropriate measures within their authority, including the promulgation of rules and regulations, to carry out the provisions of the Act.

Sec. 2. *Functions of the Department of State.* The Secretary of State shall be responsible for implementing sections 1704, 1707, and 1708 of the Act. Responsibility for transmitting the certification required by section 1707 and the report required by section 1708 of the Act is delegated to the Secretary of State.

Sec. 3. *Functions of the Department of the Treasury.* Except as provided in section 4 of this order, the Secretary of the Treasury shall be responsible for implementing sections 1705(b)–(e) and 1706 of the Act, to the extent that these sections pertain to transactions with Cuba.

Sec. 4. *Functions of the Department of Commerce.* The Secretary of Commerce shall be responsible for implementing sections 1705(b)–(e) of the Act, to the extent that these sections pertain to the exportation to Cuba from the United States or from a third country of goods and technology subject to the jurisdiction of the Department of Commerce.

Sec. 5. *Consultation.* In consultation with the Secretary of State, the Secretary of the Treasury and the Secretary of Commerce are hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the Act and this order.

Sec. 6. Nothing in this order shall be deemed to affect any functions vested by law in the Federal Communications Commission.

Sec. 7. *Effective Date.* This order shall be effective immediately.

j. Economic Relations With Iraq [1]

(1) Iraq Sanctions Act of 1990 [2]

Partial text of Public Law 101–513 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991; H.R. 5114], 104 Stat. 1979 at 2047, approved November 5, 1990

AN ACT Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes, namely:

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TITLE V—GENERAL PROVISIONS

* * * * * * *

IRAQ SANCTIONS ACT OF 1990 [3]

SEC. 586. SHORT TITLE.

Sections 586 through 586J of this Act may be cited as the "Iraq Sanctions Act of 1990".

SEC. 586A. DECLARATIONS REGARDING IRAQ'S INVASION OF KUWAIT.

The Congress—

(1) condemns Iraq's invasion of Kuwait on August 2, 1990;

(2) supports the actions that have been taken by the President in response to that invasion;

(3) calls for the immediate and unconditional withdrawal of Iraqi forces from Kuwait;

(4) supports the efforts of the United Nations Security Council to end this violation of international law and threat to international peace;

(5) supports the imposition and enforcement of multilateral sanctions against Iraq;

(6) calls on United States allies and other countries to support fully the efforts of the United Nations Security Council, and to take other appropriate actions, to bring about an end to Iraq's occupation of Kuwait; and

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[1] See also the Iran-Iraq Arms Non-Proliferation Act of 1992 (title XVI of Public Law 102–484; 106 Stat. 2571), in *Legislation on Foreign Relations Through 2005*, vol. II–B; and Iraq section in *Legislation on Foreign Relations Through 2005*, vol. I–B.

[2] In Presidential Determination 2003–23 of May 7, 2003 (68 F.R. 26459), the President suspended the application of all of the provisions, other than sec. 586E, of the Iraq Sanctions Act of 1990.

[3] 50 U.S.C. 1701 note.

(7) condemns the brutal occupation of Kuwait by Iraq and its gross violations of internationally recognized human rights in Kuwait, including widespread arrests, torture, summary executions, and mass extrajudicial killings.

SEC. 586B. CONSULTATIONS WITH CONGRESS.

The President shall keep the Congress fully informed, and shall consult with the Congress, with respect to current and anticipated events regarding the international crisis caused by Iraq's invasion of Kuwait, including with respect to United States actions.

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).[4] 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.[5]

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[4] Executive Order 12771 of July 25, 1991 (56 F.R. 35993), revoked Executive Orders 12723 and 12725, relating to blocking Kuwaiti government property and prohibiting transactions with Kuwait while occupied by Iraq.

[5] United Nations Security Council Resolution 678, adopted November 29, 1990, recalled and reaffirmed the intentions of earlier U.N. resolutions relating to Iraq's invasion of Kuwait on August 2, 1990. Earlier resolutions, in part: condemned the Iraqi invasion of Kuwait, demanded that Iraq withdraw immediately and unconditionally from Kuwait, called upon Iraq and Kuwait to begin negotiations for the resolution of their differences (Resolution 660 adopted August 2, 1990); prevented trade relations between Iraq and U.N. Member States, or the import of any Iraqi or Kuwaiti products, and established a Committee of the Security Council to examine progress of this trade embargo (Resolution 661 adopted August 6, 1990); determined that the annexation of Kuwait by Iraq had no legal validity (Resolution 662 adopted August 9, 1990); demanded that Iraq facilitate and permit the immediate departure from Kuwait and Iraq of third country citizens (Resolution 664 adopted August 18, 1990); called upon Member States to blockade maritime activity to the region (Resolution 665 adopted August 25, 1990); considered an exemption of the trade embargo for foodstuffs to Iraq and Kuwait (Resolution 666 adopted September 13, 1990); condemned Iraq's aggressions against international diplomatic premises and personnel in Kuwait (Resolution 667 adopted September 16, 1990); expanded responsibilities of the Committee established under Resolution 661 (Resolution 669 adopted September 14, 1990); further defined the trade embargo to include air traffic, and called upon Member States to detain Iraqi ships in port (Resolution 670 adopted September 25, 1990); condemned the taking of third nation nationals hostage, and condemned the destruction of Kuwaiti property by

Continued

(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)[4] shall be submitted to the Congress before those regulations take effect.

(2) NOTICE OF TERMINATION OF SANCTIONS.—The President shall notify the Congress at least 15 days before the termination, 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.[6] 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.

Iraq (Resolution 674 adopted October 29, 1990); and condemned Iraqi attempts to alter the demographic composition of the Kuwaiti population (Resolution 677 adopted November 28, 1990).

Resolution 678, adopted by the U.N. Security Council on November 29, 1990, in part:

"Demands that Iraq comply fully with resolutions 660 (1990) and all subsequent relevant resolutions, and decides, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of goodwill, to do so;

"Authorizes Member States cooperating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the foregoing resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area;".

[6] In Presidential Determination 91–46 of July 13, 1991, the President invoked the authority of this section when he determined and certified "that assistance for Jordan under chapter 4 of part II of the Foreign Assistance Act of 1961, as amended, and under section 23 of the Arms Export Control Act, is in the national interest of the United States.". He further determined, by virtue of authority given in sec. 502(c) of Public Law 102–27, that such assistance "would be beneficial to the peace process in the Middle East" (56 F.R. 33839; July 24, 1991).

In Presidential Determination 91–53 of September 16, 1991, the President made the same determinations regarding assistance for Jordan under chapter 5 of part II of the Foreign Assistance Act of 1961, as amended (56 F.R. 49837; October 2, 1991).

(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[4] 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[4] 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.

SEC. 586F. DECLARATIONS REGARDING IRAQ'S LONG-STANDING VIOLATIONS OF INTERNATIONAL LAW.

(a) IRAQ'S VIOLATIONS OF INTERNATIONAL LAW.—The Congress determines that—

(1) the Government of Iraq has demonstrated repeated and blatant disregard for its obligations under international law by violating the Charter of the United Nations, 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), as well as other international treaties;

(2) the Government of Iraq is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights and is obligated under the Covenants, as well as the Universal Declaration of Human Rights, to respect internationally recognized human rights;

(3) the State Department's Country Reports on Human Rights Practices for 1989 again characterizes Iraq's human rights record as "abysmal";

(4) Amnesty International, Middle East Watch, and other independent human rights organizations have documented extensive, systematic, and continuing human rights abuses by the Government of Iraq, including summary executions, mass political killings, disappearances, widespread use of torture, arbitrary arrests and prolonged detention without trial of thousands of political opponents, forced relocation and deportation, denial of nearly all civil and political rights such as freedom of association, assembly, speech, and the press, and the imprisonment, torture, and execution of children;

(5) since 1987, the Government of Iraq has intensified its severe repression of the Kurdish minority of Iraq, deliberately destroyed more than 3,000 villages and towns in the Kurdish regions, and forcibly expelled more than 500,000 people, thus effectively depopulating the rural areas of Iraqi Kurdistan;

(6) Iraq has blatantly violated international law by initiating use of chemical weapons in the Iran-Iraq war;

(7) Iraq has also violated international law by using chemical weapons against its own Kurdish citizens, resulting in tens of thousands of deaths and more than 65,000 refugees;

(8) Iraq continues to expand its chemical weapons capability, and President Saddam Hussein has threatened to use chemical weapons against other nations;

(9) persuasive evidence exists that Iraq is developing biological weapons in violation of international law;

(10) there are strong indications that Iraq has taken steps to produce nuclear weapons and has attempted to smuggle from the United States, in violation of United States law, components for triggering devices used in nuclear warheads whose manufacture would contravene the Treaty on the Non-Proliferation of Nuclear Weapons, to which Iraq is a party; and

(11) Iraqi President Saddam Hussein has threatened to use terrorism against other nations in violation of international law and has increased Iraq's support for the Palestine Liberation Organization and other Palestinian groups that have conducted terrorist acts.

(b) HUMAN RIGHTS VIOLATIONS.—The Congress determines that the Government of Iraq is engaged in a consistent pattern of gross violations of internationally recognized human rights. All provisions of law that impose sanctions against a country whose government is engaged in a consistent pattern of gross violations of internationally recognized human rights shall be fully enforced against Iraq.

(c) SUPPORT FOR INTERNATIONAL TERRORISM.—(1) The Congress determines that Iraq is a country which has repeatedly provided support for acts of international terrorism, a country which grants sanctuary from prosecution to individuals or groups which have committed an act of international terrorism, and a country which otherwise supports international terrorism. The provisions of law specified in paragraph (2) and all other provisions of law that impose sanctions against a country which has repeatedly provided

support for acts of international terrorism, which grants sanctuary from prosecution to an individual or group which has committed an act of international terrorism, or which otherwise supports international terrorism shall be fully enforced against Iraq.

(2) The provisions of law referred to in paragraph (1) are—

(A) section 40 of the Arms Export Control Act;

(B) section 620A of the Foreign Assistance Act of 1961;

(C) sections 555 and 556 of this Act (and the corresponding sections of predecessor foreign operations appropriations Acts); and

(D) section 555 of the International Security and Development Cooperation Act of 1985.

(d) MULTILATERAL COOPERATION.—The Congress calls on the President to seek multilateral cooperation—

(1) to deny dangerous technologies to Iraq;

(2) to induce Iraq to respect internationally recognized human rights; and

(3) to induce Iraq to allow appropriate international humanitarian and human rights organizations to have access to Iraq and Kuwait, including the areas in northern Iraq traditionally inhabited by Kurds.

SEC. 586G. SANCTIONS AGAINST IRAQ.

(a)[7] 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

[7] Sec. 1603 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2752) provided the following:

"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 100–513), 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.".

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 Export 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.

SEC. 586J. REPORTS TO CONGRESS.

(a) STUDY AND REPORT ON THE INTERNATIONAL EXPORT TO IRAQ OF NUCLEAR, BIOLOGICAL, CHEMICAL, AND BALLISTIC MISSILE TECHNOLOGY.—(1) The President shall conduct a study on the sale, export, and third party transfer or development of nuclear, biological, chemical, and ballistic missile technology to or with Iraq including—

(A) an identification of specific countries, as well as companies and individuals, both foreign and domestic, engaged in such sale or export of, nuclear, biological, chemical, and ballistic missile technology;

(B) a detailed description and analysis of the international supply, information, support, and coproduction network, individual, corporate, and state, responsible for Iraq's current capability in the area of nuclear, biological, chemical, and ballistic missile technology; and

(C) a recommendation of standards and procedures against which to measure and verify a decision of the Government of Iraq to terminate the development, production, coproduction, and deployment of nuclear, biological, chemical, and offensive ballistic missile technology as well as the destruction of all existing facilities associated with such technologies.

(2) The President shall include in the study required by paragraph (1) specific recommendations on new mechanisms, to include, but not be limited to, legal, political, economic and regulatory, whereby the United States might contribute, in conjunction with its friends, allies, and the international community, to the management, control, or elimination of the threat of nuclear, biological, chemical, and ballistic missile proliferation.

(3) Not later than March 30, 1991, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs[8] of the House of Representatives, a report, in both classified and unclassified form, setting

[8] Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

forth the findings of the study required by paragraph (1) of this subsection.

(b) STUDY AND REPORT ON IRAQ'S OFFENSIVE MILITARY CAPABILITY.—(1) The President shall conduct a study on Iraq's offensive military capability and its effect on the Middle East balance of power including an assessment of Iraq's power projection capability, the prospects for another sustained conflict with Iran, joint Iraqi-Jordanian military cooperation, the threat Iraq's arms transfer activities pose to United States allies in the Middle East, and the extension of Iraq's political-military influence into Africa and Latin America.

(2) Not later than March 30, 1991, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs[8] of the House of Representatives, a report, in both classified and unclassified form, setting forth the findings of the study required by paragraph (1).

(c) REPORT ON SANCTIONS TAKEN BY OTHER NATIONS AGAINST IRAQ.—(1) The President shall prepare a report on the steps taken by other nations, both before and after the August 2, 1990, invasion of Kuwait, to curtail the export of goods, services, and technologies to Iraq which might contribute to, or enhance, Iraq's nuclear, biological, chemical, and ballistic missile capability.

(2) The President shall provide a complete accounting of international compliance with each of the sanctions resolutions adopted by the United Nations Security Council against Iraq since August 2, 1990, and shall list, by name, each country which to his knowledge, has provided any assistance to Iraq and the amount and type of that assistance in violation of each United Nations resolution.[4]

(3) The President shall make every effort to encourage other nations, in whatever forum or context, to adopt sanctions toward Iraq similar to those contained in this section.

(4) Not later than every 6 months after the date of enactment of this Act, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs[8] of the House of Representatives, a report in both classified and unclassified form, setting forth the findings of the study required by paragraph (1) of this subsection.

(2) Prohibition on Supercomputer Licensing With End-User Designated as Iraq

Partial text of Public Law 101–515 [Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991; H.R. 5021], 104 Stat. 2101, approved November 5, 1990

AN ACT Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1991, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1991, and for other purposes, namely:

* * * * * * *

TITLE VI—GENERAL PROVISIONS

* * * * * * *

SEC. 608. (a) None of the funds in 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 to be assisting Iraq to improve its ballistic missile technology or chemical, biological, or nuclear weapons capability and so reports to the Congress.

(b) None of the funds in this or any other Act may be used to approve the licensing for export of any supercomputer to any country whose nationals are assisting Iraq to improve its rocket technology or chemical, biological, or nuclear weapons capability: *Provided,* That this provision shall apply only if the President determines that the government of the country has made inadequate efforts to restrict such involvement by its citizens or corporations and so reports to the Congress.

This Act may be cited as the "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991".

(3) Economic Sanctions Against the Republic of Iraq

Partial text of Public Law 101–510 [National Defense Authorization Act for Fiscal Year 1991; H.R. 4739], 104 Stat. 1485 at 1697, approved November 5, 1990

AN ACT To authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 1458.[1] ECONOMIC SANCTIONS AGAINST THE REPUBLIC OF IRAQ.

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—

(1) prohibited—

(A) the importation of products of Iraq into its customs territory, and

(B) the export of its products to Iraq; or

(2) given assurances satisfactory to the President that such import and export sanctions will be promptly implemented.

* * * * * * *

[1] 50 U.S.C. 1701 note.

(4) Confiscating and Vesting Certain Iraqi Property

Executive Order 13290, March 20, 2003, 68 F.R. 14307, 50 U.S.C. 1701 note; as amended by Executive Order 13350, July 30, 2004, 69 F.R. 46055

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the national emergency declared in Executive Order 13303 of March 20, 2003, and expanded in Executive Order 13315 of August 28, 2003,[1]

I, GEORGE W. BUSH, President of the United States of America, hereby determine that the United States and Iraq are engaged in armed hostilities, that it is in the interest of the United States to confiscate certain property of the Government of Iraq and its agencies, instrumentalities, or controlled entities, and that all right, title, and interest in any property so confiscated should vest in the Department of the Treasury. I intend that such vested property should be used to assist the Iraqi people and to assist in the reconstruction of Iraq, and determine that such use would be in the interest of and for the benefit of the United States.

I hereby order:

Section 1. All blocked funds held in the United States in accounts in the name of the Government of Iraq, the Central Bank of Iraq, Rafidain Bank, Rasheed Bank, or the State Organization for Marketing Oil are hereby confiscated and vested in the Department of the Treasury, except for the following:

(a) any such funds that are subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoy equivalent privileges and immunities under the laws of the United States, and are or have been used for diplomatic or consular purposes, and

(b) any such amounts that as of the date of this order are subject to post-judgment writs of execution or attachment in aid of execution of judgments pursuant to section 201 of the Terrorism Risk Insurance Act of 2002 (Public Law 107 297), provided that, upon satisfaction of the judgments on which such writs are based, any remainder of such excepted amounts shall, by virtue of this order and without further action, be confiscated and vested.

Sec. 2. The Secretary of the Treasury is authorized to perform, without further approval, ratification, or other action of the President, all functions of the President set forth in section 203(a)(1)(C)

[1] Sec. 3 of Executive Order 13350 (69 F.R. 46055) struck out "the national emergency declared in Executive Order 12722 of August 2, 1990" and inserted in lieu thereof "the national emergency declared in Executive Order 13303 of March 20, 2003, and expanded in Executive Order 13315 of August 28, 2003".

of IEEPA with respect to any and all property of the Government of Iraq, including its agencies, instrumentalities, or controlled entities, and to take additional steps, including the promulgation of rules and regulations as may be necessary, to carry out the purposes of this order. The Secretary of the Treasury may redelegate such functions in accordance with applicable law. The Secretary of the Treasury shall consult the Attorney General as appropriate in the implementation of this order.

Sec. 3. This order shall be transmitted to the Congress and published in the Federal Register.

(5) Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest

Executive Order 13303, May 22, 2003, 68 F.R. 31929, 50 U.S.C. 1701 note; as amended by Executive Order 13364, December 3, 2004, 69 F.R. 70177

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, find that the threat of attachment or other judicial process against the Development Fund for Iraq, Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, obstructs the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq. This situation constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States and I hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1.[1] (a) Except as provided in section 1(b) of this order, and unless licensed or otherwise authorized pursuant to this order, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is prohibited and shall be deemed null and void with respect to the following:

(i) the Development Fund for Iraq;

(ii) all Iraqi petroleum and petroleum products, and interests therein, but only until title passes to the initial purchaser, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, in which any foreign country or a national thereof has any interest, that are in the United States, that hereafter come within the United States,

[1] Sec. 1 of Executive Order 13364 (69 F.R. 70177) amended and restated sec. 1. It previously read as follows:

"**Section 1.** Unless licensed or otherwise authorized pursuant to this order, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is prohibited, and shall be deemed null and void, with respect to the following:

"(a) the Development Fund for Iraq, and

"(b) all Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, in which any foreign country or a national thereof has any interest, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons.".

or that are or hereafter come within the possession or control of United States persons; and

(iii) any accounts, assets, investments, or any other property of any kind owned by, belonging to, or held by the Central Bank of Iraq, or held, maintained, or otherwise controlled by any financial institution of any kind in the name of, on behalf of, or otherwise for the Central Bank of Iraq.

(b) The prohibition in section 1(a) of this order shall not apply with respect to any final judgment arising out of a contractual obligation entered into by the Government of Iraq, including any agency or instrumentality thereof, after June 30, 2004.

Sec. 2. (a) As of the effective date of this order, Executive Order 12722 of August 2, 1990, Executive Order 12724 of August 9, 1990,[2] and Executive Order 13290 of March 20, 2003, shall not apply to the property and interests in property described in section 1 of this order.

(b) Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under Executive Orders 12722, 12724, or 13290, or under the authority of IEEPA or the UNPA, except as hereafter terminated, modified, or suspended by the issuing Federal agency and except as provided in section 2(a) of this order.

Sec. 3. For the purposes of this order:

(a) The term "person" means an individual or entity;

(b) The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) The term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) The term "Iraqi petroleum and petroleum products" means any petroleum, petroleum products, or natural gas originating in Iraq, including any Iraqi-origin oil inventories, wherever located; and

(e) The term "Development Fund for Iraq" means the fund established on or about May 22, 2003, on the books of the Central Bank of Iraq, by the Administrator of the Coalition Provisional Authority responsible for the temporary governance of Iraq and all accounts held for the fund or for the Central Bank of Iraq in the name of the fund.

Sec. 4. (a) The Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government

[2] In Executive Order 13350 of July 30, 2004 (69 F.R. 46055), the President revoked Executive Order 12722 and 12724.

are hereby directed to take all appropriate measures within their statutory authority to carry out the provisions of this order.

(b) Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations.

Sec. 5. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Sec. 6. This order shall be transmitted to the Congress and published in the Federal Register.

(6) Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions

Executive Order 13315, August 28, 2003, 68 F.R. 52315, 50 U.S.C. 1701 note; as amended by Executive Order 13350, July 29, 2004, 69 F.R. 46055

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, in view of United Nations Security Council Resolution 1483 of May 22, 2003, and in order to take additional steps with respect to the situation in Iraq,

I, GEORGE W. BUSH, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. I find that the removal of Iraqi property from that country by certain senior officials of the former Iraqi regime and their immediate family members constitutes one of these obstacles. I further determine that the United States is engaged in armed hostilities and that it is in the interest of the United States to confiscate certain additional property of the former Iraqi regime, certain senior officials of the former regime, immediate family members of those officials, and controlled entities. I intend that such property, after all right, title, and interest in it has vested in the Department of the Treasury, shall be transferred to the Development Fund for Iraq. Such property shall be used to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, for the costs of Iraqi civilian administration, and for other purposes benefiting the Iraqi people. I determine that such use would be in the interest of and for the benefit of the United States. I hereby order:

Section 1. Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the former Iraqi regime or its state bodies, corporations, or agencies, or of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession

or control of United States persons, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) the persons listed in the Annex to this order;[1] and

(b) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State,

(i) to be senior officials of the former Iraqi regime or their immediate family members; or

(ii) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any of the persons listed in the Annex to this order or determined to be subject to this order.

Sec. 2. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to confiscate property that is blocked pursuant to section 1 of this order and that he determines, in consultation with the Secretary of State, to belong to a person, organization, or country that has planned, authorized, aided, or engaged in armed hostilities against the United States. All right, title, and interest in any property so confiscated shall vest in the Department of the Treasury. Such vested property shall promptly be transferred to the Development Fund for Iraq.

Sec. 3. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term "former Iraqi regime" means the Saddam Hussein regime that governed Iraq until on or about May 1, 2003;

(e) the term "coalition authority" means the Coalition Provisional Authority under the direction of its Administrator, and the military forces of the United States, the United Kingdom, and their coalition partners present in Iraq under the command or operational control of the Commander of United States Central Command; and

(f) the term "Development Fund for Iraq" means the fund established on or about May 22, 2003, on the books of the Central Bank of Iraq, by the Administrator of the Coalition Provisional Authority responsible for the temporary governance of Iraq and all accounts held for the fund or for the Central Bank of Iraq in the name of the fund.

[1] Sec. 2 of Executive Order 13350 (69 F.R. 46055) replaced this Annex with a new Annex in Executive Order 13350. Such Annex can be found at 69 F.R. 46058.

Sec. 5. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by or to persons determined to be subject to the sanctions imposed under this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13303 and expanded in scope in this order and would endanger Armed Forces of the United States that are engaged in hostilities, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 6. For those persons listed in the Annex to this order or determined to be subject to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13303 and expanded in scope in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant inclusion of a person in the Annex to this order and that such person is therefore no longer covered within the scope of the order.

Sec. 9. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 10. This order shall not apply to such property as is or may come under the control of the coalition authority in Iraq. Nothing in this order is intended to affect dispositions of such property or other determinations by the coalition authority.

Sec. 11. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, officers or employees, or any other person.

Sec. 12. This order is effective on 12:01 a.m. EDT on August 29, 2003.

Sec. 13. This order shall be transmitted to the Congress and published in the Federal Register.

(7) Termination of Emergency Declared in Executive Order 12722 With Respect to Iraq and Modification of Executive Order 13290, Executive Order 13303, and Executive Order 13315

Executive Order 13350, July 29, 2004, 69 F.R. 46055, 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, have determined that the situation that gave rise to the declaration of a national emergency with respect to Iraq in Executive Order 12722 of August 2, 1990, has been significantly altered by the removal of the regime of Saddam Hussein and other developments. I hereby terminate the national emergency declared in Executive Order 12722, revoke that Executive Order and Executive Order 12724 of August 9, 1990,[1] Executive Order 12734 of November 14, 1990, Executive Order 12743 of January 18, 1991, Executive Order 12751 of February 14, 1991, and Executive Order 12817 of October 21, 1992, that are based on that national emergency. I hereby amend Executive Order 13290 of March 20, 2003, so that the authorities therein remain in effect based on the national emergency I declared in Executive Order 13303 of May 22, 2003, and expanded in Executive Order 13315 of August 28, 2003. At the same time, and in order to take additional steps to deal with the national emergency that I declared in Executive Order 13303, and expanded in Executive Order 13315, with respect to the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative and economic institutions in Iraq, I hereby order:

Section 1. Pursuant to section 202(a) of the NEA (50 U.S.C. 1622(a)), termination of the national emergency declared in Executive Order 12722 shall not affect any action taken or proceeding pending but not finally concluded or determined as of the effective date of this order, any action or proceeding based on any act committed prior to such date, or any rights or duties that matured or penalties that were incurred prior to such date. Pursuant to section

[1] Executive Order 12722 of August 2, 1990 (55 F.R. 32875) had declared a national emergency with respect to Iraq. Subsequently, sec. 6 of Executive Order 12724 of August 9, 1990 (55 F.R. 33089) revoked Executive Order 12722, to the extent it was inconsistent with Executive Order 12724.

207(a) of IEEPA (50 U.S.C. 1706(a)), and subject to such regulations, orders, directives, or licenses as may be issued pursuant to this order, I hereby determine that the continuation of prohibitions with regard to transactions involving property blocked pursuant to Executive Orders 12722 or 12724 that continues to be blocked as of the effective date of this order is necessary on account of claims involving Iraq.

Sec. 2. The Annex to Executive Order 13315 is replaced and superseded in its entirety by the Annex to this order.[2]

Sec. 3.[3] * * *

Sec. 4. Unless licensed or otherwise authorized pursuant to this order or otherwise consistent with U.S. law, the trade in or transfer of ownership or possession of Iraqi cultural property or other items of archeological, historical, cultural, rare scientific, and religious importance that were illegally removed, or for which a reasonable suspicion exists that they were illegally removed, from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990, is prohibited.

Sec. 5. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by or to persons determined to be subject to the sanctions imposed by Executive Order 13315 or by this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13303, and expanded by Executive Order 13315, or would endanger the Armed Forces of the United States that are engaged in hostilities, and I hereby prohibit such donations as provided in section 1 of Executive Order 13315 as amended by this order.

Sec. 6. For those persons listed in the Annex to this order or determined to be subject to Executive Order 13315 or this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13303, and expanded by Executive Order 13315, there need be no prior notice of a listing or determination made pursuant to Executive Order 13315 or this order.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to determine subsequent to the

[2] The Annex to this Order, which contains a list of senior Iraqi officials and other individuals, can be found at 69 F.R. 46058.

[3] Sec. 3 amended Executive Order 13290, March 10, 2003.

issuance of the order, that circumstances no longer warrant the inclusion of a person in the Annex to this order and that such person is therefore no longer covered within the scope of the order.

Sec. 9. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, officers or employees, or any other person.

Sec. 10. This order is effective at 12:01 a.m. eastern daylight time on July 30, 2004. This order shall be transmitted to the Congress and published in the Federal Register.

(8) Modifying the Protection Granted to the Development Fund for Iraq and Certain Property in Which Iraq Has an Interest and Protecting the Central Bank of Iraq

Executive Order 13364, November 29, 2004, 69 F.R. 70177, 50 U.S.C 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, hereby modify the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, and expanded in Executive Order 13315 of August 28, 2003, and further modified in Executive Order 13350 of July 29, 2004, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. I find that the threat of attachment or other judicial process against the Central Bank of Iraq constitutes one of these obstacles. I further determine that, consistent with United Nations Security Council Resolutions 1483 of May 22, 2003, and 1546 of June 8, 2004, the steps taken in Executive Order 13303 to deal with the national emergency declared therein need to be limited so that such steps do not apply with respect to any final judgment arising out of a contractual obligation entered into by the Government of Iraq, including any agency or instrumentality thereof, after June 30, 2004, and so that, with respect to Iraqi petroleum and petroleum products and interests therein, such steps shall apply only until title passes to the initial purchaser.

I hereby order:

Section 1.[1] * * *

Sec. 2. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

[1] Sec. 1 amended sec. 1 of Executive Order 13303 (68 F.R. 31929)

(b) Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations.

Sec. 3. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Sec. 4. This order shall be transmitted to the Congress and published in the Federal Register.

k. Economic Relations With Iran

(1) Iran and Libya Sanctions Act of 1996 [1]

Public Law 104–172 [H.R. 3107], 110 Stat. 1541, approved August 5, 1996; as amended by Public Law 107–24 [ILSA Extension Act of 2001; H.R. 1954], 115 Stat. 199, approved August 3, 2001

AN ACT To impose sanctions on persons making certain investments directly and significantly contributing to the enhancement of the ability of Iran or Libya to develop its petroleum resources, and on persons exporting certain items that enhance Libya's weapons or aviation capabilities or enhance Libya's ability to develop its petroleum resources, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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

[1] 50 U.S.C. 1701 note. In a memorandum of November 21, 1996 (61 F.R. 64249), the President made the following delegations of authority under this Act:

"I hereby delegate to the Secretary of State the functions vested in the President by the following provisions of the Iran and Libya Sanctions Act of 1996 (Public Law 104–172) ('the Act'), such functions to be exercised in consultation with the Departments of the Treasury and Commerce and the United States Trade Representative, and with the Export-Import Bank and the Federal Reserve Board and other interested agencies as appropriate: sections 4(c), 5(a), 5(b), 5(c), 5(f), 6(1), 6(2), and 9(c). I hereby delegate to the Secretary of State the functions vested in the President by the following provisions of the Act: sections 4(a), 4(b), 4(d), 4(e), 5(d), 5(e), 9(a), 9(b), and 10. * * * The following functions vested in the President by the following provisions of the Act delegated by this memorandum may be redelegated: 4(a), 4(b), 4(d), 4(e), 4(d), 5(e), and 10. All other functions delegated by this memorandum may not be redelegated.".

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 support 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 $20,000,000[2] or more (or any combination of investments of at least $10,000,000 each, which in the aggregate equals or exceeds $20,000,000[2] 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)[3] 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;

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[2] Sec. 2(a) of the ILSA Extension Act of 2001 (Public Law 107–24; 115 Stat. 199) struck out "$40,000,000" and inserted in lieu thereof $20,000,000". Sec. 2(b) of that Act further stated that: "(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to investments made on or after June 13, 2001.".

[3] The Department of State published such a list in Public Notice No. 2501, January 2, 1997 (62 F.R. 1141).

(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)[4] 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

[4] As enrolled; no para. (5).

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.

(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 terminate 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)[5] REPORT ON EFFECTIVENESS OF ACTIONS UNDER THIS ACT.—Not earlier than 24 months, and not later than 30 months, after the date of the enactment of the ILSA Extension Act of 2001, the President shall transmit to Congress a report that describes—

(1) the extent to which actions relating to trade taken pursuant to this Act—

(A) have been effective in achieving the objectives of section 3 and any other foreign policy or national security objectives of the United States with respect to Iran and Libya; and

(B) have affected humanitarian interests in Iran and Libya, the country in which the sanctioned person is located, or in other countries; and

(2) the impact of actions relating to trade taken pursuant to this Act on other national security, economic, and foreign policy interests of the United States, including relations with countries friendly to the United States, and on the United States economy.

The President may include in the report the President's recommendation on whether or not this Act should be terminated or modified.

(c)[5] 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.

[5] Sec. 3 of the ILSA Extension Act of 2001 (Public Law 107–24; 115 Stat. 199) redesignated subsec. (b) as subsec. (c) and added a new subsec. (b).

(b) SUNSET.—This Act shall cease to be effective on the date that is 10 years[6] 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.

[6] Sec. 4 of the ILSA Extension Act of 2001 (Public Law 107–24; 115 Stat. 200) struck out "5 years" and inserted in lieu thereof "10 years".

(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. For purposes of this paragraph, an amendment or other modification that is made, on or after June 13, 2001, to an agreement or contract shall be treated as the entry of an agreement or contract.[7]

(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

[7] Sec. 5 of the ILSA Extension Act of 2001 (Public Law 107–24; 115 Stat. 200) added this sentence.

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.

(2) Blocking Iranian Government Property

Executive Order 12170, November 14, 1979, 44 F.R. 65729, 50 U.S.C. 1701 note

NOTE.—Other actions taken by the President regarding the Iranian crisis included a series of Executive Orders prohibiting certain transactions with Iran, establishing of and managing of escrow accounts, and overseeing the transfer of various Iranian assets. The President also issued Proclamation 4702 (44 F.R. 65581), issued on November 12, 1979, to prohibit Iranian oil from entering the United States (revoked January 19, 1981), and Executive Order 12172 (November 26, 1979; 44 F.R. 67947), to delegate authority conferred on him by 8 U.S.C. 1185 (travel control of citizens and aliens during war or national emergency) to the Secretary of State and the Attorney General with respect to Iranians holding nonimmigrant visas.

Pursuant to the authority vested in me as President by the Constitution and laws of the United States including the International Emergency Economic Powers Act, 50 U.S.C.A. sec. 1701 et seq., the National Emergencies Act, 50 U.S.C. sec. 1601 et seq., and 3 U.S.C. sec. 301,

I, JIMMY CARTER, President of the United States, find that the situation in Iran constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.[1]

I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within

[1] In a notice of November 12, 1980 (45 F.R. 75159), the President stated that the situation which prompted the declaration of this national emergency continues and that therefore, this national emergency must continue in effect beyond November 14, 1980. Subsequent notices of the continuation of this national emergency were transmitted to the Congress on November 12, 1981 (46 F.R. 55915); November 8, 1982 (47 F.R. 50841); November 4, 1983 (48 F.R. 51277); November 7, 1984 (49 F.R. 44741); November 1, 1985 (50 F.R. 45901); November 10, 1986 (51 F.R. 41067); November 10, 1987 (52 F.R. 43549); November 8, 1988 (53 F.R. 45750); October 30, 1989 (54 F.R. 46043); November 9, 1990 (55 F.R. 47453); November 12, 1991 (56 F.R. 57791); October 25, 1992 (57 F.R. 48719); November 1, 1993 (58 F.R. 58639); October 31, 1994 (59 F.R. 54785); October 31, 1995 (60 F.R. 55651); October 29, 1996 (61 F.R. 56107); September 30, 1997 (62 F.R. 51591); November 9, 1998 (63 F.R. 63125; November 5, 1999 (64 F.R. 61471); November 5, 2000 (65 F.R. 68061); November 14, 2001 (67 F.R. 56966); November 13, 2002 (67 F.R. 68927); November 12, 2003 (68 F.R. 64487); November 9, 2004 (69 F.R. 65513); and November 9, 2005 (70 F.R. 69039).

the possession or control of persons subject to the jurisdiction of the United States.

The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the provisions of this order.

This order is effective immediately and shall be transmitted to the Congress and published in the Federal Register.

(3) Prohibiting Imports From Iran

Executive Order 12613, October 29, 1987, 52 F.R. 41940, as amended by Executive Order 12959, May 6, 1995, 60 F.R. 24757; revoked by Executive Order 13059, August 19, 1997, 62 F.R. 44531

NOTE.—Executive Order 13059 of August 19, 1997 (62 F.R. 44531) consolidated several Executive Orders pertaining to transactions with Iran and revoked the remaining sections of this order, with respect to transactions occurring after August 20, 1997.

(4) Prohibiting Certain Transactions With Respect to the Development of Iranian Petroleum Resources

Executive Order 12957, March 15, 1995, 60 F.R. 14615; as amended by Executive Order 12959, May 6, 1995, 60 F.R. 24757 [1]

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that the actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.[2]

I hereby order:

Section 1.[3] * * * [Revoked—1995]

Sec. 2.[3] * * * [Revoked—1995]

Sec. 3. The Secretary of the treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these

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[1] See also 31 CFR Part 560.

[2] This national emergency was continued by Presidential notices on the following dates: March 8, 1996 (61 F.R. 9897); March 5, 1997 (62 F.R. 10409); March 4, 1998 (63 F.R. 11099); March 10, 1999 (64 F.R. 12239); March 13, 2000 (65 F.R. 13863); March 13, 2001 (66 F.R. 14013); March 13, 2002 (67 F.R. 11553); March 12, 2003 (68 F.R. 12567); March 10, 2004 (69 F.R. 12051); and March 10, 2005 (70 F.R. 12581).

[3] Sec. 5 of Executive Order No. 12959 (May 6, 1995; 60 F.R. 24757) revoked secs. 1 and 2, which formerly read as follows:

"**Section 1.** The following are prohibited, except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order: (a) the entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of (i) a contract that includes overall supervision and management responsibility for the development of petroleum resources located in Iran, or (ii) a guaranty of another person's performance under such a contract;

"(b) the entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of (i) a contract for the financing of the development of petroleum resources located in Iran, or (ii) a guaranty of another person's performance under such a contract; and

"(c) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

"**Sec. 2.** For the purposes of this order: (a) The term 'person' means an individual or entity;

"(b) The term 'entity' means a partnership, association, trust, joint venture, corporation, or other organization;

"(c) The term 'United States person' means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

"(d) The term 'Iran' means the land territory claimed by Iran and any other area over which Iran claims sovereignty, sovereign rights or jurisdiction, including the territorial sea, exclusive economic zone, and continental shelf claimed by Iran.".

functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 4. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 5. (a) This order is effective at 12:01 a.m., eastern standard time, on March 16, 1995.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

(5) Prohibiting Certain Transactions With Respect to Iran

Executive Order 12959, May 6, 1995, 60 F.R. 24757; amended by Executive Order 13059, August 19, 1997, 62 F.R. 44531 [1]

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 505 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa–9) (ISDCA), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, in order to take steps with respect to Iran in addition to those set forth in Executive Order No. 12957 of March 15, 1995, to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States referred to in that order, hereby order:

Section 1. The following are prohibited, except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order: [2]

(a)–(d) [2] * * * [Revoked—1997]

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[1] See also 31 CFR Part 560.

[2] Executive Order 13059 (August 19, 1997; 62 F.R. 44531) consolidated provisions of Executive Orders 12613, 12957, and 12959, and revoked Executive Order 12613 and subsecs. (a), (b), (c), (d), and (f) of sec. 1 of this order, with respect to transactions occurring after the effective date of Executive Order 13059 (effective August 20, 1997). Subsecs. (a), (b), (c), (d), and (f) formerly read as follows:

"(a) the importation into the United States, or the financing of such importation, of any goods or services of Iranian origin, other than Iranian-origin publications and materials imported for news publications or news broadcast dissemination;

"(b) except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)), the exportation from the United States to Iran, the Government of Iran, or to any entity owned or controlled by the Government of Iran, or the financing of such exportation, of any goods, technology (including technical data or other information subject to the Export Administration Regulations, 15 CFR Parts 768–799 (1994) (the 'EAR')), or services;

"(c) the reexportation to Iran, the Government of Iran, or to any entity owned or controlled by the Government of Iran, of any goods or technology (including technical data or other information) exported from the United States, the exportation of which to Iran is subject to export license application requirements under any United States regulations in effect immediately prior to the issuance of this order, unless, for goods, they have been (i) substantially transformed outside the United States, or (ii) incorporated into another product outside the United States and constitute less than 10 percent by value of that product exported from a third country;

"(d) except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)), any transaction, including purchase, sale, transportation, swap, financing, or brokering transactions, by a United States person relating to goods or services of Iranian origin or owned or controlled by the Government of Iran;

* * * * * * *

"(f) the approval or facilitation by a United States person of the entry into or performance by an entity owned or controlled by a United States person of a transaction or contract (i) prohibited as to United States persons by subsection (c), (d), or (e) above, or (ii) relating to the financing of activities prohibited as to United States persons by those subsections, or of a guaranty of another person's performance of such transaction or contract; and".

(e) any new investment by a United States person in Iran or in property (including entities) owned or controlled by the Government of Iran;

(f)[2] * * * [Revoked—1997]

(g) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 2. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States;

(d) the term "Iran" means the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights orjurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements; and

(e) the term "new investment" means (i) a commitment or contribution of funds or other assets, or (ii) a loan or other extension of credit.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, the requirement of reports, including reports by United States persons on oil transactions engaged in by their foreign affiliates with Iran or the Government of Iran, and to employ all powers granted to the President by IEEPA and ISDCA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 4. The Secretary of the Treasury may not authorize the exportation or reexportation to Iran, the Government of Iran, or an entity owned or controlled by the Government of Iran of any goods, technology, or services subject to export license application requirements of another agency of the United States Government, if authorization of the exportation or reexportation by that agency would be prohibited by law.

Sec. 5. Sections 1 and 2 of Executive Order No. 12613 of October 29, 1987, and sections 1 and 2 of Executive Order No. 12957 of March 15, 1995, are hereby revoked to the extent inconsistent with this order.[3] Otherwise, the provisions of this order supplement the provisions of Executive Orders No. 12613 and 12957.

[3] Sections 1 and 2 of Executive Order No. 12613 formerly read as follows:

Continued

Sec. 6. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Sec. 8. (a) This order is effective at 12:01 a.m., eastern daylight time, on May 7, 1995, except that (i) section 1(b), (c), and (d) of this order shall not apply until 12:01 a.m., eastern daylight time, on June 6, 1995, to trade transactions under contracts in force as of the date of this order if such transactions are authorized pursuant to Federal regulations in force immediately prior to the date of this order ("existing trade contracts"), and (ii) letters of credit and other financing agreements with respect to existing trade contracts may be performed pursuant to their terms with respect to underlying trade transactions occurring prior to 12:01 a.m., eastern daylight time, on June 6, 1995.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

"**Section 1.** Except as otherwise provided in regulations issued pursuant to this Order, no good or services of Iranian origin may be imported into the United States, including its territories and possessions, after the effective date of this Order.

"**Sec. 2.** The prohibition contained in Section 1 shall not apply to:

"(a) Iranian-origin publications and materials imported for news publications or news broadcast dissemination;

"(b) petroleum products refined from Iranian crude oil in a third country;

"(c) articles imported directly from Iran into the United States that were exported from Iran prior to the effective date of this Order.".

Sections 1 and 2 of Executive Order No. 12957 formerly read as follows:

"**Section 1.** The following are prohibited, except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order: (a) the entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of (i) a contract that includes overall supervision and management responsibility for the development of petroleum resources located in Iran, or (ii) a guaranty of another person's performance under such a contract;

"(b) the entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of (i) a contract for the financing of the development of petroleum resources located in Iran, or (ii) a guaranty of another person's performance under such a contract; and

"(c) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

"**Sec. 2.** For the purposes of this order: (a) The term 'person' means an individual or entity;

"(b) The term 'entity' means a partnership, association, trust, joint venture, corporation, or other organization;

"(c) The term 'United States person' means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

"(d) The term 'Iran' means the land territory claimed by Iran and any other area over which Iran claims sovereignty, sovereign rights or jurisdiction, including the territorial sea, exclusive economic zone, and continental shelf claimed by Iran.".

(6) Prohibiting Certain Transactions With Respect to Iran—Consolidation

Executive Order 13059, August 19, 1997, 62 F.R. 44531, 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) ("IEEPA"), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 505 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa–9) ("ISDCA"), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, in order to clarify the steps taken in Executive Orders 12957 of March 15, 1995, and 12959 of May 6, 1995, to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States declared in Executive Order 12957 in response to the actions and policies of the Government of Iran, hereby order:

Section 1.[1] Except to the extent provided in section 3 of this order or in regulations, orders, directives, or licenses issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the importation into the United States of any goods or services of Iranian origin or owned or controlled by the Government of Iran, other than information or informational materials within the meaning of section 203(b)(3) of IEEPA (50 U.S.C. 1702(b)(3)), is hereby prohibited.

Sec. 2. Except to the extent provided in section 3 of this order, in section 203(b) of IEEPA (50 U.S.C. 1702(b)), or in regulations, orders, directives, or licenses issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the following are prohibited:

(a) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that:

(i) such goods, technology, or services are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran; or

(ii) such goods, technology, or services are intended specifically for use in the production of, for commingling with, or for

[1] Executive Order 13059 amended and consolidated certain provisions of Executive Orders 12613, 12957, and 12959, and revoked Executive Order 12613. These orders, as amended, are found in this volume, beginning on page 1606. See page 1603 for reference to Presidential notices continuing the emergency with respect to Iran.

incorporation into goods, technology, or services to be directly or indirectly supplied, transshipped, or reexported exclusively or predominantly to Iran or the Government of Iran;

(b) the reexportation from a third country, directly or indirectly, by a person other than a United States person of any goods, technology, or services that have been exported from the United States, if:

(i) undertaken with knowledge or reason to know that the reexportation is intended specifically for Iran or the Government of Iran, and

(ii) the exportation of such goods, technology, or services to Iran from the United States was subject to export license application requirements under any United States regulations in effect on May 6, 1995, or thereafter is made subject to such requirements imposed independently of the actions taken pursuant to the national emergency declared in Executive Order 12957; provided, however, that this prohibition shall not apply to those goods or that technology subject to export license application requirements if such goods or technology have been:

(A) substantially transformed into a foreign-made product outside the United States; or

(B) incorporated into a foreign-made product outside the United States if the aggregate value of such controlled United States goods and technology constitutes less than 10 percent of the total value of the foreign-made product to be exported from a third country;

(c) any new investment by a United States person in Iran or in property, including entities, owned or controlled by the Government of Iran;

(d) any transaction or dealing by a United States person, wherever located, including purchasing, selling, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing, in or related to:

(i) goods or services of Iranian origin or owned or controlled by the Government of Iran; or

(ii) goods, technology, or services for exportation, reexportation, sale, or supply, directly or indirectly, to Iran or the Government of Iran;

(e) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this order if performed by a United States person or within the United States; and

(f) any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 3. Specific licenses issued pursuant to Executive Orders 12613 (of October 29, 1987), 12957, or 12959 continue in effect in accordance with their terms except to the extent revoked, amended, or modified by the Secretary of the Treasury. General licenses, regulations, orders, and directives issued pursuant to those orders continue in effect in accordance with their terms except to the extent

inconsistent with this order or to the extent revoked, amended, or modified by the Secretary of the Treasury.

Sec. 4. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States;

(d) the term "Iran" means the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements;

(e) the term "Government of Iran" includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(f) the term "new investment" means:

(i) a commitment or contribution of funds or other assets; or

(ii) a loan or other extension of credit, made after the effective date of Executive Order 12957 as to transactions prohibited by that order, or otherwise made after the effective date of Executive Order 12959.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State and, as appropriate, other agencies, is hereby authorized to take such actions, including the promulgation of rules and regulations, the requirement of reports, including reports by United States persons on oil and related transactions engaged in by their foreign affiliates with Iran or the Government of Iran, and to employ all powers granted to me by IEEPA and the ISDCA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. (a) The Secretary of the Treasury may authorize the exportation or reexportation to Iran or the Government of Iran of any goods, technology, or services also subject to export license application requirements of another agency of the United States Government only if authorization by that agency of the exportation or reexportation to Iran would be permitted by law.

(b) Nothing contained in this order shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or other authorization from another department or agency of the United States Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency.

Sec. 7. The provisions of this order consolidate the provisions of Executive Orders 12613, 12957, and 12959. Executive Order 12613

and subsections (a), (b), (c), (d), and (f) of section 1 of Executive Order 12959 are hereby revoked with respect to transactions occurring after the effective date of this order. The revocation of those provisions shall not alter their applicability to any transaction or violation occurring before the effective date of this order, nor shall it affect the applicability of any rule, regulation, order, license, or other form of administrative action previously taken pursuant to Executive Orders 12613 or 12959.

Sec. 8. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 9. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Sec. 10. (a) This order is effective at 12:01 a.m. eastern daylight time on August 20, 1997.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

l. Economic Relations With Syria

(1) Syria Accountability and Lebanese Sovereignty Restoration Act of 2003

Public Law 108–175 [H.R. 1828], 117 Stat. 2482, approved December 12, 2003

AN ACT To halt Syrian support for terrorism, end its occupation of Lebanon, and stop its development of weapons of mass destruction, and by so doing hold Syria accountable for the serious international security problems it has caused in the Middle East, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Syria Accountability and Lebanese Sovereignty Restoration Act of 2003".

SEC. 2.[1] FINDINGS.

Congress makes the following findings:

(1) On June 24, 2002, President Bush stated "Syria must choose the right side in the war on terror by closing terrorist camps and expelling terrorist organizations".

(2) United Nations Security Council Resolution 1373 (September 28, 2001) mandates that all states "refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts", take "the necessary steps to prevent the commission of terrorist acts", and "deny safe haven to those who finance, plan, support, or commit terrorist acts".

(3) The Government of Syria is currently prohibited by United States law from receiving United States assistance because it has repeatedly provided support for acts of international terrorism, as determined by the Secretary of State for purposes of section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)) and other relevant provisions of law.

(4) Although the Department of State lists Syria as a state sponsor of terrorism and reports that Syria provides "safe haven and support to several terrorist groups", fewer United States sanctions apply with respect to Syria than with respect to any other country that is listed as a state sponsor of terrorism.

(5) Terrorist groups, including Hizballah, Hamas, Palestinian Islamic Jihad, the Popular Front for the Liberation ofPalestine, and the Popular Front for the Liberation of Palestine-General

[1] 22 U.S.C. 2151 note.

Command, maintain offices, training camps, and other facilities on Syrian territory, and operate in areas of Lebanon occupied by the Syrian armed forces and receive supplies from Iran through Syria.

(6) United Nations Security Council Resolution 520 (September 17, 1982) calls for "strict respect of the sovereignty, territorial integrity, unity and political independence of Lebanon under the sole and exclusive authority of the Government of Lebanon through the Lebanese Army throughout Lebanon".

(7) Approximately 20,000 Syrian troops and security personnel occupy much of the sovereign territory of Lebanon exerting undue influence upon its government and undermining its political independence.

(8) Since 1990 the Senate and House of Representatives have passed seven bills and resolutions which call for the withdrawal of Syrian armed forces from Lebanon.

(9) On March 3, 2003, Secretary of State Colin Powell declared that it is the objective of the United States to "let Lebanon be ruled by the Lebanese people without the presence of [the Syrian] occupation army".

(10) Large and increasing numbers of the Lebanese people from across the political spectrum in Lebanon have mounted peaceful and democratic calls for the withdrawal of the Syrian Army from Lebanese soil.

(11) Israel has withdrawn all of its armed forces from Lebanon in accordance with United Nations Security Council Resolution 425 (March 19, 1978), as certified by the United Nations Secretary General.

(12) Even in the face of this United Nations certification that acknowledged Israel's full compliance with Security Council Resolution 425, Syrian- and Iranian-supported Hizballah continues to attack Israeli outposts at Shebaa Farms, under the pretense that Shebaa Farms is territory from which Israel was required to withdraw by Security Counsel Resolution 425, and Syrian- and Iranian-supported Hizballah and other militant organizations continue to attack civilian targets inIsrael.

(13) Syria will not allow Lebanon-a sovereign country-to fulfill its obligation in accordance with Security Council Resolution 425 to deploy its troops to southern Lebanon.

(14) As a result, the Israeli-Lebanese border and much of southern Lebanon is under the control of Hizballah, which continues to attack Israeli positions, allows Iranian Revolutionary Guards and other militant groups to operate freely in the area, and maintains thousands of rockets along Israel's northern border, destabilizing the entire region.

(15) On February 12, 2003, Director of Central Intelligence George Tenet stated the following with respect to the Syrian- and Iranian-supported Hizballah: "[A]s an organization with capability and worldwide presence [it] is [al Qaeda's] equal if not a far more capable organization * * * [T]hey're a notch above in many respects, in terms of in their relationship with the Iranians and the training they receive, [which] puts them in a state-sponsored category with a potential for lethality that's quite great.".

(16) In the State of the Union address on January 29, 2002, President Bush declared that the United States will "work closely with our coalition to deny terrorists and their state sponsors the materials, technology, and expertise to make and deliver weapons of mass destruction".

(17) The Government of Syria continues to develop and deploy short- and medium-range ballistic missiles.

(18) According to the December 2001 unclassified Central Intelligence Agency report entitled "Foreign Missile Developments and the Ballistic Missile Threat through 2015", "Syria maintains a ballistic missile and rocket force of hundreds of FROG rockets, Scuds, and SS-21 SRBMs [and] Syria has developed [chemical weapons] warheads for its Scuds".

(19) The Government of Syria is pursuing the development and production of biological and chemical weapons and hasa nuclear research and development program that is cause for concern.

(20) According to the Central Intelligence Agency's "Unclassified Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions", released January 7, 2003: "[Syria] already holds a stockpile of the nerve agent sarin but apparently is trying to develop more toxic and persistent nerve agents. Syria remains dependent on foreign sources for key elements of its [chemical weapons] program, including precursor chemicals and key production equipment. It is highly probable that Syria also is developing an offensive [biological weapons] capability.".

(21) On May 6, 2002, the Under Secretary of State for Arms Control and International Security, John Bolton, stated: "The United States also knows that Syria has long had a chemical warfare program. It has a stockpile of the nerve agent sarin and is engaged in research and development of the more toxic and persistent nerve agent VX. Syria, which has signed but not ratified the [Biological Weapons Convention], is pursuing the development of biological weapons and is able to produce at least small amounts of biological warfare agents.".

(22) According to the Central Intelligence Agency's "Unclassified Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions", released January 7, 2003: "Russia and Syria have approved a draft cooperative program on cooperation on civil nuclear power. In principal, broader access to Russian expertise provides opportunities for Syria to expand its indigenous capabilities, should it decide to pursue nuclear weapons.".

(23) Under the Treaty on the Non-Proliferation of Nuclear Weapons (21 UST 483), which entered force on March 5, 1970, and to which Syria is a party, Syria has undertaken not to acquire or produce nuclear weapons and has accepted full scope safeguards of the International Atomic Energy Agency to detect diversions of nuclear materials from peaceful activities to the production of nuclear weapons or other nuclear explosive devices.

(24) Syria is not a party to the Chemical Weapons Convention or the Biological Weapons Convention, which entered into force on April 29, 1997, and on March 26, 1975, respectively.

(25) Syrian President Bashar Assad promised Secretary of State Powell in February 2001 to end violations of SecurityCouncil Resolution 661, which restricted the sale of oil and other commodities by Saddam Hussein's regime, except to the extent authorized by other relevant resolutions, but this pledge was never fulfilled.

(26) Syria's illegal imports and transshipments of Iraqi oil during Saddam Hussein's regime earned Syria $50,000,000or more per month as Syria continued to sell its own Syrian oil at market prices.

(27) Syria's illegal imports and transshipments of Iraqi oil earned Saddam Hussein's regime $2,000,000 per day.

(28) On March 28, 2003, Secretary of Defense Donald Rumsfeld warned: "[W]e have information that shipments of military supplies have been crossing the border from Syria into Iraq, including night-vision goggles * * * These deliveries pose a direct threat to the lives of coalition forces. We consider such trafficking as hostile acts, and will hold the Syrian government accountable for such shipments.".

(29) According to Article 23(1) of the United Nations Charter, members of the United Nations are elected as non-permanent members of the United Nations Security Council with "due regard being specially paid, in the first instance to the contribution of members of the United Nations to the maintenance of international peace and security and to other purposes of the Organization".

(30) Despite Article 23(1) of the United Nations Charter, Syria was elected on October 8, 2001, to a 2-year term as a nonpermanent member of the United Nations Security Council beginning January 1, 2002, and served as President of the Security Council during June 2002 and August 2003.

(31) On March 31, 2003, the Syrian Foreign Minister, Farouq al-Sharra, made the Syrian regime's intentions clear when he explicitly stated that "Syria's interest is to see the invaders defeated in Iraq".

(32) On April 13, 2003, Secretary of Defense Donald Rumsfeld charged that "busloads" of Syrian fighters entered Iraq with "hundreds of thousands of dollars" and leaflets offering rewards for dead American soldiers.

(33) On September 16, 2003, the Under Secretary of State for Arms Control and International Security, John Bolton, appeared before the Subcommittee on the Middle East and Central Asia of the Committee on International Relations of the House of Representatives, and underscored Syria's "hostile actions" toward coalition forces during Operation Iraqi Freedom. Under Secretary Bolton added that: "Syria allowed military equipment to flow into Iraq on the eve of and during the war. Syria permitted volunteers to pass into Iraq to attack and kill our service members during the war, and is still doing so * * * [Syria's] behavior during Operation Iraqi Freedom underscores

the importance of taking seriously reports and information on Syria's WMD capabilities.".

(34) During his appearance before the Committee on International Relations of the House of Representatives on September 25, 2003, Ambassador L. Paul Bremer, III, Administrator of the Coalition Provisional Authority in Iraq, stated that out of the 278 third-country nationals who were captured by coalition forces in Iraq, the "single largest group are Syrians".

SEC. 3.[1] SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the Government of Syria should immediately and unconditionally halt support for terrorism, permanently and openly declare its total renunciation of all forms of terrorism, and close all terrorist offices and facilities in Syria, including the offices of Hamas, Hizballah, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, and the Popular Front for the Liberation of Palestine-General Command;

(2) the Government of Syria should—

(A) immediately and unconditionally stop facilitating transit from Syria to Iraq of individuals, military equipment, and all lethal items, except as authorized by the Coalition Provisional Authority or a representative, internationally recognized Iraqi government;

(B) cease its support for "volunteers" and terrorists who are traveling from and through Syria into Iraq to launch attacks; and

(C) undertake concrete, verifiable steps to deter such behavior and control the use of territory under Syrian control;

(3) the Government of Syria should immediately declare its commitment to completely withdraw its armed forces, including military, paramilitary, and security forces, from Lb-anon, and set a firm timetable for such withdrawal;

(4) the Government of Lebanon should deploy the Lebanese armed forces to all areas of Lebanon, including South Lebanon, in accordance with United Nations Security Council Resolution 520 (September 17, 1982), in order to assert the sovereignty of the Lebanese state over all of its territory, and should evict all terrorist and foreign forces from southern Lebanon, including Hizballah and the Iranian Revolutionary Guards;

(5) the Government of Syria should halt the development and deployment of medium- and long-range surface-to-surface missiles and cease the development and production of biological and chemical weapons;

(6) the Governments of Lebanon and Syria should enter into serious unconditional bilateral negotiations with the Government of Israel in order to realize a full and permanent peace;

(7) the United States should continue to provide humanitarian and educational assistance to the people of Lebanon only through appropriate private, nongovernmental organizations and appropriate international organizations, until such time as the Government of Lebanon asserts sovereignty and

control over all of its territory and borders and achieves full political independence, as called for in United Nations Security Council Resolution 520; and

(8) as a violator of several key United Nations Security Council resolutions and as a nation that pursues policies which undermine international peace and security, Syria should not have been permitted to join the United Nations Security Council or serve as the Security Council's President, and should be removed from the Security Council.

SEC. 4.[1] STATEMENT OF POLICY.

It is the policy of the United States that—

(1) Syria should bear responsibility for attacks committed by Hizballah and other terrorist groups with offices, training camps, or other facilities in Syria, or bases in areas of Lebanon occupied by Syria;

(2) the United States will work to deny Syria the ability to support acts of international terrorism and efforts to develop or acquire weapons of mass destruction;

(3) the Secretary of State will continue to list Syria as a state sponsor of terrorism until Syria ends its support for terrorism, including its support of Hizballah and other terrorist groups in Lebanon and its hosting of terrorist groups in Damascus, and comes into full compliance with United States law relating to terrorism and United Nations Security Council Resolution 1373 (September 28, 2001);

(4) the full restoration of Lebanon's sovereignty, political independence, and territorial integrity is in the national security interest of the United States;

(5) Syria is in violation of United Nations Security Council Resolution 520 (September 17, 1982) through its continued occupation of Lebanese territory and its encroachment upon Lebanon's political independence;

(6) Syria's obligation to withdraw from Lebanon is not conditioned upon progress in the Israeli-Syrian or Israeli-Lebanese peace process but derives from Syria's obligation under Security Council Resolution 520;

(7) Syria's acquisition of weapons of mass destruction and ballistic missile programs threaten the security of the Middle East and the national security interests of the United States;

(8) Syria will be held accountable for any harm to Coalition armed forces or to any United States citizen in Iraq if the government of Syria is found to be responsible due to its facilitation of terrorist activities and its shipments of military supplies to Iraq; and

(9) the United States will not provide any assistance to Syria and will oppose multilateral assistance for Syria until Syria ends all support for terrorism, withdraws its armed forces from Lebanon, and halts the development and deployment of weapons of mass destruction and medium- and long-range surface-to-surface ballistic missiles.

SEC. 5.[1] PENALTIES AND AUTHORIZATION.

(a) PENALTIES.—Until the President makes the determination that Syria meets all the requirements described in paragraphs (1)

through (4) of subsection (d) and certifies such determination to Congress in accordance with such subsection—

(1) the President shall prohibit the export to Syria of any item, including the issuance of a license for the export of any item, on the United States Munitions List or Commerce Control List of dual-use items in the Export Administration Regulations (15 CFR part 730 et seq.); and

(2) the President shall impose two or more of the following sanctions:

(A) Prohibit the export of products of the United States (other than food and medicine) to Syria.

(B) Prohibit United States businesses from investing or operating in Syria.

(C) Restrict Syrian diplomats in Washington, D.C., and at the United Nations in New York City, to travel only within a 25-mile radius of Washington, D.C., or the United Nations headquarters building, respectively.

(D) Prohibit aircraft of any air carrier owned or controlled by Syria to take off from, land in, or overfly the United States.

(E) Reduce United States diplomatic contacts with Syria (other than those contacts required to protect United States interests or carry out the purposes of this Act).

(F) Block transactions in any property in which the Government of Syria has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States.

(b) WAIVER.—The President may waive the application of subsection (a)(1), (a)(2), or both if the President determines that it is in the national security interest of the United States to do so and submits to the appropriate congressional committees a report containing the reasons for the determination.

(c) AUTHORITY TO PROVIDE ASSISTANCE TO SYRIA.—If the President—

(1) makes the determination that Syria meets the requirements described in paragraphs (1) through (4) of subsection (d) and certifies such determination to Congress in accordance with such subsection;

(2) determines that substantial progress has been made both in negotiations aimed at achieving a peace agreement between Israel and Syria and in negotiations aimed at achieving a peace agreement between Israel and Lebanon; and

(3) determines that the Government of Syria is strictly respecting the sovereignty, territorial integrity, unity, and political independence of Lebanon under the sole and exclusive authority of the Government of Lebanon through the Lebanese army throughout Lebanon, as required under paragraph (4) of United Nations Security Council Resolution 520 (1982), then the President is authorized to provide assistance to Syria under chapter 1 of part I of the Foreign Assistance Act of 1961 (relating to development assistance).

(d) CERTIFICATION.—A certification under this subsection is a certification transmitted to the appropriate congressional committees of a determination made by the President that—

(1) the Government of Syria has ceased providing support for international terrorist groups and does not allow terrorist groups, such as Hamas, Hizballah, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, and the Popular Front for the Liberation of Palestine-General Command to maintain facilities in territory under Syrian control;

(2) the Government of Syria ended its occupation of Lebanon described in section 2(7) of this Act;

(3) the Government of Syria has ceased the development and deployment of medium- and long-range surface-to-surface ballistic missiles, is not pursuing or engaged in the research, development, acquisition, production, transfer, or deployment of biological, chemical, or nuclear weapons, has provided credible assurances that such behavior will not be undertaken in the future, and has agreed to allow United Nations and other international observers to verify such actions and assurances; and

(4) the Government of Syria has ceased all support for, and facilitation of, all terrorist activities inside of Iraq, including preventing the use of territory under its control by any means whatsoever to support those engaged in terrorist activities inside of Iraq.

SEC. 6.[1] REPORT.

(a) REPORT.—Not later than 6 months after the date of the enactment of this Act, and every 12 months thereafter until the conditions described in paragraphs (1) through (4) of section 5(d) are satisfied, the Secretary of State shall submit to the appropriate congressional committees a report on—

(1) Syria's progress toward meeting the conditions described in paragraphs (1) through (4) of section 5(d);

(2) connections, if any, between individual terrorists and terrorist groups which maintain offices, training camps, or other facilities on Syrian territory, or operate in areas of Lebanon occupied by the Syrian armed forces, and terrorist attacks on the United States or its citizens, installations, or allies; and

(3) how the United States is increasing its efforts against Hizballah and other terrorist organizations supported by Syria.

(b) FORM.—The report submitted under subsection (a) shall be in unclassified form but may include a classified annex.

SEC. 7.[1] DEFINITION OF APPROPRIATE CONGRESSIONAL COMMITTEES.

In this Act, the term "appropriate congressional committees" means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(2) Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria

Executive Order 13338, May 11, 2004, 69 F.R. 26751, 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175 (SAA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, hereby determine that the actions of the Government of Syria in supporting terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and hereby declare a national emergency to deal with that threat.[1] To address that threat, and to implement the SAA, I hereby order the following:

Section 1. (a) The Secretary of State shall not permit the exportation or reexportation to Syria of any item on the United States Munitions List (22 C.F.R. part 121).

(b) Except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to the provisions of this order in a manner consistent with the SAA, and notwithstanding any license, permit, or authorization granted prior to the effective date of this order, (i) the Secretary of Commerce shall not permit the exportation or reexportation to Syria of any item on the Commerce Control List (15 C.F.R. part 774); and (ii) with the exception of food and medicine, the Secretary of Commerce shall not permit the exportation or reexportation to Syria of any product of the United States not included in section 1(b)(i) of this order.

(c) No other agency of the United States Government shall permit the exportation or reexportation to Syria of any product of the United States, except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order in a manner consistent with the SAA, and notwithstanding any license, permit, or authorization granted prior to the effective date of this order.

Sec. 2. The Secretary of Transportation shall not permit any air carrier owned or controlled by Syria to provide foreign air transportation as defined in 49 U.S.C. 40102(a)(23), except that he may, to

[1] In a notice of May 5, 2005 (70 F.R. 24697), the President stated that this national emergency must continue in effect for 1 year.

the extent consistent with Department of Transportation regulations, permit such carriers to charter aircraft to the Government of Syria for the transport of Syrian government officials to and from the United States on official Syrian government business. In addition, the Secretary of Transportation shall prohibit all takeoffs and landings in the United States, other than those associated with an emergency, by any such air carrier when engaged in scheduled international air services.

Sec. 3. (a) Except to the extent provided in section 203(b)(1), (3), and (4) of the IEEPA (50 U.S.C. 1702(b) (1), (3), and (4)), and the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, Public Law 106–387) (TSRA), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: persons who are determined by the Secretary of the Treasury, in consultation with the Secretary of State,

(i) to be or to have been directing or otherwise significantly contributing to the Government of Syria's provision of safe haven to or other support for any person whose property or interests in property are blocked under United States law for terrorism-related reasons, including, but not limited to, Hamas, Hizballah, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, the Popular Front for the Liberation of Palestine-General Command, and any persons designated pursuant to Executive Order 13224 of September 23, 2001;

(ii) to be or to have been directing or otherwise significantly contributing to the Government of Syria's military or security presence in Lebanon;

(iii) to be or to have been directing or otherwise significantly contributing to the Government of Syria's pursuit of the development and production of chemical, biological, or nuclear weapons and medium- and long-range surface-to-surface missiles;

(iv) to be or to have been directing or otherwise significantly contributing to any steps taken by the Government of Syria to undermine United States and international efforts with respect to the stabilization and reconstruction of Iraq; or

(v) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to this order.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, (i) the making of any contribution of funds, goods, or services by, to, or for the benefit of any person whose property or interests in property are blocked pursuant to this order; and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 4. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading

or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this order is prohibited.

Sec. 5. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of the IEEPA (50 U.S.C. 1702(b)(2)) would seriously impair the ability to deal with the national emergency declared in this order, and hereby prohibit, (i) the exportation or reexportation of such donated articles to Syria as provided in section 1(b) of this order; and (ii) the making of such donations by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 3 of this order.

Sec. 6. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term "Government of Syria" means the Government of the Syrian Arab Republic, its agencies, instrumentalities, and controlled entities; and

(e) the term "product of the United States" means: for the purposes of subsection 1(b), any item subject to the Export Administration Regulations (15 C.F.R. parts 730-774); and for the purposes of subsection 1(c), any item subject to the export licensing jurisdiction of any other United States Government agency.

Sec. 7. With respect to the prohibitions contained in section 1 of this order, consistent with subsection 5(b) of the SAA, I hereby determine that it is in the national security interest of the United States to waive, and hereby waive application of subsection 5(a)(1) and subsection 5(a)(2)(A) of the SAA so as to permit the exportation or reexportation of certain items as specified in the Department of Commerce's General Order No. 2 to Supplement No. 1, 15 C.F.R. part 736, as issued consistent with this order and as may be amended pursuant to the provisions of this order and in a manner consistent with the SAA. This waiver is made pursuant to the SAA only to the extent that regulation of such exports or reexports would not otherwise fall within my constitutional authority to conduct the Nation's foreign affairs and protect national security.

Sec. 8. With respect to the prohibitions contained in section 2 of this order, consistent with subsection 5(b) of the SAA, I hereby determine that it is in the national security interest of the United States to waive, and hereby waive, application of subsection 5(a)(2)(D) of the SAA insofar as it pertains to: aircraft of any air carrier owned or controlled by Syria chartered by the Syrian government for the transport of Syrian government officials to and from the United States on official Syrian government business, to

the extent consistent with Department of Transportation regulations; takeoffs or landings for non-traffic stops of aircraft of any such air carrier that is not engaged in scheduled international air services; takeoffs and landings associated with an emergency; and overflights of United States territory.

Sec. 9. I hereby direct the Secretary of State to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out subsection 1(a) of this order. I hereby direct the Secretary of Commerce, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out subsection 1(b) of this order. I direct the Secretary of Transportation, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out section 2 of this order. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the IEEPA as may be necessary to carry out sections 3, 4, and 5 of this order. The Secretaries of State, Commerce, Transportation, and the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The Secretary of State, in consultation with the Secretaries of Commerce, Transportation, and the Treasury, as appropriate, is authorized to exercise the functions and authorities conferred upon the President in subsection 5(b) of the SAA and to redelegate these functions and authorities consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretaries of State, Commerce, Transportation, and the Treasury in a timely manner of the measures taken.

Sec. 10. This order is not intended to create, and does not create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 11. For those persons whose property or interests in property are blocked pursuant to section 3 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 12. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA, 50 U.S.C. 1641(c), and section 204(c) of the IEEPA, 50 U.S.C. 1703(c).

Sec. 13. (a) This order is effective at 12:01 eastern daylight time on May 12, 2004.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

m. South African Democratic Transition Support Act of 1993 [1]

Public Law 103–149 [H.R. 3225], 107 Stat. 1503, approved November 23, 1993

AN ACT To support the transition to nonracial democracy in South Africa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "South African Democratic Transition Support Act of 1993".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) After decades of apartheid, South Africa has entered a new era which presents a historic opportunity for a transition to a peaceful, stable, and democratic future.

(2) The United States policy of economic sanctions toward the apartheid government of South Africa, as expressed in the Comprehensive Anti-Apartheid Act of 1986, helped bring about reforms in that system of government and has facilitated the establishment of a nonracial government.

(3) Through broad and open negotiations, the parties in South Africa have reached a landmark agreement on the future of their country. This agreement includes the establishment of a Transitional Executive Council and the setting of a date for nonracial elections.

(4) The international community has a vital interest in supporting the transition from apartheid toward nonracial democracy.

(5) The success of the transition in South Africa is crucial to the stability and economic development of the southern African region.

(6) Nelson Mandela of the African National Congress and other representative leaders in South Africa have declared that the time has come when the international community should lift all economic sanctions against South Africa.

(7) In light of recent developments, the continuation of these economic sanctions is detrimental to persons disadvantaged by apartheid.

(8) Those calling for the lifting of economic sanctions against South Africa have made clear that they do not seek the immediate termination of the United Nations-sponsored special sanctions relating to arms transfers, nuclear cooperation, and exports of oil. The Ad Hoc Committee on Southern Africa of the Organization of African Unity, for example, has urged that the

[1] 22 U.S.C. 5001 note.

oil embargo established pursuant to a 1986 General Assembly resolution be lifted after the establishment and commencement of the work of the Transitional Executive Council.

SEC. 3. UNITED STATES POLICY.

It is the sense of the Congress that—

(1) the United States should—

(A) strongly support the Transitional Executive Council in South Africa,

(B) encourage rapid progress toward the establishment of a nonracial democratic government in South Africa, and

(C) support a consolidation of democracy in South Africa through democratic elections for an interim government and a new nonracial constitution;

(2) the United States should continue to provide assistance to support the transition to a nonracial democracy in South Africa, and should urge international financial institutions and other donors to also provide such assistance;

(3) to the maximum extent practicable, the United States should consult closely with international financial institutions, other donors, and South African entities on a coordinated strategy to support the transition to a nonracial democracy in South Africa;

(4) in order to provide ownership and managerial opportunities, professional advancement, training, and employment for disadvantaged South Africans and to respond to the historical inequities created under apartheid, the United States should—

(A) promote the expansion of private enterprise and free markets in South Africa,

(B) encourage the South African private sector to take a special responsibility and interest in providing such opportunities, advancement, training, and employment for disadvantaged South Africans,

(C) encourage United States private sector investment in and trade with South Africa,

(D) urge United States investors to develop a working partnership with representative organs of South African civil society, particularly churches and trade unions, in promoting responsible codes of corporate conduct and other measures to address the historical inequities created under apartheid;

(5) the United States should urge the Government of South Africa to liberalize its trade and investment policies to facilitate the expansion of the economy, and to shift resources to meet the needs of disadvantaged South Africans;

(6) the United States should promote cooperation between South Africa and other countries in the region to foster regional stability and economic growth; and

(7) the United States should demonstrate its support for an expedited transition to, and should adopt a long term policy beneficial to the establishment and perpetuation of, a nonracial democracy in South Africa.

SEC. 4. REPEAL OF APARTHEID SANCTIONS LAWS AND OTHER MEASURES DIRECTED AT SOUTH AFRICA.

(a) COMPREHENSIVE ANTI-APARTHEID ACT.—

(1) IN GENERAL.—All provisions of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5001 and following) are repealed as of the date of enactment of this Act, except for the sections specified in paragraph (2).

(2) EFFECTIVE DATE OF REPEAL OF CODE OF CONDUCT REQUIREMENTS.—Sections 1, 3, 203(a), 203(b), 205, 207, 208, 601, 603, and 604 of the Comprehensive Anti-Apartheid Act of 1986 are repealed as of the date on which the President certifies to the Congress that an interim government, elected on a nonracial basis through free and fair elections, has taken office in South Africa.[2]

(3) CONFORMING AMENDMENTS.—(A) Section 3 of the Comprehensive Anti-Apartheid Act of 1986 is amended by striking paragraphs (2) through (4) and paragraphs (7) through (9), by inserting "and" at the end of paragraph (5), and by striking "; and" at the end of paragraph (6) and inserting a period.

(B) The following provisions of the Foreign Assistance Act of 1961 that were enacted by the Comprehensive Anti-Apartheid Act of 1986 are repealed: subsections (e)(2), (f), and (g) of section 116 (22 U.S.C. 2151n); section 117 (22 U.S.C. 2151o), relating to assistance for disadvantaged South Africans; and section 535 (22 U.S.C. 2346d). Section 116(e)(1) of the Foreign Assistance Act of 1961 is amended by striking "(1)".

(b) OTHER PROVISIONS.—The following provisions are repealed or amended as follows:

(1) Subsections (c) and (d) of section 802 of the International Security and Development Cooperation Act of 1985 (99 Stat. 261) is repealed.

(2) Section 211 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (99 Stat. 432) is repealed, and section 1(b) of that Act is amended by striking the item in the table of contents relating to section 211.

(3) Sections 1223 and 1224 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (101 Stat. 1415) is repealed, and section 1(b) of that Act is amended by striking the items in the table of contents relating to sections 1223 and 1224.

(4) Section 362 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (105 Stat. 716) is repealed, and section 2 of that Act is amended by striking the item in the table of contents relating to section 362.

(5) Section 2(b)(9) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(9)) is repealed.

(6) Section 43 of the Bretton Woods Agreements Act (22 U.S.C. 286aa) is amended by repealing subsection (b) and by striking "(a)".

(7) Section 330 of H.R. 5205 of the 99th Congress (Department of Transportation and Related Agencies Appropriations Act, 1987) (22 U.S.C. 5056a) as incorporated by reference in

[2] The President so certified on June 8, 1994 (according to Department of State Public Notice 2025; 59 F.R. 33909).

section 101(l) of Public Law 99–500 and Public Law 99–591, and made effective as if enacted into law by section 106 of Public Law 100–202, is repealed.

(8)(A) Section 901(j)(2)(C) of the Internal Revenue Code of 1986 (26 U.S.C. 901(j)(2)(C)) is repealed.

(B) Subparagraph (A) shall not be construed as affecting any of the transitional rules contained in Revenue Ruling 92–62 which apply by reason of the termination of the period for which section 901(j) of the Internal Revenue Code of 1986 was applicable to South Africa.

(9) The table in section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) is amended by striking "Republic of South Africa".

(c) SANCTIONS MEASURES ADOPTED BY STATE OR LOCAL GOVERNMENTS OR PRIVATE ENTITIES.—

(1) POLICY REGARDING RESCISSION.—The Congress urges all State or local governments and all private entities in the United States that have adopted any restriction on economic interactions with South Africa, or any policy discouraging such interaction, to rescind such restriction or policy.

(2) REPEAL OF PROVISIONS RELATING TO WITHHOLDING FEDERAL FUNDS.—Effective October 1, 1995, the following provisions are repealed:

(A) The undesignated paragraph entitled "STATE AND LOCAL ANTI-APARTHEID POLICIES" in chapter IX of the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989 (22 U.S.C. 5117).

(B) Section 210 of the Urgent Supplemental Appropriations Act, 1986 (100 Stat. 749).

(d) CONTINUATION OF UN SPECIAL SANCTIONS.—It is the sense of the Congress that the United States should continue to respect United Nations Security Council resolutions on South Africa, including the resolution providing for a mandatory embargo on arms sales to South Africa and the resolutions relating to the import of arms, restricting exports to the South African military and police, and urging states to refrain from nuclear cooperation that would contribute to the manufacture and development by South Africa of nuclear weapons or nuclear devices.

SEC. 5. UNITED STATES ASSISTANCE FOR THE TRANSITION TO A NONRACIAL DEMOCRACY.

(a) IN GENERAL.—The President is authorized and encouraged to provide assistance under chapter 10 of part I of the Foreign Assistance Act of 1961 (relating to the Development Fund for Africa) or chapter 4 of part II of that Act (relating to the Economic Support Fund) to support the transition to nonracial democracy in South Africa. Such assistance shall—

(1) focus on building the capacity of disadvantaged South Africans to take their rightful place in the political, social, and economic systems of their country;

(2) give priority to working with and through South African nongovernmental organizations whose leadership and staff represent the majority population and which have the support of

the disadvantaged communities being served by such organizations;

(3) in the case of education programs—

(A) be used to increase the capacity of South African institutions to better serve the needs of individuals disadvantaged by apartheid;

(B) emphasize education within South Africa to the extent that assistance takes the form of scholarships for disadvantaged South African students; and

(C) fund nontraditional training activities;

(4) support activities to prepare South Africa for elections, including voter and civic education programs, political party building, and technical electoral assistance;

(5) support activities and entities, such as the Peace Accord structures, which are working to end the violence in South Africa; and

(6) support activities to promote human rights, democratization, and a civil society.

(b) GOVERNMENT OF SOUTH AFRICA.—

(1) LIMITATION ON ASSISTANCE.—Except as provided in paragraph (2), assistance provided in accordance with this section may not be made available to the Government of South Africa, or organizations financed and substantially controlled by that government, unless the President certifies to the Congress that an interim government that was elected on a nonracial basis through free and fair elections has taken office in South Africa.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), assistance may be provided for—

(A) the Transitional Executive Council;

(B) South African higher education institutions, particularly those traditionally disadvantaged by apartheid policies; and

(C) any other organization, entity, or activity if the President determines that the assistance would promote the transition to nonracial democracy in South Africa.

Any determination under subparagraph (C) should be based on consultations with South African individuals and organizations representative of the majority population in South Africa (particularly consultations through the Transitional Executive Council) and consultations with the appropriate congressional committees.

(c) INELIGIBLE ORGANIZATIONS.—

(1) ACTS OF VIOLENCE.—An organization that has engaged in armed struggle or other acts of violence shall not be eligible for assistance provided in accordance with this section unless that organization is committed to a suspension of violence in the context of progress toward nonracial democracy.

(2) VIEWS INCONSISTENT WITH DEMOCRACY AND FREE ENTERPRISE.—Assistance provided in accordance with this section may not be made available to any organization that has espoused views inconsistent with democracy and free enterprise unless such organization is engaged actively and positively in

the process of transition to a nonracial democracy and such assistance would advance the United States objective of promoting democracy and free enterprise in South Africa.

SEC. 6. UNITED STATES INVESTMENT AND TRADE.

(a) TAX TREATY.—The President should begin immediately to negotiate a tax treaty with South Africa to facilitate United States investment in that country.

(b) OPIC.—The President should immediately initiate negotiations with the Government of South Africa for an agreement authorizing the Overseas Private Investment Corporation to carry out programs with respect to South Africa in order to expand United States investment in that country.

(c) TRADE AND DEVELOPMENT AGENCY.—In carrying out section 661 of the Foreign Assistance Act of 1961, the Director of the Trade and Development Agency should provide additional funds for activities related to projects in South Africa.

(d) EXPORT-IMPORT BANK.—The Export-Import Bank of the United States should expand its activities in connection with exports to South Africa.

(e) PROMOTING DISADVANTAGED ENTERPRISES.—

(1) INVESTMENT AND TRADE PROGRAMS.—Each of the agencies referred to in subsections (b) through (d) should take active steps to encourage the use of its programs to promote business enterprises in South Africa that are majority-owned by South Africans disadvantaged by apartheid.

(2) UNITED STATES GOVERNMENT PROCUREMENT.—To the extent not inconsistent with the obligations of the United States under any international agreement, the Secretary of State and the head of any other department or agency of the United States carrying out activities in South Africa shall, to the maximum extent practicable, in procuring goods or services, make affirmative efforts to assist business enterprises having more than 50 percent beneficial ownership by South African blacks or other nonwhite South Africans, notwithstanding any law relating to the making or performance of, or the expenditure of funds for, United States Government contracts.

SEC. 7. INFORMATION AND EDUCATIONAL EXCHANGE PROGRAMS.

The Director of the United States Information Agency should use the authorities of the United States Information and Educational Exchange Act of 1948 to promote the development of a nonracial democracy in South Africa.

SEC. 8. OTHER COOPERATIVE AGREEMENTS.

In addition to the actions specified in the preceding sections of this Act, the President should seek to conclude cooperative agreements with South Africa on a range of issues, including cultural and scientific issues.

SEC. 9. INTERNATIONAL FINANCIAL INSTITUTIONS AND OTHER DONORS.

(a) IN GENERAL.—The President should encourage other donors, particularly Japan and the European Community countries, to expand their activities in support of the transition to nonracial democracy in South Africa.

(b) INTERNATIONAL FINANCIAL INSTITUTIONS.—The Secretary of the Treasury should instruct the United States Executive Director of each relevant international financial institution, including the International Bank for Reconstruction and Development and the International Development Association, to urge that institution to initiate or expand its lending and other financial assistance activities to South Africa in order to support the transition to nonracial democracy in South Africa.

(c) TECHNICAL ASSISTANCE.—The Secretary of the Treasury should instruct the United States Executive Director of each relevant international financial institution to urge that institution to fund programs to initiate or expand technical assistance to South Africa for the purpose of training the people of South Africa in government management techniques.

SEC. 10. CONSULTATION WITH SOUTH AFRICANS.

In carrying out this Act, the President should consult closely with South African individuals and organizations representative of the majority population in South Africa (particularly consultations through the Transitional Executive Council) and others committed to abolishing the remnants of apartheid.

n. Prohibiting Trade and Certain Other Transactions Involving Libya

NOTE.—Executive Order 13357 of September 24, 2004 (69 F.R. 56665) terminated the national emergency declared in Executive Order 12543 of January 7, 1986 (51 F.R. 875) regarding Libya. Executive Order 13357 further revoked Executive Order 12543, as well as Executive Order 12538 of November 15, 1985 (50 F.R. 47527) regarding imports and refined petroleum products from Libya; Executive Order 12544 of January 8, 1986 (51 F.R. 1235) regarding blocking Libyan Government property in the United States or held by U.S. persons; and Executive Order 12801 of April 15, 1992 (57 F.R. 14319) regarding barring overflight, takeoff, and landing of aircraft flying to or from Libya.

o. Policy Toward United States Business Transactions in Angola

Partial text of Public Law 99–472 [H.R. 5548], 100 Stat. 1200, approved October 15, 1986

AN ACT To amend the Export-Import Bank Act of 1945.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Export-Import Bank Act Amendments of 1986".

* * * * * * *

SEC. 21. POLICY TOWARD UNITED STATES BUSINESS TRANSACTIONS IN ANGOLA.

(a) The Congress finds that—

(1) the Marxist Popular Movement for the Liberation of Angola (hereafter in this section referred to as the "MPLA") has failed to hold fair and free elections since assuming power in Angola in 1975;

(2) Angola currently harbors more than 35,000 Soviet and Cuban troops and advisers;

(3) the Cubans and Soviets have channeled more than $4,000,000,000 in assistance and military aid in furtherance of this intervention in Africa;

(4) the MPLA government of Angola obtains more than 90 percent of its foreign exchange from the extraction and production of oil;

(5) most of Angola's oil is extracted in Cabinda Province, where 75 percent of it is extracted by the Chevron-Gulf Oil company;

(6) the MPLA has refused to take meaningful steps to end its dependency on Soviet and Cuban forces, engage in national reconciliation within Angola, or encourage the independence of Namibia; and

(7) United States business interests are in direct conflict with United States foreign policy objectives in aiding the MPLA government of Angola, which directly opposes Jonas Savimbi and UNITA, recipients of United States support.

(b)(1) It is the sense of the Congress that the interests of the United States are best served when United States business transactions conducted in Angola do not directly or indirectly support Cuban troops and Soviet advisers.

(2) the Congress hereby requests that the President consider using his authorities under the Export Administration Act of 1979

to restrict United States business transactions that conflict with United States security interests in Angola.

* * * * * * *

NOTE.—Executive Order 13298 of May 6, 2003 (68 F.R. 24857) terminated the national emergency declared in Executive Order 12865 of September 26, 1993 (58 F.R. 51005) regarding Angola and the National Union for the Total Independence of Angola (UNITA). Executive Order 13298 further revoked Executive Order 12865, as well as Executive Order 13069 of December 12, 1997 (62 F.R. 65989) regarding the prohibition of certain transactions with UNITA; and Executive Order 13098 of August 18, 1998 (63 F.R. 44771) regarding the prohibition of certain transactions involving UNITA.

p. Authority to Deny Most-Favored-Nation Treatment to the Products of Afghanistan

Partial text of Public Law 99–190 [Further Continuing Appropriations Act 1986; H.J. Res. 465], 99 Stat. 1185 at 1314, approved December 19, 1985

AN ACT Making appropriations for foreign assistance and related programs for the fiscal year ending September 30, 1986, and for other purposes, namely:

* * * * * * *

TITLE V—GENERAL PROVISIONS

* * * * * * *

SEC. 552.[1] (a) Notwithstanding any other provision of law, the President is authorized—

(1) to deny nondiscriminatory (most-favored-nation) trade treatment to the products of Afghanistan and thereby cause such products to be subject to the rate of duty set forth in column number 2 of the Tariff Schedules of the United States, and

(2) to deny credit, credit guarantees, and investment guarantees to, or for the benefit of, Afghanistan under any Federal program.

(b) If the President has not denied nondiscriminatory trade treatment to the products of Afghanistan before the date that is 45 days after the date of enactment of this joint resolution, the President shall submit to the Congress on such date.

* * * * * * *

SEC. 118.[1] (a) Notwithstanding any other provision of law, the President is authorized—

(1) to deny nondiscriminatory (most-favored-nation) trade treatment to the products of Afghanistan and thereby cause such products to be subject to the rate of duty set forth in column number 2 of the Tariff Schedules of the United States, and

(2) to deny credit, credit guarantees, and investment guarantees to, or for the benefit of, Afghanistan under any Federal program.

(b) If the President has not denied nondiscriminatory trade treatment to the products of Afghanistan before the date that is 45 days after the date of enactment of this joint resolution, the President shall submit to the Congress on such date a report which states the reasons why the President has not denied such treatment.

[1] 19 U.S.C. 2434 note. The President suspended the most-favored-nation status for products of Afghanistan in Proclamation 5437 of January 31, 1986 (51 F.R. 4287). Normal trade relations (most-favored-nation status) was restored in Proclamation 7553 of May 3, 2002 (67 F.R. 30535).

(c) Notwithstanding any other provision of law, if the President takes any action under subsection (a), the President is authorized to—

(1) restore nondiscriminatory trade treatment to the products of Afghanistan, and

(2) extend credit, credit guarantees, and investment guarantees to, or for the benefit of, Afghanistan under any Federal program.

only if the President provides written notice of such restoration or extension to the Congress at least 30 days prior to the date on which such restoration or extension takes effect.

(d) For purposes of this joint resolution, the term "product of Afghanistan" means any article which is grown, produced, or manufactured (in whole or in part) in Afghanistan.

* * * * * * *

NOTE.—Executive Order 13268 of July 2, 2002 (67 F.R. 44751) terminated the national emergency declared in Executive Order 13129 of July 4, 1999 (64 F.R. 13129) regarding the Taliban. Executive Order 13268 further revoked Executive Order 13129 and amended Executive Order 13224 of September 23, 2001 (66 F.R. 49077) regarding blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism. Executive Order 13224 can be found in this volume, p. 1504.

q. Transactions With and Investment in Burma

(1) Burmese Freedom and Democracy Act of 2003

Public Law 108–61 [H.R. 2330], 117 Stat. 864, approved July 28, 2003

AN ACT To sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes.

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Burmese Freedom and Democracy Act of 2003".

SEC. 2.[1] FINDINGS.

Congress makes the following findings:

(1) The State Peace and Development Council (SPDC) has failed to transfer power to the National League for Democracy(NLD) whose parliamentarians won an overwhelming victory in the 1990 elections in Burma.

(2) The SPDC has failed to enter into meaningful, political dialogue with the NLD and ethnic minorities and has dismissed the efforts of United Nations Special Envoy Razali bin Ismail to further such dialogue.

(3) According to the State Department's "Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma" dated March 28, 2003, the SPDC has become "more confrontational" in its exchanges with the NLD.

(4) On May 30, 2003, the SPDC, threatened by continued support for the NLD throughout Burma, brutally attacked NLD supporters, killed and injured scores of civilians, and arrested democracy advocate Aung San Suu Kyi and other activists.

(5) The SPDC continues egregious human rights violations against Burmese citizens, uses rape as a weapon of intimidation and torture against women, and forcibly conscripts child-soldiers for the use in fighting indigenous ethnic groups.

(6) The SPDC is engaged in ethnic cleansing against minorities within Burma, including the Karen, Karenni, and Shan people, which constitutes a crime against humanity and has directly led to more than 600,000 internally displaced people living within Burma and more than 130,000 people from Burma living in refugee camps along the Thai-Burma border.

(7) The ethnic cleansing campaign of the SPDC is in sharp contrast to the traditional peaceful coexistence in Burma of Buddhists, Muslims, Christians, and people of traditional beliefs.

[1] 50 U.S.C. 1701 note.

(8) The SPDC has demonstrably failed to cooperate with the United States in stopping the flood of heroin and methamphetamines being grown, refined, manufactured, and transported in areas under the control of the SPDC serving to flood the region and much of the world with these illicit drugs.

(9) The SPDC provides safety, security, and engages in business dealings with narcotics traffickers under indictment by United States authorities, and other producers and traffickers of narcotics.

(10) The International Labor Organization (ILO), for the first time in its 82-year history, adopted in 2000, a resolution recommending that governments, employers, and workers organizations take appropriate measures to ensure that their relations with the SPDC do not abet the government-sponsored system of forced, compulsory, or slave labor in Burma, and that other international bodies reconsider any cooperation they may be engaged in with Burma and, if appropriate, cease as soon as possible any activity that could abet the practice of forced, compulsory, or slave labor.

(11) The SPDC has integrated the Burmese military and its surrogates into all facets of the economy effectively destroying any free enterprise system.

(12) Investment in Burmese companies and purchases from them serve to provide the SPDC with currency that is used to finance its instruments of terror and repression against the Burmese people.

(13) On April 15, 2003, the American Apparel and Footwear Association expressed its "strong support for a full and immediate ban on U.S. textiles, apparel and footwear imports from Burma" and called upon the United States Government to "impose an outright ban on U.S. imports" of these items until Burma demonstrates respect for basic human and labor rights of its citizens.

(14) The policy of the United States, as articulated by the President on April 24, 2003, is to officially recognize the NLD as the legitimate representative of the Burmese people as determined by the 1990 election.

(15) The United States must work closely with other nations, including Thailand, a close ally of the United States, to highlight attention to the SPDC's systematic abuses of human rights in Burma, to ensure that nongovernmental organizations promoting human rights and political freedom in Burma are allowed to operate freely and without harassment, and to craft a multilateral sanctions regime against Burma in order to pressure the SPDC to meet the conditions identified in section 3(a)(3) of this Act.

SEC. 3.[1] BAN AGAINST TRADE THAT SUPPORTS THE MILITARY REGIME OF BURMA.

(a) GENERAL BAN.—

(1) IN GENERAL.—Notwithstanding any other provision of law, until such time as the President determines and certifies to Congress that Burma has met the conditions described in

paragraph (3), beginning 30 days after the date of the enactment of this Act, the President shall ban the importation of any article that is a product of Burma.

(2) BAN ON IMPORTS FROM CERTAIN COUNTRIES.—The import restrictions contained in paragraph (1) shall apply to, among other entities—

(A) the SPDC, any ministry of the SPDC, a member of the SPDC or an immediate family member of such member;

(B) known narcotics traffickers from Burma or an immediate family member of such narcotics trafficker;

(C) the Union of Myanmar Economics Holdings Incorporated (UMEHI) or any company in which the UMEHI has a fiduciary interest;

(D) the Myanmar Economic Corporation (MEC) or any company in which the MEC has a fiduciary interest;

(E) the Union Solidarity and Development Association (USDA); and

(F) any successor entity for the SPDC, UMEHI, MEC, or USDA.

(3) CONDITIONS DESCRIBED.—The conditions described in this paragraph are the following:

(A) The SPDC has made substantial and measurable progress to end violations of internationally recognized human rights including rape, and the Secretary of State, after consultation with the ILO Secretary General and relevant nongovernmental organizations, reports to the appropriate congressional committees that the SPDC no longer systematically violates workers rights, including the use of forced and child labor, and conscription of child-soldiers.

(B) The SPDC has made measurable and substantial progress toward implementing a democratic government including—

(i) releasing all political prisoners;

(ii) allowing freedom of speech and the press;

(iii) allowing freedom of association;

(iv) permitting the peaceful exercise of religion; and

(v) bringing to a conclusion an agreement between the SPDC and the democratic forces led by the NLD and Burma's ethnic nationalities on the transfer of power to a civilian government accountable to the Burmese people through democratic elections under the rule of law.

(C) Pursuant to section 706(2) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228), Burma has not been designated as a country that has failed demonstrably to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take other effective counternarcotics measures, including, but not limited to (i) the arrest and extradition of all individuals under indictment in the United States for narcotics trafficking, (ii) concrete and measurable actions to stem the flow of illicit drug money

into Burma's banking system and economic enterprises, and (iii) actions to stop the manufacture and export of methamphetamines.

(4) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this subsection, the term "appropriate congressional committees" means the Committees on Foreign Relations and Appropriations of the Senate and the Committees on International Relations and Appropriations of the House of Representatives.

(b) WAIVER AUTHORITIES.—The President may waive the prohibitions described in this section for any or all articles that are a product of Burma if the President determines and notifies the Committees on Appropriations, Finance, and Foreign Relations of the Senate and the Committees on Appropriations, International Relations, and Ways and Means of the House of Representatives that to do so is in the national interest of the United States.

SEC. 4.[1] FREEZING ASSETS OF THE BURMESE REGIME IN THE UNITED STATES.

(a) REPORTING REQUIREMENT.—Not later than 60 days after the date of enactment of this Act, the President shall take such action as is necessary to direct, and promulgate regulations to the same, that any United States financial institution holding funds belonging to the SPDC or the assets of those individuals who hold senior positions in the SPDC or its political arm, the Union Solidarity Development Association, shall promptly report those funds or assets to the Office of Foreign Assets Control.

(b) ADDITIONAL AUTHORITY.—The President may take such action as may be necessary to impose a sanctions regime to freeze such funds or assets, subject to such terms and conditions as the President determines to be appropriate.

(c) DELEGATION.—The President may delegate the duties and authorities under this section to such Federal officers or other officials as the President deems appropriate.

SEC. 5.[1] LOANS AT INTERNATIONAL FINANCIAL INSTITUTIONS.

The Secretary of the Treasury shall instruct the United States executive director to each appropriate international financial institution in which the United States participates, to oppose, and vote against the extension by such institution of any loan or financial or technical assistance to Burma until such time as the conditions described in section 3(a)(3) are met.

SEC. 6.[1] EXPANSION OF VISA BAN.

(a) IN GENERAL.—

(1) VISA BAN.—The President is authorized to deny visas and entry to the former and present leadership of the SPDC or the Union Solidarity Development Association.

(2) UPDATES.—The Secretary of State shall coordinate on a biannual basis with representatives of the European Union to allow officials of the United States and the European Union to ensure a high degree of coordination of lists of individuals banned from obtaining a visa by the European Union for the reason described in paragraph (1) and those banned from receiving a visa from the United States.

(b) PUBLICATION.—The Secretary of State shall post on the Department of State's website the names of individuals whose entry into the United States is banned under subsection (a).

SEC. 7.[1] CONDEMNATION OF THE REGIME AND DISSEMINATION OF INFORMATION.

Congress encourages the Secretary of State to highlight the abysmal record of the SPDC to the international community and use all appropriate fora, including the Association of Southeast Asian Nations Regional Forum and Asian Nations Regional Forum, to encourage other states to restrict financial resources to the SPDC and Burmese companies while offering political recognition and support to Burma's democratic movement including the National League for Democracy and Burma's ethnic groups.

SEC. 8.[1] SUPPORT DEMOCRACY ACTIVISTS IN BURMA.

(a) IN GENERAL.—The President is authorized to use all available resources to assist Burmese democracy activists dedicated to nonviolent opposition to the regime in their efforts to promote freedom, democracy, and human rights in Burma, including a listing of constraints on such programming.

(b) REPORTS.—

(1) FIRST REPORT.—Not later than 3 months after the date of enactment of this Act, the Secretary of State shall provide the Committees on Appropriations and Foreign Relations of the Senate and the Committees on Appropriations and International Relations of the House of Representatives a comprehensive report on its short- and long-term programs and activities to support democracy activists in Burma, including a list of constraints on such programming.

(2) REPORT ON RESOURCES.—Not later than 6 months after the date of enactment of this Act, the Secretary of State shall provide the Committees on Appropriations and Foreign Relations of the Senate and the Committees on Appropriations and International Relations of the House of Representatives a report identifying resources that will be necessary for the reconstruction of Burma, after the SPDC is removed from power, including-

(A) the formation of democratic institutions;

(B) establishing the rule of law;

(C) establishing freedom of the press;

(D) providing for the successful reintegration of military officers and personnel into Burmese society; and

(E) providing health, educational, and economic development.

(3) REPORT ON TRADE SANCTIONS.—Not later than 90 days before the date on which the import restrictions contained in section 3(a)(1) are to expire, the Secretary of State, in consultation with the United States Trade Representative and the heads of appropriate agencies, shall submit to the Committees on Appropriations, Finance, and Foreign Relations of the Senate, and the Committees on Appropriations, International Relations, and Ways and Means of the House of Representatives, a report on—

(A) bilateral and multilateral measures undertaken by the United States Government and other governments topromote human rights and democracy in Burma;

(B) the extent to which actions related to trade with Burma taken pursuant to this Act have been effective in—

(i) improving conditions in Burma, including human rights violations, arrest and detention of democracy activists, forced and child labor, and the status of dialogue between the SPDC and the NLD and ethnic minorities;

(ii) furthering the policy objections of the United States toward Burma; and

(C) the impact of actions relating to trade take pursuant to this Act on other national security, economic, and foreign policy interests of the United States, including relations with countries friendly to the United States.

SEC. 9.[1] DURATION OF SANCTIONS.

(a) TERMINATION BY REQUEST FROM DEMOCRATIC BURMA.—The President may terminate any provision in this Act upon the request of a democratically elected government in Burma, provided that all the conditions in section 3(a)(3) have been met.

(b) CONTINUATION OF IMPORT SANCTIONS.—

(1) EXPIRATION.—The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act unless renewed under paragraph (2) of this section.

(2) RESOLUTION BY CONGRESS.—The import restrictions contained in section 3(a)(1) may be renewed annually for a 1-year period if, prior to the anniversary of the date of enactment of this Act, and each year thereafter, a renewal resolution is enacted into law in accordance with subsection (c).[2]

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

(c) RENEWAL RESOLUTIONS.—

(1) IN GENERAL.—For purposes of this section, the term "renewal resolution" means a joint resolution of the 2 Houses of Congress, the sole matter after the resolving clause of which is as follows: "That Congress approves the renewal of the import restrictions contained in section 3(a)(1) of the Burmese Freedom and Democracy Act of 2003.".

(2) PROCEDURES.—

(A) IN GENERAL.—-A renewal resolution—

(i) may be introduced in either House of Congress by any member of such House at any time within the 90-day period before the expiration of the import restrictions contained in section 3(a)(1); and

(ii) the provisions of subparagraph (B) shall apply.

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[2] Public Law 108–272 (118 Stat. 818) provided that "Congress approves the renewal of the import restrictions contained in section 3(a)(1) of the Burmese Freedom and Democracy Act of 2003.".

Public Law 109–39 (119 Stat. 409) provided that "Congress approves the renewal of the import restrictions contained in section 3(a)(1) of the Burmese Freedom and Democracy Act of 2003.".

(B) EXPEDITED CONSIDERATION.—The provisions of section 152(b), (c), (d), (e), and (f) of the Trade Act of 1974 (19 U.S.C. 2192 (b), (c), (d), (e), and (f)) apply to a renewal resolution under this Act as if such resolution were a resolution described in section 152(a) of the Trade Act of 1974.

(2) Policy Toward Burma—Sanctions

Partial text of Public Law 104–208 [Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997; title I, sec. 101(c) of the Omnibus Consolidated Appropriations Act, 1997; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

AN ACT Making appropriations for the foreign operations, export financing, and related programs for the fiscal year ending September 30, 1997, and for other purposes.

TITLE I

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SEC. 101. * * *

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(c) For programs, projects or activities in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

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TITLE V—GENERAL PROVISIONS

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POLICY TOWARD BURMA

SEC. 570. (a) Until such time as the President determines and certifies to Congress that Burma has made measurable and substantial progress in improving human rights practices and implementing democratic government, the following sanctions shall be imposed on Burma:

(1) BILATERAL ASSISTANCE.—There shall be no United States assistance to the Government of Burma, other than:

(A) humanitarian assistance,

(B) subject to the regular notification procedures of the Committees on Appropriations, counter-narcotics assistance under chapter 8 of part I of the Foreign Assistance Act of 1961, or crop substitution assistance, if the Secretary of State certifies to the appropriate congressional committees that—

(i) the Government of Burma is fully cooperating with United States counter-narcotics efforts, and

(ii) the programs are fully consistent with United States human rights concerns in Burma and serve the United States national interest, and

(C) assistance promoting human rights and democratic values.

(2) MULTILATERAL ASSISTANCE.—The Secretary of the Treasury shall instruct the United States executive director of each international financial institution to vote against any loan or other utilization of funds of the respective bank to or for Burma.

(3) VISAS.—Except as required by treaty obligations or to staff the Burmese mission to the United States, the United States should not grant entry visas to any Burmese government official.

(b) CONDITIONAL SANCTIONS.—The President is hereby authorized to prohibit, and shall prohibit United States persons from new investment in Burma, if the President determines and certifies to Congress that, after the date of enactment of this Act, the Government of Burma has physically harmed, rearrested for political acts, or exiled Daw Aung San Suu Kyi or has committed large-scale repression of or violence against the Democratic opposition.

(c) MULTILATERAL STRATEGY.—The President shall seek to develop, in coordination with members of ASEAN and other countries having major trading and investment interests in Burma, a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Law and Order Restoration Council (SLORC) and democratic opposition groups within Burma.

(d)[1] PRESIDENTIAL REPORTS.—Every six months following the enactment of this Act, the President shall report to the Chairmen of the Committee on Foreign Relations, the Committee on International Relations and the House and Senate Appropriations Committees on the following:

(1) progress toward democratization in Burma;

(2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and

(3) progress made in developing the strategy referred to in subsection (c).

(e) WAIVER AUTHORITY.—The President shall have the authority to waive, temporarily or permanently, any sanction referred to in subsection (a) or subsection (b) if he determines and certifies to Congress that the application of such sanction would be contrary to the national security interests of the United States.

(f) DEFINITIONS.—

[1] The President filed a report pursuant to this section with Presidential Determination No. 97–29 of June 13, 1997 (62 F.R. 34157); and Presidential Determination No. 98–6 of December 2, 1997 (62 F.R. 65005). In Presidential Determination No. 98–30 of June 15, 1998, the President authorized and directed the Secretary of State to transmit the required report to the Congress (63 F.R. 34255). The Secretary of State was subsequently authorized and directed to transmit the report on the following dates: Presidential Memorandum of October 27, 1998 (63 F.R. 63123); Presidential Memorandum of October 27, 1999 (64 F.R. 60647); Presidential Memorandum of April 19, 2000 (65 F.R. 24849); Presidential Memorandum of October 31, 2000 (65 F.R. 66599); Presidential Memorandum of April 12, 2001 (66 F.R. 20723); Presidential Memorandum of February 1, 2002 (67 F.R. 5923); Presidential Memorandum of November 6, 2002 (67 F.R. 75799); Presidential Determination 03–07 of December 11, 2002 (due to clerical error, report was not transmitted on November 6; 67 F.R. 77645); and Presidential Memorandum of March 28, 2003 (68 F.R. 17529). No reports are recorded in the 2004 or 2005 issues of the *Federal Register*.

(1) The term "international financial institutions" shall include the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the Asian Development Bank, and the International Monetary Fund.

(2) The term "new investment" shall mean any of the following activities if such an 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 Burma or a nongovernmental entity in Burma, on or after the date of the certification under subsection (b):

(A) the entry into a contract that includes the economical development of resources located in Burma, 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:

Provided, That the term "new investment" does not include the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology.

(3) Economic Sanctions Against Products of Burma

Partial text of Public Law 101–382 [Customs and Trade Act of 1990; H.R. 1594], 104 Stat. 629, approved August 20, 1990

AN ACT To make miscellaneous and technical changes to various trade laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE I—TRADE AGENCY AUTHORIZATION, CUSTOMS USER FEES, AND OTHER PROVISIONS

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Subtitle D—Miscellaneous Provisions

* * * * * * *

SEC. 138. ECONOMIC SANCTIONS AGAINST PRODUCTS OF BURMA.

(a) IN GENERAL.—If, prior to October 1, 1990, the President does not certify to Congress that Burma has met all of the conditions listed in subsection (b), then the President—

(1) shall impose such economic sanctions upon Burma as the President determines to be appropriate, including any sanctions appropriate under the Narcotics Control Trade Act of 1986; and

(2) should confer with other industrialized democracies in order to reach cooperative agreements to impose sanctions against Burma.

(b) CONDITIONS WHICH BURMA MUST MEET.—The conditions referred to in subsection (a) are as follows:

(1) Burma meets the certification requirements listed in section 802(b) of the Narcotics Control Trade Act of 1986;

(2) The national governmental legal authority in Burma has been transferred to a civilian government.

(3) Martial law has been lifted in Burma.

(4) Prisoners held for political reasons in Burma have been released.

(c) IMPOSITION OF SANCTIONS.—In applying subsection (a)(1), the President shall give primary consideration to the imposition of sanctions on those products which constitute major imports from Burma, including fish, tropical timber, and aquatic animals, unless the President determines that sanctions against such products would have a significant adverse effect on the economic interests of the United States.

(d) REPORTS IF SANCTIONS NOT IMPOSED.—If the President does not impose economic sanctions under subsection (a)(1), the President shall—

(1) report to the Congress his reasons for not imposing sanctions and the actions he intends to take to achieve the conditions listed in subsection (b) (1) through (4); and

(2) for as long as economic sanctions are not imposed during the 2-year period after the date on which the report is first made under paragraph (1), submit semiannual reports to the Congress regarding the reasons and actions referred in such paragraph.

* * * * * * *

(4) Blocking Property of the Government of Burma and Prohibiting Certain Transactions

Executive Order 13310, July 28, 2003, 68 F.R. 44853, 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), the Burmese Freedom and Democracy Act of 2003 (July 28, 2003), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the Government of Burma's continued repression of the democratic opposition in Burma and with respect to the national emergency declared in Executive Order 13047 of May 20, 1997; [1]

I, GEORGE W. BUSH, President of the United States of America, hereby order:

Section 1. Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, PublicLaw 106-387) (TSRA), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) the persons listed in the Annex attached and made a part of this order; and

(b) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State,

(i) to be a senior official of the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and Development Association of Burma, or any successor entity to any of the foregoing; or

(ii) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

Sec. 2. Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)), the TSRA, or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the following are prohibited:

[1] Sec. 12 of this Executive Order revoked secs. 1 through 7 of Executive Order 13047, to the extent they are inconsistent with this Executive Order.

(a) the exportation or reexportation, directly or indirectly, to Burma of any financial services either (i) from the United States or (ii) by a United States person, wherever located; and

(b) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this order if performed by a United States person or within the United States;

Sec. 3. Beginning 30 days after the effective date of this order, and except to the extent provided in section 8 of this order and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to 30 days after the effective date of this order, the importation into the United States of any article that is a product of Burma is hereby prohibited.

Sec. 4. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 5. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term "Government of Burma" means the Government of Burma (sometimes referred to as Myanmar), its agencies, instrumentalities and controlled entities, and the Central Bank of Burma.

Sec. 6. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by or to persons whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13047, and hereby prohibit such donations as provided by section 1 of this order.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to section 1 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13047, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 8. Determining that such a waiver is in the national interest of the United States, I hereby waive the prohibitions described

in section 3 of the Burmese Freedom and Democracy Act of 2003 with respect to any and all articles that are a product of Burma to the extent that prohibiting the importation of such articles would conflict with the international obligations of the United States under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the United Nations Headquarters Agreement, and other legal instruments providing equivalent privileges and immunities.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and sections 3(a) and 4 of the Burmese Freedom and Democracy Act of 2003, other than the authority to make the determinations and certification to the Congress that Burma has met the conditions described in 3(a)(3) of the Act, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The Secretary of State is authorized to exercise the functions and authorities conferred upon the President by section 3(b) of the Burmese Freedom and Democracy Act of 2003 and to redelegate these functions and authorities consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 10. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1 of this order.

Sec. 11. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 12. Sections 1 through 7 of Executive Order 13047 are hereby revoked to the extent they are inconsistent with this order. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under Executive Order 13047, not inconsistent with section 3 of this order and not revoked administratively, shall remain in full force and effect under this order until amended, modified, or terminated by proper authority. The revocation of any provision of Executive Order 13047 pursuant to this section shall not affect any violation of any rules, regulations, orders, licenses, or other forms of administrative action under that order during the period that such provision of that order was in effect.

Sec. 13. All provisions of this order other than section 3 shall not apply to any activity, or any transaction incident to an activity, undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that was entered into by a United

States person with the Government of Burma or a nongovernmental entity in Burma prior to 12:01 a.m. eastern daylight time on May 21, 1997.

Sec. 14. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 15. This order is effective on 12:01 a.m. eastern daylight time on July 29, 2003.

Sec. 16. This order shall be transmitted to the Congress and published in the Federal Register.

r. Prohibiting Certain Transactions with [Former] Yugoslavia

(1) Compliance with United Nations Sanctions Against Iraq, Serbia, and Montenegro

Partial text of Public Law 104–208, 110 Stat. 3009, approved September 30, 1996

* * * * * * *

SEC. 533.[1] (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 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 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 and 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.

* * * * * * *

[1] 110 Stat. 3009–152, 50 U.S.C. 1701 note. See also sec. 540 of this Act, set forth as a note to sec. 1511 of Public Law 103–160 (50 U.S.C. 1701 note) in *Legislation on Foreign Relations Through 2005*, vol. I–B.

(2) Sanctions Against Serbia

Partial text of P.L. 106–113 [Consolidated Appropriations for the Fiscal Year Ending September 30, 2000, and for Other Purposes; H.R. 3194], 113 Stat. 1501, approved November 29, 1999

AN ACT Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the several departments, agencies, corporations and other organizational units of the Government for the fiscal year 2000, and for other purposes, namely:

* * * * * * *

APPENDIX B—H.R. 3422

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2000, and for other purposes, namely:

* * * * * * *

TITLE V—GENERAL PROVISIONS

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SANCTIONS AGAINST SERBIA

SEC. 599.[1] (a) CONTINUATION OF EXECUTIVE BRANCH SANCTIONS.—The sanctions listed in subsection (b) shall remain in effect for fiscal year 2000, unless the President submits to the Committees on Appropriations and Foreign Relations in the Senate and the Committees on Appropriations and International Relations of the House of Representatives a certification described in subsection (c).

(b) APPLICABLE SANCTIONS.—

(1) The Secretary of the Treasury shall instruct the United States executive directors of the international financial institutions to work in opposition to, and vote against, any extension by such institutions of any financial or technical assistance or grants of any kind to Serbia.

(2) The Secretary of State should instruct the United States Ambassador to the Organization for Security and Cooperation in Europe (OSCE) to block any consensus to allow the participation of Serbia in the OSCE or any organization affiliated with the OSCE.

[1] See also sec. 1511 of Public Law 103–160, the National Defense Authorization Act for Fiscal Year 1994, in *Legislation on Foreign Relations Through 2005*, vol. I–B.

(3) The Secretary of State should instruct the United States Representative to the United Nations to vote against any resolution in the United Nations Security Council to admit Serbia to the United Nations or any organization affiliated with the United Nations, to veto any resolution to allow Serbia to assume the United Nations' membership of the former Socialist Federal Republic of Yugoslavia, and to take action to prevent Serbia from assuming the seat formerly occupied by the Socialist Federal Republic of Yugoslavia.

(4) The Secretary of State should instruct the United States Permanent Representative on the Council of the North Atlantic Treaty Organization to oppose the extension of the Partnership for Peace program or any other organization affiliated with NATO to Serbia.

(5) The Secretary of State should instruct the United States Representative to the Southeast European Cooperative Initiative (SECI) to oppose and to work to prevent the extension of SECI membership to Serbia.

(c) CERTIFICATION.—A certification described in this subsection is a certification that—

(1) the representatives of the successor states to the Socialist Federal Republic of Yugoslavia have successfully negotiated the division of assets and liabilities and all other succession issues following the dissolution of the Socialist Federal Republic of Yugoslavia;

(2) the Government of Serbia is fully complying with its obligations as a signatory to the General Framework Agreement for Peace in Bosnia and Herzegovina;

(3) the Government of Serbia is fully cooperating with and providing unrestricted access to the International Criminal Tribunal for the former Yugoslavia, including surrendering persons indicted for war crimes who are within the jurisdiction of the territory of Serbia, and with the investigations concerning the commission of war crimes and crimes against humanity in Kosova;

(4) the Government of Serbia is implementing internal democratic reforms; and

(5) Serbian federal government officials, and representatives of the ethnic Albanian community in Kosova have agreed on, signed, and begun implementation of a negotiated settlement on the future status of Kosova.

(d) STATEMENT OF POLICY.—It is the sense of the Congress that the United States should not restore full diplomatic relations with Serbia until the President submits to the Committees on Appropriations and Foreign Relations in the Senate and the Committees on Appropriations and International Relations in the House of Representatives the certification described in subsection (c).

(e) EXEMPTION OF MONTENEGRO AND KOSOVA.—The sanctions described in subsection (b) shall not apply to Montenegro or Kosova.

(f) DEFINITION.—The term "international financial institution" includes the International Monetary Fund, the International Bank

for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the European Bank for Reconstruction and Development.

(g) WAIVER AUTHORITY.—The President may waive the application in whole or in part, of any sanction described in subsection (b) if the President certifies to the Congress that the President has determined that the waiver is necessary to meet emergency humanitarian needs.

* * * * * * *

RESTRICTION ON UNITED STATES ASSISTANCE FOR CERTAIN RECONSTRUCTION EFFORTS IN THE BALKANS REGION

SEC. 599B. (a) Funds appropriated or otherwise made available by this Act for United States assistance for reconstruction efforts in the Federal Republic of Yugoslavia or any contiguous country should to the maximum extent practicable be used for the procurement of articles and services of United States origin.

(b) DEFINITIONS.—In this section:

(1) ARTICLE.—The term "article" means any agricultural commodity, steel, communications equipment, farm machinery or petrochemical refinery equipment.

(2) FEDERAL REPUBLIC OF YUGOSLAVIA.—The term "Federal Republic of Yugoslavia" includes Serbia, Montenegro and Kosova.

* * * * * * *

(3) Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans

Executive Order 13219, June 26, 2001, 66 F.R. 34777, 50 U.S.C 1701 note; as amended by Executive Order 13304, May 28, 2003, 68 F.R. 32315

NOTE.—Executive Order 13304 of May 28, 2003 (68 F.R. 32315), which amended this Executive Order, terminated the national emergency declared in Executive Order 12808 of May 30, 1992 (57 F.R. 23299) and in Executive Order 13088 of June 9, 1998 (63 F.R. 32109) regarding the former Socialist Federal Republic of Yugoslavia. Executive Order 13304 revoked both of these Executive Orders and further revoked Executive Order 12810 of June 5, 1992 (57 F.R. 24347) regarding the blocking of property of the Federal Republic of Yugoslavia (Serbia and Montenegro); Executive Order 12831 of January 15, 1993 (58 F.R. 5253) regarding additional measures with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro); Executive Order 12846 of April 25, 1993 (58 F.R. 25771) regarding additional measures with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro); Executive Order 12934 of October 25, 1994 (59 F.R. 54117) regarding blocking property and additional measures with respect to the Bosnian Serb-controlled areas of the Republic of Bosnia and Herzegovina; Executive Order 13121 of April 30, 1999 (64 F.R. 24021) regarding the blocking of property of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and prohibiting trade transactions involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in response to the situation in Kosovo; and Executive Order 13192 of January 17, 2001 (66 F.R. 7379) regarding the lifting and modifying of measures with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro).

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, have determined that the actions of persons engaged in, or assisting, sponsoring, or supporting, (i) extremist violence in the

former Yugoslav Republic of Macedonia, southern Serbia, the Federal Republic of Yugoslavia, and elsewhere in the Western Balkans region, or (ii) acts obstructing implementation of the Dayton Accords in Bosnia or United Nations Security Council Resolution 1244 of June 10, 1999, in Kosovo, threaten the peace in or diminish the security and stability of those areas and the wider region, undermine the authority, efforts, and objectives of the United Nations, the North Atlantic Treaty Organization (NATO), and other international organizations and entities present in those areas and the wider region, and endanger the safety of persons participating in or providing support to the activities of those organizations and entities, including United States military forces and Government officials. I find that such actions constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and hereby declare a national emergency to deal with that threat. I hereby order:

Section 1. (a)[1] Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), and the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX, Public Law 106-387), and in regulations, orders, directives, or licenses that may hereafter be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of:

(i) the persons listed in the Annex to this order;[2] and

(ii) persons designated by the Secretary of the Treasury, in consultation with the Secretary of State, because they are determined:

(A) to be under open indictment by the International Criminal Tribunal for the former Yugoslavia, unless circumstances warrant otherwise, or

(B) to have committed, or to pose a significant risk of committing, acts of violence that have the purpose or effect of threatening the peace in or diminishing the stability or security of any area or state in the Western Balkans region, undermining the authority, efforts, or objectives of international organizations or entities present in the region, or endangering the safety of persons participating in or providing support to the activities of those international organizations or entities, or

(C) to have actively obstructed, or pose a significant risk of actively obstructing, the Ohrid Framework Agreement of 2001 relating to Macedonia, United Nations Security Council Resolution 1244 relating to Kosovo, or the Dayton Accords or the Conclusions of the Peace Implementation Conference held in London on December 8–9, 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council or its Steering Board, relating to Bosnia and Herzegovina, or

(D) to have materially assisted in, sponsored, or provided financial, material, or technological support for, or goods or

[1] Sec. 3 of Executive Order 13304 (68 F.R. 32315) amended and restated subsecs. (a) and (b).
[2] Sec. 2 of Executive Order 13304 (68 F.R. 32315) replaced and superseded the Annex to this Executive Order. For the text of the current Annex, see 68 F.R. 32318.

services in support of, such acts of violence or obstructionism or any person listed in or designated pursuant to this order, or

(E) to be owned or controlled by, or acting or purporting to act directly or indirectly for or on behalf of, any person listed in or designated pursuant to this order, that are or hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(b)[1] I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by or to persons determined to be subject to the sanctions imposed under this order would seriously impair the ability to deal with the national emergency declared in this order, and hereby prohibit such donations as provided in paragraph (a) of this section.

(c) The blocking of property and interests in property pursuant to paragraph (a) of this section includes, but is not limited to, the prohibition of the making or receiving by a United States person of any contribution or provision of funds, goods, or services to or for the benefit of a person designated in or pursuant to paragraph (a) of this section.

Sec. 2. Any transaction by a United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited. Any conspiracy formed to violate the prohibitions of this order is prohibited.

Sec. 3. For the purposes of this order:

(a) The term "person" means an individual or entity;

(b) The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) The term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 4. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken.

Sec. 5. This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or any other person.

Sec. 6. (a) This order is effective at 12:01 eastern daylight time on June 27, 2001;

(b) This order shall be transmitted to the Congress and published in the Federal Register.

Sec. 7.[3] For those persons listed in the Annex to this order or determined to be subject to the sanctions imposed under this order who might have a constitutional presence in the United States, I have determined that, because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 8.[3] The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant inclusion of a person in the Annex to this order and that such person is therefore no longer covered within the scope of the sanctions set forth herein. Such a determination shall become effective upon publication in the Federal Register.

[3] Sec. 4 of Executive Order 13304 (68 F.R. 32315) added secs. 7 and 8.

s. Prohibiting Certain Transactions With Respect to Rwanda and Delegating Authority With Respect to Other United Nations Arms Embargoes

Executive Order 12918, May 26, 1994, 59 F.R. 28205, 22 U.S.C. 287c note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), the Export Administration Act of 1979 (50 U.S.C. App. 2401 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 918 of May 17, 1994, it is hereby ordered as follows:[1]

Section 1. *Arms Embargo.* The following activities are prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses that may hereafter be issued pursuant to this order: (a) The sale or supply to Rwanda from the territory of the United States by any person, or by any United States person in any foreign country or other location, or using any U.S.-registered vessel or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned, irrespective of origin. This prohibition does not apply to activities related to the United Nations Assistance Mission for Rwanda or the United Nations Observer Mission Uganda-Rwanda or other entities permitted to have such items by the United Nations Security Council; and

(b) Any willful evasion or attempt to violate or evade any of the prohibitions set forth in this order, by any person.

Sec. 2. *Definitions.* For purposes of this order, the term: (a) "Person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities; and

(b) "United States person" means any citizen or national of the United States, any lawful permanent resident of the United States, or any corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities, organized under the laws of the United States (including foreign branches).

[1] The Department of State suspended all licenses and other approvals to export or otherwise transfer defense articles or defense services to Rwanda, pursuant to secs. 38 and 42 of the AECA, on May 27, 1994 (Public Notice 2016; 59 F.R. 28583). Subsequently, the Department of State amended the International Traffic in Arms Regulations (22 CFR parts 120–130) to include Rwanda (Public Notice 2050; 59 F.R. 42158).

Sec. 3. *Responsibilities.* The functions and responsibilities for the enforcement of the foregoing prohibitions are delegated as follows:
(a) The Secretary of State is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by section 5 of the United Nations Participation Act and other authorizes available to the Secretary of State, as may be necessary to carry out the purpose of this order, relating to arms and related materiel of a type enumerated on the United States Munitions List (22 C.F.R. Part 121). The Secretary of State may redelegate any of these functions to other officers and agencies of the United States Government; and

(b) The Secretary of Commerce, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by section 5 of the United Nations Participation Act and other authorities available to the Secretary of Commerce, as may be necessary to carry out the purposes of this order, relating to arms and related materiel identified in the Export Administration Regulations (15 C.F.R. Parts 730–799). The Secretary of Commerce may redelegate any of these functions to other officers and agencies of the United States Government.

Sec. 4. *Authorization.* All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 5. *Delegation of Authority.* The Secretary of State and the Secretary of Commerce in consultation with the Secretary of State are hereby authorized to promulgate rules and regulations, and to employ all powers granted to the President by section 5 of the United Nations Participation Act and not otherwise delegated by Executive order, as may be necessary to carry out the purpose of implementing any other arms embargo mandated by resolution of the United Nations Security Council, consistent with the allocation of functions delegated under section 3 of this order. The Secretary of State or the Secretary of Commerce may redelegate any of these functions to other officers and agencies of the United States Government.

Sec. 6. *Judicial Review.* Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. *Effective Date.* This order shall take effect at 11:59 p.m. eastern daylight time on May 26, 1994.

t. Prohibiting Certain Transactions with Sudan

(1) Importation of Gum Arabic from Sudan

Partial text of Public Law 106–476 [H.R. 4868], 114 Stat. 2101, approved November 9, 2000

AN ACT To amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE I—TARIFF PROVISIONS

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Subtitle B—Other Tariff Provisions

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CHAPTER 4—MISCELLANEOUS PROVISIONS

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SEC. 1464. IMPORTATION OF GUM ARABIC.

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

(1) The Republic of the Sudan produces 60 percent of the world's supply of gum arabic in raw form and has a virtual monopoly on the world's supply of the highest grade of gum arabic.

(2) The President imposed comprehensive sanctions against Sudan on November 3, 1997, under Executive Order No. 13067.

(3) The Secretary of the Treasury, upon recommendation of the Secretary of State, has issued limited licenses each year since the imposition of sanctions against Sudan under Executive Order No. 13067 to permit United States gum arabic processors to import gum arabic in raw form from Sudan due to a lack of alternative sources in other countries.

(4) The United States gum arabic processing industry consists of three small companies whose existence is threatened by the comprehensive sanctions in effect against Sudan.

(5) The United States gum arabic processing industry is working with the United States Agency for International Development to develop alternative sources of gum arabic in raw form in countries that are not subject to sanctions, but alternative sources of the highest grade of gum arabic in raw form are not currently available.

(b) LICENSE APPLICATIONS TO IMPORT GUM ARABIC FROM SUDAN.—Notwithstanding any other provision of law, the Secretary of the Treasury and the Secretary of State, in consultation with the Secretary of Commerce and the heads of other appropriate agencies—

(1) shall consider promptly any license application by a United States gum arabic processor to import gum arabic in raw form from the Republic of the Sudan; and

(2) in reviewing such license applications by United States gum arabic processors, shall consider whether adequate commercial quantities of the highest grade of gum arabic in raw form are available from countries not subject to United States sanctions in order to allow such United States processors of gum arabic to remain in business.

(c) DEVELOPMENT OF ALTERNATIVE SOURCES OF GUM ARABIC.—The President shall utilize such authority as is available to the President to promote the development in countries other than Sudan of alternative sources of the highest grade of gum arabic in raw form of sufficient commercial quality to be utilized in products intended for human consumption.

(d) DEFINITION.—In this section, the term "gum arabic in raw form" means gum arabic of the type described in subheadings 1301.20.00 and 1301.90.90 of the Harmonized Tariff Schedule of the United States.

(2) Blocking Sudanese Government Property and Prohibiting Transactions with Sudan

Executive Order 13067, November 3, 1997, 62 F.R. 59989, 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code;

I, WILLIAM J. CLINTON, President of the United States of America, find that the policies and actions of the Government of Sudan, including continued support for international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence of human rights violations, including slavery and the denial of religious freedom, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and hereby declare a national emergency [1] to deal with that threat. I hereby order:

Section 1. Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and in regulations, orders, directives, or licenses that may be issued pursuant to this order, all property and interests in property of the Government of Sudan that are in the United States, that hereafter come within the United States, or that hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. The following are prohibited, except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and in regulations, orders, directives, or licenses that may be issued pursuant to this order:

(a) the importation into the United States of any goods or services of Sudanese origin, other than information or informational materials;

(b) the exportation or reexportation, directly or indirectly, to Sudan of any goods, technology (including technical data, software, or other information), or services from the United States or by a United States person, wherever located, or requiring the issuance of a license by a Federal agency, except for donations of articles intended to relieve human suffering, such as food, clothing, and medicine;

(c) the facilitation by a United States person, including but not limited to brokering activities, of the exportation or reexportation of goods, technology, or services from Sudan to any destination, or to Sudan from any location;

[1] The national emergency with respect to Sudan was continued in Presidential notices of October 27, 1998 (63 F.R. 58617); October 29, 1999 (64 F.R. 59105); October 31, 2000 (65 F.R. 66161); October 31, 2001 (66 F.R. 55867); October 31, 2002 (67 F.R. 66523); October 29, 2003 (68 F.R. 62211); November 1, 2004 (69 F.R. 63915); and November 1, 2005 (70 F.R. 66745).

(d) the performance by any United States person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Sudan;

(e) the grant or extension of credits or loans by any United States person to the Government of Sudan;

(f) any transaction by a United States person relating to transportation of cargo to or from Sudan; the provision of transportation of cargo to or from the United States by any Sudanese person or any vessel or aircraft of Sudanese registration; or the sale in the United States by any person holding authority under subtitle 7 of title 49, United States Code, of any transportation of cargo by air that includes any stop in Sudan; and

(g) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 3. Nothing in this order shall prohibit:

(a) transactions for the conduct of the official business of the Federal Government or the United Nations by employees thereof; or

(b) transactions in Sudan for journalistic activity by persons regularly employed in such capacity by a news-gathering organization.

Sec. 4. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

(d) the term "Government of Sudan" includes the Government of Sudan, its agencies, instrumentalities and controlled entities, and the Central Bank of Sudan.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State and, as appropriate, other agencies, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. (a) This order shall take effect at 12:01 a.m. eastern standard time on November 4, 1997, except that trade transactions under contracts in force as of the effective date of this order may be performed pursuant to their terms through 12:01 a.m. eastern

standard time on December 4, 1997, and letters of credit and other financing agreements for such underlying trade transactions may be performed pursuant to their terms.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

u. Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons

Executive Order 13159, June 24, 2000, 65 F.R. 39279, 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code.

I, WILLIAM J. CLINTON, President of the United States of America, in view of the policies underlying Executive Order 12938 of November 14, 1994, and Executive Order 13085 of May 26, 1998, find that the risk of nuclear proliferation created by the accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States, and hereby declare a national emergency to deal with that threat, Ihereby order:

Section 1.[1] A major national security goal of the United States is to ensure that fissile material removed from Russian nuclear weapons pursuant to various arms control and disarmament agreements is dedicated to peaceful uses, subject to transparency measures, and protected from diversion to activities of proliferation concern. As reflected in Executive Order 13085, the full implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993, and related contracts and agreements (collectively, the "HEU Agreements") is essential to the attainment of this goal. The HEU Agreements provide for the conversion of approximately 500 metric tons of highly enriched uranium contained in Russian nuclear weapons into low-enriched uranium for use as fuel in commercial nuclear reactors. In furtherance of our national security goals, all heads of departments and agencies of the United States Government shall continue to take all appropriate measures within their authority to further the full implementation of the HEU Agreements.

Sec. 2. Government of the Russian Federation assets directly related to the implementation of the HEU Agreements currently may be subject to attachment, judgment, decree, lien, execution, garnishment, or other judicial process, thereby jeopardizing the full

[1] The national emergency with respect to the disposition of highly enriched uranium from Russia was continued in a notice of the President on June 11, 2001 (66 F.R. 32207); June 18, 2002 (67 F.R. 42179); June 10, 2003 (68 F.R. 35149); June 16, 2004 (69 F.R. 34047); and June 17, 2005 (70 F.R. 35507).

In Executive Order 13313 of July 31, 2003 (68 F.R. 46073), the President assigned the function of submitting recurring reports to the Congress pursuant to this order to the Secretary of State.

implementation of the HEU Agreements to the detriment of U.S. foreign policy. In order to ensure the preservation and proper and complete transfer to the Government of the Russian Federation of all payments due to it under the HEU Agreements, and except to the extent provided in regulations, orders, directives, or licenses that may hereafter be issued pursuant to this order, all property and interests in property of the Government of the Russian Federation directly related to the implementation of the HEU Agreements that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in. Unless licensed or authorized pursuant to this order, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to this order.

Sec. 3. For the purposes of this order: (a) The term "person" means an individual or entity;

(b) The term "entity" means a partnership, association, trust, joint venture, corporation, or other organization;

(c) The term "United States person" means any United States citizen; permanent resident alien; juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; or any person in the United States; and

(d) The term "Government of the Russian Federation" means the Government of the Russian Federation, any political subdivision, agency, or instrumentality thereof, and any person owned or controlled by, or acting for or on behalf of, the Government of the Russian Federation.

Sec. 4. (a) The Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Energy, and, as appropriate, other agencies, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their statutory authority to carry out the provisions of this order.

(b) Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization from any department or agency of the United States Government in compliance with applicable laws and regulations subject to the jurisdiction of the department or agency.

Sec. 5. This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or any other person.

Sec. 6. (a) This order is effective at 12:01 a.m. eastern daylight time on June 22, 2000.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

v. Prohibiting the Importation of Rough Diamonds from Sierra Leone

(1) Clean Diamond Trade Act

Public Law 108–19 [H.R. 1584], 117 Stat. 631, approved April 25, 2003

AN ACT To implement effective measures to stop trade in conflict diamonds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Clean Diamond Trade Act".

SEC. 2.[2] FINDINGS.

Congress finds the following:

(1) Funds derived from the sale of rough diamonds are being used by rebels and state actors to finance military activities, overthrow legitimate governments, subvert international efforts to promote peace and stability, and commit horrifying atrocities against unarmed civilians. During the past decade, more than 6,500,000 people from Sierra Leone, Angola, and the Democratic Republic of the Congo have been driven from their homes by wars waged in large part for control of diamond mining areas. A million of these are refugees eking out a miserable existence in neighboring countries, and tens of thousands have fled to the United States. Approximately 3,700,000 people have died during these wars.

(2) The countries caught in this fighting are home to nearly 70,000,000 people whose societies have been torn apart not only by fighting but also by terrible human rights violations.

(3) Human rights and humanitarian advocates, the diamond trade as represented by the World Diamond Council, and the United States Government have been working to block the trade in conflict diamonds. Their efforts have helped to build a consensus that action is urgently needed to end the trade in conflict diamonds.

(4) The United Nations Security Council has acted at various times under chapter VII of the Charter of the United Nations to address threats to international peace and security posed by conflicts linked to diamonds. Through these actions, it has prohibited all states from exporting weapons to certain countries affected by such conflicts. It has further required all states to prohibit the direct and indirect import of rough diamonds from

[1] 19 U.S.C. 3901 note.
[2] 19 U.S.C. 3901.

Sierra Leone unless the diamonds are controlled under specified certificate of origin regimes and to prohibit absolutely the direct and indirect import of rough diamonds from Liberia.

(5) In response, the United States implemented sanctions restricting the importation of rough diamonds from Sierra Leone to those diamonds accompanied by specified certificates of origin and fully prohibiting the importation of rough diamonds from Liberia. The United States is now taking further action against trade in conflict diamonds.

(6) Without effective action to eliminate trade in conflict diamonds, the trade in legitimate diamonds faces the threat of a consumer backlash that could damage the economies of countries not involved in the trade in conflict diamonds and penalize members of the legitimate trade and the people they employ. To prevent that, South Africa and more than 30 other countries are involved in working, through the "Kimberley Process", toward devising a solution to this problem. As the consumer of a majority of the world's supply of diamonds, the United States has an obligation to help sever the link between diamonds and conflict and press for implementation of an effective solution.

(7) Failure to curtail the trade in conflict diamonds or to differentiate between the trade in conflict diamonds and the trade in legitimate diamonds could have a severe negative impact on the legitimate diamond trade in countries such as Botswana, Namibia, South Africa, and Tanzania.

(8) Initiatives of the United States seek to resolve the regional conflicts in sub-Saharan Africa which facilitate the trade in conflict diamonds.

(9) The Interlaken Declaration on the Kimberley Process Certification Scheme for Rough Diamonds of November 5, 2002, states that Participants will ensure that measures taken to implement the Kimberley Process Certification Scheme for rough Diamonds will be consistent with international trade rules.

SEC. 3.[3] DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Ways and Means and the Committee on International Relations of the House of Representatives, and the Committee on Finance and the Committee on Foreign Relations of the Senate.

(2) CONTROLLED THROUGH THE KIMBERLEY PROCESS CERTIFICATION SCHEME.—An importation or exportation of rough diamonds is "controlled through the Kimberley Process Certification Scheme" if it is an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is—

(A) carried out in accordance with the Kimberley Process Certification Scheme, as set forth in regulations promulgated by the President; or

[3] 19 U.S.C. 3902.

(B) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the Kimberley Process Certification Scheme.

(3) EXPORTING AUTHORITY.—The term "exporting authority" means 1 or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate the Kimberley Process Certificate.

(4) IMPORTING AUTHORITY.—The term "importing authority" means 1 or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regulating imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

(5) KIMBERLEY PROCESS CERTIFICATE.—The term "Kimberley Process Certificate" means a forgery resistant document of a Participant that demonstrates that an importation or exportation of rough diamonds has been controlled through the Kimberley Process Certification Scheme and contains the minimum elements set forth in Annex I to the Kimberley Process Certification Scheme.

(6) KIMBERLEY PROCESS CERTIFICATION SCHEME.—The term "Kimberley Process Certification Scheme" means those standards, practices, and procedures of the international certification scheme for rough diamonds presented in the document entitled "Kimberley Process Certification Scheme" referred to in the Interlaken Declaration on the Kimberley Process Certification Scheme for Rough Diamonds of November 5, 2002.

(7) PARTICIPANT.—The term "Participant" means a state, customs territory, or regional economic integration organization identified by the Secretary of State.

(8) PERSON.—The term "person" means an individual or entity.

(9) ROUGH DIAMOND.—The term "rough diamond" means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States.

(10) UNITED STATES.—The term "United States", when used in the geographic sense, means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

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

(A) any United States citizen or any alien admitted for permanent residence into the United States;

(B) any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); and

(C) any person in the United States.

SEC. 4.[4] MEASURES FOR THE IMPORTATION AND EXPORTATION OF ROUGH DIAMONDS.

(a) PROHIBITION.—The President shall prohibit the importation into, or exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme.

(b) WAIVER.—The President may waive the requirements set forth in subsection (a) with respect to a particular country for periods of not more than 1 year each, if, with respect to each such waiver—

(1) the President determines and reports to the appropriate congressional committees that such country is taking effective steps to implement the Kimberley Process Certification Scheme; or

(2) the President determines that the waiver is in the national interests of the United States, and reports such determination to the appropriate congressional committees, together with the reasons therefor.

SEC. 5.[5] REGULATORY AND OTHER AUTHORITY.

(a) IN GENERAL.—The President is authorized to and shall as necessary issue such proclamations, regulations, licenses, and orders, and conduct such investigations, as may be necessary to carry out this Act.

(b) RECORDKEEPING.—Any United States person seeking to export from or import into the United States any rough diamonds shall keep a full record of, in the form of reports or otherwise, complete information relating to any act or transaction to which any prohibition imposed under section 4(a) applies. The President may require such person to furnish such information under oath, including the production of books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(c) OVERSIGHT.—The President shall require the appropriate Government agency to conduct annual reviews of the standards, practices, and procedures of any entity in the United States that issues Kimberley Process Certificates for the exportation from the United States of rough diamonds to determine whether such standards, practices, and procedures are in accordance with the Kimberley Process Certification Scheme. The President shall transmit to the appropriate congressional committees a report on each annual review under this subsection.

SEC. 6.[6] IMPORTING AND EXPORTING AUTHORITIES.

(a) IN THE UNITED STATES.—For purposes of this Act—

(1) the importing authority shall be the United States Bureau of Customs and Border Protection or, in the case of a territory or possession of the United States with its own customs administration, analogous officials; and

(2) the exporting authority shall be the Bureau of the Census.

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[4] 19 U.S.C. 3903.
[5] 19 U.S.C. 3904.
[6] 19 U.S.C. 3905.

(b) OF OTHER COUNTRIES.—The President shall publish in the Federal Register a list of all Participants, and all exporting authorities and importing authorities of Participants. The President shall update the list as necessary.

SEC. 7.[7] STATEMENT OF POLICY.

The Congress supports the policy that the President shall take appropriate steps to promote and facilitate the adoption by the international community of the Kimberley Process Certification Scheme implemented under this Act.

SEC. 8.[8] ENFORCEMENT.

(a) IN GENERAL.—In addition to the enforcement provisions set forth in subsection (b)—

(1) a civil penalty of not to exceed $10,000 may be imposed on any person who violates, or attempts to violate, any license, order, or regulation issued under this Act; and

(2) whoever willfully violates, or willfully attempts to violate, any license, order, or regulation issued under his Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who willfully participates in such violation may be punished by a like fine, imprisonment, or both.

(b) IMPORT VIOLATIONS.—Those customs laws of the United States, both civil and criminal, including those laws relating to seizure and forfeiture, that apply to articles imported in violation of such laws shall apply with respect to rough diamonds imported in violation of this Act.

(c) AUTHORITY TO ENFORCE.—The United States Bureau of Customs and Border Protection and the United States Bureau of Immigration and Customs Enforcement are authorized, as appropriate, to enforce the provisions of subsection (a) and to enforce the laws and regulations governing exports of rough diamonds, including with respect to the validation of the Kimberley Process Certificate by the exporting authority.

SEC. 9.[9] TECHNICAL ASSISTANCE.

The President may direct the appropriate agencies of the United States Government to make available technical assistance to countries seeking to implement the Kimberley Process Certification Scheme.

SEC. 10.[10] SENSE OF CONGRESS.

(a) ONGOING PROCESS.—It is the sense of the Congress that the Kimberley Process Certification Scheme, officially launched on January 1, 2003, is an ongoing process. The President should work with Participants to strengthen the Kimberley Process Certification Scheme through the adoption of measures for the sharing of statistics on the production of and trade in rough diamonds, and for monitoring the effectiveness of the Kimberley Process Certification

[7] 19 U.S.C. 3906.
[8] 19 U.S.C. 3907.
[9] 19 U.S.C. 3908.
[10] 19 U.S.C. 3909.

Scheme in stemming trade in diamonds the importation or exportation of which is not controlled through the Kimberley Process Certification Scheme.

(b) STATISTICS AND REPORTING.—It is the sense of the Congress that under Annex III to the Kimberley Process Certification Scheme, Participants recognized that reliable and comparable data on the international trade in rough diamonds are an essential tool for the effective implementation of the Kimberley Process Certification Scheme. Therefore, the executive branch should continue to—

(1) keep and publish statistics on imports and exports of rough diamonds under subheadings 7102.10.00, 7102.21, and 7102.31.00 of the Harmonized Tariff Schedule of the United States;

(2) make these statistics available for analysis by interested parties and by Participants; and

(3) take a leadership role in negotiating a standardized methodology among Participants for reporting statistics on imports and exports of rough diamonds.

SEC. 11.[11] KIMBERLEY PROCESS IMPLEMENTATION COORDINATING COMMITTEE.

The President shall establish a Kimberley Process Implementation Coordinating Committee to coordinate the implementation of this Act. The Committee shall be composed of the following individuals or their designees:

(1) The Secretary of the Treasury and the Secretary of State, who shall be co-chairpersons.

(2) The Secretary of Commerce.

(3) The United States Trade Representative.

(4) The Secretary of Homeland Security.

(5) A representative of any other agency the President deems appropriate.

SEC. 12.[12] REPORTS.

(a) ANNUAL REPORTS.—Not later than 1 year after the date of the enactment of this Act and every 12 months thereafter for such period as this Act is in effect, the President shall transmit to the Congress a report—

(1) describing actions taken by countries that have exported rough diamonds to the United States during the preceding 12-month period to control the exportation of the diamonds through the Kimberley Process Certification Scheme;

(2) describing whether there is statistical information or other evidence that would indicate efforts to circumvent the Kimberley Process Certification Scheme, including cutting rough diamonds for the purpose of circumventing the Kimberley Process Certification Scheme;

(3) identifying each country that, during the preceding 12-month period, exported rough diamonds to the United States and was exporting rough diamonds not controlled through the Kimberley Process Certification Scheme, if the failure to do so has significantly increased the likelihood that those diamonds

[11] 19 USC 3910.
[12] 19 U.S.C. 3911.

not so controlled are being imported into the United States; and

(4) identifying any problems or obstacles encountered in the implementation of this Act or the Kimberly Process Certification Scheme.

(b) SEMIANNUAL REPORTS.—For each country identified in subsection (a)(3), the President, during such period as this Act is in effect, shall, every 6 months after the initial report in which the country was identified, transmit to the Congress a report that explains what actions have been taken by the United States or such country since the previous report to ensure that diamonds the exportation of which was not controlled through the Kimberley Process Certification Scheme are not being imported from that country into the United States. The requirement to issue a semiannual report with respect to a country under this subsection shall remain in effect until such time as the country is controlling the importation and exportation of rough diamonds through the Kimberley Process Certification Scheme.

SEC. 13.[13] GAO REPORT.

Not later than 24 months after the effective date of this Act, the Comptroller General of the United States shall transmit a report to the Congress on the effectiveness of the provisions of this Act in preventing the importation or exportation of rough diamonds that is prohibited under section 4. The Comptroller General shall include in the report any recommendations on any modifications to this Act that may be necessary.

SEC. 14.[14] DELEGATION OF AUTHORITIES.

The President may delegate the duties and authorities under this Act to such officers, officials, departments, or agencies of the United States Government as the President deems appropriate.

SEC. 15.[15] EFFECTIVE DATE.

This Act shall take effect on the date on which the President certifies to the Congress that—

(1) an applicable waiver that has been granted by the World Trade Organization is in effect; or

(2) an applicable decision in a resolution adopted by the United Nations Security Council pursuant to Chapter VII of the Charter of the United Nations is in effect.

This Act shall thereafter remain in effect during those periods in which, as certified by the President to the Congress, an applicable waiver or decision referred to in paragraph (1) or (2) is in effect.

[13] 19 U.S.C. 3912.
[14] 19 U.S.C. 3913.
[15] 19 U.S.C. 3901 note.

(2) Implementing the Clean Diamond Trade Act

Executive Order 13312, July 29, 2003, 68 F.R. 45151; 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Clean Diamond Trade Act (Public Law 108–19) (the "Act"), the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, and in view of the national emergency described and declared in Executive Order 13194 of January 18, 2001, and expanded in scope in Executive Order 13213 of May 22, 2001,

I, GEORGE W. BUSH, President of the United States of America, note that, in response to the role played by the illicit trade in diamonds in fueling conflict and human rights violations in Sierra Leone, the President declared a national emergency in Executive Order 13194 and imposed restrictions on the importation of rough diamonds into the United States from Sierra Leone. I expanded the scope of that emergency in Executive Order 13213 and prohibited absolutely the importation of rough diamonds from Liberia. I further note that representatives of the United States and numerous other countries announced in the Interlaken Declaration of November 5, 2002, the launch of the Kimberley Process Certification Scheme (KPCS) for rough diamonds, under which Participants prohibit the importation of rough diamonds from, or the exportation of rough diamonds to, a non-Participant and require that shipments of rough diamonds from or to a Participant be controlled through the KPCS. The Clean Diamond Trade Act authorizes the President to take steps to implement the KPCS. Therefore, in order to implement the Act, to harmonize Executive Orders 13194 and 13213 with the Act, to address further threats to international peace and security posed by the trade in conflict diamonds, and to avoid undermining the legitimate diamond trade, it is hereby ordered as follows:

Section 1. *Prohibitions.* Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, the following are, except to the extent a waiver issued under section 4(b) of the Act applies, prohibited:

(a) the importation into, or exportation from, the United States on or after July 30, 2003, of any rough diamond, from whatever source, unless the rough diamond has been controlled through the KPCS;

(b) any transaction by a United States person anywhere, or any transaction that occurs in whole or in part within the United States, that evades or avoids, or has the purpose of

evading or avoiding, or attempts to violate, any of the prohibitions set forth in this section; and

(c) any conspiracy formed to violate any of the prohibitions of this section.

Sec. 2. *Assignment of Functions.* (a) The functions of the President under the Act are assigned as follows:

(i) sections 4(b), 5(c), 6(b), 11, and 12 to the Secretary of State; and

(ii) sections 5(a) and 5(b) to the Secretary of the Treasury.

(b) The Secretary of State and the Secretary of the Treasury may reassign any of these functions to other officers, officials, departments, and agencies within the executive branch, consistent with applicable law.

(c) In performing the function of the President under section 11 of the Act, the Secretary of State shall establish the coordinating committee as part of the Department of State for administrative purposes only, and shall, consistent with applicable law, provide administrative support to the coordinating committee. In the performance of functions assigned by subsection 2(a) of this order or by the Act, the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security shall consult the coordinating committee, as appropriate.

Sec. 3. *Amendments to Related Executive Orders.*[1] * * *

Sec. 4. *Definitions.* For the purposes of this order and Executive Order 13194, the definitions set forth in section 3 of the Act shall apply, and the term "Kimberley Process Certification Scheme" shall not be construed to include any changes to the KPCS after April 25, 2003.

Sec. 5. *General Provisions.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

Sec. 6. *Effective Date and Transmittal.* (a) Sections 1 and 3 of this order are effective at 12:01 a.m. eastern daylight time on July 30, 2003. The remaining provisions of this order are effective immediately.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

[1] Sec. 3 amended Executive Order 13194 (66 F.R. 7389) that declared a national emergency with respect to Sierra Leone, and Executive Order 13213 (66 F.R. 28827) that expanded that emergency with respect to Liberia. Subsequently, Executive Order 13324 (69 F.R. 2823) revoked Executive Order 13194 and Executive Order 13213.

NOTE.—Executive Order 13324 of January 15, 2004 (69 F.R. 2823) terminated the national emergency declared in Executive Order 13194 of January 18, 2001 (66 F.R. 7389) regarding Sierra Leone and the expansion of that emergency declared in Executive Order 13213 of May 22, 2001 (66 F.R. 28827) regarding Liberia. Executive Order 13324 further revoked Executive Order 13194 and Executive Order 13213.

(w) Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia

Executive Order 13348, July 22, 2004, 69 F.R. 44885, 50 U.S.C. 1701 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolutions 1521 of December 22, 2003, and 1532 of March 12, 2004,

I, GEORGE W. BUSH, President of the United States of America, note that the actions and policies of former Liberian President Charles Taylor and other persons, in particular their unlawful depletion of Liberian resources and their removal from Liberia and secreting of Liberian funds and property, have undermined Liberia's transition to democracy and the orderly development of its political, administrative, and economic institutions and resources. I further note that the Comprehensive Peace Agreement signed on August 18, 2003, and the related ceasefire have not yet been universally implemented throughout Liberia, and that the illicit trade in round logs and timber products is linked to the proliferation of and trafficking in illegal arms, which perpetuate the Liberian conflict and fuel and exacerbate other conflicts throughout West Africa. I find that the actions, policies, and circumstances described above constitute an unusual and extraordinary threat to the foreign policy of the United States and hereby declare a national emergency to deal with that threat.[1] To address that threat, I hereby order:

Section 1. (a) Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

[1] The national emergency with respect to Liberia was continued by Presidential Notice on July 19, 2005 (70 F.R. 41935).

(A) to be or have been an immediate family member of Charles Taylor;

(B) to have been a senior official of the former Liberian regime headed by Charles Taylor or otherwise to have been or be a close ally or associate of Charles Taylor or the former Liberian regime;

(C) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the unlawful depletion of Liberian resources, the removal of Liberian resources from that country, and the secreting of Liberian funds and property by any person whose property and interests in property are blocked pursuant to this order; or

(D) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of, any person whose property or interests in property are blocked pursuant to paragraph (a) of this section would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by paragraph (a) of this section.

(c) The prohibitions in paragraph (a) of this section include, but are not limited to,

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of, any person whose property or interests in property are blocked pursuant to this order, and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 2. Except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the direct or indirect importation into the United States of any round log or timber product originating in Liberia is prohibited.

Sec. 3. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. For purposes of this order: (a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term "round log or timber product" means any product classifiable in Chapter 44 of the Harmonized Tariff Schedule of the United States.

Sec. 5. For those persons whose property and interests in property are blocked pursuant to section 1 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of NEA, 50 U.S.C. 1641(c), and section 204(c) of IEEPA, 50 U.S.C. 1703(c).

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1 of this order.

Sec. 9. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 10. This order is effective at 12:01 a.m. eastern daylight time on July 23, 2004.

Sec. 11. This order shall be transmitted to the Congress and published in the Federal Register.

(x) Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe

Executive Order 13288, March 6, 2003, 68 F.R. 11457, 50 U.S.C. 1701 note; as amended by Executive Order 13391, November 22, 2005, 70 F.R. 71201

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, have determined that the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions, contributing to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region, constitute an unusual and extraordinary threat to the foreign policy of the United States, and I hereby declare a national emergency to deal with that threat.[1]

I hereby order:

Section 1.[2] (a) Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), and in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to have engaged in actions or policies to undermine Zimbabwe's democratic processes or institutions;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such actions or policies or any person whose property and interests in property are blocked pursuant to this order;

[1] The national emergency with respect to Zimbabwe was continued by Presidential Notice on March 2, 2004 (69 F.R. 10313) and on March 2, 2005 (70 F.R. 19859).

[2] Sec. 2 of Executive Order 13391 (70 F.R. 71201) redesignated sec. 6 as sec. 8, struck out secs. 1 through 5, and inserted in lieu thereof new secs. 1 though 7.

(C) to be or have been an immediate family member of any person whose property and interests in property are blocked pursuant to this order; or

(D) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by paragraph (a) of this section.

(c) The prohibitions in paragraph (a) of this section include but are not limited to (i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order, and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 2.[2] (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3.[2] For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 4.[2] For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that, because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that, for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 5.[2] The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government are hereby

directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken.

Sec. 6.[2] The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1(a) of this order.

Sec. 7.[2] This order is not intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 8.[2] (a) This order is effective at 12:01 eastern standard time on March 7, 2003; and

(b) This order shall be transmitted to the Congress and published in the Federal Register.

6. Johnson Act—Financial Transactions With Foreign Governments [1]

Partial text of Public Law 80–772 [H.R. 3190], 62 Stat. 744, approved June 25, 1948; amended by Public Law 103–322 [Violent Crime Control and Law Enforcement Act of 1994; H.R. 3355], 108 Stat. 1796, approved September 13, 1994

* * * * * * *

Whoever, within the United States, purchases or sells the bonds, securities, or other obligations of any foreign government or political subdivision thereof or any organization or association acting for or on behalf of a foreign government or political subdivision thereof, issued after April 13, 1934, or makes any loan to such foreign government, political subdivision, organization or association, except a renewal or adjustment of existing indebtedness, while such government, political subdivision, organization or association, is in default in the payment of its obligations, or any part thereof, to the United States, shall be fined under this title [2] or imprisoned for not more than five years, or both.

This section is applicable to individuals, partnerships, corporations, or associations other than public corporations created by or pursuant to special authorizations of Congress, or corporations in which the United States has or exercises a controlling interest through stock ownership or otherwise. While any foreign government is a member both of the International Monetary Fund and of the International Bank for Reconstruction and Development, this section shall not apply to the sale or purchase of bonds, securities, or other obligations of such government or any political subdivision thereof or of any organization or association acting for or on behalf of such government or political subdivision, or to making of any loan to such government, political subdivision, organization, or association.

* * * * * * *

[1] 18 U.S.C. 955. For text of Foreign Agents Registration Act of 1938, as amended (Public Law 75–583), see *Legislation on Foreign Relations Through 2005*, vol. IV, sec. N.

For text of Logan Act—Private correspondence with foreign governments (Public Law 80–772), see *Legislation on Foreign Relations Through 2005*, vol. IV, sec. N.

Sec. 902 of the FREEDOM Support Act (Public Law 102–511; 106 Stat. 3355) provided the following:

"SEC. 902. JOHNSON ACT.

"Section 955 of title 18, United States Code, shall not apply with respect to any obligations of the former Soviet Union, or any of the independent states of the former Soviet Union, or any political subdivision, organization, or association thereof.".

[2] Sec. 330016(1)(L) of Public Law 103–322 (108 Stat. 2147) struck out "not more than $10,000" and inserted in lieu thereof "under this title".

7. Foreign Investment in the United States

a. Foreign Investment Study Act of 1974

Public Law 93–479 [S. 2840], 88 Stat. 1450, approved October 26, 1974 [1]

AN ACT To authorize the Secretary of Commerce and the Secretary of the Treasury to conduct a study of foreign direct and portfolio investment in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Investment Study Act of 1974".

Sec. 2. The Secretary of the Treasury and the Secretary of Commerce are hereby authorized and directed to conduct a comprehensive, overall study of foreign direct and portfolio investments in the United States.

Sec. 3. The Departments of Commerce and Treasury, in consultation with appropriate agencies, shall determine the definitions and limitations of direct and portfolio investments for the (purposes of the study authorized in section 2 of this Act.

Sec. 4. In carrying out the study described in section 2 of this Act, the Secretary of Commerce and the Secretary of the Treasury shall, respectively and jointly as may be appropriate—

(1) identify and collect such information as may be required to carry out the study authorized in section 2 of this Act;

(2) consult with and secure information from (and where appropriate the views of) representatives of industry, the financial community, labor, agriculture, science and technology, academic institutions, public interest organizations, and such other groups as the Secretaries deem suitable; and

(3) consult and cooperate with other government agencies, Federal, State, and local, and, to the extent appropriate, with foreign governments and international organizations.

Sec. 5. The Secretary of Commerce shall carry out that part of the study authorized in section 2 of this Act relating to foreign direct investment, and shall, among other things, to the extent he determines feasible, specifically—

(1) investigate and review the nature, scope, magnitude, and rate of foreign direct investment activities in the United States;

(2) survey the reasons foreign firms are undertaking direct investment in the United States;

(3) identify the processes and mechanisms through which foreign direct investment flows into the United States, the financing methods used by foreign direct investors, and the effects of such financing on American financial markets;

[1] 15 U.S.C. 78b note.

(4) analyze the scope and significance of foreign direct investment in acquisitions and takeovers of existing American enterprises, the significance of such investments in the form of new facilities or joint ventures with American firms, and the effects thereof on domestic business competition;

(5) analyze the concentration and distribution of foreign direct investment in specific geographic areas and economic sectors;

(6) analyze the effects of foreign direct investment on United States national security, energy, natural resources, agriculture, environment, real property holdings, balance of payments, balance of trade, the United States international economic position, and various significant American product markets;

(7) analyze the effect of foreign direct investment in terms of employment opportunities and practices and the activities and influence of foreign and American management executives employed by foreign firms;

(8) analyze the effect of Federal, regional, State, and local laws, rules, regulations, controls, and policies on foreign direct investment activities in the United States.

(9) compare the purpose and effect of United States, State, and local laws, rules, regulations, programs, and policies on foreign direct investment in the United States with laws, rules, regulations, programs, and policies of selected nations and areas where such comparison may be informative;

(10) compare and contrast the foreign direct investment activities in the United States with the investment activities of American investors abroad and appraise the impact of such American activities abroad on the investment activities and policies of foreign firms in the United States;

(11) study the adequacy of information, disclosure, and reporting requirements and procedure;

(12) determine the effects of variations between accounting, financial reporting, and other business practices of American and foreign investors on foreign investment activities in the United States; and

(13) study and recommend means whereby information and statistics on foreign direct investment activities can be kept current.

Sec. 6. The Secretary of the Treasury shall carry out that part of the study authorized in section 2 of this Act relating to foreign portfolio investment, and shall, to the extent he determines feasible, specifically—

(1) investigate and review the nature, scope, and magnitude of foreign portfolio investment activities in the United States;

(2) survey the reasons for foreign portfolio investment in the United States;

(3) identify the processes and mechanisms through which foreign portfolio investment is made in the United States, the financing methods used, and the effects of foreign portfolio investment on American financial markets;

(4) analyze the effects of foreign portfolio investment on the United States balance of payments and the United States international investment position;

(5) study and analyze the concentration and distribution of foreign portfolio investment in specific United States economic sectors;

(6) study the effect of Federal securities laws, rules, regulations, and policies on foreign portfolio investment activities in the United States;

(7) compare the purpose and effect of United States, State, and local laws, rules, regulations, programs, and policies on foreign portfolio investment in the United States with laws, rules, regulations, programs, and policies of selected nations and areas where such comparison may be informative;

(8) compare the foreign portfolio investment activities in the United States with information available on the portfolio investment activities of American investors abroad;

(9) study adequacy of information, disclosures, and reporting requirements and procedures; and

(10) study and recommend means whereby information and statistics on foreign portfolio investment activities can be kept current.

POWERS

Sec. 7. (a) The Secretary of Commerce and the Secretary of the Treasury may each by regulation establish whatever rules each deems necessary to carry out each of his functions under this Act.

(b) Each such Secretary may require any person subject to the jurisdiction of the United States—

(1) to maintain a complete record of any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which such Secretary determines is germane to his functions in the foreign direct investment and foreign portfolio investment studies to be conducted pursuant to this Act; and

(2) to furnish under oath any report containing whatever information such Secretary determines is necessary to carry out his functions in such studies. Whenever an order under clause (2) of this subsection requires a person to produce information which can be specifically identified as being part of the records of its customers, the Secretary shall, upon being provided the names and addresses of such customers, send a notice to such customers that information from their records will be disclosed pursuant to this Act; *Provided,* That this requirement shall not apply when such person is directly involved in the ownership or management of assets for the customer as nominee, agent, partner, fiduciary, trustee, or in a similar relationship.

The authority of each Secretary under this subsection shall expire on the date provided under section 10 of this Act for the Secretary of Commerce and the Secretary of the Treasury to submit a full and complete report to the Congress.

(c) In addition to the Secretary of Commerce and the Secretary of the Treasury, the only individuals who may have access to information furnished under subsection (b)(2) are those sworn employees, including consultants, of the Department of Commerce or Department of the Treasury designated by the Secretary of either

such Department. Neither such Secretary nor any such employee may—

(1) use any information furnished under subsection (b)(2) except for analytical or statistical purposes with the United States Government; or

(2) publish, or make available to any other person in any manner, any such information in a manner that the information furnished under subsection (b)(2) by any person can be specifically identified, except for the purposes of a proceeding under section 8.

Such Secretaries may exchange any such information furnished under subsection (b)(2) in order to prevent any duplication or omission in the studies conducted by each such Secretary pursuant to this Act.

(d) Except for the requirement under subsection (b)(2), no agency of the United States or employee thereof may compel (1) the Secretary of Commerce or the Secretary of the Treasury, (2) any individual designated by either such Secretary under the first sentence of subsection (c), or (3) any person which maintained or furnished any report under subsection (b), to submit any such report or constituent part thereof to that agency or any other agency of the United States. Without the prior written consent of the person which maintained or furnished any report under subsection (b) and without the prior written consent of the customer, where the person maintained or furnished any such report which included information identifiable as being derived from the records of such customer, such report or any such constituent part may not be produced for any judicial or administrative proceeding, except for a proceeding under section 8(b) of this Act.

ENFORCEMENT

Sec. 8. (a) Whoever fails to furnish any information required pursuant to the authority of this Act, whether required to be furnished in the form of a report or otherwise, or to comply with any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act may be assessed a civil penalty not exceeding $10,000 in a proceeding brought under subsection (b) of this section.

(b) Whenever it appears to either the Secretary of the Treasury or the Secretary of Commerce that any person has failed to furnish any information required pursuant to the provisions of this Act, whether required to be furnished in the form of a report or otherwise, or has failed to comply with any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act, such Secretary may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, seeking a mandatory injunction commanding such person to comply with such rule, regulation, order, or instruction, and upon a proper showing by such Secretary of the relevance to the purposes of the Act of such rule, regulation, order, or instruction, a permanent or temporary injunction or restraining order

shall be granted without bond, and such person, may also be subject to the civil penalty provided in subsection (a) of this section if the judge finds that such penalty is necessary to obtain compliance with such injunction or restraining order.

(c) Whoever willfully fails to submit any information required pursuant to this Act, whether required to be furnished in the form of a report or otherwise, or willfully violates any rule, regulation, order, or instruction promulgated pursuant to the authority of this Act shall, upon conviction, be fined not more than $10,000 or, if a natural person, may be imprisoned for not more than one year 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.

Sec. 9. (a) The Secretary of Commerce and the Secretary of the Treasury may procure the temporary or intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. Persons so employed shall receive compensation at a rate to be fixed by the Secretaries concerned but not in excess of the maximum amount payable under such section. While away from his home or regular place of business and engaged in the performance of services for the Department of Commerce or the Department of the Treasury in conjunction with the provisions of this Act, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

(b) The Secretary of Commerce and the Secretary of the Treasury are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of any agency or instrumentality of the Federal Government in conjunction with the study authorized in this Act.

Sec. 10. The Secretary of Commerce and the Secretary of the Treasury shall submit to the Congress an interim report twelve months after the date of enactment of this Act, and not later than one and one-half years after enactment of this Act, a full and complete report of the findings made under the study authorized by this Act, together with such recommendations as they consider appropriate.

Sec. 11. There is authorized to be appropriated a sum not to exceed $3,000,000 to carry out the purposes of this Act. Any funds so appropriated shall remain available until expended.

b. International Investment and Trade in Services Survey Act

Public Law 94–472 [S. 2839], 90 Stat. 2059, approved October 11, 1976; as amended by Public Law 95–381 [S. 2028], 92 Stat. 726, approved September 22, 1978; Public Law 96–72 [Export Administration Act of 1979; S. 737], 93 Stat. 503, approved September 29, 1979; Public Law 97–33 [S. 1104], 95 Stat. 170, approved August 7, 1981; Public Law 97–70 [S. 1687], 95 Stat. 1045, approved October 26, 1981; Public Law 98–573 [Trade and Tariff Act of 1984; H.R. 3398], 98 Stat. 2948, approved October 30, 1984; and Public Law 101–533 [Foreign Direct Investment and International Financial Data Improvements Act of 1990; S. 2516], 104 Stat. 2344, approved November 7, 1990

AN ACT To supplement the authority of the President to collect regular and periodic information on international investment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "International Investment and Trade in Services Survey Act".[1]

FINDINGS AND PURPOSE

SEC. 2.[2] (a) The Congress finds and declares that—

(1) the United States Government is presently authorized to collect limited amounts of information on United States investment abroad and foreign investment in the United States.

(2) international investment has increased rapidly within recent years;

(3) such investment significantly affects the economies of the United States and other nations;

(4) international efforts to obtain information on the activities of multinational enterprises and other international investors have accelerated recently;

(5) the potential consequences of international investment cannot be evaluated accurately because the United States Government lacks sufficient information on such investment and its actual or possible effects on the national security, commerce, employment, inflation, general welfare, and foreign policy of the United States;

(6) accurate and comprehensive information on international investment is needed by the Congress to develop an informed United States policy on such investment;

[1] Sec. 306(b)(1) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3009) redesignated this Act as the "International Investment and Trade in Services Survey Act".

[2] 22 U.S.C. 3101.

(7)[3] United States service industries engaged in interstate and foreign commerce account for a substantial part of the labor force and gross national product of the United States economy, and such commerce is rapidly increasing;

(8)[3] international trade and services is an important issue for international negotiations and deserves priority in the attention of governments, international agencies, negotiators, and the private sector; and

(9)[3] existing estimates of international investment and trade in services,[4] collected under existing legal authority, are limited in scope and are based on outdated statistical bases, reports, and information which are insufficient for policy formulation and decisionmaking.

(b) It is therefore the purpose of this Act to provide clear and unambiguous authority for the President to collect information on international investment and United States foreign trade in services, whether directly or by affiliates, including related information necessary for assessing the impact of such investment and trade,[5] to authorize the collection and use of information on direct investments owned or controlled directly or indirectly by foreign governments or persons,[6] and to provide analyses of such information to the Congress, the executive agencies, and the general public. It is the intent of the Congress that information which is collected from the public under this Act be obtained with a minimum burden on business and other respondents and with no unnecessary duplication of effort, consistent with the national interest in obtaining comprehensive and reliable information on international investment and trade in services,[4]

(c) Nothing in this Act is intended to restrain or deter foreign investment in the United States, United States investment abroad, or trade in services.[4]

DEFINITIONS

SEC. 3.[7] As used in this Act, the term—

(1) "United States", when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and all territories and possessions of the United States;

(2) "foreign", when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States;

(3) "person" means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any

[3] Sec. 306(b)(2) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3009) redesignated existing para. (7) as para. (9), and added new paras. (7) and (8).

[4] Sec. 306(b) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3009) added the words "or trade in services".

[5] Sec. 306(b)(2) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3010) added the words to this point beginning with "and United States foreign trade in services,".

[6] Sec. 6(A) of the Foreign Direct Investment and International Financial Data Improvements Act of 1990 (Public Law 101–533; 104 Stat. 2348), added text to this point beginning with "to authorize the collection".

[7] 22 U.S.C. 3102.

State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency);

(4) "United States person" means any person resident in the United States or subject to the jurisdiction of the United States;

(5) "foreign person" means any person resident outside the United States or subject to the jurisdiction of a country other than the United States;

(6) "business enterprise" means any organization, association, branch, or venture which exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate;

(7) "parent" means a person of one country who, directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country;

(8) "affiliate" means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an unincorporated business or an equivalent interest for an unincorporated business, including a branch;

(9) "international investment" means (A) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person, and (B) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations or a foreign person;

(10) "direct investment" means the ownership or control, directly or indirectly, by one person of 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise; and

(11) "portfolio investment" means any international investment which is not direct investment.

AUTHORITY AND DUTIES

SEC. 4.[8] (a) The President shall, to the extent he deems necessary and feasible—

(1) conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services,[4] including (but not limited to such information as may be

[8] 22 U.S.C. 3103.

necessary for computing and analyzing the United States balance of payments), the employment and taxes of United States parents and affiliates, and the international investment and trade in services[4] position of the United States;

(2) conduct such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment and trade in services[4] which may have significant implications for the economic welfare and national security of the United States;

(3) study the adequacy of information, disclosure, and reporting requirements and procedures relating to international investment and trade in services;[4] recommend necessary improvements in information recording, collection, and retrieval and in statistical analysis and presentation;[9] and report periodically to the Committees on Finance, Foreign Relations and Commerce of the Senate and the Committees on Ways and Means, Energy and Commerce, and Foreign Affairs,[10] of the House of Representatives on national and international developments with respect to laws and regulations affecting international investment and trade in services;[4]

(4)[11] conduct (not more frequently than once every five years and in addition to any other surveys conducted pursuant to paragraphs (1) and (2) benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons; and

(5)[11] publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection and to the benchmark surveys conducted pursuant to subsections (b) and (c), including, with respect to foreign direct investment in the United States, information on ownership by foreign government of United States affiliates by country, and tables, on an aggregated basis, of business enterprises the ownership or control of which by foreign persons is more than 50 percent of the voting securities or other evidences of ownership of such enterprises, and business enterprises the ownership or control of which by foreign persons is 50 percent or less of the voting securities or other evidences of ownership of such enterprises.[12]

(b) With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering[13] year 1980, a benchmark survey covering[13] year 1987, and benchmark surveys covering every fifth year thereafter. With respect to

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[9] Sec. 306(b)(4) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3010) struck out "relating to international investment" that previously appeared at this point.

[10] Sec. 306(b)(3) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3010) added references to the Committees on Finance, Ways and Means, and Energy and Commerce.

[11] Sec. 306(b)(4) of the International Trade and Investment Act (title III of Public Law 98–573; 8 Stat. 3010) redesignated existing para. (4) as para. (5), and added a new para. (4).

[12] Sec. 6(b) of the Foreign Direct Investment and International Financial Data Improvements Act of 1990 (Public Law 101–533; 104 Stat. 2348), added text to this point beginning with ", including, with respect to".

[13] Public Law 97–70 (95 Stat. 1045) struck out "calendar" preceding "year 1987".

United States direct investment abroad, the President shall conduct a benchmark survey covering[13] year 1989, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the President shall,[14] among other things and to the extent he determines necessary and feasible—

(1) identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) obtain (A) information on the balance sheets of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade (including trade in both goods and services)[15] between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) obtain information on tax payments by parents and affiliates by country; and

(5) determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

(c)(1) The President shall conduct a comprehensive benchmark survey of foreign portfolio investment in the United States at least once every five years and, for such purposes, shall (among other things and to the extent he determines necessary and feasible) determine the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of foreign private holders, diversification of holdings by economic sector, and holders of record.

(2)[16] In addition to the benchmark surveys conducted pursuant to paragraph (1), the President shall annually compile currently available data on United States portfolio investment abroad including items such as data on the magnitude and aggregate value of portfolio investment, form of investments, types of investors, nationality of investors and recorded residence of private holders, diversification of holdings by economic sector, and holders of record.

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[14] Sec. 1 of Public Law 97–33 (95 Stat. 170) amended and restated subsec. (b) to this point. Former text had required a survey at least every 5 years for both U.S. direct investment abroad and foreign direct investment in the United States.

[15] Sec. 306(b)(4) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3010) inserted "(including trade in both goods and services)".

[16] Sec. 2 of Public Law 97–33 (95 Stat. 170) amended and restated para. (2). Former text required a survey of U.S. portfolio investment abroad to be submitted to Congress on October 11, 1981, together with a report on the feasibility and desirability of conducting such surveys on a periodic basis.

The President shall submit an analysis of such data to the Congress not later than the first day of July each year.

(d) The President shall conduct a study of the feasibility of establishing a system to monitor foreign direct investment in agricultural, rural, and urban real property, including the feasibility of establishing a nationwide multipurpose land data system, and shall submit to the Congress an interim report of his findings and conclusions not later than two years after the date of enactment of this Act and a final report of such findings and conclusions not later than three years after such date of enactment.[17]

(e)[18] The Secretary of Commerce shall prepare a report on the estimated cost of monitoring and compiling data on legislation enacted by the major trading partners of the United States, and such other foreign nations as the Secretary deems appropriate, which regulates or restricts foreign inward investment in such foreign nations.

(f)[18] Activities shall be conducted so that information obtained pursuant to this Act shall be timely and useful in the development of policy with respect to international investment and trade in services.[4] Reporting and recordkeeping requirements imposed under this Act shall be designed in order to minimize costs to the extent feasible, consistent with effective enforcement and the compilation of information required by this Act. Reporting, recordkeeping, and documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(g)[18] In collecting information under this Act, the President shall give due regard to the costs incurred by persons supplying such information, as well as to the costs incurred by the Government, and shall insure that the information collected is only in such detail as is necessary to fulfill the stated purposes for which the information is being gathered.

(h)[19] (1) The President, or the designee of the President responsible for monitoring the impact of foreign investment in the United States, coordinating implementation of United States policy on investment, and investigating foreign acquisitions under section 721 of the Defense Production Act of 1950 (50 App. U.S.C. 2170)), may request a report from the Bureau of Economic Analysis of the Department of Commerce. When such request is made in connection with an investigation under such section 721, the report shall be provided within 14 days after the request is made. When such request is not made in connection with an investigation under such section 721, the report shall be provided within 60 days after the request.

(2) A report requested under paragraph (1) shall contain the best available information on the extent of foreign direct investment in a given industry, including a breakdown of total investment in the industry, and any foreign government investment in the industry,

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[17] The final version of this report was originally due in 2 years. Sec. 2 of Public Law 95–381 (92 Stat. 726) added the requirement for an interim report and extended the due date for the final report to 3 years.

[18] Sec. 3 of Public Law 97–33 (95 Stat. 170) redesignated subsecs. (e) and (f) as subsecs. (f) and (g), respectively, and added a new subsec. (e).

[19] Sec. 6(c) of the Foreign Direct Investment and International Financial Data Improvements Act of 1990 (Public Law 101–533; 104 Stat. 2348) added subsec. (h).

by country of the foreign owner, and any other information that the Bureau of Economic Analysis or such designee of the President considers relevant. The industry information provided shall be at the most detailed level available of Standard Industrial Classification, subject to the requirements of section 5.

RULES AND REGULATIONS; ACCESS TO INFORMATION

SEC. 5.[20] (a) The authorities and responsibilities under this Act may be exercised through such rules and regulations as may be necessary to carry out the purposes of this Act.

(b) Rules or regulations issued pursuant to this Act may require any person subject to the jurisdiction of the United States—

(1) to maintain a complete record of any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential to carrying out the[21] surveys and studies to be conducted under this Act; and

(2) to furnish, under oath, any report containing information which is determined to be necessary to carry out the[21] surveys and studies conducted under this Act.

When a report under paragraph (2) is furnished under oath, such oath shall be by the officer of such person who is directly responsible for the maintenance and compilation of such information, and shall certify that the report was prepared in accordance with this Act, is complete, and is to such officer's best knowledge and belief, substantially accurate, except in a case in which, in accordance with rules and regulations issued under this Act, estimates have been provided because data are not available from customary accounting records or precise data could not be obtained without undue burden, and the data subject to such estimates has been noted in the report.[22]

(c) Access to information obtained under subsection (b)(2) of this section shall be available only to officials or employees designated to perform functions under this Act, including consultants and persons working on contracts awarded pursuant to this Act. Subject to the limitation of paragraph (1) of this subsection, the President may authorize the exchange between agencies or officials designated by him of information furnished by any person under this Act as he deems necessary to carry out the purposes of this Act. Nothing in this section shall be construed to require any Federal agency to disclose to any official exercising authority under this Act any information or report collected under legal authority other than this Act where disclosure is prohibited by law. Information collected pursuant to subsection (b)(2) may be used only—

(1) for analytical or statistical purposes within the United States Government; or

[20] 22 U.S.C. 3104.

[21] Sec. 306(b)(5) of the International Trade and Investment Act (title III of Public Law 98–573; 98 Stat. 3010) struck out "international investment" preceding "surveys".

[22] Sec. 7(a) of the Foreign Direct Investment and International Financial Data Improvements Act of 1990 (Public Law 101–533; 104 Stat. 2349) added this sentence.

(2) for the purpose of a proceeding under subsection (e)[23] of this section or under section 6 (b) or (c).

No official or employee designated to perform functions under this Act, including consultants and persons working on contracts awarded pursuant to this Act, may publish or make available to any other person any information collected pursuant to subsection (b)(2) in a manner that the person who furnished the information can be specifically identified except as provided in this section. No person can compel the submission or disclosure of any report or constituent part thereof collected pursuant to this Act, or any copy of such report or constituent part thereof, without the prior written consent of the person who maintained or furnished such report under subsection (b) and without prior written consent of the customer, where the person who maintained or furnished such report included information identifiable as being derived from the records of such customer.

(d)[24] The Bureau of the Census of the Department of Commerce is authorized, for purposes of augmenting and improving the quality of data collected by the Bureau of the Census, to have, upon written request, access to data relating to business enterprises that is collected directly by the Bureau of Economic Analysis for purposes of this Act. The Bureau of Labor Statistics of the Department of Labor is authorized, for purposes of augmenting and improving the data collected by the Bureau of Labor Statistics, to have access, upon written request, to selected identification information on business enterprises and data on international services transactions, that is collected directly by the Bureau of Economic Analysis for purposes of this Act. Officers and employees of the Bureau of the Census and the Bureau of Labor Statistics shall, for purposes of subsection (c), be deemed to be officials or employees designated to perform functions under this Act.

(e)[24] Any person who willfully violates subsection (c) or (d)[23] shall, upon conviction, be fined not more than $10,000, in addition to any other penalty imposed by law.

ENFORCEMENT

SEC. 6.[25] (a) Whoever fails to furnish any information required under this Act, whether required to be furnished in the form of a report or otherwise, or to comply with any rule, regulation, order, or instruction promulgated under this Act, shall be subject to a civil penalty of not less than $2,500, and not more than $25,000,[26] in a proceeding brought under subsection (b) of this section.

(b) Whenever it appears that any person has failed to furnish any information required under this Act, whether required to be

[23] Sec. 6(e) of the Foreign Direct Investment and International Financial Data Improvements Act of 1990 (Public Law 101–533; 104 Stat. 2349), struck out "(d)" and inserted in lieu thereof "(e)" in subsec. (c)(2); and inserted "or (d)" in subsec. (e), as conforming amendments for the addition of new subsec. (d) and redesignation of subsec. (d) to (e).

[24] Sec. 6(d) of the Foreign Direct Investment and International Financial Data Improvements Act of 1990 (Public Law 101–533; 104 Stat. 2349) redesignated subsec. (d) as (e), and added a new subsec. (d).

[25] 22 U.S.C. 3105.

[26] Sec. 7(b) of the Foreign Direct Investment and International Financial Data Improvements Act of 1990 (Public Law 101–533; 104 Stat. 2349) struck out "may be subject to a civil penalty not exceeding $10,000" and inserted in lieu thereof "shall be subject to a civil penalty of not less than $2,500, and not more than $25,000,".

furnished in the form of a report or otherwise, or has failed to comply with any rule, regulation, order, or instruction promulgated under this Act, a civil action may be brought in an appropriate district court of the United States, or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, and such court may enter a restraining order or a permanent or temporary injunction commanding such person to furnish such information or to comply with such rule, regulation, order, or instruction, as the case may be, or impose the civil penalty provided in subsection (a) of this section, or both.

(c) Whoever willfully fails to submit any information required under this Act, whether required to be furnished in the form of a report or otherwise, or willfully violates any rule, regulation, order, or instruction promulgated under this Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both, and any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both.

USE OF EXPERTS AND ADMINISTRATIVE SUPPORT SERVICES

SEC. 7.[27] (a) Any official designated by the President to carry out this Act may procure the temporary or intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code. Persons so employed shall receive compensation at a rate not in excess of the maximum amount payable under such section. While away from his home or regular place of business and engaged in the performance of services in conjunction with the provisions of this Act, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

(b) Any official designated by the President to carry out this Act may use, on a reimbursable basis when appropriate (as determined by the President), the available services, equipment, personnel, and facilities of any agency or instrumentality of the United States Government.

CONSULTATIONS [28]

SEC. 8.[28] Officials performing functions pursuant to this Act shall secure balanced, diverse, and responsible views from qualified persons representing business, organized labor, and the academic community and may, where appropriate, create such independent public advisory committees as are necessary to carry out the purposes of this Act.

[27] 22 U.S.C. 3106.

[28] 22 U.S.C. 3107. Sec. 4 of Public law 97–33 (95 Stat. 171) amended sec. 8 by deleting the words "AND REVIEWS" from the section title, striking out "(a)" preceding "Officials performing", and deleting subsec. (b). Subsec. (b) had directed the President to review the results of any studies and surveys conducted pursuant to this act and to report annually to Congress "on any trends or developments which may have national policy implications and which in the President's opinion warrant the review of the respective committees.".

AUTHORIZATIONS

SEC. 9.[29] To carry out this Act, there are authorized to be appropriated $4,400,000 for the fiscal year ending September 30, 1980, $4,500,000 for the fiscal year ending September 30, 1981, $4,000,000 for the fiscal year ending September 30, 1982, and such sums as may be necessary for any subsequent fiscal years.

[29] 22 U.S.C. 3108. Sec. 23 of the Export Administration Act of 1979 (Public Law 96–72; 93 Stat. 536) added the authorization figures for fiscal years 1980 and 1981. Sec. 5 of Public Law 97–33 (95 Stat. 171) added the authorization for fiscal year 1982 and subsequent fiscal years. Authorizations for previous years included: fiscal year 1978—$1,000,000; fiscal year 1979—$4,000,000.

c. Foreign Direct Investment and International Financial Data Improvements Act of 1990

Public Law 101–533 [S. 2516], 104 Stat. 2344, approved November 7, 1990; amended by Public Law 102–484 [National Defense Authorization Act for Fiscal Year 1993; H.R. 5006], 106 Stat. 2315, approved October 23, 1992; Public Law 103–160 [National Defense Authorization Act for Fiscal Year 1994; H.R. 2401], 107 Stat. 1547, approved November 30, 1993; Public Law 104–316 [General Accounting Office Act of 1996; H.R. 3864], 110 Stat. 3826, approved October 19, 1996; Public Law 106–261 [Strom Thurmond National Defense Authorization Act for Fiscal Year 1999; H.R. 3616], 112 Stat. 2136, approved October 17, 1998; and Public Law 108–271 [GAO Human Capital Reform Act of 2004; H.R. 2751], 118 Stat. 811, approved July 7, 2004

AN ACT To augment and improve the quality of international data compiled by the Bureau of Economic Analysis under the International Investment and Trade in Services Survey Act by allowing that agency to share statistical establishment list information compiled by the Bureau of the Census, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] SHORT TITLE.

This Act may be cited as the "Foreign Direct Investment and International Financial Data Improvements Act of 1990".

SEC. 2.[2] FINDINGS.

The Congress makes the following findings:

(1) The United States Government collects substantial amounts of information from foreign owned or controlled business enterprise or affiliates operating in the United States.

(2) Additional analysis and presentation of this information is desirable to assist the public debate on the issue of foreign direct investments in the United States.

(3) Information collected from foreign owned or controlled firms by the Bureau of Economic Analysis has serious analytical limitations because it is largely collected on an "enterprise" basis that does not permit an adequate analysis by industry groupings.

(4) Statistical and analytic comparisons of the performance of foreign owned or controlled businesses operating within the United States with other business enterprises operating within the same industry can be accomplished under sections 2(b) and 5(c) of the International Investment and Trade in Services Survey Act, and under Executive Order Numbered 11961, without the need to collect additional information, by sharing with other authorized Government agencies the employer identification numbers maintained by the Bureau of Economic Analysis.

[1] 22 U.S.C. 3141 note.
[2] 22 U.S.C. 3141.

(5) Public disclosures of confidential business information collected by the United States Government relating to international direct investment flows could cause serious damage to the accuracy of the statistical data base.

(6) The Government Accountability Office[3] may have limited access to Government data on foreign direct investment.

SEC. 3.[4] REPORT BY SECRETARY OF COMMERCE.

(a) ANNUAL REPORT ON FOREIGN DIRECT INVESTMENT IN THE UNITED STATES.—Not later than 6 months after the date of the enactment of this Act, and not later than the end of each 1-year period occurring thereafter, the Secretary of Commerce shall submit to the Committee on Energy and Commerce, the Committee on Ways and Means, and the Committee on Foreign Affairs of the House of Representatives,[5] to the Committee on Commerce, Science, and Transportation of the Senate, and to the Joint Economic Committee of the Congress a report on the role and significance of foreign direct investment in the United States. Such report shall address the history, scope, trends, market concentrations, and effects on the United States economy of such investment. In addition, the Secretary of Commerce shall, if requested by any such committee, appear before that committee to provide testimony with respect to any report under this subsection.

(b) SOURCES OF DATA.—In preparing each report under subsection (a), the Secretary of Commerce, or the Secretary's designees, shall consider information collected by—

(1) the Bureau of Economic Analysis under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 and following);

(2) the Bureau of the Census on industry, manufacturing, research and development, and trade, under title 13, United States Code;

(3) the Bureau of Labor Statistics pertaining to information collected under the International Investment and Trade in Services Survey Act, but only to the extent that such information is in a form that cannot be associated with, or otherwise identify, directly or indirectly, a person, including any enterprise or establishment;

(4) the Secretary of Commerce or the Secretary's designee pursuant to section 2 of Executive Order 11858 of May 7, 1975;

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[3] Sec. 8(b) of Public Law 108–271 provided that: "Any reference to the General Accounting Office in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Government Accountability Office."

[4] 22 U.S.C. 3142.

[5] Sec. 1(a)(4) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Energy and Commerce of the House of Representatives shall be treated as referring to the Committee on Commerce of the House of Representatives. Sec. 1(c)(1) of that Act (110 Stat. 187) further provided that any reference in any provision of law enacted before January 4, 1995 to the House Committee on Energy and Commerce shall be treated as referring to (1) the Committee on Agriculture in the case of a provision relating to inspection of seafood or seafood products; (2) the Committee on Banking and Financial Services in the case of a provision relating to bank capital markets activities or depository institution securities; or (3) the Committee on Transportation and Infrastructure in the case of a provision relating to railroads and railway labor issues.

Sec. 1(a)(5) of Public Law 104–14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

(5) the United States Department of Agriculture under the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 and following);

(6) the Department of the Treasury under section 6039C of the Internal Revenue Code of 1986 (26 U.S.C. 6039C), but only to the extent that such information is in a form that cannot be associated with, or otherwise identify, directly or indirectly, a person, including any enterprise or establishment;

(7) the Department of Energy under section 657(8) of the Department of Energy Organization Act (42 U.S.C. 7267(8)), but only to the extent that such information is in a form that cannot be associated with, or otherwise identify, directly or indirectly, a person, including any enterprise or establishment;

(8) other Federal agencies not referred to in paragraph (1) through (7), but only to the extent that such information is in a form that cannot be associated with, or otherwise identify, directly or indirectly, a person, including any enterprise or establishment;

(9) foreign governments and agencies thereof; and

(10) private sector sources.

(c) ANALYSES.—(1) The analysis in each report prepared under subsection (a) shall, to the extent of available data, compare business enterprises controlled by foreign persons with other business enterprises in the United States with respect to employment, market share, value added, productivity, research and development, exports, imports, profitability, taxes paid, and investment incentives and services provided by State and local governments (including quasi-governmental entities).

(2) Each such analysis shall be done by significant industry sectors and geographical regions, except that information shall not be presented in a way in which any person, including any business enterprise or establishment, can be identified. The restriction contained in the preceding sentence on presentation of information does not apply to information that is obtained from foreign governments or agencies thereof and that has been published pursuant tot he lawful disclosure of the information. To the extent that data are available, each such analysis shall include an analysis, together with current levels and trends, of the number and market share of business enterprises at least 10 percent of the voting securities or other evidences of ownership of which are owned or controlled by a foreign person, and of the number and market share of the establishments of such business enterprises, that are engaged substantially in the production or coproduction of any critical technologies identified in the most recent assessment prepared under section 2505 of title 10,[6] or included in the most recent report submitted to the President under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976.

[6] Sec. 1069(d)(2) of Public Law 105–261 (112 Stat. 2136) struck out "included in the most recent plan submitted to the Congress under section 2506 of title 10", and inserted in lieu thereof "identified in the most recent assessment prepared under section 2505 of title 10". Previously, sec. 1182(d)(2) of Public Law 103–160 (107 Stat. 1773) struck out "section 2522 of title 10" and inserted in lieu thereof "section 2506 of title 10". Previous to that, sec. 1054(f) of Public Law 102–484 (106 Stat. 2503) struck out "section 2368 of title 10" and inserted in lieu thereof "section 2522 of title 10".

SEC 4.[7] REPORTS BY GENERAL ACCOUNTING OFFICE.

(a) IN GENERAL.—The Comptroller General, to the extent permitted by law, including section 8 of this Act, is authorized to review the information described in section 3(b) for purposes of preparing the reports referred to in[8] subsection (b) of this section. Nothing in this section authorizes disclosure of any individually identifiable data or information in any form that can be associated with or otherwise identify, directly or indirectly, any person, including any enterprise or establishment.

(b)[9] REPORTS.—Consistent with the provisions of this section, the Comptroller General may submit to the Committee on Energy and Commerce, the Committee on Ways and Means, and the Committee on Foreign Affairs of the House of Representatives,[5] to the Committee on Commerce, Science, and Transportation of the Senate, and to the Joint Economic Committee of the Congress reports—[10]

(1) analyzing reports issued by the Secretary of Commerce under section 3;[11]

(2) making recommendations for changes in the analysis done in the report due the following year under section 3;

(3) making recommendations for improving the collection by respective Federal agencies of data on foreign direct investment in the United States, including use of private sector data, and improving survey questionnaires to obtain useful and consistent information that avoids unnecessary redundancy among Federal agencies;

(4) reviewing the status and processes for reconciliation of data exchanged as required by this Act and the amendments made by this Act, and making any recommendations for improving and augmenting international financial data;

(5) making recommendations for possible additional policy coordination within the executive branch affecting foreign direct investment in the United States; and

(6) making recommendations for improvement of the coverage, industry, classification, and consistency among Federal agencies of their respective surveys.[12]

(c) OTHER REVIEWS AND REPORTS.—(1) The Comptroller General may, to the extent permitted by law, including section 5(c) of the International Investment and Trade in Services Survey Act (22 U.S.C. 3104(c)) and section 8 of this Act, also review data and information at the Bureau of the Census, the Bureau of Labor Statistics, and the Bureau of Economic Analysis and from time to time report to the Committee on Energy and Commerce, the Committee

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[7] 22 U.S.C. 3143.

[8] Sec. 111(c)(1) of Public Law 104–316 (110 Stat. 3833) struck out "report required under" and inserted in lieu thereof "reports referred to in".

[9] Sec. 111(c)(2)(A) of Public Law 104–316 (110 Stat. 3833) struck out "(b) REPORT.—Not later than 5 months after each report issued by the Secretary of Commerce under section 3, the Comptroller General of the United States shall submit" and inserted in lieu thereof "(b) REPORTS.—Consistent with the provisions of this section, the Comptroller General may submit".

[10] Sec. 111(c)(2)(B) of Public Law 104–316 (110 Stat. 3833) struck out "Congress, a report" and inserted in lieu thereof "Congress reports".

[11] Sec. 111(c)(2)(C) of Public Law 104–316 (110 Stat. 3833) struck out "the report of the Secretary of Commerce" and inserted in lieu thereof "reports issued by the Secretary of Commerce under section 3".

[12] Sec. 111(c)(2)(D) of Public Law 104–316 (110 Stat. 3833) struck out a final sentence in the subsection following para. (6), which had read: "Reports under this subsection shall be issued only with respect to the first 3 reports issued by the Secretary of Commerce under section 3.".

on Ways and Means, and the Committee on Foreign Affairs of the House of Representatives,[5] to the Committee on Commerce, Science, and Transportation of the Senate, and to the Joint Economic Committee of the Congress.

(2) The Comptroller General shall, in carrying out paragraph (1), comply with procedures relating to access to and disclosure of data and information established within the Federal statistical agencies referred to in paragraph (1), and maintain any and all individually identifiable data and information at the statistical agency where the information is reviewed.

(d) CONFIDENTIALITY; REVIEW BY OTHER AGENCIES.—In preparing any report under this section, the Comptroller General shall not—

(1) disclose any confidential business information or present any information in a way in which any person, including a business enterprise or establishment, can be identified; or

(2) combine, match, or use in any other way individually identifiable data or information maintained by any of the Federal statistical agencies referred to in subsection (c) with any other individually identifiable confidential data or information that is not collected by such statistical agencies.

Before issuing any such report, the Comptroller General shall in each instance submit the report to the head or heads of the agency or agencies from which confidential or identifiable information described in the preceding sentence was obtained. The agency or agencies concerned shall promptly review the report for the purpose of assuring that the confidentiality of such information and identity is maintained, and for any other purpose, and shall provide the Comptroller General with appropriate comments or other suggestions within 10 working days after receiving the report.

(e) RIGHT OF ACCESS.—The access by the Comptroller General to information under this Act shall be in conformity with section 716 of title 31, United States Code.

SEC. 5.[13] ACCESS TO CENSUS DATA BY BUREAU OF ECONOMIC ANALYSIS. * * *

SEC. 6.[14] AMENDMENTS TO THE INTERNATIONAL INVESTMENT AND TRADE IN SERVICE SURVEY ACT. * * *

SEC. 7.[14] ACCOUNTABILITY FOR TIMELY REPORTING. * * *

SEC. 8.[15] ACCESS TO INFORMATION; CONFIDENTIALITY.

(a) CONFIDENTIALITY.—(1) Those officers and employees who have access to information under this Act to which the provisions of section 9 of title 13, United States Code, apply must have been sworn, as provided for in section 23(c) of such title, to observe the limitations imposed by section 9(a) of such title and to be subject to the provisions of section 214 of such title to the same extent as such section applies to officers or employees of the Bureau of the Census.

(2) Only those officers and employees who have sworn to observe the provisions of section 5(c) of the International Investment and Trade in Service Survey Act (22 U.S.C. 3104(c)) may have access

[13] Sec. 5 amended title 13, U.S.C., by adding a new chapter 10, sec. 401.
[14] Secs. 6 and 7 amended the International Investment and Trade in Service Survey Act.
[15] 22 U.S.C. 3144.

under this Act to information to which such provisions apply, and such officers and employees are subject to the penalties for improper disclosure of such information provided in section 5(e) of that Act to the same extent as such section applies to officers or employees designated to perform functions under that Act.

(3) Those officers and employees referred to in paragraphs (1) and (2) of this section shall be subject to any other restriction or penalty imposed by law with respect to disclosure of information to which such officers or employees have access under this Act.

(b) VIOLATIONS AND PENALTIES.—Whoever is in possession of information made available to any department or agency by virtue of this Act or the amendments made by this Act and discloses the information in any form which can be associated with, or otherwise identify, any person, including any business enterprise or establishment, shall be fined not less than $2,500 nor more than $25,000 or imprisoned not more than 5 years, or both.

(c) UNLAWFUL ACCESS.—Whoever procures, by fraud, misrepresentation, or other unlawful act, access to information made available to any department or agency by virtue of this Act or the amendments made by this Act shall be fined not less than $2,500 nor more than $25,000 or imprisoned not more than 5 years, or both.

(d) INFORMATION IMMUNE FROM PROCESS.—Information obtained under this Act shall be immune from legal process and shall not be used as evidence or for any purpose in any Federal, State, or local government action, suit, or other administrative or judicial proceeding except as necessary to enforce requirements imposed by law on the collection of information, to enforce the provisions of subsections (b) and (c).

(e) IMPLEMENTATION.—(1) The Secretary of Commerce shall be responsible for the implementation of the exchange of information under this Act between the Bureau of the Census and the Bureau of Economic Analysis, and shall resolve any questions on access to information, data, or methodology that may arise between the Bureau of the Census and the Bureau of Economic Analysis, except that the Secretary shall not construe this section in a manner which would prevent the augmentation and improvement of the quality of international data collected under the International Investment and Trade in Services Survey Act. The Bureau of Economic Analysis and the Bureau of the Census shall agree in writing to the data to be shared under this Act.

(2) The Director of the Office of Management and Budget shall be responsible for the implementation of the exchange of information under this Act between the Bureau of Economic Analysis and the Bureau of Labor Statistics, and shall resolve any questions on access to information, data, or methodology that may arise between the Bureau of Economic Analysis and the Bureau of Labor Statistics, except that the Director shall not construe this section in a manner which would prevent the augmentation and improvement of the quality of international data collected under the International Investment and Trade in Services Survey Act.

SEC. 9.[16] CONSTRUCTION OF THE ACT.

(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act shall be construed to require any business enterprise or any of its officers, directors, shareholders, or employees, or any other person, to provide information beyond that which is required before the enactment of this Act.

(b) IMPLEMENTATION.—All departments and agencies implementing this Act and the amendments made by this Act shall, with respect to surveys or questionnaires used in such implementation—

(1) eliminate questions that are no longer necessary,

(2) cooperate with one another in order to ensure that questions asked are consistent among the departments and agencies, and

(3) develop new questions in order to obtain more refined statistics and analyses,

consistent with the purposes of the provisions of law amended by this Act and the Paperwork Reduction Act of 1980.

SEC. 10.[17] DEFINITIONS.

For purposes of this Act—

(1) the terms "foreign", "direct investment", "international investment", "United States", "business enterprise", "foreign person", and "United States person", have the meaning given those terms in section 3 of the International Investment and Trade in Services Survey Act (22 U.S.C.3102); and

(2) the term "foreign direct investment in the United States" means direct investment by foreign persons in any business enterprise that is a United States person.

[16] 22 U.S.C. 3145.
[17] 22 U.S.C. 3146.

d. International Investment and Trade in Services [1]

Executive Order 11961, January 19, 1977, 42 F.R. 4321, 22 U.S.C. 3101 note; as amended by Executive Order 12013, October 7, 1977, 42 F.R. 45931; Executive Order 12318, August 21, 1981, 46 F.R. 42833; and Executive Order 12518, June 3, 1985, 50 F.R. 23661

By virtue of the authority vested in me by the International Investment and Trade in Services Survey Act [1] (90 Stat. 2059, 22 U.S.C. 3101), and section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. All the functions vested in the President by the International Investment and Trade in Services Survey Act [1] (90 Stat. 2059, 22 U.S.C. 3101), hereinafter referred to as the Act, are hereby delegated to the Director of the Office of Management and Budget, hereinafter referred to as the Director. The Director may, from time to time, designate other officers or agencies of the Federal Government to perform any or all of the functions hereby delegated to the Director, subject to such instructions, limitations, and directions as the Director deems appropriate.

Sec. 2. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of the Treasury, with respect to portfolio investment shall perform the functions set forth in section 4(a) (1), (2), (5) [1] and 4(c) of the Act.

Sec. 3. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of Commerce, with respect to direct investment and trade in services [1] shall perform the functions set forth in sections 4(a) (1), (2), (4), (5) [1] and 4(b) of the Act.

Sec. 4. Subject of the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of Commerce shall perform the function of making periodic reports to the Committees of the Congress as set forth in Section 4(a)(3) of the Act.[2]

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[1] Executive Order 12518 (50 F.R. 23661) redesignated this title from "Administration of the International Investment Survey Act of 1976"; substituted "International Investment and Trade in Services Survey Act" for "International Investment Survey Act of 1976" wherever it appears; substituted "(5)" for "(4)" in sec. 2; added "and trade in services" after "investment" in sec. 3; and added "(5)" after "(4)" in sec. 3.

[2] Sec. 4(b) of Executive Order 12318 (46 F.R. 42833) substituted the text beginning with the words "the Secretary of Commerce" to this point. Previously the text read "the Secretary of Commerce shall perform the functions set forth in Sections 4(a)(3) and 5(c) of the Act". Executive Order 12013 (42 F.R. 45931) deleted the original text, which stated "the Council on International Economic Policy shall perform the function of making periodic reports to the Committees of the Congress set forth in Section 4(a)(3) of the Act".

e. Committee on Foreign Investment in the United States

Executive Order 11858, May 7, 1975, 40 F.R. 20263, 15 U.S.C. 78b note; as amended by Executive Order 12188, January 2, 1980, 45 F.R. 989; Executive Order 12661, December 27, 1988, 54 F.R. 779; Executive Order 12860, September 3, 1993, 58 F.R. 47201; and Executive Order 13287, February 28, 2003, 68 F.R. 10619

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Act of February 14, 1903, as amended (15 U.S.C. 1501 et seq.), section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a), and section 301 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. (a) There is hereby established the Committee on Foreign Investment in the United States (hereinafter referred to as the Committee). The Committee shall be composed of[1] the following:

(1) The Secretary of State.

(2) The Secretary of the Treasury.

(3) The Secretary of Defense.

(4) The Secretary of Commerce.

(5)[2] The United States Trade Representative.

(6)[3] The Chairman of the Council of Economic Advisers.

(7)[4] The Attorney General.

(8)[4] The Secretary of Homeland Security.

(9)[4] The Director of the Office of Management and Budget.

(9)[5] the Director of the Office of Science and Technology Policy.

(10)[5] the Assistant to the President for National Security Affairs.

(11)[5] the Assistance to the President for Economic Policy.

The[6] Secretary of the Treasury shall be the chairman of the Committee. The chairman, as he deems appropriate, may invite

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[1] Sec. 3–201(B) of Executive Order 12661, December 27, 1988 (54 F.R. 779) struck out "a representative, whose status is not below that of an Assistant Secretary, designated by each of" at this point.

[2] Sec. 1–105(f)(1) of Executive Order 12188 struck out "The Assistant to the President for Economic Affairs" and inserted in lieu thereof "The United States Trade Representative".

[3] Sec. 1–105(f)(2) of Executive Order 12188 struck out "The Executive Director of the Council on International Economic Policy" and inserted in lieu thereof "The Chairman of the Council of Economic Advisers".

[4] Sec. 3–201(F) of Executive Order 12661, December 27, 1988 (54 F.R. 779) added paras. (7) and (8). Subsequently, Sec. 57 of Executive Order 13287, February 28, 2003 (68 F.R. 10629) redesignated para. (8) as para. (9), and inserted "(8) The Secretary of Homeland Security". Existing paras. (9) through (11) probably should have been redesignated as well.

[5] Sec. 1 of Executive Order 12860 (58 F.R. 47201) added paras. (9), (10), and (11).

[6] Sec. 3–201(C) of Executive Order 12661, December 27, 1988 (54 F.R. 779) struck out "representative of the" at this point.

An Interim Presidential Directive Regarding Disposition of Certain Mergers, Acquisitions, and Takeovers, October 26, 1988 (53 F.R. 43999, November 1, 1988) designated the Secretary of the Treasury to perform the functions of the President as defined by sec. 721 of the Defense Production Act of 1950, as amended, and to consult with the Committee on Foreign Investment in the United States, established here. Sec. 3–201(G) of Executive Order 12661, December 27, 1988 (54 F.R. 779) revoked this Interim Directive.

representatives of other departments and agencies to participate from time to time in activities of the Committee.

(b) The Committee shall have primary continuing responsibility within the executive branch for monitoring the impact of foreign investment in the United States, both direct and portfolio, and for coordinating the implementation of U.S. policy on such investment. In fulfillment of this responsibility, the Committee shall:

(1) arrange for the preparation of analyses of trends and significant developments in foreign investments in the United States;

(2) provide guidance on arrangements with foreign governments for advance consultations on prospective major foreign governmental investments in the United States;

(3) review investments in the United States which, in the judgment of the Committee, might have major implications for U.S. national interests;

(4) consider proposals for new legislation or regulations relating to foreign investment as may appear necessary; and

(5)[7] coordinate the views of the Executive Branch and discharge the responsibilities with respect to Section 721(a) and (e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) ("Defense Production Act").

(c) As the need arises, the Committee shall submit recommendations and analyses to the National Security Council and to the Economic Policy Board. It shall also arrange for the preparation and publication of periodic reports.

Sec. 2. The Secretary of Commerce, with respect to the collection and use of data on foreign investment in the United States, shall provide, in particular, for the performance of the following activities:

(a) The obtainment, consolidation, and analysis of information on foreign investment in the United States;

(b) the improvement on such foreign investment;

(c) the close observation of foreign investment in the United States;

(d) the preparation of reports and analyses of trends and of significant developments in appropriate categories of such investment;

(e) the compilation of data and preparation of evaluations of significant investment transactions; and

(f) the submission to the Committee of appropriate reports, analyses, data and recommendations relating to foreign investment in the United States, including recommendations as to how information on foreign investment can be kept current.

Sec. 3. The Secretary of the Treasury is authorized, without further approval of the President, to make reasonable use of the resources of the Exchange Stabilization Fund, in accordance with section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a), to pay any of the expenses directly incurred by the Secretary of Commerce in the performance of the functions and activities provided by this order. This authority shall be in effect for one year, unless revoked prior thereto.

[7] Sec. 3–201(D) of Executive Order 12661 (December 27, 1988; 54 F.R. 779) added para. (5).

Sec. 4. All departments and agencies are directed to provide, to the extent permitted by law, such information and assistance as may be requested by the Committee or the Secretary of Commerce in carrying out their functions and activities under this order.

Sec. 5. Information which has been submitted or received in confidence shall not be publicly disclosed, except to the extent required by law; and such information shall be used by the Committee only for the purpose of carrying out the functions and activities prescribed by this order. Information or documentary material filed pursuant to Section 1(b)(5) or Section 7 of this Order shall be treated in accordance with paragraph (b) of Section 721 of the Defense Production Act.[8]

Sec. 6. Nothing in this order shall affect the data-gathering, regulatory, or enforcement authority of any existing department or agency over foreign investment, and the review of individual investments provided by this order shall not in any way supersede or prejudice any other process provided by law.

Sec. 7.[9] (1) *Investigations.* (a) The Committee is designated to receive notices and other information, to determine whether investigations should be undertaken , and to make investigations, pursuant to Section 721(a) of the Defense Production Act. (b) If the Committee determines that an investigation should be undertaken, such investigation shall commence no later than 30 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. Such investigation shall be completed no later than 45 days after such determination. (c) If one or more Committee members differ with a Committee decision not to undertake an investigation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision within 25 days after receipt by the Committee or written notification of the proposed or pending merger, acquisition, or takeover. (d) A unanimous decision by the Committee not to undertake an investigation with regard to a notice shall conclude action under this section on such notice. The Chairman shall advise the President of said decision.

(2) *Report to the President.* Upon completion or termination of any investigation, the Committee shall report to the President and present a recommendation. Any such report shall include information relevant to subparagraphs (1) and (2) of Section 721(d) of the Defense Production Act. If the Committee is unable to reach a unanimous recommendation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision.

Sec. 8.[9] The Chairman of the Committee, in consultation with other members of the Committee, is hereby delegated the authority to issue regulations to implement Section 721 of the Defense Production Act.

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[8] Sec. 3–201(E) of Executive Order 12661 (December 27, 1988; 54 F.R. 779) added this sentence.

[9] Sec. 3–201(A) of Executive Order 12661 (December 27, 1988; 54 F.R. 779) added secs. 7 and 8.

8. Collection and Publication of Foreign Commerce and Trade Statistics

Sections 301 through 307, Title 13, U.S.C.; as added by Public Law 87–826, 76 Stat. 951–52, approved October 15, 1962; and amended by Public Law 93–618 [Trade Act of 1974; H.R. 10710], 88 Stat. 1978 at 2074, approved January 3, 1975; Public Law 96–39 [Trade Agreements Act of 1979; H.R. 4537], 93 Stat. 144 at 313, approved July 26, 1979; Public Law 96–275 [H.R. 6842], 94 Stat. 539, approved June 17, 1980; Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 106–113 [Proliferation Prevention Enhancement Act of 1999; H.R. 3194], 113 Stat. 1501A–505, approved November 29, 1999; and Public Law 107–228 [Foreign Relations Authorization Act, Fiscal Year 2003; H.R. 1646], 116 Stat. 1350, approved September 30, 2002

§ 301. Collection and publication.

(a)[1] The Secretary is authorized to collect information from all persons exporting from, or importing into, the United States and the noncontiguous areas over which the United States exercises sovereignty, jurisdiction, or control, and from all persons engaged in trade between the United States and such noncontiguous areas and between those areas, or from the owners, or operators of carriers engaged in such foreign commerce or trade, and shall compile and publish such information pertaining to exports, imports, trade, and transportation relating thereto, as he deems necessary or appropriate to enable him to foster, promote, develop, and further the commerce, domestic and foreign, of the United States and for other lawful purposes.

(b)[1] The Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, on quarterly and cumulative bases, statistics on United States imports for consumption and United States exports by country and by product. Statistics on United States imports shall be submitted in accordance with the Tariff Schedules of United States Annotated and general statistical headnote 1 thereof, in detail as follows:

(1) net quantity;

(2) United States customs value:

(3) purchase price or its equivalent;

(4) equivalent of arm's length value;

(5) aggregate cost from port of exportation to United States port of entry;

(6) a United States port of entry value comprised of (5) plus (4), if applicable, or, if not applicable, (5) plus (3); and

(7) for transactions where (3) and (4) are equal, the total value of such transactions.

[1] Sec. 609(a) of the Trade Act of 1974 (Public Law 93–618; 88 Stat. 2074) added the subsec. designation "(a)" and new subsecs. (b), (c), and (d).

The data for paragraphs (1), (2), (3), (5), and (6) shall be reported separately for nonrelated and related party transactions, and shall also be reported as a total of all transactions.

(c)[1] In submitting any information under subsection (b) with respect to exports, the Secretary shall state separately from the total value of all exports—

(1)(A) the value of agricultural commodities exported under the Agricultural Trade Development and Assistance Act of 1954, as amended; and

(B) the total amount of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities; and

(2) the value of goods exported under the Foreign Assistance Act of 1961.

(d)[1] To assist the Secretary to carry out the provisions of subsections (b) and (c)—

(1) the Secretary of Agriculture shall furnish information to the Secretary concerning the value of agricultural commodities exported under provisions of the Agricultural Trade Development and Assistance Act of 1954, as amended, and the total amounts of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities; and

(2) the Secretary of State shall furnish information to the Secretary concerning the value of goods exported under the provisions of the Foreign Assistance Act of 1961, as amended.

(e)[2] There shall be reported, on monthly and cumulative bases, for each item in the Tariff Schedules of the United States Annotated, the United States port of entry value (as determined under subsection (b)(6)). There shall be reported, on monthly and cumulative bases, the balance of international trade for the United States reflecting (1) the aggregate value of all United States imports as reported in accordance with the first sentence of this subsection, and (2) the aggregate value of all United States exports. The information required to be reported under this subsection shall be reported in a form that is adjusted for economic inflation or deflation (on a constant dollar basis consistent with the reporting of the National Income and Product Accounts), and in a form that is not so adjusted.[3]

(f)[2] On or before January 1, 1981, and as often thereafter as may be necessary to reflect significant changes in rates, there shall be reported for each item of the Tariff Schedules of the United States Annotated, the ad valorem or ad valorem equivalent rate of duty which would have been required to be imposed on dutiable imports under that item, if the United States customs values of such imports were based on the United States port of entry value (as reported in accordance with the first sentence of subsection (e)) in

[2] Sec. 1108(a) of the Trade Agreements Act of 1979 (Public Law 96–39; 93 Stat. 313) added subsecs. (e) and (f).

[3] Sec. 1932 of Public Law 100–418 (Omnibus Trade and Competitiveness Act of 1988; 102 Stat. 1320) added this sentence. Sec. 1931(a) of that Act struck out the sentence previously appearing at this point, which read "The values and balance of trade required to be reported by this subsection shall be released no later than 48 hours before the release of any other government statistics concerning values of United States imports or United States balance of trade, or statistics from which such values or balance may be derived.".

order to collect the same amount of duties on imports under that item as are currently collected.

(g)[4] Shippers' Export Declarations (or any successor document), wherever located, shall be exempt from public disclosure unless the Secretary determines that such exemption would be contrary to the national interest.

(h)[5] The Secretary is authorized to require by regulation the filing of Shippers' Export Declarations under this chapter through an automated electronic system for the filing of export information established by the Department of the Treasury.

§ 302. Rules, regulations, and orders.

The Secretary may make such rules, regulations, and orders as he deems necessary or appropriate to carry out the provisions of this chapter. Any rules, regulations, or orders issued pursuant to this authority may be established in such form or manner, may contain such classifications or differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the Secretary are necessary or proper to effectuate the purpose of this chapter, or to prevent circumvention or evasion of any rule,

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[4] Sec. 1 of Public Law 96–275 (94 Stat. 539) added subsec. (g).

[5] Public Law 106–113 (113 Stat. 1501) added subsec. (h).

Public Law 106–113 further provided:

"(b) IMPLEMENTING REGULATIONS.—

"(1) IN GENERAL.—The Secretary of Commerce, with the concurrence of the Secretary of State, shall publish regulations in the Federal Register to require that, upon the effective date of those regulations, exporters (or their agents) who are required to file Shippers' Export Declarations under chapter 9 of title 13, United States Code, file such Declarations through the Automated Export System with respect to exports of items on the United States Munitions List or the Commerce Control List.

"(2) ELEMENTS OF THE REGULATIONS.—The regulations referred to in paragraph (1) shall include at a minimum—

"(A) provision by the Department of Commerce for the establishment of on-line assistance services to be available for those individuals who must use the Automated Export System;

"(B) provision by the Department of Commerce for ensuring that an individual who is required to use the Automated Export System is able to print out from the System a validated record of the individual's submission, including the date of the submission and a serial number or other unique identifier, where appropriate, for the export transaction; and

"(C) a requirement that the Department of Commerce print out and maintain on file a paper copy or other acceptable back-up record of the individual's submission at a location selected by the Secretary of Commerce.

"(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 270 days after the Secretary of Commerce, the Secretary of the Treasury, and the Director of the National Institute of Standards and Technology jointly provide a certification to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives that a secure Automated Export System available through the Internet that is capable of handling the expected volume of information required to be filed under subsection (b), plus the anticipated volume from voluntary use of the Automated Export System, has been successfully implemented and tested and is fully functional with respect to reporting all items on the United States Munitions List, including their quantities and destinations.".

Sec. 1256 of Public Law 106–113 (113 Stat. 1501A–507) further provided:

"SEC. 1256. DEFINITIONS.

"In this subtitle:

"(1) AUTOMATED EXPORT SYSTEM.—The term "Automated Export System" means the automated and electronic system for filing export information established under chapter 9 of title 13, United States Code, on June 19, 1995 (60 Federal Register 32040).

"(2) COMMERCE CONTROL LIST.—The term "Commerce Control List" has the meaning given the term in section 774.1 of title 15, Code of Federal Regulations.

"(3) SHIPPERS' EXPORT DECLARATION.—The term "Shippers' Export Declaration" means the export information filed under chapter 9 of title 13, United States Code, as described in part 30 of title 15, Code of Federal Regulations.

"(4) UNITED STATES MUNITIONS LIST.—The term "United States Munitions List" means the list of items controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778).".

regulation, or order issued hereunder. The Secretary may also provide by rule or regulation, for such confidentiality, publication, or disclosure, of information collected hereunder as he may deem necessary or appropriate in the public interest. Rules, regulations, and orders, or amendments thereto shall have the concurrence of the Secretary of the Treasury prior to promulgation.

§ 303. Secretary of Treasury functions.

To assist the Secretary to carry out the functions of this chapter, the Secretary of the Treasury shall collect information in the form and manner prescribed by the regulations issued pursuant to this chapter from persons engaged in foreign commerce or trade[6] and from the owners or operators of carriers.

§ 304. Filing export information, delayed filings, penalties for failure to file.

(a) The information or reports in connection with the exportation or transportation of cargo required to be filed by carriers with the Secretary of the Treasury under any rule, regulation, or order issued pursuant to this chapter may be filed after the departure of such carrier from the port or place of exportation or transportation, whether such departing carrier is destined directly to a foreign port or place or to a noncontiguous area, or proceeds by way of other ports or places of the United States, provided that a bond in an approved form in a penal sum of $10,000[7] is filed with the Secretary of the Treasury. The Secretary of Commerce may, by a rule, regulation, or order issued in conformity herewith, prescribe a maximum period after such departure during which the required information or reports may be filed. In the event any such information or report is not filed within such prescribed period, a penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation[8] shall be exacted. Civil suit may be instituted in the name of the United States against the principal and surety for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond.

(b)[9] Any person, other than a person described in subsection (a), required to submit export information, shall file such information in accordance with any rule, regulation, or order issued pursuant to this chapter. In the event any such information or reports are not filed within such prescribed period, the Secretary of Commerce (and officers of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation.

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[6] Sec. 1404(d) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228; 116 Stat. 1545) struck out ", other than by mail,".

[7] Sec. 1404(e)(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228; 116 Stat. 1545) struck out "the penal sum of $1,000" and inserted in lieu thereof "a penal sum of $10,000".

[8] Sec, 1404(e)(2) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228; 116 Stat. 1545) struck out "a penalty not to exceed $100 for each day's delinquency beyond the prescribed period, but not more than $1,000" and inserted in lieu thereof "a penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation".

[9] Sec. 1404(e)(3) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228; 116 Stat. 1545) redesignated subsec. (b) as subsec. (c) and inserted a new subsec. (b).

(c)[9] The Secretary may remit or mitigate any penalty incurred for violations of this section and regulations issued pursuant thereto if, in his opinion, they were incurred without willful negligence or fraud, or other circumstances justify a remission or mitigation.

§ 305.[10] PENALTIES FOR UNLAWFUL EXPORT INFORMATION ACTIVITIES.

(a) CRIMINAL PENALTIES.—

(1) FAILURE TO FILE; SUBMISSION OF FALSE OR MISLEADING INFORMATION.—Any person who knowingly fails to file or knowingly submits false or misleading export information through the Shippers Export Declaration (SED) (or any successor document) or the Automated Export System (AES) shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

(2) FURTHERANCE OF ILLEGAL ACTIVITIES.—Any person who knowingly reports any information on or uses the SED or the AES to further any illegal activity shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

(3) FORFEITURE PENALTIES.—Any person who is convicted under this subsection shall, in addition to any other penalty, be subject to forfeiting to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(b) CIVIL PENALTIES.—The Secretary (and officers of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 per violation on any person violating the provisions of this chapter or any rule, regulation, or order issued thereunder, except as provided in section 304. Such penalty may be in addition to any other penalty imposed by law.

(c) CIVIL PENALTY PROCEDURE.—

(1) IN GENERAL.—Whenever a civil penalty is sought for a violation of this section or of section 304, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing

[10] Sec. 1404(f) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228; 116 Stat. 1546) amended and restated sec. 305. It previously read as follows:

"§ 305. VIOLATIONS, PENALTIES.

"Any person, including the owners or operators of carriers, violating the provisions of this chapter, or any rule, regulation, or order issued thereunder, except as provided in section 304 above, shall be liable to a penalty not to exceed $1,000 in addition to any other penalty imposed by law. The amount of any such penalty shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.".

before an administrative law judge. Any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code.

(2) COMMENCEMENT OF CIVIL ACTIONS.—If any person fails to pay a civil penalty imposed under this chapter, the Secretary may request the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than 5 years after the date the order imposing the civil penalty becomes final. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(3) REMISSION OR MITIGATION OF PENALTIES.—The Secretary may remit or mitigate any penalties imposed under paragraph (1) if, in the Secretary's opinion—

(A) the penalties were incurred without willful negligence or fraud; or

(B) other circumstances exist that justify a remission or mitigation.

(4) APPLICABLE LAW FOR DELEGATED FUNCTIONS.—If, pursuant to section 306, the Secretary delegates functions under this section to another agency, the provisions of law of that agency relating to penalty assessment, remission or mitigation of such penalties, collection of such penalties, and limitations of actions and compromise of claims, shall apply.

(5) DEPOSIT OF PAYMENTS IN GENERAL FUND OF THE TREASURY.—Any amount paid in satisfaction of a civil penalty imposed under this section or section 304 shall be deposited into the general fund of the Treasury and credited as miscellaneous receipts.

(d) ENFORCEMENT.—

(1) BY THE SECRETARY OF COMMERCE.—The Secretary of Commerce may designate officers or employees of the Office of Export Enforcement to conduct investigations pursuant to this chapter. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this chapter, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

(2) BY THE COMMISSIONER OF CUSTOMS.—The Commissioner of Customs may designate officers or employees of the Customs Service to enforce the provisions of this chapter, or to conduct investigations pursuant to this chapter.

(e) REGULATIONS.—The Secretary of Commerce shall promulgate regulations for the implementation and enforcement of this section.

(f) EXEMPTION.—The criminal fines provided for in this section are exempt from the provisions of section 3571 of title 18, United States Code.

§ 306. Delegation of functions.

Subject to the concurrence of the head of the department or agency concerned, the Secretary may make such provisions as he

shall deem appropriate, authorizing the performance by any officer, agency or employee of the United States Government departments or offices, or the governments of any areas over which the United States exercises sovereignty, jurisdiction, or control, of any function of the Secretary, contained in this chapter.

§ 307. Relationship to general census law.

The following sections only, 1, 2, 3, 4, 5, 6, 7, 11, 21, 22, 23, 24, 211, 212, 213, and 214, of chapters 1 through 7 of this title are applicable to this chapter.

9. Materials and Commodities

a. Opposition of Use of Multilateral Assistance To Produce or Extract Foreign Surplus Commodities and Minerals for Export

Partial text of Public Law 99–472 [H.R. 5548], 100 Stat. 1200 at 1210, approved October 15, 1986

AN ACT To amend the Export-Import Bank Act of 1945.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Export-Import Bank Act Amendments of 1986".

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SEC. 22.[1] OPPOSITION OF MULTILATERAL ASSISTANCE FOR FOREIGN SURPLUS COMMODITIES AND MINERALS.

The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by such institutions, using funds appropriated or otherwise made available pursuant to any provision of law, for the production or extraction of any commodity or mineral for export, if—

(1) such commodity or mineral, as the case may be, is in surplus on world markets; and

[1] 22 U.S.C. 262h. Similar language was enacted as sec. 514 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (sec. 101(c) of title I of Public Law 104–208; 110 Stat. 3009); sec. 514 (111 Stat. 2409) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118, 111 Stat. 2409); sec. 514 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (112 Stat. 2681–173, sec. 101(d) of Public Law 105–277); sec. 514 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (113 Stat. 1501A–85, Appendix B of Public Law 106–113); sec. 514 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (114 Stat. 1900A–25, sec. 101(a) of Public Law 106–429); sec. 514 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2142); sec. 514 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003 (Division D of Public Law 108–7; 117 Stat. 184); sec. 514 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (Division D of Public Law 108–199; 118 Stat. 171); sec. 514 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (Division D of Public Law 108–447; 118 Stat. 2995); and sec. 514 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102; 119 Stat. 2200). For text, see *Legislation on Foreign Relations Through 2005*, vol. I–A.

(2) the export of such commodity or mineral, as the case may be, would cause substantial injury to the United States producers of the same, similar, or competing commodity or mineral.

b. National Critical Materials Act of 1984

Title II of Public Law 98–373 [S. 373], 98 Stat. 1242 at 1248, approved July 31, 1984, as amended by Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988

AN ACT To provide for a comprehensive national policy dealing with national research needs and objectives in the Arctic, for a National Critical Materials Council, for development of a continuing and comprehensive national materials policy for programs necessary to carry out that policy, including Federal programs of advanced materials research and technology, and the innovation in basic materials industries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE II—NATIONAL CRITICAL MATERIALS ACT OF 1984

SHORT TITLE

SEC. 201.[1] This title may be cited as the "National Critical Materials Act of 1984".

FINDINGS AND PURPOSES

SEC. 202.[2] (a) The Congress finds that—

(1) the availability of adequate supplies of strategic and critical industrial minerals and materials continues to be essential for national security, economic well-being, and industrial production;

(2) the United States is increasingly dependent on foreign sources of materials and vulnerable to supply interruption in the case of many of those minerals and materials essential to the Nation's defense and economic well-being;

(3) together with increasing import dependence, the Nation's industrial base, including the capacity to process minerals and materials, is deteriorating—both in terms of facilities and in terms of a trained labor force;

(4) research, development, and technological innovation, especially related to improved materials and new processing technologies, are important factors which affect our long-term capability for economic competitiveness, as well as for adjustment to interruptions in supply of critical minerals and material;

(5) while other nations have developed and implemented specific long-term research and technology programs to develop

[1] 30 U.S.C. 1801 note.
[2] 30 U.S.C. 1801.

high-performance materials, no such policy and program evolution has occurred in the United States;

(6) establishing critical materials reserves, by both the public and private sectors and with proper organization and management, represents one means of responding to the genuine risks to our economy and national defense from dependency on foreign sources;

(7) there exists no single Federal entity with the authority and responsibility for establishing critical materials policy and for coordinating and implementing that policy; and

(8) the importance of materials to national goals requires an organizational means for establishing responsibilities for materials programs and for the coordination, within and at a suitable high level of the Executive Office of the President, with other existing policies within the Federal Government.

(b) It is the purpose of this title—

(1) to establish a National Critical Materials Council under and reporting to the Executive Office of the President which shall—

(A) establish responsibilities for and provide for necessary coordination of critical materials policies, including all facets of research and technology, among the various agencies and departments of the Federal Government, and make recommendations for the implementation of such policies;

(B) bring to the attention of the President, the Congress, and the general public such material issues and concerns, including research and development, as are deemed critical to the economic and strategic health of the Nation; and

(C) ensure adequate and continuing consultation with the private sector concerning critical materials, materials research and development, use of materials, Federal materials policies, and related matters;

(2) to establish a national Federal program for advanced materials research and technology, including basic phenomena through processing and manufacturing technology; and

(3) to stimulate innovation and technology utilization in basic as well as advanced materials industries.

ESTABLISHMENT OF THE NATIONAL CRITICAL MATERIALS COUNCIL

SEC. 203.[3] There is hereby established a National Critical Materials Council (hereinafter referred to as the "Council") under and reporting to the Executive Office of the President. The Council

[3] 30 U.S.C. 1802.

[4] Sec. 5182 of Public Law 100–418 (Omnibus Trade and Competitiveness Act of 1988; 102 Stat. 1454) contained the following provisions:

"(a) REQUIREMENT TO INCREASE STAFF.—Not later than 30 days after the date of the enactment of this Act, the Executive Director of the National Critical Materials Council shall increase the number of employees of the Council by the equivalent of 5 full-time employees over the number of employees of the Council on the date of the enactment of this Act.

"(b) QUALIFICATIONS OF STAFF.—Not less than the equivalent of 4 full-time employees appointed pursuant to subsection (a) shall be permanent professional employees who have expertise in technical fields that are relevant to the responsibilities of the National Critical Materials Council, such as materials science and engineering, environmental matters, minerals and natural resources, ceramic or composite engineering, metallurgy, and geology.".

shall be composed of three members[4] who shall be appointed by the President and who shall serve at the pleasure of the President. Members so appointed who are not already Senate-confirmed officers of the Government shall be appointed by and with the advice and consent of the Senate. The President shall designate one of the members to serve as Chairman. Each member shall be a person who, as a result of training, experience, and achievement, is qualified to carry out the duties and functions of the Council, with particular emphasis placed on fields relating to materials policy or materials science and engineering. In addition, at least one of the members shall have a background in and understanding of environmentally related issues.

RESPONSIBILITIES AND AUTHORITIES OF THE COUNCIL

SEC. 204.[5] (a) It shall be the primary responsibility of the Council—

(1) to assist and advise the President in establishing coherent national materials policies consistent with other Federal policies, and making recommendations necessary to implement such policies;

(2) to assist in establishing responsibilities for, and to coordinate, Federal materials-related policies, programs, and research and technology activities, as well as recommending to the Office of Management and Budget budget priorities for materials activities in each of the Federal departments and agencies;

(3) to review and appraise the various programs and activities of the Federal Government in accordance with the policy and directions given in the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601), and to determine the extent to which such programs and activities are contributing to the achievement of such policy and directions;

(4) to monitor and evaluate the critical materials needs of basic and advanced technology industries and the Government, including the critical materials research and development needs of the private and public sectors;

(5) to advise the President of mineral and material trends, both domestic and foreign, the implications thereof for the United States and world economies and the national security, and the probable effects of such trends on domestic industries;

(6) to assess through consultation with the materials academic community, the adequacy and quality of materials-related educational institutions and the supply of materials scientists and engineers;

(7) to make or furnish such studies, analyses, reports, and recommendations with respect to matters of materials related policy and legislation as the President may request;

(8)(A) to prepare a report providing a domestic inventory of critical materials with projections on the prospective needs of Government and industry for these materials, including a long-range assessment, prepared in conjunction with the Office of

[5] 30 U.S.C. 1803.

Science and Technology Policy in accordance with the National Materials and Minerals Policy, Research and Development Act of 1980, and in conjunction with such other Government departments or agencies as may be considered necessary, of the prospective major critical materials problems which the United States is likely to confront in the immediate years ahead and providing advice as to how these problems may best be addressed, with the first such report being due on April 1, 1985, and (B) review and update such report and assessment as appropriate and report thereon to the Congress at least biennially; and

(9) to recommend to the Congress such changes in current policies, activities, and regulations of the Federal Government, and such legislation, as may be considered necessary to carry out the intent of this title and the National Materials and Minerals Policy, Research and Development Act of 1980.

(b) In carrying out its responsibilities under this section the Council shall have the authority—

(1) to establish such special advisory panels as it considers necessary, with each such panel consisting of representatives of industry, academia, and other members of the private sector, not to exceed ten members, and being limited in scope of subject and duration; and

(2) to establish and convene such Federal interagency committees as it considers necessary in carrying out the intent of this title.

(c) In seeking to achieve the goals of this title and related Acts, the Council and other Federal departments and agencies with responsibilities or jurisdiction related to materials or materials policy, including the National Security Council, the Council on Environmental Quality, the Office of Management and Budget, and the Office of Science and Technology Policy, shall work collaboratively and in close cooperation.

PROGRAM AND POLICY FOR ADVANCED MATERIALS RESEARCH AND TECHNOLOGY

SEC. 205.[6] (a) In addition to the responsibilities described in section 204, the Council shall be responsible for coordination with appropriate agencies and departments of the Federal Government relative to Federal materials research and development policies and programs. Such policies and programs shall be consistent with the policies and goals described in the National Materials and Minerals Policy, Research and Development Act of 1980. In carrying out this responsibility the Council shall—

(1)(A) establish a national Federal program plan[7] for advanced materials research and development, recommend the

[6] 30 U.S.C. 1804.

[7] Sec. 5181 of Public Law 100–418 (Omnibus Trade and Competitiveness Act of 1988; 102 Stat. 1454) contained the following stipulation:

"The National Critical Materials Council shall prepare the national Federal program plan for advanced materials research and development under section 205(a)(1)(A) of the National Critical Materials Act of 1984 (Public Law 98–373; 98 Stat. 1251) and shall submit such plan to Congress not later than 180 days after the date of the enactment of this Act. The plan shall be submitted to the Committee on Science, Space, and Technology, as well as other appropriate

Continued

designation of the key responsibilities for carrying out such research, and to provide for coordination of this plan with the Office of Science and Technology Policy, the Office of Management and Budget, and such other Federal offices and agencies as may be deemed appropriate, and (B) annually review such plan and report thereon to the Congress;

(2) review annually the materials research, development, and technology authorization requests and budgets of all Federal agencies and departments; and in this activity the Council shall make recommendations, in cooperation with the Office of Science and Technology Policy, the Office of Management and Budget, and all other Federal offices and agencies deemed appropriate, to ensure close coordination of the goals and directions of such programs with the policies determined by the Council; and

(3) assist the Office of Science and Technology Policy in the preparation of such long-range materials assessments and reports as may be required by the National Materials and Minerals Policy, Research and Development Act of 1980, and assist other Federal entities in the preparation of analyses and reporting relating to critical and advanced materials.

(b) The Office of Management and Budget, in reviewing the materials research, development, and technology authorization requests of the various Federal departments and agencies for any fiscal year, and the recommendations of the Council, shall consider all of such requests and recommendations as an integrated, coherent, multiagency request which shall be reviewed by the Office of Management and Budget for its adherence to the national Federal materials program plan in effect for such fiscal year under subsection (a).

INNOVATION IN BASIC AND ADVANCED MATERIALS INDUSTRIES

SEC. 206.[8] (a)(1) In order to promote the use of more cost-effective, advanced technology and other means of providing for innovation and increased productivity within the basic and advanced materials industries, the Council shall evaluate and make recommendations regarding the establishment of Centers for Industrial Technology as provided in Public Law 96–480 (15 U.S.C. 3705).

(2) The activities of such Centers shall focus on, but not be limited to, the following generic materials areas: corrosion; welding and joining of materials; advanced processing and fabrication technologies; microfabrication; and fracture and fatigue.

(b) In order to promote better use and innovation of materials in design for improved safety or efficiency, the Council shall establish in cooperation with the appropriate Federal agencies and private industry, an effective mechanism for disseminating materials property data in an efficient and timely manner. In carrying out this responsibility, the Council shall consider, where appropriate, the

committees, of the House of Representatives, and to the Committee on Governmental Affairs, as well as other appropriate committees, of the Senate.".

[8] 30 U.S.C. 1805.

establishment of a computerized system taking into account, to the maximum extent practicable, existing available resources.

COMPENSATION OF MEMBERS AND REIMBURSEMENTS

SEC. 207.[9] (a) The Chairman of the Council, if not otherwise a paid officer or employee of the Federal Government, shall be paid at the rate not to exceed the rate of basic pay provided for level II of the Executive Schedule. The other members of the Council, if not otherwise paid officers or employees of the Federal Government, shall be paid at a per diem rate comparable to the rate not to exceed the rate of basic pay provided for level III of the Executive Schedule.

(b) Subject to existing law and regulations governing conflicts of interest, the Council may accept reimbursement from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, or from any State or local government, for reasonable travel expenses incurred by any member or employee of the Council in connection with such member's or employee's attendance at any conference, seminar, or similar meeting.

POSITION AND AUTHORITIES OF EXECUTIVE DIRECTOR

SEC. 208.[10] (a) There shall be an Executive Director (hereinafter referred to as the "Director"), who shall be chief administrator of the Council. The Director shall be appointed by the Council full time and shall be paid at the rate not to exceed the rate of basic pay provided for level III of the Executive Schedule.

(b) The Director is authorized—

(1) to employ such personnel as may be necessary for the Council to carry out its duties and functions under this title, but not to exceed twelve compensated employees;

(2) to obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code; and

(3) to develop, subject to approval by the Council, rules and regulations necessary to carry out the purposes of this title.

(c) In exercising his responsibilities and duties under this title, the Director—

(1) may consult with representatives of academia, industry, labor, State and local governments, and other groups; and

(2) shall utilize to the fullest extent possible the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals.

(d) Notwithstanding section 367(b) of the Revised Statutes (31 U.S.C. 665(b)), the Council may utilize voluntary and uncompensated labor and services in carrying out its duties and functions.

[9] 30 U.S.C. 1806.
[10] 30 U.S.C. 1807.

RESPONSIBILITIES AND DUTIES OF THE DIRECTOR

SEC. 209.[11] In carrying out his functions the Director shall assist and advise the Council on policies and programs of the Federal Government affecting critical and advanced materials by—

(1) providing the professional and administrative staff and support for the Council;

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, including research and development, which affect critical materials availability and needs;

(3) cataloging, as fully as possible, research and development activities of the Government, private industry, and public and private institutions; and

(4) initiating Government and private studies and analyses, including those to be conducted by or under the auspices of the Council, designed to advance knowledge of critical or advanced materials issues and develop alternative proposals, including research and development, to resolve national critical materials problems.

AUTHORITY

SEC. 210.[12] The Council is authorized—

(1) to establish such internal rules and regulations as may be necessary for its operation;

(2) to enter into contracts and acquire materials and supplies necessary for its operation to such extent or in such amounts as are provided for in appropriation Acts;

(3) to publish, consistent with title 44 of the United States Code, or arrange to publish critical materials information that it deems to be useful to the public and private industry to the extent that such publication is consistent with the national defense and economic interest;

(4) to utilize such services or personnel as may be provided to the Council on a nonreimbursable[13] basis by any agency of the United States; and

(5) to exercise such authorities as may be necessary and incidental to carrying out its responsibilities and duties under this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 211.[14] There are hereby authorized to be appropriated to carry out the provisions of this title a sum not to exceed $500,000 for the fiscal year ending September 30, 1985, and such sums as may be necessary thereafter: *Provided,* That the authority provided

[11] 30 U.S.C. 1808.
[12] 30 U.S.C. 1809.
[13] Sec. 5183 of Public Law 100–418 (102 Stat. 1454) struck out "reimbursable" and inserted in lieu thereof "nonreimbursable".
[14] 30 U.S.C. 1810.

for in this title shall expire on September 30, 1992,[15] unless otherwise authorized by Congress.

DEFINITION

SEC. 212. As used in this title, the term "materials" has the meaning given it by section 2(b) of the National Materials and Minerals Policy, Research and Development Act of 1980.[16]

[15] Sec. 5184 of Public Law 100–418 (102 Stat. 1454) struck out "1990" and inserted in lieu thereof "1992".

[16] Sec. 2(b) of such Act reads as follows:

"(b) As used in this Act, the term materials means substances, including minerals, of current or potential use that will be needed to supply the industrial, military, and essential civilian needs of the United States in the production of goods or services, including those which are primarily imported or for which there is a prospect of shortages or uncertain supply, or which present opportunities in terms of new physical properties, use, recycling, disposal or substitution, with the exclusion of food and energy fuels used as such.".

c. International Coffee Agreement Act of 1980

Public Law 96–599 [H.R. 3637], 94 Stat. 3491, approved December 24, 1980; as amended by Public Law 97–276 [Continuing Appropriations, 1983; H.J. Res. 599], 96 Stat. 1186 at 1204, approved October 2, 1982; Public Law 97–446 [H.R. 4566], 96 Stat. 2329 at 2345, approved January 12, 1983; Public Law 98–120 [H.R. 3813], 97 Stat. 809, approved October 12, 1983; and Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988

AN ACT To carry out the obligations of the United States under the International Coffee Agreement of 1976, signed at New York on February 27, 1976, and entered into force for the United States on October 1, 1976, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "International Coffee Agreement Act of 1980".[1]

IMPORTATION OF COFFEE UNDER INTERNATIONAL COFFEE AGREEMENT 1976; PRESIDENTIAL POWERS AND DUTIES

SEC. 2. On and after the entry into force of the International Coffee Agreement 1983,[2] and before October 1, 1989,[3] as the agreement remains in effect, the President is authorized, in order to carry out and enforce the provisions of that agreement—

(1) to regulate the entry of coffee for consumption, or withdrawal of coffee from warehouse for consumption, or any other form of entry or withdrawal of coffee such as for transportation or exportation, including whenever quotas are in effect pursuant to the agreement, (A) the limitation of entry, or withdrawal from warehouse, of coffee imported from countries which are not members of the International Coffee Organization, and (B) the prohibition of entry of any shipment from any member of the International Coffee Organization of coffee which is not accompanied either by a valid certificate of origin, a valid certificate of reexport, a valid certificate of reshipment, or a valid certificate of transit, issued by a qualified agency in such form as required under the agreement.

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[1] 19 U.S.C. 1356k.

[2] Sec. 1 of Public Law 98–120 (97 Stat. 809) struck out a reference to 1976 and inserted in lieu thereof the reference to 1983.

[3] Sec. 1123(a) of Public Law 100–418 (Omnibus Trade and Competitiveness Act of 1988; 102 Stat. 1146) extended this date to 1989. Previously, sec. 1(2) of Public Law 98–120 (97 Stat. 809) had struck out "for such period prior to October 1, 1983" and inserted in lieu thereof "before October 1, 1986". Other extensions had been made by sec. 154 of Public Law 97–446 (96 Stat. 2345) which extended the date until October 1, 1983; and prior to that, by sec. 161 of the Continuing Appropriations Act, 1983 (Public Law 97–276; 96 Stat. 1204), which extended the date from October 1, 1982, until "the expiration of this joint resolution" (December 17, 1982).

Sec. 1123(b) of Public Law 100–418 further stated that the amendment made by subsec. (a) shall take effect on January 1, 1987.

(2) to require that every export or reexport of coffee from the United States shall be accompanied by a valid certificate of origin or a valid certificate of reexport, issued by a qualified agency of the United States designated by him, in such form as required under the agreement;

(3) to require the keeping of such records, statistics, and other information, and the rendering of such reports, relating to the importation, distribution, prices, and consumption of coffee as he may from time to time prescribe; and

(4) to take such other action, and issue and enforce such rules and regulations, as he may consider necessary or appropriate in order to implement the obligations of the United States under the agreement.

DEFINITION OF COFFEE

SEC. 3. As used in this Act, the term "coffee" means coffee as defined in article 3 of the International Coffee Agreement 1983.[2]

DELEGATION OF PRESIDENTIAL POWERS AND DUTIES; PROTECTION OF INTERESTS OF UNITED STATES CONSUMERS; REMEDIAL ACTION

SEC. 4. The President may exercise any powers and duties conferred on him by sections 2 through 5 of this Act through such agency or officer as he shall direct. The powers and duties conferred by section 2 through 5 of this Act shall be exercised in the manner the President considers appropriate to protect the interest of United States consumers. In the event the President determines that there has been an unwarranted increase in the price of coffee due in whole or in part to the International Coffee Agreement, or to market manipulation by two or more members of the International Coffee Organization, the President shall request the International Coffee Council or the Executive Board to increase supplies of coffee available to world markets by suspending coffee export quotas and to take any other appropriate action. At the same time he shall report his determination to the Congress. In the event the International Coffee Council has failed to take corrective action to remedy the situation within a reasonable time after such request the President shall submit to the Congress such recommendations as he may consider appropriate to correct the situation. In the event that members of the International Coffee Organization involved in market manipulation which has resulted in price increases have failed to remedy the situation within a reasonable time after a request for remedy, the exercise of the authority set forth in section 2 of this Act shall be suspended until the President determines that effective market manipulation activities have ceased.

REPORT TO THE CONGRESS

SEC. 5. The President shall submit to the Congress an annual report on the International Coffee Agreement 1983.[2] Such report shall contain full information on the operation of such agreement, including full information with respect to the general level of prices of coffee and matters pertaining to the transportation of coffee from

exporting countries to the United States. The report shall also include a summary of the actions the United States and the International Coffee Organization have taken to protect the interest of United States consumers.

d. International Natural Rubber Agreement Appropriation Authorization

Public Law 96–271 [S. 2666], 94 Stat. 499, approved June 16, 1980

AN ACT To authorize appropriations for the International Natural Rubber Agreement for fiscal year 1981.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to meet the obligations of the United States as a member of the International Natural Rubber Organization established by the International Natural Rubber Agreement, there is authorized to be appropriated for the fiscal year 1981 $88,000,000 for the payment of contributions by the United States to the buffer stock account established by the agreement. Funds appropriated under this Act are authorized to remain available during the period in which the International Natural Rubber Agreement remains in effect with respect to the United States.

e. International Sugar Agreement, 1977, Implementation

Public Law 96–236 [H.R. 6029], 94 Stat. 336, approved April 22, 1980; as amended by Public Law 97–446 [H.R. 4566], 96 Stat. 2329 at 2344, approved January 12, 1983; and Public Law 105–277 [H.R. 4328; 112 Stat. 2681–817], approved October 21, 1998

AN ACT Providing for the implementation of the International Sugar Agreement, 1977, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.[1] DEFINITIONS.

For purposes of this Act—

(1) The term "Agreement" means the International Sugar Agreement, 1977, signed at New York City on December 9, 1977.

(2) The term "sugar" has the same meaning as is given to such term in paragraph (12) of Article 2 of the Agreement.

(3) The term "entry" means entry, or withdrawal from warehouse, for consumption in the customs territory of the United States.

SEC. 2.[2] IMPLEMENTATION OF AGREEMENT.

On and after the entering into force of the Agreement with respect to the United States, and for such period before January 1, 1985,[3] as the Agreement remains in force, the President may, in order to carry out and enforce the provisions of the Agreement—

(1) regulate the entry of sugar by appropriate means, including, but not limited to—

(A) the imposition of limitations on the entry of sugar which is the product of foreign countries, territories, or areas not members of the International Sugar Organization, and

(B) the prohibition of the entry of any shipment or quantity of sugar not accompanied by a valid certificate of contribution or such other documentation as may be required under the Agreement;

(2) require of appropriate persons the keeping of such records, statistics, and other information, and the submission of such reports, relating to the entry, distribution, prices, and consumption of sugar and alternative sweeteners as he may from time to time prescribe; and

(3) take such other action, and issue and enforce such rules or regulations, as he may consider necessary or appropriate in

[1] 7 U.S.C. 3601. Executive Order 12224 (July 1, 1980; 45 F.R. 45243) delegated functions vested in the President by this Act to the United States Trade Representative, in consultation with the Secretary of Agriculture and the Secretary of State.

[2] 7 U.S.C. 3602.

[3] Sec. 153 of Public Law 97–446 (96 Stat. 2344) extended this date from January 1, 1983, to January 1, 1985.

order to implement the rights and obligations of the United States under the Agreement.

SEC. 3.[4] DELEGATION OF POWERS AND DUTIES.

The President may exercise any power or duty conferred on him by this Act through such agencies or offices of the United States as he shall designate. Such agencies or offices shall issue such regulations as they determine are necessary to implement this Act.

SEC. 4.[5] CRIMINAL OFFENSES.

Any person who—

(1) knowingly fails to keep any information, or to submit any report, required under section 2;

(2) submits any report under section 2 knowing that the report or any part thereof is false; or

(3) knowingly violates any rule or regulation issued to carry out this Act;

is guilty of an offense and upon conviction thereof is punishable by a fine of not more than $1,000.

SEC. 5.[6] * * * [Repealed—1998]

SEC. 6.[7] * * * [Repealed—1998]

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[4] 7 U.S.C. 3603.

[5] 7 U.S.C. 3604.

[6] 7 U.S.C. 3605. Sec. 2219(a)(5) of Public Law 105–277 (112 Stat 2681–817) repealed sec. 5, which formerly read as follows:

"SEC. 5. REPORT TO CONGRESS.

"The President shall submit to Congress, on or before May 1 and November 1 of each year, a report on the operation and effect of the agreement during the immediately preceding six-month period. Unless otherwise published on a regular basis by an agency of the United States, the report shall contain, but not be limited to—

"(1) information with respect to world and domestic sugar demand, supplies, and prices during the period concerned;

"(2) projections with respect to world and domestic sugar demand, supplies, and prices; and

"(3) a summary of the international and domestic actions taken during the period concerned under the Agreement and under domestic legislation to protect the interests of United States consumers and producers of sugar.".

[7] 7 U.S.C. 3606. Sec. 101(g) of the Federal Reports Elimination Act of 1998 (Public Law 105–362; 112 Stat. 3281) repealed sec. 6, which formerly read as follows:

"SEC. 6. PROTECTION OF INTERESTS OF UNITED STATES CONSUMERS.

"The powers and duties conferred by sections 2 and 3 shall be exercised in the manner the President considers appropriate to protect the interests of United States consumers. If the President determines that there has been an unwarranted increase in the price of sugar due in whole or in part to the Agreement, or to market manipulation by two or more members of the International Sugar Organization, the President shall request the International Sugar Council or the Executive Committee to increase supplies of sugar available to world markets by suspending sugar export quotas or to take any other appropriate action, and, at the same time, shall report that determination to the Congress. If the International Sugar Council fails to take corrective action to remedy the situation within a reasonable time after such request, the President shall submit to the Congress such recommendations as he may consider appropriate to correct the situation. In the event that members of the International Sugar Organization involved in market manipulation which has resulted in price increases have failed to remedy the situation within a reasonable time after a request for remedy, the exercise of the authority set forth in section 2 shall be suspended until the President determines that effective market manipulation activities have ceased.".

f. Strategic and Critical Materials Transaction Authorization Act of 1979

Public Law 96–175 [H.R. 595], 93 Stat. 1289, approved December 29, 1979

AN ACT To authorize certain transactions involving the acquisition and disposal of strategic and critical materials for the National Defense Stockpile.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Strategic and Critical Materials Transaction Authorization Act of 1979".

SEC. 2. There is authorized to be appropriated the sum of $237,000,000 for the acquisition of strategic and critical materials under section 6(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e). Before any acquisition using funds appropriated under the authorization of this section may be carried out, a list of the materials to be acquired shall be submitted to the Committees on Armed Services of the Senate and House of Representatives, and such acquisition may not then be carried out until the end of the 60-day period beginning on the date such list is received by such committees.

SEC. 3. The President is hereby authorized to dispose of materials determined to be excess to the current requirements of the National Defense Stockpile in the following quantities:

(1) 35,000 long tons of tin.

(2) 3,000,000 carats of industrial diamond stones.

(3) 5,000,000 troy ounces of silver.

SEC. 4. Any acquisition using funds appropriated under the authorization of section 2, and any disposal under the authority of section 3, shall be carried out in accordance with the provisions of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.).

SEC. 5. The President, on behalf of the United States,[1] is authorized to contribute (from the amount of tin authorized to be disposed of under section 3(1)) up to 5,000 long tons of tin to the Tin Buffer Stock established under the Fifth International Tin Agreement. Upon the termination of such agreement in 1981, all proceeds generated from such contribution shall be remitted to the National Defense Stockpile Transaction Fund established by section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h).

[1] The functions vested in the President by sec. 5 were delegated to the United States Trade Representative pursuant to Executive Order 12263 (January 8, 1981; 46 F.R. 2315). Subsequently, Executive Order 12553 (February 25, 1986; 51 F.R. 7237) revoked Executive Order 12263.

10. Foreign Corrupt Practices

a. Foreign Corrupt Practices Act of 1977

Partial text of Public Law 95–213 [S. 305], 91 Stat. 1494, approved December 19, 1977; as amended by Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107, approved August 23, 1988; Public Law 103–322 [Violent Crime Control and Law Enforcement Act of 1994; H.R. 3355], 108 Stat. 1796, approved September 13, 1994; and Public Law 105–366 [International Bribery and Fair Competition Act of 1998; S. 2375], 112 Stat. 3302, approved November 10, 1998

AN ACT To amend the Securities Exchange Act of 1934 to make it unlawful for an issuer of securities registered pursuant to section 12 of such Act or an issuer required to file reports pursuant to section 15(d) of such Act to make certain payments to foreign officials and other foreign persons, to require such issuers to maintain accurate records, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FOREIGN CORRUPT PRACTICES

SHORT TITLE

SEC. 101.[1] This title may be cited as the "Foreign Corrupt Practices Act of 1977".

* * * * * * *

PROHIBITED FOREIGN TRADE PRACTICES BY DOMESTIC CONCERNS

SEC. 104.[2] (a) PROHIBITION.—It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)[3] (i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

[1] 15 U.S.C. 78a note.

[2] 15 U.S.C. 78dd–2. Sec. 5003(c) of Public Law 100–418 (Omnibus Trade and Competitiveness Act of 1988; 102 Stat. 1419) amended and restated sec. 104.

[3] Sec. 3(a)(1) of Public Law 105–366 (112 Stat. 3304) amended and restated para. (A) and added subclause (iii).

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)[4] (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)[5] (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern[6] in obtaining or retaining business for or with, or directing business to, any person.

(b) EXCEPTION FOR ROUTINE GOVERNMENTAL ACTION.—Subsections (a) and (i)[7] shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

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[4] Sec. 3(a)(2) of Public Law 105–366 (112 Stat. 3304) amended and restated para. (A) and added subclause (iii).

[5] Sec. 3(a)(3) of Public Law 105–366 (112 Stat. 3304) amended and restated para. (A) and added subclause (iii).

[6] Sec. 330005 of Public Law 103–322 (108 Stat. 2142) struck out "issuer" and inserted in lieu thereof "domestic concern".

[7] Sec. 3(d)(2) of Public Law 105–366 (112 Stat. 3305) struck out "Subsection (a)" and inserted in lieu thereof "Subsections (a) and (i)".

(c) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to actions under subsections (a) and (i)[8] that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) INJUNCTIVE RELIEF.—(1) When it appears to the Attorney General that any domestic concern to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsections (a) and (i)[9] of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

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[8] Sec. 3(d)(3) of Public Law 105–366 (112 Stat. 3305) struck out "subsection (a)" and inserted in lieu thereof "subsections (a) and (i)".

[9] Sec. 3(d)(4) of Public Law 105–366 (112 Stat. 3305) struck out "subsection (a)" and inserted in lieu thereof "subsections (a) and (i)".

(e) GUIDELINES BY THE ATTORNEY GENERAL.—Not later than 6 months after the date of the enactment of the Foreign Corrupt Practices Act Amendments of 1988, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(f) OPINIONS OF THE ATTORNEY GENERAL.—(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it

was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not, except with the consent of the domestic concern, be made publicly available, regardless of whether the Attorney General responds to such a request or the domestic concern withdraws such request before receiving a response.

(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(g) PENALTIES.[10]—(1)(A) Any domestic concern that is not a natural person and that violates subsection (a) or (i) shall be fined not more than $2,000,000.

(B) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(2)(A)[11] Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of

[10] Sec. 3(b)(1) of Public Law 105–366 (112 Stat. 3304) amended subsec. (g). The subsection previously read as follows:

"(g) PENALTIES.—(1)(A) Any domestic concern that violates subsection (a) of this section shall be fined not more than $2,000,000.

"(B) Any domestic concern that violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.".

[11] Sec. 3(b)(2) of Public Law 105–366 (112 Stat. 3304) amended para. (2). The paragraph previously read as follows:

"(2)(A) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully violates subsection (a), shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

Continued

such domestic concern, who willfully violates subsection (a) or (i) shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(B) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

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

(1) The term "domestic concern" means—

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

(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2)(A)[12] The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means

(i) an organization that is designated by Executive order pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288); or

(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—

(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

"(C) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.".

[12] Sec. 3(c) of Public Law 105–366 (112 Stat. 3305) amended para. (2), which previously read as follows:

"(2) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality.".

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The[13] term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) processing governmental papers, such as visas and work orders;

(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

(i) ALTERNATIVE JURISDICTION.—[14]

(1) It shall also be unlawful for any United States person to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of subsection (a), for the purposes set forth therein, irrespective of whether such United States person makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, the term "United States person" means a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)) or any corporation, partnership, association, joint-stock

[13] Sec. 3(e) of Public Law 105–366 (112 Stat. 3305) struck out "For purposes of paragraph (1), the" and inserted in lieu thereof "The".

[14] Sec. 3(d) of Public Law 105–366 (112 Stat. 3305) added subsec. (i).

company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

SEC. 104A.[15] PROHIBITED FOREIGN TRADE PRACTICES BY PERSONS OTHER THAN ISSUERS OR DOMESTIC CONCERNS.

(a) PROHIBITION.—It shall be unlawful for any person other than an issuer that is subject to section 30A of the Securities Exchange Act of 1934 or a domestic concern (as defined in section 104 of this Act), or for any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of such person, while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any

[15] 15 U.S.C. 78dd–3. Sec. 4 of the International Bribery and Fair Competition Act of 1998 (Public Law 105–366; 112 Stat. 3306), added sec. 104A.

act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality in order to assist such person in obtaining or retaining business for or with, or directing business to, any person.

(b) EXCEPTION FOR ROUTINE GOVERNMENTAL ACTION.—Subsection (a) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to actions under subsection (a) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) INJUNCTIVE RELIEF.

(1) When it appears to the Attorney General that any person to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid

of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) PENALTIES.—

(1)(A) Any juridical person that violates subsection (a) of this section shall be fined not more than $2,000,000.

(B) Any juridical person that violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(2)(A) Any natural person who willfully violates subsection (a) of this section shall be fined not more than $100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person who violates subsection (a) of this section shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a person, such fine may not be paid, directly or indirectly, by such person.

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

(1) The term "person", when referring to an offender, means any natural person other than a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the law of a foreign nation or a political subdivision thereof.

(2)(A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means—

(i) an organization that is designated by Executive order pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288); or

(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3)(A) A person's state of mind is knowing, with respect to conduct, a circumstance or a result if—

(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) processing governmental papers, such as visas and work orders;

(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

* * * * * * *

b. Foreign Corrupt Practices Act Amendments of 1988

Partial text of Title V of Public Law 100–418 [Omnibus Trade and Competitiveness Act of 1988; H.R. 4848], 102 Stat. 1107 at 1415, approved August 23, 1988

AN ACT To enhance the competitiveness of American industry, and for other purposes.

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SUBTITLE A—FOREIGN CORRUPT PRACTICES ACT AMENDMENTS; REVIEW OF CERTAIN ACQUISITIONS

PART I—FOREIGN CORRUPT PRACTICES ACT AMENDMENTS

SEC. 5001. SHORT TITLE.

This part may be cited as the "Foreign Corrupt Practices Act Amendments of 1988".

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SEC. 5003. FOREIGN CORRUPT PRACTICES ACT AMENDMENTS.

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(d) INTERNATIONAL AGREEMENT.—

(1) NEGOTIATIONS.—It is the sense of the Congress that the President should pursue the negotiation of an international agreement, among the members of the Organization of Economic Cooperation and Development, to govern persons from those countries concerning acts prohibited with respect to issuers and domestic concerns by the amendments made by this section. Such international agreement should include a process by which problems and conflicts associated with such acts could be resolved.

(2) REPORT TO CONGRESS.—(A) Within 1 year after the date of the enactment of this Act, the President shall submit to the Congress a report on—

(i) the progress of the negotiations referred to in paragraph (1),

(ii) those steps which the executive branch and the Congress should consider taking in the event that these negotiations do not successfully eliminate any competitive disadvantage of United States businesses that results when persons from other countries commit the acts described in paragraph (1); and

(iii) possible actions that could be taken to promote cooperation by other countries in international efforts to prevent bribery of foreign officials, candidates, or parties in third countries.

(B) The President shall include in the report submitted under subparagraph (A)—

(i) any legislative recommendations necessary to give the President the authority to take appropriate action to carry out clauses (ii) and (iii) of subparagraph (A);

(ii) an analysis of the potential effect on the interests of the United States, including United States national security, when persons from other countries commit the acts described in paragraph (1); and

(iii) an assessment of the current and future role of private initiatives in curtailing such acts.

PART II—REVIEW OF CERTAIN MERGERS, ACQUISITIONS, AND TAKEOVERS

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c. International Anti-Bribery and Fair Competition Act of 1998

Partial text of Public Law 105–366 [S. 2375], 112 Stat. 3302, approved November 10, 1998

AN ACT To amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977 to improve the competitiveness of American business and promote foreign commerce, and for other purposes.

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SEC. 5.[1] TREATMENT OF INTERNATIONAL ORGANIZATIONS PROVIDING COMMERCIAL COMMUNICATIONS SERVICES.

(a) DEFINITION.—For purposes of this section:

(1) INTERNATIONAL ORGANIZATION PROVIDED COMMERCIAL SERVICES.—The term "international organization providing commercial communications services" means—

(A) the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization; and

(B) the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Satellite Organization.

(2) PRO-COMPETITIVE PRIVATIZATION.—The term "pro-competitive privatization" means a privatization that the President determines to be consistent with the United States policy of obtaining full and open competition to such organizations (or their successors), and nondiscriminatory market access, in the provision of satellite services.

(b) TREATMENT AS PUBLIC INTERNATIONAL ORGANIZATIONS.—

(1) TREATMENT.—An international organization providing commercial communications services shall be treated as a public international organization for purposes of section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1) and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2) until such time as the President certifies to the Committee on Commerce of the House of Representatives and the Committees on Banking, Housing and Urban Affairs and Commerce, Science, and Transportation that such international organization providing commercial communications services has achieved a pro-competitive privatization.

(2) LIMITATION ON EFFECT OF TREATMENT.—The requirement for a certification under paragraph (1), and any certification made under such paragraph, shall not be construed to affect

[1] 15 U.S.C. 78dd–1 note.

the administration by the Federal Communications Commission of the Communications Act of 1934 in authorizing the provision of services to, from, or within the United States over space segment of the international satellite organizations, or the privatized affiliates or successors thereof.

(c) EXTENSION OF LEGAL PROCESS.—

(1) IN GENERAL.—Except as required by international agreements to which the United States is a party, an international organization providing commercial communications services, its officials and employees, and its records shall not be accorded immunity from suit or legal process for any act or omission taken in connection with such organization's capacity as a provider, directly or indirectly, of commercial telecommunications services to, from, or within the United States.

(2) NO EFFECT ON PERSONAL LIABILITY.—Paragraph (1) shall not affect any immunity from personal liability of any individual who is an official or employee of an international organization providing commercial communications services.

(3) EFFECTIVE DATE.—This subsection shall take effect on May 1, 1999.

(d) ELIMINATAION OR LIMITATION OF EXCEPTIONS.—

(1) ACTION REQUIRED.—The President shall, in a manner that is consistent with requirements in international agreements to which the United States is a party, expeditiously take all appropriate actions necessary to eliminate or to reduce substantially all privileges and immunities that are accorded to an international organization described in subparagraph (A) or (B) of subsection (a)(1), its officials, its employees, or its records, and that are not eliminated pursuant to subsection (c).

(2) DESIGNATION OF AGREEMENTS.—The President shall designate which agreements constitute international agreements to which the United States is a party for purposes of this section.

(e) PRESERVATION OF LAW ENFORCEMENT AND INTELLIGENCE FUNCTIONS.—Nothing in subsection (c) or (d) of this section shall affect any immunity from suit or legal process of an international organization providing commercial communications services, or the privatized affiliates or successors thereof, for acts or omissions—

(1) under chapter 119, 121, 206, or 601 of title 18, United States Code, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 514 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 884), or Rule 104, 501, or 608 of the Federal Rules of Evidence;

(2) under similar State laws providing protection to service providers cooperating with law enforcement agencies pursuant to State electronic surveillance or evidence laws, rules, regulations, or procedures; or

(3) pursuant to a court order.

(f) RULES OF CONSTRUCTION.—

(1) NEGOTIATIONS.—Nothing in this section shall affect the President's existing constitutional authority regarding the time, scope, and objectives of international negotiations.

(2) PRIVATIZATION.—Nothing in this section shall be construed as legislative authorization for the privatization of

INTELSAT or Inmarsat, nor to increase the President's authority with respect to negotiations concerning such privatization.

SEC. 6.[1] ENFORCEMENT AND MONITORING.

(a) REPORTS REQUIRED.—Not later than July 1 of 1999 and each of the 5 succeeding years, the Secretary of Commerce shall submit to the House of Representatives and the Senate a report that contains the following information with respect to implementation of the Convention:

(1) RATIFICATION.—A list of the countries that have ratified the Convention, the dates of ratification by such countries, and the entry into force for each such country.

(2) DOMESTIC LEGISLATION.—A description of domestic laws enacted by each party to the Convention that implement commitments under the Convention, and assessment of the compatibility of such laws with the Convention.

(3) ENFORCEMENT.—As assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention and achieve its object and purpose including—

(A) an assessment of the enforcement of the domestic laws described in paragraph (2);

(B) an assessment of the efforts by each such party to promote public awareness of such domestic laws and the achievement of such object and purpose; and

(C) an assessment of the effectiveness, transparency, and viability of the monitoring process for the Convention,including its inclusion of input from the private sector and nongovernmental organizations.

(4) LAWS PROHIBITING TAX DEDUCTION OF BRIBES.—An explanation of the domestic laws enacted by each party tothe Convention that would prohibit the deduction of bribes in the computation of domestic taxes.

(5) NEW SIGNATORIES.—A description of efforts to expand international participation in the Convention by adding new signatories to the Convention and by assuring that all countries which are or become members of the Organization for Economic Cooperation and Development are also parties to the Convention.

(6) SUBSEQUENT EFFORTS.—An assessment of the status of efforts to strengthen the Convention by extending the prohibitions contained in the Convention to cover bribes to political parties, party officials, and candidates for political office.

(7) ADVANTAGES.—Advantages, in terms of immunities, market access, or otherwise, in the countries or regions served by the organizations described in section 5(a), the reason for such advantages, and an assessment of progress toward fulfilling the policy described in that section.

(8) BRIBERY AND TRANSPARENCY.—An assessment of anti-bribery programs and transparency with respect to each of the international organizations covered by this Act.

(9) PRIVATE SECTOR REVIEW.—A description of the steps taken to ensure full involvement of United States private sector participants and representatives of nongovernmental organizations in the monitoring and implementation of the Convention.

(10) ADDITIONAL INFORMATION.—In consultation with the private sector participants and representatives of nongovernmental organizations described in paragraph (9), a list of additional means for enlarging the scope of the Convention and otherwise increasing its effectiveness. Such additional means shall include, but not be limited to, improved recordkeeping provisions and the desirability of expanding the applicability of the Convention to additional individuals and organizations and the impact on United States business of section 30A of the Securities Exchange Act of 1934 and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977.

(b) DEFINITION.—For purposes of this section, the term "Convention" means the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on November 21, 1997, and signed on December 17, 1997, by the United States and 32 other nations.

Appendix I

NOTE.—Appendix I lists Public Laws included in *Legislation on Foreign Relations Through 2005*, either as free-standing law or in amendments, arranged by Public Law number with corresponding short title or popular name.

Public Law No.	Short Title
109–169	United States-Bahrain Free Trade Agreement Implementation Act
109–167	Passport Services Enhancement Act of 2005
109–165	Torture Victims Relief Reauthorization Act of 2005
109–164	Trafficking Victims Protection Reauthorization Act of 2005
109–163	National Defense Authorization Act for Fiscal Year 2006
109–163	United States Policy in Iraq Act (section 1227)
109–163	Detainee Treatment Act of 2005 (title XIV)
109–159	Transfer of Items To War Reserves Stockpile for Allies, Korea
109–148	Department of Defense, Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006
109–148	Department of Defense Appropriations Act, 2006 (division A)
109–148	Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 (division B)
109–140	To Provide Certain Authorities for the Department of State
109–134	Naval Vessels Transfer Act of 2005
109–121	Senator Paul Simon Water for the Poor Act of 2005
109–112	Iran Nonproliferation Amendments Act of 2005
109–108	Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006
109–108	Department of State and Related Agencies Appropriations Act, 2006 (title IV)
109–102	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006

109–97	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006
109–95	Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005
109–77	Continuing Appropriations, Fiscal Year 2006
109–58	Energy Policy Act of 2005
109–54	Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006
109–53	Dominican Republic-Central America-United States Free Trade Agreement Implementation Act
109–39	Renewal of Import Restrictions—Burmese Freedom and Democracy Act of 2003
109–13	Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005
108–497	Comprehensive Peace in Sudan Act of 2004
108–484	Microenterprise Results and Accountability Act of 2004
108–458	Intelligence Reform and Terrorism Prevention Act of 2004
108–458	9/11 Commission Implementation Act of 2004 (title VII)
108–458	Afghanistan Freedom Support Act Amendments of 2004 (sec. 7104)
108–447	Consolidated Appropriations Act, 2005
108–447	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (division D)
108–447	Migratory Bird Treaty Reform Act of 2004 (division E, sec. 143)
108–447	Miscellaneous Appropriations and Offsets Act, 2005 (division J, title I)
108–429	Miscellaneous Trade and Technical Corrections Act of 2004
108–429	Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (title III)
108–429	Wool Suit and Textile Trade Extension Act of 2004 (title IV)
108–375	Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005
108–370	Prevention of Child Abduction Partnership Act
108–347	Belarus Democracy Act of 2004
108–333	North Korean Human Rights Act of 2004
108–332	Global Anti-Semitism Review Act of 2004
108–323	Tropical Forest Conservation Act Reauthorization
108–302	United States-Morocco Free Trade Agreement Implementation Act
108–297	Cape Town Treaty Implementation Act of 2004
108–286	United States-Australia Free Trade Agreement Implementation Act
108–283	Northern Uganda Crisis Response Act
108–274	AGOA Acceleration Act of 2004
108–272	Approving the Renewal of Import Restrictions—Burma

108–266	Marine Turtle Conservation Act of 2004
108–235	Taiwan's Participation in the World Health Organization
108–215	Amendments to U.S.–Mexico Agreement Establishing a Border Environment Cooperation Commission and North American Development Bank
108–200	Congo Basin Forest Partnership Act of 2004
108–199	Consolidated Appropriations, 2004
108–199	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (division D)
108–199	HELP Commission Act (division B, sec. 637)
108–199	Millennium Challenge Act of 2003 (division D, title VI)
108–175	Syria Accountability and Lebanese Sovereignty Restoration Act of 2003
108–136	National Defense Authorization Act for Fiscal Year 2004
108–136	Nuclear Security Initiative Act of 2003 (title XXXVI)
108–106	Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004
108–77	United States-Chile Free Trade Agreement Implementation Act
108–31	Microenterprise Report to Congress
108–28	Taiwan's Participation in the World Health Organization
108–25	United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003
108–19	Clean Diamond Trade Act
108–11	Emergency Wartime Supplemental Appropriations Act, 2003
108–7	Consolidated Appropriations, 2003
107–365	Caribbean National Forest Wild and Scenic Rivers Act of 2002
107–327	Afghanistan Freedom Support Act of 2002
107–314	Bob Stump National Defense Authorization Act for Fiscal Year 2003
107–258	Persian Gulf POW/MIA Accountability Act of 2002
107–246	Russian Democracy Act of 2002
107–245	Sudan Peace Act
107–243	Authorization for Use of Military Force Against Iraq Resolution of 2002
107–228	Foreign Relations Authorization Act, Fiscal Year 2003
107–228	Department of State Authorization Act, Fiscal Year 2003 (division A)
107–228	Security Assistance Act of 2002 (division B)
107–228	Middle East Peace Commitments Act of 2002 (division A, title VI, subtitle A)
107–228	Tibetan Policy Act of 2002 (division A, title VI, subtitle B)
107–228	East Timor Transition to Independence Act of 2002 (division A, title VI, subtitle C)
107–228	Clean Water for the Americas Partnership Act of 2002 (division A, title VI, subtitle D)

107–228	Freedom Investment Act of 2002 (division A, title VI, subtitle E)
107–228	Russian Federation Debt for Nonproliferation Act of 2002 (division B, title XIII, subtitle B)
107–228	Nonproliferation Assistance Coordination Act of 2002 (division B, title XIII, subtitle C)
107–228	Iran Nuclear Proliferation Prevention Act of 2002 (division B, title XIII, subtitle D)
107–210	Trade Act of 2002
107–210	Customs Border Security Act of 2002 (title III)
107–210	Bipartian Trade Promotion Authority Act of 2002 (title XXI)
107–210	Andean Trade Promotion and Drug Eradication Act (title XXXI)
107–206	2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States
107–206	American Servicemembers Protection Act (title II)
107–197	Terrorist Bombings Convention Implementation Act of 2002
107–189	Export-Import Bank Reauthorization Act of 2002
107–187	Gerald B. H. Solomon Freedom Consolidation Act of 2002
107–173	Ehanced Border Security and Visa Entry Reform Act of 2002
107–148	Radio Free Afghanistan Act
107–141	Asian Elephant Conservation Reauthorization Act of 2002
107–117	Department of Defense and Emergency Supplemental Appropriations for Recovery From and Response To Terrorist Attacks on the United States Act, 2002
107–115	Kenneth M. Ludden Foreign Operations, Export Financing and Related Programs Appropriations Act, 2002
107–112	Rhinoceros and Tiger Conservation Reauthorization Act of 2001
107–111	African Elephant Conservation Reauthorization Act of 2001
107–107	National Defense Authorization Act for Fiscal Year 2002
107–99	Zimbabwe Democracy and Economic Recovery Act of 2001
107–81	Afghan Women and Children Relief Act of 2001
107–56	Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001
107–56	International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 (title III)
107–43	United States-Jordan Free Trade Area Implementation Act
107–40	Authorization for Use of Military Force in Response to Terrorist Attacks of September 11, 2001
107–39	Condemnation of Terrorist Attacks

107–24	ILSA [Iran and Libya Sanctions Act] Extension Act of 2001
106–570	Assistance for International Malaria Control Act
106–570	International Malaria Control Act (title I)
106–570	United States-Macau Policy Act of 2000 (title II)
106–570	Pacific Charter Commission Act of 2000 (title IV)
106–570	Paul D. Coverdell World Wise Schools Act of 2000 (title VI)
106–567	Intelligence Authorization Act for Fiscal Year 2001
106–567	Japanese Imperial Government Disclosure Act of 2000 (title VIII)
106–557	Shark Finning Prohibition Act
106–555	Striped Bass Conservation, Atlantic Coastal Fisheries Management and Marine Mammal Rescue Assistance Act of 2000
106–554	Consolidated Appropriations Act, 2001
106–554	Vietnam Education Foundation Act of 2000 (title II)
106–553	Department of State and Related Agency Appropriations Act, 2001
106–531	Reports Consolidation Act of 2000
106–484	Bring Them Home Alive Act of 2000
106–476	Tariff Suspension and Trade Act of 2000
106–450	Yukon River Salmon Act of 2000
106–429	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001
106–411	Great Ape Conservation Act of 2000
106–398	Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001
106–387	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001
106–387	Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX)
106–386	Victims of Trafficking and Violence Protection Act of 2000
106–386	Trafficking Victims Protection Act of 2000 (division A)
106–373	Famine Prevention and Freedom From Hunger Improvement Act of 2000
106–346	National Terrorist Asset Trading Center
106–309	Microenterprise for Self-Reliance and International Anti-Corruption Act of 2000
106–309	Microenterprise for Self-Reliance Act of 2000 (title I)
106–309	International Anti-Corruption and Good Governance Act of 2000 (title II)
106–309	International Academic Opportunities Act of 2000 (title III)
106–309	Support for Overseas Cooperative Development Act (sec. 401)
106–309	Paul D. Coverdell Fellows Program Act of 2000 (sec. 408)
106–286	U.S.-China Relations Act of 2000
106–280	Security Assistance Act of 2000
106–279	Intercountry Adoption Act of 2000
106–264	Global AIDS and Tuberculosis Relief Act of 2000

106–264	Global AIDS Research and Relief Act of 2000 (title I)
106–264	International Tuberculosis Control Act of 2000 (title II)
106–256	Oceans Act of 2000
106–247	Neotropical Migratory Bird Conservation Act
106–212	American Institute in Taiwan Facilities Enhancement Act
106–200	Trade and Development Act of 2000
106–200	African Growth and Opportunity Act (title I)
106–200	U.S.-Caribbean Basin Trade Partnership Act (title II)
106–178	Iran and Syria Nonproliferation Act (formerly Iran Nonproliferation Act of 2000)
106–158	Export Enhancement Act of 1999
106–120	Intelligence Authorization Act for Fiscal Year 2000
106–120	Foreign Narcotics Kingpin Designation Act (title VIII)
106–113	Consolidated Appropriations, Fiscal Year 2000
106–113	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (H.R. 3422, enacted by reference)
106–113	Silk Road Strategy Act of 1999 (sec. 596, H.R. 3422, enacted by reference)
106–113	Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference)
106–113	Secure Embassy Construction and Counterterrorism Act of 1999 (title VI, division A, H.R. 3427, enacted by reference)
106–113	North Korea Threat Reduction Act of 1999 (subtitle B, title VIII, division A, H.R. 3427, enacted by reference)
106–113	United Nations Reform Act of 1999 (title IX, division A, H.R. 3427, enacted by reference)
106–113	Arms Control, Nonproliferation, and Security Assistance Act of 1999 (division B, H.R. 3427, enacted by reference)
106–113	Arms Control and Nonproliferation Act of 1999 (title XI, division B, H.R. 3427, enacted by reference)
106–113	National Security and Corporate Fairness under the Biological Weapons Convention Act (chapter 2, subtitle A, title XI, division B, H.R. 3427, enacted by reference)
106–113	Security Assistance Act of 1999 (title XII, H.R. 3427, enacted by reference)
106–113	Defense Offsets Disclosure Act of 1999 (subtitle D, title XII, H.R. 3427, enacted by reference)
106–113	Proliferation Prevention Enhancement Act of 1999 (subtitle E, title XII, H.R. 3427, enacted by reference)
106–113	International Arms Sales Code of Conduct Act of 1999 (subtitle F, title XII, H.R. 3427, enacted by reference)
106–108	Arctic Tundra Habitat Emergency Conservation Act
106–87	Torture Victims Relief Reauthorization Act of 1999
106–79	Department of Defense Appropriations Act, 2000

106–65	National Defense Authorization Act for Fiscal Year 2000
106–65	Panama Canal Commission Authorization Act for Fiscal Year 2000 (title XXXV)
106–38	National Missile Defense Act of 1999
106–36	Miscellaneous Trade and Technical Corrections Act of 1999
106–35	Western Hemisphere Drug Elimination Technical Corrections Act
106–30	Peace Corps Reauthorization
105–385	Africa: Seeds of Hope Act of 1998
105–384	Governing International Fisheries Agreement with Poland
105–382	Department of State Special Agents Retirement Act of 1998
105–366	International Anti-Bribery and Fair Competition Act of 1998
105–362	Federal Reports Elimination Act of 1998
105–338	Iraq Liberation Act of 1998
105–323	Extradition Treaties Interpretation Act of 1998
105–319	Irish Peace Process Cultural and Training Program Act of 1998
105–312	Rhinoceros and Tiger Conservation Act of 1998
105–303	Commercial Space Act of 1998
105–292	International Religious Freedom Act of 1998
105–277	Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999
105–277	Haitian Refugee Immigration Fairness Act of 1998 (division A, sec. 101(h), title IX)
105–277	Trade Deficit Review Commission Act (division A, sec. 127)
105–277	Office of National Drug Control Policy Reauthorization Act of 1998 (division C, title VII)
105–277	Western Hemisphere Drug Elimination Act (division C, title VIII)
105–277	Foreign Affairs Reform and Restructuring Act of 1998 (division G)
105–277	Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A)
105–277	Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 (division G, subdivision B)
105–277	United Nations Reform Act of 1998 (division G, subdivision C)
105–277	European Security Act of 1998 (division G, title XXVII)
105–277	Chemical Weapons Convention Implementation Act of 1998 (division I)
105–262	Department of Defense Appropriations Act, 1999
105–261	Strom Thurmond National Defense Authorization Act for Fiscal Year 1999
105–261	Defense Against Weapons of Mass Destruction Act of 1998 (title XIV)
105–261	Panama Canal Commission Authorization Act for Fiscal Year 1999 (title XXXV)

105–261	Radio Free Asia Act of 1998 (title XXXIX)
105–246	Nazi War Crimes Disclosure Act
105–235	Finding the Government of Iraq in Unacceptable and Material Breach of Its International Obligations
105–217	African Elephant Conservation Reauthorization Act of 1998
105–194	Agriculture Export Relief Act of 1998
105–186	U.S. Holocaust Assets Commission Act of 1998
105–174	1998 Supplemental Appropriations and Rescissions Act
105–173	International Parental Kidnapping Crime Act
105–158	Holocaust Victims Redress Act
105–119	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998
105–107	Intelligence Authorization Act for Fiscal Year 1998
105–100	Nicaraguan Adjustment and Central American Relief Act (title II)
105–96	Asian Elephant Conservation Act of 1997
105–85	National Defense Authorization Act for Fiscal Year 1998
105–42	International Dolphin Conservation Program Act
104–319	Human Rights, Refugee, and Other Foreign Relations Provisions Act of 1996
104–309	Records Relating to Nazi War Crimes
104–297	Sustainable Fisheries Act
104–293	Intelligence Authorization Act for Fiscal Year 1997
104–293	Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII)
104–269	Release of USIA Materials: VOA, Radio Marti Recordings
104–264	Federal Aviation Reauthorization Act of 1996
104–227	Antarctic Science, Tourism, and Conservation Act of 1996
104–208	Omnibus Consolidated Appropriations for Fiscal Year 1997
104–208	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (title I, sec. 101(c))
104–208	NATO Enlargement Facilitation Act of 1996 (title VI, sec. 101(c))
104–203	Most-Favored-Nation Treatment for Cambodia
104–201	National Defense Authorization Act for Fiscal Year 1997
104–201	Defense Against Weapons of Mass Destruction Act of 1996 (title XIV)
104–201	Panama Canal Commission Authorization Act for Fiscal Year 1997 (title XXXV, subtitle A)
104–201	Panama Canal Act Amendments of 1996 (title XXXV, subtitle B)
104–172	Iran and Libya Sanctions Act of 1996
104–171	Most-Favored-Nation Treatment for Romania
104–164	Miscellaneous Amendments and Authorization—FYs 1996 and 1997

104–162	Most-Favored-Nation Treatment for People's Republic of Bulgaria
104–161	Release of USIA Materials: "Fragile Ring of Life"
104–134	USEC Privatization Act
104–132	Antiterrorism and Effective Death Penalty Act of 1996
104–127	Federal Agriculture Improvement and Reform Act of 1996
104–114	Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996
104–106	National Defense Authorization Act for Fiscal Year 1996
104–106	Ballistic Missile Defense Act of 1995 (title II, subtitle C)
104–93	Intelligence Authorization Act for Fiscal Year 1996
104–72	Au Pair Extension
104–66	Federal Reports Elimination and Sunset Act of 1995
104–45	Jerusalem Embassy Act of 1995
104–43	Fisheries Act of 1995
104–43	High Seas Fishing Compliance Act of 1995 (title I)
104–43	Northwest Atlantic Fisheries Convention Act of 1995 (title II)
104–43	Atlantic Tunas Convention Act of 1995 (title III)
104–43	Sea of Okhotsk Fisheries Enforcement Act of 1995 (title V)
104–43	High Seas Driftnet Fishing Moratorium Protection Act (title VI)
104–43	Yukon River Salmon Act of 1995 (title VII) Act for Fiscal Year 1997
104–6	Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995
104–6	Mexican Debt Disclosure Act of 1995 (title IV)
103–465	Uruguay Rounds Agreements Act
103–465	Export Enhancement Program Amendments of 1994 (title IV, subtitle A, part II, sec. 411(a))
103–447	International Narcotics Control Corrections Act of 1994
103–447	NATO Participation Act of 1994 (title II)
103–423	United States Policy Toward Haiti
103–416	Visa for Officials of Taiwan
103–392	Jobs Through Trade Expansion Act of 1994
103–391	Rhinoceros and Tiger Conservation Act of 1994
103–381	African Conflict Resolution Act
103–372	To Provide for an Investigation of the Whereabouts of U.S. Citizens Missing From Cyprus Since 1974
103–337	National Defense Authorization Act for Fiscal Year 1995
103–306	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995
103–294	Helsinki Human Rights Day
103–236	Foreign Relations Authorization Act, Fiscal Years 1994 and 1995
103–236	Mike Mansfield Fellowship Act (title II, part C)

103–236	United States International Broadcasting Act of 1994 (title III)
103–236	Spoils of War Act of 1994 (title V, part B)
103–236	Anti-Economic Discrimination Act of 1994 (title V, part C)
103–236	Cambodian Genocide Justice Act (title V, part D)
103–236	Middle East Peace Facilitation Act of 1994 (title V, part E)
103–236	Arms Control and Nonproliferation Act of 1994 (title VII, part A)
103–236	Nuclear Proliferation Prevention Act of 1994 (title VIII)
103–236	Protection and Reduction of Government Secrecy Act (title IX)
103–206	Coast Guard Authorization Act of 1993
103–199	Act For Reform in Emerging New Democracies and Support and Help for Improved Partnership with Russia, Ukraine, and Other New Independent States (FRIENDSHIP Act)
103–182	North American Free Trade Agreement Implementation Act
103–160	National Defense Authorization Act for Fiscal Year 1994
103–160	Cooperative Threat Reduction Act of 1993 (title XII)
103–160	Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993 (title XIII)
103–160	National Shipbuilding and Shipyard Conversion Act of 1993 (title XIII, subtitle D)
103–160	Panama Canal Commission Authorization Act for Fiscal Year 1994 (title XXXV)
103–158	Act to Honor the Victims of the Bombing of Pan Am Flight 103
103–149	South African Democratic Transition Support Act of 1993
103–133	Nondiscriminatory Treatment Toward Products of Romania
103–125	Middle East Peace Facilitation Act of 1993
102–588	National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993
102–587	Oceans Act of 1992
102–587	North Pacific Anadromous Stocks Convention Act of 1992 (title VIII)
102–582	High Seas Driftnet Fisheries Enforcement Act
102–582	Central Bering Sea Fisheries Enforcement Act of 1992 (title III)
102–567	North Pacific Anadromous Stocks Act of 1992 (title VIII)
102–565	Peace Corps Authorization for Fiscal Year 1993
102–549	Jobs Through Exports Act of 1992
102–549	Aid, Trade, and Competitiveness Act of 1992 (title III)
102–549	Enterprise for the Americas Act of 1992 (title VI)
102–532	Enterprise for the Americas Initiative Act of 1992
102–523	International Dolphin Conservation Act of 1992

102–511	Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act)
102–509	Soviet Scientists Immigration Act of 1992
102–486	Energy Policy Act of 1992
102–484	National Defense Authorization Act for Fiscal Year 1993
102–484	Former Soviet Union Demilitarization Act of 1992 (title XIV)
102–484	Weapons of Mass Destruction Control Act of 1992 (title XV)
102–484	Iran-Iraq Arms Non-Proliferation Act of 1992 (title XVI)
102–484	Cuban Democracy Act of 1992 (title XVII)
102–484	Panama Canal Commission Authorization Act for Fiscal Year 1993 (title XXXV)
102–454	Distribution of USIA Materials
102–450	Asian/Pacific American Heritage Month—Designation
102–429	Export Enhancement Act of 1992
102–420	Withdrawal of MFN From Serbia and Montenegro
102–404	Chinese Student Protection Act of 1992
102–396	Department of Defense Appropriations Act, 1993
102–391	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993
102–383	United States-Hong Kong Policy Act of 1992
102–372	Tourism Policy and Export Promotion Act of 1992
102–363	Nondiscriminatory Treatment Toward Products of Albania
102–311	International Peacekeeping Act of 1992
102–274	Horn of Africa Recovery and Food Security Act
102–270	Peace Process in Liberia
102–256	Torture Victim Protection Act of 1991
102–247	Omnibus Insular Areas Act of 1992
102–237	Food, Agriculture, Conservation, and Trade Act Amendments of 1991
102–228	Conventional Forces in Europe Treaty Implementation Act of 1991
102–228	Soviet Nuclear Threat Reduction Act of 1991 (title II)
102–197	Most-Favored Nation Treatment for the Union of Soviet Socialist Republics
102–195	National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992
102–190	National Defense Authorization Act for Fiscal Years 1992 and 1993
102–190	Missile Defense Act of 1991 (title II, part C)
102–190	Panama Canal Commission Authorization Act for Fiscal Year 1992 (title XXXV)
102–183	David L. Boren National Security Education Act of 1991 (title VIII)
102–182	Termination of Trade Restrictions to Czechoslovakia and Hungary
102–182	Andean Trade Preference Act (title II)
102–182	Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III)

102–158	Most-Favored Nation Treatment for People's Republic of Bulgaria
102–157	Most-Favored Nation Treatment for Mongolian People's Republic
102–138	Foreign Relations Authorization Act, Fiscal Years 1992 and 1993
102–138	Dante B. Fascell North-South Center Act of 1991 (sec. 208)
102–21	Emergency Supplemental Assistance for Israel Act of 1991
102–20	Foreign Relations Persian Gulf Conflict Emergency Supplemental Authorization Act, Fiscal Year 1991
102–1	Authorization for Use of U.S. Armed Forces Pursuant to U.N. Security Council Resolution 678
101–649	Immigration Act of 1990
101–647	Crime Control Act of 1990
101–646	Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990
101–627	Fishery Conservation Amendments of 1990
101–627	Dolphin Protection Consumer Information Act (title IX)
101–624	Food, Agriculture, Conservation, and Trade Act of 1990
101–624	Agricultural Development and Trade Act of 1990 (title XV)
101–624	Global Climate Change Prevention Act of 1990 (title XXIV)
101–623	International Narcotics Control Act of 1990
101–620	Protection of Antarctica
101–611	National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991
101–610	National and Community Service Act of 1990
101–606	Global Change Research Act of 1990
101–606	International Cooperation in Global Change Research Act of 1990 (title II)
101–604	Aviation Security Improvement Act of 1990
101–594	Antarctic Protection Act of 1990
101–549	Clean Air Act Amendments
101–541	Most-Favored-Nation Treatment for Czechoslovakia
101–533	Foreign Direct Investment and International Financial Date Improvements Act of 1990
101–513	Foreign Operations, Export Financing, and Related Programs Appropriations Act 1991
101–513	European Bank for Reconstruction and Development Act (sec. 562(c))
101–513	Iraq Sanctions Act of 1990 (secs. 586–586J)
101–513	International Forestry Cooperation Act of 1990 (title VI)
101–511	Department of Defense Appropriations Act, 1991
101–510	National Defense Authorization Act for Fiscal Year 1991
101–510	Panama Canal Commission Authorization Act for Fiscal Year 1991 (title XXXV)
101–454	Eisenhower Exchange Fellowship Act of 1990

101–454	Fascell Fellowship Amendments Act of 1990 (sec. 9)
101–438	Rio Grande American Canal Extension Act of 1990
101–382	Customs and Trade Act of 1990
101–382	Caribbean Basin Economic Recovery Expansion Act of 1990 (title II)
101–382	Forest Resources Conservation and Shortage Relief Act of 1990 (title IV)
101–380	Oil Pollution Act of 1990
101–328	National Space Council Authorization Act of 1990
101–298	Biological Weapons Anti-Terrorism Act of 1989
101–246	Foreign Relations Authorization Act, Fiscal Years 1990 and 1991
101–246	PLO Commitments Compliance Act of 1989 (title VIII)
101–243	Urgent Assistance for Democracy in Panama Act of 1990
101–240	International Development and Finance Act of 1989
101–240	Foreign Debt Reserving Act of 1989 (title IV)
101–240	Global Environmental Protection Assistance Act of 1989 (title VII)
101–231	International Narcotics Control Act of 1989
101–219	Implementation of Compact of Free Association With Palau
101–216	Arms Control and Disarmament Amendments Act of 1989
101–215	Survival Assistance for Victims of Civil Strife in Central America
101–189	National Defense Authorization Act for Fiscal Years 1990 and 1991
101–179	Support for East European Democracy (SEED) Act of 1989
101–167	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990
101–162	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990
101–62	Implementing Agreement for Vienna Convention on Diplomatic Relations
100–705	Panama Canal Commission Compensation Fund Act of 1988
100–690	International Narcotics Control Act of 1988 (title IV)
100–685	National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989
100–629	U.S.-U.S.S.R. Fishing Agreement
100–576	Bangladesh Disaster Assistance Act of 1988
100–530	International Cooperation to Protect Biological Diversity
100–478	African Elephant Conservation Act (title II)
100–465	Rio Grande Pollution Correction Act of 1987
100–463	Department of Defense Appropriations Act, 1989
100–461	Overseas Private Investment Corporation Amendments Act of 1988 (H.R. 5263, enacted by reference)
100–461	Miscellaneous International Affairs Authorization Act of 1988 (S. 2757, enacted by reference)

100–460	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989
100–456	National Defense Authorization Act, Fiscal Year 1989
100–449	United States-Canada Free Trade Agreement Implementation Act of 1988
100–418	Omnibus Trade and Competitiveness Act of 1988
100–418	Telecommunications Trade Act of 1988 (title I, subtitle C, part 4)
100–418	Export Enhancement Act 1988 (title II)
100–418	Fair Trade in Auto Parts Act of 1988 (title II, subtitle A, part II)
100–418	American Aid to Poland Act of 1988 (title II, subtitle B, part II)
100–418	Multilateral Export Control Enhancement Amendments Act (title II, subtitle D, part II)
100–418	Exchange Rates and International Economic Policy Coordination Act of 1988 (title III, subtitle A)
100–418	International Debt Management Act of 1988 (title III, subtitle B)
100–418	Multilateral Development Banks Procurement Act (title III, subtitle C)
100–418	Export-Import Bank and Tied Aid Credit Amendments of 1988 (title III, subtitle D)
100–418	Primary Dealers Act of 1988 (title III, subtitle F)
100–418	Financial Reports Act of 1988 (title III, subtitle G)
100–418	Agricultural Competitiveness and Trade Act of 1988 (title IV)
100–418	Pesticide Monitoring Improvements Act of 1988 (title IV, subtitle G)
100–418	Foreign Corrupt Practices Act Amendments of 1988 (title V, subtitle A, part I)
100–418	Competitiveness Policy Council Act (title V, part I, subtitle C)
100–418	Small Business International Trade and Competitiveness Act (title VII)
100–418	Foreign Shipping Practices Act of 1988 (title X)
100–393	Dire Emergency Supplemental Appropriations Act, 1988
100–373	International Energy Emergency Authorities: Extension
100–350	German Democratic Republic Fishery Agreement
100–330	South Pacific Tuna Act of 1988
100–300	International Child Abduction Remedies Act
100–276	Central American Peace Assistance
100–220	United States-Japan Fishery Agreement Approval Act of 1987
100–220	Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (title IV)
100–213	Arms Control and Disarmament Amendments Act of 1987
100–204	Foreign Relations Authorization Act, Fiscal Years 1988 and 1989
100–204	United States Information Agency Authorization Act, Fiscal Years 1988 and 1989 (title II)

100–204	Board for International Broadcasting Authorization Act, Fiscal Years 1988 and 1989 (title V)
100–204	Anti-Terrorism Act of 1987 (title X)
100–204	Global Climate Protection Act of 1987 (title XI)
100–203	Omnibus Budget Reconciliation Act of 1987
100–202	Continuing Appropriations, Fiscal Year 1988
100–202	Cuban Political Prisoners and Immigrants (sec. 101(a), title VII)
100–202	Indochinese Refugee and Resettlement Act of 1987 (sec. 101(a), title VIII)
100–202	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e))
100–202	Multilateral Investment Guarantee Agency Act (sec. 101(e), H.R. 3570, enacted by reference, title IV)
100–180	National Defense Authorization Act for Fiscal Years 1988 and 1989
100–147	National Aeronautics and Space Administration Authorization Act of 1988
100–113	Federal Triangle Development Act
100–66	United States-Korea Fishery Agreement
99–661	National Defense Authorization Act, Fiscal Year 1987
99–661	Department of Defense Authorization Act, 1987 (Division A)
99–658	Approval of the Compact of Free Association With the Government of Palau
99–630	Humpback Whales Wildlife Sanctuary (West Indies)
99–603	Immigration Reform and Control Act of 1986
99–570	International Narcotics Control Act of 1986 (title II)
99–529	Special Foreign Assistance Act of 1986
99–513	R.M.S. Titanic Maritime Memorial Act of 1986
99–498	Higher Education Amendments of 1986
99–475	Release of USIA Materials to Museums
99–472	Export-Import Bank Act Amendments of 1986
99–415	Anglo-Irish Agreement Support Act of 1986
99–399	Omnibus Diplomatic Security and Antiterrorism Act of 1986
99–399	Diplomatic Security Act (titles I–IV)
99–399	Victims of Terrorism Compensation Act (title VIII)
99–399	International Maritime and Port Security Act (title IX)
99–399	Fascell Fellowship Act (title X)
99–239	Compact of Free Association Act of 1985
99–198	Food Security Act of 1985
99–198	Food for Progress Act of 1985 (sec. 1110)
99–190	Further Continuing Appropriations, 1985
99–190	Multilateral Development Bank Act of 1985 (sec. 101(i), H.R. 2253, enacted by reference)
99–183	Agreement for Nuclear Cooperation Between the United States and China
99–180	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1986
99–177	Balanced Budget and Emergency Deficit Control Act of 1985 [Gramm-Rudman-Hollings Act]

99–162	Sales of Arms to Jordan
99–145	Department of Defense Authorization Act, 1986
99–145	Relating to the approval and implementation of the proposed agreement for nuclear cooperation between the United States and the People's Republic of China
99–93	Foreign Relations Authorization Act, Fiscal Years 1986 and 1987
99–93	United States Information Agency Authorization Act, Fiscal Years 1986 and 1987 (title II)
99–93	Board for International Broadcasting Authorization Act, Fiscal Years 1986 and 1987 (title III)
99–93	Iran Claims Settlement (title V)
99–93	United States Scholarship Program for Developing Countries Authorization, Fiscal Years 1986 & 1987 (title VI)
99–93	Arms Control and Disarmament Act Authorization for Fiscal Years 1986 and 1987 (title VII)
99–88	Supplemental Appropriations Act, 1985
99–88	Jordan Supplemental Economic Assistance Authorization Act of 1985 (title IV)
99–85	Authorization for an Improved U.S./Soviet Direct Communications Link
99–83	International Security and Development Cooperation Act of 1985
99–83	International Narcotics Control Act of 1985 (title VI)
99–83	Peace Corps Authorization for Fiscal Years 1986 and 1987 (title XI)
99–64	Export Administration Amendments Act of 1985
99–47	United States-Israel Free Trade Area Implementation Act of 1985
99–8	African Famine Relief and Recovery Act of 1985
99–5	Pacific Salmon Treaty Act of 1985
98–623	Governing International Fishery Agreements With Iceland and the European Economic Community (title I)
98–623	Antarctic Marine Living Resources Convention Act of 1984 (title III)
98–618	Intelligence Authorization Act for Fiscal Year 1985
98–573	Trade and Tariff Act of 1984
98–573	International Trade and Investment Act (title III)
98–573	Generalized System of Preferences Renewal Act of 1984 (title V)
98–573	Steel Import Stabilization Act (title VIII)
98–573	Wine Equity and Export Expansion Act of 1984 (title IX)
98–562	Cooperative East-West Ventures in Space
98–533	1984 Act to Combat International Terrorism
98–525	Department of Defense Authorization Act, 1985
98–525	United States Institute for Peace Act (title XVII)
98–473	Continuing Appropriations, 1985
98–473	Inter-American Investment Corporation Act (title II, S. 2416, enacted by reference)

98–473	President's Emergency Food Assistance Act of 1984 (title III)
98–447	United States Government Opposition to the Practice of Torture
98–445	Eastern Pacific Tuna Licensing Act of 1984
98–373	Arctic Research and Policy Act of 1984 (title I)
98–373	National Critical Materials Act of 1984 (title II)
98–266	Clement J. Zablocki Memorial Outpatient Facility, American Children's Hospital, Krakow, Poland
98–258	Agricultural Programs Adjustment Act of 1984
98–258	Agricultural Exports (title V)
98–198	Child Health Revolution
98–181	Supplemental Appropriations Act, 1984
98–181	Trade and Development Enhancement Act of 1983 (title VI, part C)
98–181	International Lending Supervision Act of 1983 (title IX)
98–181	Multilateral Development Banks: Sense of Congress (title X)
98–164	Department of State Authorization Act, Fiscal Years 1984 and 1985 (titles I, X)
98–164	United States Information Agency Authorization Act, Fiscal Years 1984 and 1985 (title II)
98–164	Board for International Broadcasting Authorization Act, Fiscal Years 1984 and 1985 (title III)
98–164	Asia Foundation Act (title IV)
98–164	National Endowment for Democracy Act (title V)
98–164	Foreign Missions Amendments Act (title VI)
98–164	International Environmental Protection Act of 1983 (title VII)
98–164	Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983 (title VIII)
98–164	United States-India Fund for Cultural, Educational, and Scientific Cooperation Act (title IX)
98–151	Continuing Resolution, 1984
98–151	Foreign Assistance and Related Programs Appropriations Act, 1984 (sec. 101(b)(1))
98–151	International Security and Development Assistance Authorization Act of 1983 (sec. 101(b)(2))
98–119	Multinational Force in Lebanon Resolution
98–111	Radio Broadcasting to Cuba Act
98–94	Department of Defense Authorization Act, 1984
98–67	Caribbean Basin Economic Recovery Act (title II)
98–43	Lebanon Emergency Assistance Act of 1983
97–446	Convention on Cultural Property Implementation Act (title III)
97–425	Nuclear Waste Policy Act of 1982
97–418	Protection of Foreign Missions
97–389	Fisheries Amendments of 1982
97–389	Atlantic Salmon Convention Act of 1982 (title III)
97–389	Governing International Fishery Agreements with Japan and Spain (title IV)
97–325	International Carriage of Perishable Foodstuffs Act

97–290	Export Trading Company Act of 1982 (title I)
97–290	Bank Export Services Act (title II)
97–252	Department of Defense Authorization Act, 1983
97–241	Department of State Authorization Act, Fiscal Years 1982 and 1983
97–241	Foreign Missions Act (title II)
97–241	United States Information Agency Authorization Act, Fiscal Years 1982 and 1983 (title III)
97–241	Board for International Broadcasting Authorization Act, Fiscal Years 1982 and 1983 (title IV)
97–229	Energy Emergency Preparedness Act of 1982
97–145	Export Administration Amendments Act of 1981
97–132	Multinational Force and Observers Participation Resolution
97–127	Czechoslovakian Claims Settlement Act of 1981
97–113	International Security and Development Cooperation Act of 1981
97–98	Agriculture and Food Act of 1981
97–98	Agriculture Trade and Export Policy Commission Act (title XII, subtitle C)
97–35	African Development Bank Act (title XIII, subtitle B, part 3)
96–599	International Coffee Agreement Act of 1980
96–561	American Fisheries Promotion Act (title II)
96–533	International Security and Development Cooperation Act of 1980
96–533	African Development Foundation Act (title V)
96–494	Agriculture Act of 1980
96–494	Agricultural Trade Suspension Adjustment Act of 1980 (title II)
96–494	Bill Emerson Humanitarian Trust Act (title III)
96–487	Alaska National Interests Lands Conservation Act
96–478	Act to Prevent Pollution from Ships
96–465	Foreign Service Act of 1980
96–449	Hostage Relief Act of 1980
96–422	Refugee Education Assistance Act of 1980
96–389	Bretton Woods Agreements Act Amendments, 1980
96–339	Atlantic Tunas Convention Act of 1975, Appropriation Authorization
96–323	North Atlantic Treaty Organization Mutual Support Act of 1979
96–283	Deep Seabed Hard Mineral Resources Act
96–283	Deep Seabed Hard Mineral Removal Tax Act of 1979 (title IV)
96–280	Nuclear Non-Proliferation Act of 1978—Agreements for Cooperation
96–271	International Natural Rubber Agreement Appropriation Authorization for Fiscal Year 1981
96–259	Providing for Increased Participation by the United States in the Inter-American and Asian Development Banks and African Development Fund
96–236	International Sugar Agreement, 1977, Implementation
96–212	Refugee Act of 1980

96–175	Strategic and Critical Materials Transaction Authorization Act of 1979
96–133	Energy Policy and Conservation Act Amendments
96–92	International Security Assistance Act of 1979
96–72	Export Administration Act of 1979
96–70	Panama Canal Act of 1979
96–60	Department of State Authorization Act, Fiscal Years 1980 and 1981 (title I)
96–60	International Communication Agency Authorization Act, Fiscal Years 1980 and 1981 (title II)
96–53	International Development Cooperation Act of 1979
96–39	Trade Agreements Act of 1979
96–35	Special International Security Assistance Act of 1979
96–9	Reaffirming North Atlantic Alliance—United States Commitment
96–8	Taiwan Relations Act
95–630	Financial Institutions Regulatory and Interest Rate Control Act of 1978
95–630	Export-Import Bank Act Amendments of 1978 (title XIX)
95–561	Education Amendments of 1978
95–561	National Academy of Peace and Conflict Resolution (title XV, part B)
95–511	Foreign Intelligence Surveillance Act of 1978
95–501	Agricultural Trade Act of 1978
95–485	Department of Defense Appropriation Authorization Act, 1979
95–452	Inspector General Act of 1978
95–435	Bretton Woods Agreements Act Amendments, 1978
95–426	Foreign Relations Authorization Act, Fiscal Year 1979
95–426	International Communication Agency Authorization for Fiscal Year 1979 (title II)
95–424	International Development and Food Assistance Act of 1978
95–393	Diplomatic Relations Act
95–384	International Security Assistance Act of 1978
95–287	Reaffirming the Unity of the North Atlantic Alliance Commitment
95–242	Nuclear Non-Proliferation Act of 1978
95–238	Department of Energy Act of 1978
95–223	International Emergency Economic Powers Act (title II)
95–213	Foreign Corrupt Practices Act of 1977 (title I)
95–118	International Financial Institutions Act
95–113	Food and Agriculture Act of 1977
95–105	Foreign Relations Authorization Act, Fiscal Year 1978
95–105	United States Information Agency Authorization for Fiscal Year 1978 (title II)
95–92	International Security Assistance Act of 1977
95–88	International Development and Food Assistance Act of 1977
95–6	Fishery Conservation Zone Transition Act
94–583	Foreign Sovereign Immunities Act of 1976

94–472	International Investment and Trade in Services Survey Act
94–412	National Emergencies Act
94–350	Foreign Relations Authorization Act, Fiscal Year 1977
94–350	United States Information Agency Authorization for Fiscal Year 1977 (title II)
94–350	Foreign Service Retirement Amendments of 1976 (title V)
94–329	International Security Assistance and Arms Export Control Act of 1976
94–304	Establishing a Commission on Security and Cooperation in Europe
94–302	African Development Fund Act (title II)
94–265	Magnuson-Stevens Fishery Conservation and Management Act of 1976
94–265	Driftnet Act Amendments of 1990 (sec. 206)
94–163	Energy Policy and Conservation Act
94–161	International Development and Food Assistance Act of 1975
94–141	Foreign Relations Authorization Act, Fiscal Year 1976
94–118	Japan-United States Friendship Act
94–110	Joint Resolution to Implement the United States Proposal for the Early-Warning System in Sinai
94–70	Atlantic Tunas Convention Act of 1975
94–39	National Aeronautics and Space Administration Authorization Act, 1976
93–627	Deepwater Port Act of 1974
93–618	Trade Act of 1974
93–618	Narcotics Control Trade Act (title VIII)
93–559	Foreign Assistance Act of 1974
93–479	Foreign Investment Study Act of 1974
93–475	State Department/USIA Authorization Act, Fiscal Year 1975
93–366	Antihijacking Act of 1974
93–365	Department of Defense Appropriation Authorization Act, 1975
93–248	Intervention on the High Seas Act
93–205	Endangered Species Act of 1973
93–199	Emergency Security Assistance Act of 1973
93–189	Foreign Assistance Act of 1973
93–188	United Nations Environment Program Participation Act of 1973
93–153	Trans-Alaska Pipeline Authorization Act
93–148	War Powers Resolution
93–129	Board for International Broadcasting Act of 1973
93–126	Department of State Appropriations Authorization Act of 1973
93–110	Par Value Modification Act—Foreign Currency Reports (title II)
92–544	Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations Act, 1973
92–522	Marine Mammal Protection Act of 1972

92–499	Act to Extend Diplomatic Privileges to the Commission of the European Communities
92–403	Case Act—Transmittal of International Agreements
92–352	Foreign Relations Authorization Act of 1972
92–268	Par Value Modification Act
92–257	Trust Territory of the Pacific Islands Act
92–226	Foreign Assistance Act of 1971
92–39	Micronesian Claims Act of 1971
91–672	Foreign Military Sales Act Amendments, 1971
91–652	Special Foreign Assistance Act of 1971
91–441	Armed Forces Appropriation Authorization, 1971
91–269	United States Recognition and Participation in International Expositions
91–175	Foreign Assistance Act of 1969, as amended
90–629	Arms Export Control Act
90–554	Foreign Assistance Act of 1968
90–553	International Center Act
90–390	Export Loans—Assistance
90–349	Special Drawing Rights Act
90–137	Foreign Assistance Act of 1967
89–732	Cuban Refugee Adjustment Act
89–673	Foreign Gifts and Decorations Act of 1966
89–583	Foreign Assistance Act of 1966
89–532	Convention on the Settlement of Investment Disputes Act of 1966
89–486	Foreign Agents Registration Act Amendments
89–369	Asian Development Bank Act
89–296	Ryukyu Islands Claims Settlement Act
89–259	Cultural Objects—Importation for Temporary Display
89–171	Foreign Assistance Act of 1965
89–134	Peace Corps Act Amendments
88–633	Foreign Assistance Act of 1964
88–408	Tonkin Gulf Resolution
88–205	Foreign Assistance Act of 1963
87–826	Collection and Publication of Foreign Commerce and Trade Statistics
87–794	Trade Expansion Act of 1962
87–733	Cuban Resolution
87–565	Foreign Assistance Act of 1962
87–510	Migration and Refugee Assistance Act of 1962
87–297	Arms Control and Disarmament Act
87–293	Peace Corps Act
87–256	Mutual Educational and Cultural Exchange Act of 1961
87–195	Foreign Assistance Act of 1961
87–195	Tropical Forest Conservation Act of 1998 (part V)
87–125	General Government Matters, Department of Commerce, and Related Agencies Appropriation Act, 1962
86–735	Latin American Development Act
86–628	Legislative Branch Appropriation Act, 1961
86–565	International Development Association Act
86–472	Mutual Security Act of 1960

86–472	Center for Cultural and Technical Interchange Between East and West Act of 1960 (chapter VII)
86–420	Mexico-United States Interparliamentary Group
86–147	Inter-American Development Bank Act
86–108	Mutual Security Act of 1959
86–42	Canada-United States Interparliamentary Group
85–931	Agricultural Trade Development and Assistance Act of 1954—Extension and Amendment
85–846	EURATOM Cooperation Act of 1958
85–568	National Aeronautics and Space Act of 1958
85–474	Departments of State and Justice, the Judiciary, and Related Agencies Appropriation Act, 1959
85–177	International Atomic Energy Agency Participation Act of 1957
85–7	Resolution To Promote Peace and Stability in the Middle East
84–885	State Department Basic Authorities Act of 1956
84–689	United States Group of the North Atlantic Treaty Parliamentary Conferences—Participation Resolution
84–350	International Finance Corporation Act
83–703	Atomic Energy Act of 1954
83–680	Fisherman's Protective Act of 1967
83–665	Mutual Security Act of 1954
83–480	Agricultural Trade Development and Assistance Act of 1954
83–451	Civil Government for the Trust Territory of the Pacific Islands
82–486	Extending Certain Privileges to Representatives of Organization of American States
82–414	Immigration and Nationality Act
81–806	U.S. Participation in Certain International Organizations
81–764	Tuna Conventions Act of 1950
81–676	Whaling Convention Act of 1949
81–507	National Science Foundation Act of 1950
81–455	International Claims Settlement Act of 1949
81–439	Agricultural Act of 1949
80–772	Act of June 25, 1948
80–772	Logan Act—Private Correspondence With Foreign Governments
80–772	Johnson Act—Financial Transactions With Foreign Governments
80–402	United States Information and Educational Exchange Act of 1948
80–357	United Nations Headquarters Agreement Act
80–253	National Security Council
79–547	Act of July 25, 1946
79–291	International Organizations Immunities Act
79–264	United Nations Participation Act of 1945
79–173	Export-Import Bank Act of 1945
79–171	Bretton Woods Agreements Act
76–54	Neutrality Act of 1939
75–583	Foreign Agents Registration Act of 1938

75–543	Act of May 25, 1938
71–361	Tariff Act of 1930
69–186	Foreign Service Buildings Act, 1926
65–91	Trading With the Enemy Act

Appendix II

NOTE.—Appendix II lists Public Laws included in *Legislation on Foreign Relations Through 2005*, either as free-standing law or in amendments, arranged alphabetically by short title or popular name with corresponding Public Law number.

Short Title	Public Law No.
1984 Act to Combat International Terrorism	98–533
1998 Supplemental Appropriations and Rescissions Act	105–174
2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States	107–206
9/11 Commission Implementation Act of 2004 (title VII)	108–458
AGOA Acceleration Act of 2004	108–274
Act For Reform In Emerging New Democracies and Support and Help for Improved Partnership with Russia, Ukraine, and Other New Independent States (FRIENDSHIP Act)	103–199
Act of May 25, 1938	75–543
Act of July 25, 1946	79–547
Act of June 25, 1948	80–772
Act to Extend Diplomatic Privileges to the Commission of the European Communities	92–499
Act to Honor the Victims of the Bombing of Pan Am Flight	103–158
Act to Prevent Pollution from Ships	96–478
Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference)	106–113
Afghan Women and Children Relief Act of 2001	107–81
Afghanistan Freedom Support Act of 2002	107–327
Africa: Seeds of Hope Act of 1998	105–385
African Conflict Resolution Act	103–381
African Development Bank Act (title XIII, subtitle B, part 3)	97–35
African Development Foundation Act (title V)	96–533

African Development Fund Act (title II) 94–302
African Elephant Conservation Act (title II) 100–478
African Elephant Conservation Reauthorization Act of 1998 105–217
African Elephant Conservation Reauthorization Act of 2001 107–111
African Famine Relief and Recovery Act of 1985 99–8
African Growth and Opportunity Act (title I) 106–200
Agreement for Nuclear Cooperation Between the United States and China 99–183
Agricultural Act of 1949 81–439
Agricultural Competitiveness and Trade Act of 1988 (title IV) 100–418
Agricultural Development and Trade Act of 1990 (title XV) 101–624
Agricultural Exports (title V) 98–258
Agricultural Programs Adjustment Act of 1984 98–258
Agricultural Trade Act of 1978 95–501
Agricultural Trade Development and Assistance Act of 1954 83–480
Agricultural Trade Development and Assistance Act of 1954—Extension and Amendment 85–931
Agricultural Trade Suspension Adjustment Act of 1980 (title II) 96–494
Agriculture and Food Act of 1981 97–98
Agriculture Export Relief Act 105–194
Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 109–97
Agriculture Trade and Export Policy Commission Act (title XII, subtitle C) 97–98
Aid, Trade, and Competitiveness Act of 1992 (title III) 102–549
Alaska National Interests Lands Conservation Act 96–487
Amendments to U.S.–Mexico Agreement Establishing a Border Environment Cooperation Commission and North American Development Bank 108–215
American Aid to Poland Act of 1988 (title II, subtitle B, part II) 100–418
American Fisheries Promotion Act (title II) 96–561
American Institute in Taiwan Facilities Enhancement Act 106–212
American Servicemembers Protection Act (title II) 107–206
Andean Trade Preference Act (title II) 102–182
Andean Trade Promotion and Drug Eradication Act (title XXXI) 107–210
Anglo-Irish Agreement Support Act of 1986 99–415
Antarctic Marine Living Resources Convention Act of 1984 (title III) 98–623
Antarctic Protection Act of 1990 101–594
Antarctic Science, Tourism, and Conservation Act of 1996 104–227
Anti-Economic Discrimination Act of 1994 (title V, part C) 103–236
Anti-Terrorism Act of 1987 (title X) 100–204

Antiterrorism and Effective Death Penalty Act of 1996 104–132
Antihijacking Act of 1974 93–366
Approval of the Compact of Free Association With the Government of Palau 99–658
Approving the Renewal of Import Restrictions—Burma 108–272
Arctic Research and Policy Act of 1984 (title I) 98–373
Arctic Tundra Habitat Emergency Conservation Act ... 106–108
Armed Forces Appropriation Authorization, 1971 91–441
Arms Control and Disarmament Act 87–297
Arms Control and Disarmament Act Authorization for Fiscal Years 1986 and 1987 (title VII) 99–93
Arms Control and Disarmament Amendments Act of 1987 100–213
Arms Control and Disarmament Amendments Act of 1989 101–216
Arms Control and Nonproliferation Act of 1994 (title VII, part A) 103–236
Arms Control and Nonproliferation Act of 1999 (title XI, division B, H.R. 3427, enacted by reference) 106–113
Arms Control, Nonproliferation, and Security Assistance Act of 1999 (division B, H.R. 3427, enacted by reference) 106–113
Arms Export Control Act 90–629
Asia Foundation Act (title IV) 98–164
Asian Development Bank Act 89–369
Asian Elephant Conservation Act of 1997 105–96
Asian Elephant Conservation Reauthorization Act of 2002 107–141
Asian/Pacific American Heritage Month—Designation 102–450
Assistance for International Malaria Control Act 106–570
Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005 109–95
Atlantic Salmon Convention Act of 1982 (title III) 97–389
Atlantic Tunas Convention Act of 1975 94–70
Atlantic Tunas Convention Act of 1975, Appropriation Authorization 96–339
Atlantic Tunas Convention Act of 1995 (title III) 104–43
Atlantic Tunas Convention Authorization Act of 1995 (title III) 104–43
Atomic Energy Act of 1954 83–703
Au Pair Extension 104–72
Authorization for an Improved U.S./Soviet Direct Communications Link 99–85
Authorization for Use of Military Force [international terrorism] 107–40
Authorization for Use of Military Force Against Iraq Resolution of 2002 107–243
Authorization for Use of U.S. Armed Forces Pursuant to U.N. Security Council Resolution 678 102–1
Aviation Security Improvement Act of 1990 101–604
Balanced Budget and Emergency Deficit Control Act of 1985 [Gramm-Rudman-Hollings Act] 99–177

Ballistic Missile Defense Act of 1995 (title II, subtitle C) 104–106
Bangladesh Disaster Assistance Act of 1988 100–576
Bank Export Services Act (title II) 97–290
Belarus Democracy Act of 2004 108–347
Bill Emerson Humanitarian Trust Act (title III) 96–494
Biological Weapons Anti-Terrorism Act of 1989 101–298
Bipartian Trade Promotion Authority Act of 2002 (title XXI) 107–210
Board for International Broadcasting Act of 1973 93–129
Board for International Broadcasting Appropriations, 1988 (sec. 101(a), title V) 100–202
Board for International Broadcasting Authorization Act, Fiscal Years 1982 and 1983 (title IV) 97–241
Board for International Broadcasting Authorization Act, Fiscal Years 1984 and 1985 (title III) 98–164
Board for International Broadcasting Authorization Act, Fiscal Years 1986 and 1987 (title III) 99–93
Board for International Broadcasting Authorization Act, Fiscal Years 1988 and 1989 (title V) 100–204
Bob Stump National Defense Authorization Act for Fiscal Year 2003 107–314
Bretton Woods Agreements Act 79–171
Bretton Woods Agreements Act Amendments, 1978 95–435
Bretton Woods Agreements Act Amendments, 1980 96–389
Bring Them Home Alive Act of 2000 106–484
Cambodian Genocide Justice Act (title V, part D) 103–236
Canada-United States Interparliamentary Group 86–42
Cape Town Treaty Implementation Act of 2004 108–297
Caribbean Basin Economic Recovery Act (title II) 98–67
Caribbean Basin Economic Recovery Expansion Act of 1990 (title II) 101–382
Caribbean National Forest Wild and Scenic Rivers Act of 2002 107–365
Case Act—Transmittal of International Agreements ... 92–403
Center for Cultural and Technical Interchange Between East and West Act of 1960 (chapter VII) 86–472
Central American Peace Assistance 100–276
Central Bering Sea Fisheries Enforcement Act of 1992 (title III) 102–582
Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (title III) 102–182
Chemical Weapons Convention Implementation Act of 1998 (division I) 105–277
Child Health Revolution 98–198
Chinese Student Protection Act of 1992 102–404
Civil Government for the Trust Territory of the Pacific Islands 83–451
Clean Air Act Amendments 101–549
Clean Diamond Trade Act 108–19
Clean Water for the Americas Partnership Act of 2002 (division A, title VI, subtitle D) 107–228
Clement J. Zablocki Memorial Outpatient Facility, American Children's Hospital, Krakow, Poland 98–266

Coast Guard Authorization Act of 1993 103–206
Collection and Publication of Foreign Commerce and Trade Statistics 87–826
Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII) 104–293
Commercial Space Act of 1998 105–303
Compact of Free Association Act of 1985 99–239
Competitiveness Policy Council Act (title V, part I, subtitle C) 100–418
Comprehensive Peace in Sudan Act of 2004 108–497
Congo Basin Forest Partnership Act of 2004 108–200
Consolidated Appropriations Act, 2005 108–447
Continuing Appropriations, Fiscal Year 2006 109–77
Continuing Resolution, 1984 98–151
Convention on Cultural Property Implementation Act (title III) 97–446
Convention on the Settlement of Investment Disputes Act of 1966 89–532
Conventional Forces in Europe Treaty Implementation Act of 1991 102–228
Cooperative East-West Ventures in Space 98–562
Cooperative Threat Reduction Act of 1993 (title XII) ... 103–160
Crime Control Act of 1990 101–647
Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 104–114
Cuban Political Prisoners and Immigrants (sec. 101(a), title VII) 100–202
Cuban Refugee Adjustment Act 89–732
Cuban Resolution 87–733
Cuban Democracy Act of 1992 (title XVII) 102–484
Cultural Objects—Importation for Temporary Display 89–259
Customs and Trade Act of 1990 101–382
Customs Border Security Act of 2002 (title III) 107–210
Czechoslovakian Claims Settlement Act of 1981 97–127
Dante B. Fascell North-South Center Act of 1991 (sec. 208) 102–138
David L. Boren National Security Education Act of 1991 102–183
Deep Seabed Hard Mineral Removal Tax Act of 1979 (title IV) 96–283
Deep Seabed Hard Mineral Resources Act 96–283
Deepwater Port Act of 1974 93–627
Defense Against Weapons of Mass Destruction Act of 1996 (title XIV) 104–201
Defense Against Weapons of Mass Destruction Act of 1998 (title XIV) 105–261
Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993 (title XIII) 103–160
Defense Offsets Disclosure Act of 1999 (subtitle D, title XII, H.R. 3427, enacted by reference) 106–113
Demilitarization of the Former Soviet Union Act of 1992 (title XIV) 102–484

Department of Defense and Emergency Supplemental Appropriations for Recovery From and Response To Terrorist Attacks on the United States Act, 2002 107–117
Department of Defense Appropriation Act, 1976 94–212
Department of Defense Appropriation Authorization Act, 1975 93–365
Department of Defense Appropriation Authorization Act, 1979 95–485
Department of Defense Appropriations Act, 2006 (division A) 109–148
Department of Defense Authorization Act, 1983 97–252
Department of Defense Authorization Act, 1984 98–94
Department of Defense Authorization Act, 1985 98–525
Department of Defense Authorization Act, 1986 99–145
Department of Defense Authorization Act, 1987 (Division A) 99–661
Department of Defense, Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 109–148
Department of Energy Act of 1978 95–238
Department of State and Related Agencies Appropriations Act, 2006 (title IV) 109–108
Department of State Appropriations Authorization Act of 1973 93–126
Department of State Authorization Act, Fiscal Year 2003 (division A) 107–228
Department of State Authorization Act, Fiscal Years 1980 and 1981 (title I) 96–60
Department of State Authorization Act, Fiscal Years 1982 and 1983 97–241
Department of State Authorization Act, Fiscal Years 1984 and 1985 (titles I, X) 98–164
Department of State Special Agents Retirement Act of 1998 105–382
Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 109–54
Departments of State and Justice, the Judiciary, and Related Agencies Appropriation Act, 1959 85–474
Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations Act, 1973 92–544
Detainee Treatment Act of 2005 (title XIV) 109–163
Diplomatic Relations Act 95–393
Diplomatic Security Act (titles I–IV) 99–399
Dire Emergency Supplemental Appropriations Act, 1988 100–393
Distribution of USIA Materials 102–454
Dolphin Protection Consumer Information Act (title IX) 101–627
Dominican Republic-Central America-United States Free Trade Agreement Implementation Act 109–53
Driftnet Act Amendments of 1990 (sec. 206) 94–265
Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (title IV) 100–220

East Timor Transition to Independence Act of 2002 (division A, title VI, subtitle C) 107–228
Eastern Pacific Tuna Licensing Act of 1984 98–445
Education Amendments of 1978 95–561
Eisenhower Exchange Fellowship Act of 1990 101–454
Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (title III) 108–429
Emergency Security Assistance Act of 1973 93–199
Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 108–106
Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 109–13
Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 (division B) 109–148
Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995 104–6
Emergency Supplemental Assistance for Israel Act of 1991 102–21
Emergency Supplemental Persian Gulf Refugee Assistance Act of 1991 102–45
Endangered Species Act of 1973 93–205
Energy Emergency Preparedness Act of 1982 97–229
Energy Policy Act of 1992 102–486
Energy Policy Act of 2005 109–58
Energy Policy and Conservation Act 94–163
Energy Policy and Conservation Act Amendments 96–133
Enhanced Border Security and Visa Entry Reform Act of 2002 107–173
Enterprise for the Americas Act of 1992 (title VI) 102–549
Enterprise for the Americas Initiative Act of 1992 102–532
Establishing a Commission on Security and Cooperation in Europe 94–304
EURATOM Cooperation Act of 1958 85–846
European Bank for Reconstruction and Development Act (sec. 562(c)) 101–513
European Security Act of 1998 (division G, title XXVII) 105–277
Exchange Rates and International Economic Policy Coordination Act of 1988 (title III, subtitle A) 100–418
Export Administration Act of 1979 96–72
Export Administration Amendments Act of 1981 97–145
Export Administration Amendments Act of 1985 99–64
Export Enhancement Act of 1988 (title II) 100–418
Export Enhancement Act of 1992 102–429
Export Enhancement Act of 1999 106–158
Export Enhancement Program Amendments of 1994 (title IV, subtitle A, part II, sec. 411(a)) 103–465
Export-Import Bank Act Amendments of 1978 (title XIX) 95–630
Export-Import Bank Act Amendments of 1986 99–472

Export-Import Bank Act of 1945 79–173
Export-Import Bank and Tied Aid Credit Amendments of 1988 (title III, subtitle D) 100–418
Export-Import Bank Reauthorization Act of 2002 107–189
Export Loans—Assistance 90–390
Export Trading Company Act of 1982 (title I) 97–290
Extending Certain Privileges to Representatives of Organization of American States 82–486
Extradition Treaties Implementation Act of 1998 105–323
Fair Trade in Auto Parts Act of 1988 (title II, subtitle A, part II) 100–418
Famine Prevention and Freedom From Hunger Improvement Act of 2000 106–373
Fascell Fellowship Act (title X) 99–399
Fascell Fellowship Amendments Act of 1990 (sec. 9) ... 101–454
Federal Agriculture Improvement and Reform Act of 1996 104–127
Federal Aviation Reauthorization Act of 1996 104–264
Federal Reports Elimination Act of 1998 105–362
Federal Reports Elimination and Sunset Act of 1995 .. 104–66
Federal Triangle Development Act 100–113
Financial Institutions Regulatory and Interest Rate Control Act of 1978 95–630
Financial Reports Act of 1988 (title III, subtitle G) 100–418
Finding the Government of Iraq in Unacceptable and Material Breach of Its International Obligations 105–235
Fisheries Act of 1995 104–43
Fisheries Amendments of 1982 97–389
Fisherman's Protective Act of 1967 83–680
Fishery Conservation Amendments of 1990 101–627
Fishery Conservation Zone Transition Act 95–6
Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 106–398
Food, Agriculture, Conservation, and Trade Act of 1990 101–624
Food, Agriculture, Conservation, and Trade Act Amendments of 1991 102–237
Food and Agriculture Act of 1977 95–113
Food for Progress Act of 1985 (sec. 1110) 99–198
Food Security Act of 1985 99–198
Foreign Affairs Agencies Consolidation Act of 1998 (division G, subdivision A) 105–277
Foreign Affairs Reform and Restructuring Act of 1998 (division G) 105–277
Foreign Agents Registration Act Amendments 89–486
Foreign Agents Registration Act of 1938 75–583
Foreign Assistance Act of 1961 87–195
Foreign Assistance Act of 1962 87–565
Foreign Assistance Act of 1963 88–205
Foreign Assistance Act of 1964 88–633
Foreign Assistance Act of 1965 89–171
Foreign Assistance Act of 1966 89–583
Foreign Assistance Act of 1967 90–137
Foreign Assistance Act of 1968 90–554

Foreign Assistance Act of 1969, as amended 91–175
Foreign Assistance Act of 1971 92–226
Foreign Assistance Act of 1973 93–189
Foreign Assistance Act of 1974 93–559
Foreign Assistance and Related Programs Appropriations Act, 1984 (sec. 101(b)(1)) 98–151
Foreign Corrupt Practices Act Amendments of 1988 (title V, subtitle A, part I) 100–418
Foreign Corrupt Practices Act of 1977 (title I) 95–213
Foreign Debt Reserving Act of 1989 (title IV) 101–240
Foreign Direct Investment and International Financial Date Improvements Act of 1990 101–533
Foreign Gifts and Decorations Act of 1966 89–673
Foreign Intelligence Surveillance Act of 1978 95–511
Foreign Investment Study Act of 1974 93–479
Foreign Military Sales Act Amendments, 1971 91–672
Foreign Missions Act (title II) 97–241
Foreign Missions Amendments Act (title VI) 98–164
Foreign Narcotics Kingpin Designation Act (title VIII) 106–120
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e)) 100–202
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 100–460
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 101–167
Foreign Operations, Export Financing, and Related Programs Appropriations Act 1991 101–513
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 102–391
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 103–306
Foreign Operations, Export Financing, and Related Programs Supplemental Appropriations Act, 1997 (title I, sec. 101(c)) 104–208
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (H.R. 3422, enacted by reference) 106–113
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 106–429
[Kenneth M. Ludden] Foreign Operations, Export Financing and Related Programs Appropriations Act, 2002 107–115
Foreign Operations, Export Financing and Related Programs Appropriations Act, 2003 (division E) 108–7
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (division D) 108–199
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (division D) 108–447
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 109–102
Foreign Relations Authorization Act, Fiscal Year 1976 94–141
Foreign Relations Authorization Act, Fiscal Year 1977 94–350
Foreign Relations Authorization Act, Fiscal Year 1978 95–105
Foreign Relations Authorization Act, Fiscal Year 1979 95–426

Foreign Relations Authorization Act, Fiscal Year 2003 107–228
Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 99–93
Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 100–204
Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 101–246
Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 102–138
Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 103–236
Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 (division G, subdivision B) 105–277
Foreign Relations Authorization Act of 1972 92–352
Foreign Relations Persian Gulf Conflict Emergency Supplemental Authorization Act, Fiscal Year 1991 .. 102–20
Foreign Service Act of 1980 96–465
Foreign Service Buildings Act, 1926 69–186
Foreign Service Retirement Amendments of 1976 (title V) 94–350
Foreign Shipping Practices Act of 1988 (title X) 100–418
Foreign Sovereign Immunities Act of 1976 94–583
Forest Resources Conservation and Shortage Relief Act of 1990 (title IV) 101–382
Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act) 102–511
Freedom Investment Act of 2002 (division A, title VI, subtitle E) 107–228
FRIENDSHIP Act 103–199
Further Continuing Appropriations, 1985 99–190
General Government Matters, Department of Commerce, and Related Agencies Appropriation Act, 1962 87–125
Generalized System of Preferences Renewal Act of 1984 (title V) 98–573
Gerald B.H. Solomon Freedom Consolidation Act of 2002 107–187
German-American Day 103–100
German Democratic Republic Fishery Agreement 100–350
Global AIDS and Tuberculosis Relief Act of 2000 106–264
Global AIDS Research and Relief Act of 2000 (title I) .. 106–264
Global Anti-Semitism Review Act of 2004 108–332
Global Change Research Act of 1990 101–606
Global Climate Change Prevention Act of 1990 (title XXIV) 101–624
Global Climate Protection Act of 1987 (title XI) 100–204
Global Environmental Protection Assistance Act of 1989 (title VII) 101–240
Governing International Fishery Agreement With Poland 105–384
Governing International Fishery Agreements With Iceland and the European Economic Community (title I) 98–623

Governing International Fishery Agreements With Japan and Spain (title IV) 97–389
Great Ape Conservation Act of 2000 106–411
Haitian Refugee Immigration Fairness Act of 1998 (division A, sec. 101(h), title IX) 105–277
HELP Commission Act (division B, sec. 637) 108–199
Helsinki Human Rights Day 103–294
High Seas Driftnet Fisheries Enforcement Act 102–582
High Seas Driftnet Fishing Moratorium Protection Act (title VI) 104–43
High Seas Fishing Compliance Act of 1995 (title I) 104–43
Higher Education Amendments of 1986 99–498
Holocaust Victims Redress Act 105–158
Horn of Africa Recovery and Food Security Act 102–274
Hostage Relief Act of 1980 96–449
Human Rights, Refugees, and Other Foreign Relations Provisions Act of 1996 104–319
Humpback Whales Wildlife Sanctuary (West Indies) ... 99–630
ILSA [Iran and Libya Sanctions Act] Extension Act of 2001 107–24
Immigration Act of 1990 101–649
Immigration and Nationality Act 82–414
Immigration Reform and Control Act of 1986 99–603
Implementation of Compact of Free Association With Palau 101–219
Implementing Agreement for Vienna Convention on Diplomatic Relations 101–62
Indochinese Refugee and Resettlement Act of 1987 (sec. 101(a), title VIII) 100–202
Inspector General Act of 1978 95–452
Intelligence Authorization Act for Fiscal Year 1985 98–618
Intelligence Authorization Act for Fiscal Year 1996 104–93
Intelligence Authorization Act for Fiscal Year 1997 104–293
Intelligence Authorization Act for Fiscal Year 1998 105–107
Intelligence Authorization Act for Fiscal Year 2000 106–120
Intelligence Reform and Terrorism Prevention Act of 2004 108–458
Inter-American Development Bank Act 86–147
Inter-American Investment Corporation Act (title II, S. 2416, enacted by reference) 98–473
Intercountry Adoption Act of 2000 106–279
International Academic Opportunities Act of 2000 (title III) 106–309
International Anti-Bribery and Fair Competition Act of 1998 105–366
International Anti-Corruption and Good Governance Act of 2000 (title II) 106–309
International Arms Sales Code of Conduct Act of 1999 (subtitle F, title XII, H.R. 3427, enacted by reference) 106–113
International Atomic Energy Agency Participation Act of 1957 85–177
International Carriage of Perishable Foodstuffs Act 97–325
International Center Act 90–553

International Child Abduction Remedies Act 100–300
International Claims Settlement Act of 1949 81–455
International Coffee Agreement Act of 1980 96–599
International Communication Agency Authorization for Fiscal Year 1979 (title II) 95–426
International Communication Agency Authorization Act, Fiscal Years 1980 and 1981 (title II) 96–60
International Cooperation in Global Change Research Act of 1990 (title II) 101–606
International Cooperation to Protect Biological Diversity 100–530
International Debt Management Act of 1988 (title III, subtitle B) 100–418
International Development and Finance Act of 1989 ... 101–240
International Development and Food Assistance Act of 1975 94–161
International Development and Food Assistance Act of 1977 95–88
International Development and Food Assistance Act of 1978 95–424
International Development Association Act 86–565
International Development Cooperation Act of 1979 96–53
International Dolphin Conservation Act of 1992 102–523
International Dolphin Conservation Program Act 105–42
International Emergency Economic Powers Act (title II) 95–223
International Energy Emergency Authorities: Extension 100–373
International Environmental Protection Act of 1983 (title VII) 98–164
International Finance Corporation Act 84–350
International Financial Institutions Act 95–118
International Forestry Cooperation Act of 1990 (title VI) 101–513
International Investment and Trade in Services Survey Act 94–472
International Lending Supervision Act of 1983 (title IX) 98–181
International Malaria Control Act (title I) 106–570
International Maritime and Port Security Act (title IX) 99–399
International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 (title III) 107–56
International Narcotics Control Act of 1985 (title VI) .. 99–83
International Narcotics Control Act of 1986 (title II) ... 99–570
International Narcotics Control Act of 1988 (title IV) .. 100–690
International Narcotics Control Act of 1989 101–231
International Narcotics Control Act of 1990 101–623
International Narcotics Control Corrections Act of 1994 103–447
International Natural Rubber Agreement Appropriation Authorization for Fiscal Year 1981 96–271
International Organizations Immunities Act 79–291
International Parental Kidnapping Crime Act 105–173

International Peacekeeping Act of 1992 102–311
International Religious Freedom Act of 1998 105–292
International Security and Development Assistance Authorization Act of 1983 (sec. 101(b)(2)) 98–151
International Security and Development Cooperation Act of 1980 96–533
International Security and Development Cooperation Act of 1981 97–113
International Security and Development Cooperation Act of 1985 99–83
International Security Assistance Act of 1977 95–92
International Security Assistance Act of 1978 95–384
International Security Assistance Act of 1979 96–92
International Security Assistance and Arms Export Control Act of 1976 94–329
International Sugar Agreement, 1977, Implementation 96–236
International Trade and Investment Act (title III) 98–573
International Tuberculosis Control Act of 2000 (title II) 106–264
Intervention on the High Seas Act 93–248
Iran and Libya Sanctions Act of 1996 104–172
Iran Claims Settlement (title V) 99–93
Iran-Iraq Arms Non-Proliferation Act of 1992 (title XVI) 102–484
Iran Nonproliferation Act of 2000 106–178
Iran Nonproliferation Amendments Act of 2005 109–112
Iran Nuclear Proliferation Prevention Act of 2002 (division B, title XIII, subtitle D) 107–228
Iraq Liberation Act of 1998 105–338
Iraq Sanctions Act of 1990 (secs. 586–586J) 101–513
Irish Peace Process Cultural and Training Program Act of 1998 105–319
Japan-United States Friendship Act 94–118
Japanese Imperial Government Disclosure Act of 2000 (title VIII) 106–567
Jerusalem Embassy Act of 1995 104–45
Jobs Through Exports Act of 1992 102–549
Jobs Through Trade Expansion Act of 1994 103–392
Johnson Act—Financial Transactions With Foreign Governments 80–772
Joint Resolution to Implement the United States Proposal for the Early-Warning System in Sinai 94–110
Jordan Supplemental Economic Assistance Authorization Act of 1985 (title IV) 99–88
Kenneth M. Ludden Foreign Operations, Export Financing and Related Programs Appropriations Act, 2002 107–115
Latin American Development Act 86–735
Lebanon Emergency Assistance Act of 1983 98–43
Legislative Branch Appropriation Act, 1961 86–628
Logan Act—Private Correspondence With Foreign Governments 80–772
Magnuson-Stevens Fishery Conservation and Management Act of 1976 94–265

Marine Mammal Protection Act of 1972 92–522
Marine Turtle Conservation Act of 2004 108–266
Mexican Debt Disclosure Act of 1995 (title IV) 104–6
Mexico-United States Interparliamentary Group 86–420
Microenterprise for Self-Reliance Act of 2000 (title I) .. 106–309
Microenterprise for Self-Reliance and International Anti-Corruption Act of 2000 106–309
Microenterprise Report to Congress 108–31
Microenterprise Results and Accountability Act of 2004 108–484
Micronesian Claims Act of 1971 92–39
Middle East Peace Facilitation Act of 1993 103–125
Middle East Peace Facilitation Act of 1994 (title V, part E) 103–236
Middle East Peace Commitments Act of 2002 (division A, title VI, subtitle A) 107–228
Migration and Refugee Assistance Act of 1962 87–510
Migratory Bird Treaty Reform Act of 2004 (division E, sec. 143) 108–447
Mike Mansfield Fellowship Act (title II, part C) 103–236
Millennium Challenge Act of 2003 (division D, title VI) 108–199
Miscellaneous Amendments and Authorization—FYs 1996 and 1997 104–164
Miscellaneous Appropriations and Offsets Act, 2005 (division J, title I) 108–447
Miscellaneous International Affairs Authorization Act of 1988 (S. 2757, enacted by reference) 100–461
Miscellaneous Trade and Technical Corrections Act of 1999 106–36
Miscellaneous Trade and Technical Corrections Act of 2004 108–429
Missile Defense Act of 1991 (title II, part C) 102–190
Most-Favored-Nation Treatment for Cambodia 104–203
Most-Favored-Nation Treatment for People's Republic of Bulgaria 102–158
Most-Favored-Nation Treatment for People's Republic of Bulgaria 104–162
Most-Favored-Nation Treatment for Czechoslovakia 101–541
Most-Favored Nation Treatment for Mongolian People's Republic 102–157
Most-Favored-Nation Treatment for Romania 104–171
Most-Favored Nation Treatment for the Union of Soviet Socialist Republics 102–197
Multilateral Development Bank Act of 1985 (sec. 101(i), H.R. 2253, enacted by reference) 99–190
Multilateral Development Banks Procurement Act (title III, subtitle C) 100–418
Multilateral Development Banks: Sense of Congress (title X) 98–181
Multilateral Export Control Enhancement Amendments Act (title II, subtitle D, part II) 100–418
Multilateral Investment Guarantee Agency Act (sec. 101(e), H.R. 3570, enacted by reference, title IV) 100–202

Multinational Force and Observers Participation Resolution 97–132
Multinational Force in Lebanon Resolution 98–119
Mutual Educational and Cultural Exchange Act of 1961 87–256
Mutual Security Act of 1954 83–665
Mutual Security Act of 1959 86–108
Mutual Security Act of 1960 86–472
National Academy of Peace and Conflict Resolution (title XV, part B) 95–561
National Aeronautics and Space Act of 1958 85–568
National Aeronautics and Space Administration Authorization Act, 1976 94–39
National Aeronautics and Space Administration Authorization Act of 1988 100–147
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 100–685
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991 101–611
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992 102–195
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 102–588
National and Community Service Act of 1990 101–610
National Critical Materials Act of 1984 (title II) 98–373
National Defense Authorization Act, Fiscal Year 1987 99–661
National Defense Authorization Act, Fiscal Year 1989 100–456
National Defense Authorization Act for Fiscal Years 1988 and 1989 100–180
National Defense Authorization Act for Fiscal Years 1990 and 1991 101–189
National Defense Authorization Act for Fiscal Year 1991 101–510
National Defense Authorization Act for Fiscal Years 1992 and 1993 102–190
National Defense Authorization Act for Fiscal Year 1993 102–484
National Defense Authorization Act for Fiscal Year 1994 103–160
National Defense Authorization Act for Fiscal Year 1995 103–337
National Defense Authorization Act for Fiscal Year 1996 104–106
National Defense Authorization Act for Fiscal Year 1997 104–201
National Defense Authorization Act for Fiscal Year 1998 105–85
National Defense Authorization Act for Fiscal Year 1999 105–262
National Defense Authorization Act for Fiscal Year 2000 106–65
[Floyd D. Spence] National Defense Authorization Act for Fiscal Year 2001 106–398

National Defense Authorization Act for Fiscal Year 2002 107–107
[Bob Stump] National Defense Authorization Act for Fiscal Year 2003 107–314
National Defense Authorization Act for Fiscal Year 2004 108–136
[Ronald W. Reagan] National Defense Authorization Act for Fiscal Year 2005 108–375
National Defense Authorization Act for Fiscal Year 2006 109–163
National Emergencies Act 94–412
National Endowment for Democracy Act (title V) 98–164
National Former Prisoners of War Recognition Day 103–60
National Missile Defense Act of 1999 106–38
National Science Foundation Act of 1950 81–507
National Security and Corporate Fairness under the Biological Weapons Convention Act (chapter 2, subtitle A, title XI, division B, H.R. 3427, enacted by reference) 106–113
National Security Council 80–253
National Shipbuilding and Shipyard Conversion Act of 1993 (title XIII, subtitle D) 103–160
National Space Council Authorization Act of 1990 101–328
National Terrorist Asset Trading Center 106–346
NATO Participation Act of 1994 (title II) 103–447
Naval Vessels Transfer Act of 2005 109–134
Nazi War Crimes Disclosure Act 105–246
Neotropical Migratory Bird Conservation Act 106–247
Neutrality Act of 1939 76–54
Nicaraguan Adjustment and Central American Relief Act (title II) 105–100
Nondiscriminatory Treatment Toward Products of Albania 102–363
Nondiscriminatory Treatment Toward Products of Romania 103–133
Nonproliferation Assistance Coordination Act of 2002 107–228
Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 101–646
North American Free Trade Agreement Implementation Act 103–182
North Atlantic Treaty Organization Mutual Support Act of 1979 96–323
North Korea Threat Reduction Act of 1999 (subtitle B, title VIII, division A, H.R. 3427, enacted by reference) 106–113
North Korean Human Rights Act of 2004 108–333
North Pacific Anadromous Stocks Act of 1992 (title VIII) 102–567
North Pacific Anadromous Stocks Convention Act of 1992 (title VIII) 102–587
Northern Uganda Crisis Response Act 108–283
Northwest Atlantic Fisheries Convention Act of 1995 (title II) 104–43
Nuclear Non-Proliferation Act of 1978 95–242

Nuclear Non-Proliferation Act of 1978—Agreements for Cooperation 96–280
Nuclear Proliferation Prevention Act of 1994 (title VIII) 103–236
Nuclear Security Initiative Act of 2003 (title XXXVI) .. 108–136
Nuclear Waste Policy Act of 1982 97–425
Oceans Act of 1992 102–587
Oceans Act of 2000 106–256
Office of National Drug Control Policy Reauthorization Act of 1998 (division C, title VII) 105–277
Oil Pollution Act of 1990 101–380
Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 105–277
Omnibus Consolidated Appropriations for Fiscal Year 1997 104–208
Omnibus Diplomatic Security and Antiterrorism Act of 1986 99–399
Omnibus Insular Areas Act of 1992 102–247
Omnibus Trade and Competitiveness Act of 1988 100–418
Operation Desert Shield/Desert Storm Supplemental Appropriations Act, 1991 102–28
Overseas Private Investment Corporation Amendments Act of 1988 (H.R. 5263, enacted by reference) 100–461
Pacific Charter Commission Act of 2000 (title IV) 106–570
Pacific Salmon Treaty Act of 1985 99–5
Passport Services Enhancement Act of 2005 109–167
Paul D. Coverdell Fellows Program Act of 2000 (sec. 408) 106–309
Paul D. Coverdell World Wise Schools Act of 2000 (title VI) 106–570
Panama Canal Act of 1979 96–70
Panama Canal Act Amendments of 1996 104–201
Panama Canal Commission Authorization Act for Fiscal Year 1990 (title XXXV) 101–189
Panama Canal Commission Authorization Act for Fiscal Year 1991 (title XXXV) 101–510
Panama Canal Commission Authorization Act for Fiscal Year 1992 (title XXXV) 102–190
Panama Canal Commission Authorization Act for Fiscal Year 1993 (title XXXV) 102–484
Panama Canal Commission Authorization Act for Fiscal Year 1994 (title XXXV) 103–160
Panama Canal Commission Authorization Act for Fiscal Year 1995 (title XXXVI) 103–337
Panama Canal Commission Authorization Act for Fiscal Year 1996 (title XXXV) 104–106
Panama Canal Commission Authorization Act for Fiscal Year 1997 (title XXXV) 104–201
Panama Canal Commission Authorization Act for Fiscal Year 1998 (title XXXV) 105–85
Panama Canal Commission Authorization Act for Fiscal Year 1999 (title XXXV) 105–261
Panama Canal Commission Authorization Act for Fiscal Year 2000 (title XXXV) 106–65

Par Value Modification Act 92–268
Par Value Modification Act—Foreign Currency Reports (title II) 93–110
Peace Corps Act 87–293
Peace Corps Act Amendments 89–134
Peace Corps Authorization for Fiscal Years 1986 and 1987 (title XI) 99–83
Peace Corps Authorization for Fiscal Year 1993 102–565
Peace Corps Reauthorization 106–30
Peace Process in Liberia 102–270
Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 102–25
Persian Gulf POW/MIA Accountability Act of 2002 107–258
Pesticide Monitoring Improvements Act of 1988 (title IV, subtitle G) 100–418
PLO Commitments Compliance Act of 1989 (title VIII) 101–246
President's Emergency Food Assistance Act of 1984 (title III) 98–473
Prevention of Child Abduction Partnership Act 108–370
Primary Dealers Act of 1988 (title III, subtitle F) 100–418
Proliferation Prevention Enhancement Act of 1999 (subtitle E, title XII, H.R. 3427, enacted by reference) 106–113
Protection and Reduction of Government Secrecy Act (title IX) 103–236
Protection of Antarctica 101–620
Protection of Foreign Missions 97–418
Providing for Increased Participation by the United States in the Inter-American and Asian Development Banks and African Development Fund 96–259
Quincentenary of Voyage of Christopher Columbus 102–472
R.M.S. Titanic Maritime Memorial Act of 1986 99–513
Radio Broadcasting to Cuba Act 98–111
Radio Free Afghanistan 107–148
Radio Free Asia Act of 1998 (title XXXIX) 105–261
Reaffirming North Atlantic Alliance—United States Commitment 96–9
Reaffirming the Unity of the North Atlantic Alliance Commitment 95–287
Records Relating to Nazi Warm Crimes 104–309
Refugee Act of 1980 96–212
Refugee Education Assistance Act of 1980 96–422
Release of USIA Materials to Museums 99–475
Release of USIA Materials: "Fragile Ring of Life" 104–161
Release of USIA Materials: VOA, Radio Marti Recordings 104–269
Renewal of Import Restrictions—Burmese Freedom and Democracy Act of 2003 109–39
Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983 (title VIII) 98–164
Resolution To Promote Peace and Stability in the Middle East 85–7
Rhinoceros and Tiger Conservation Act of 1994 103–391

Rhinoceros and Tiger Conservation Act of 1998 105–312
Rhinoceros and Tiger Conservation Reauthorization Act of 2001 107–112
Rio Grande American Canal Extension Act of 1990 101–438
Rio Grande Pollution Correction Act of 1987 100–465
Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 108–375
Russian Democracy Act of 2002 107–246
Russian Federation Debt for Nonproliferation Act of 2002 (division B, title XIII, subtitle B) 107–228
Ryukyu Islands Claims Settlement Act 89–296
Sales of Arms to Jordan 99–162
Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 109–108
Sea of Okhotsk Fisheries Enforcement Act of 1995 (title V) 104–43
Secure Embassy Construction and Counterterrorism Act of 1999 (title VI, division A, H.R. 3427, enacted by reference) 106–113
Security Assistance Act of 1999 (title XII, H.R. 3427, enacted by reference) 106–113
Security Assistance Act of 2000 106–280
Security Assistance Act of 2002 (division B) 107–228
Senator Paul Simon Water for the Poor Act of 2005 109–121
Shark Finning Prohibition Act 106–557
Silk Road Strategy Act of 1999 (sec. 596, H.R. 3422, enacted by reference) 106–113
Small Business International Trade and Competitiveness Act (title VII) 100–418
South African Democratic Transition Support Act of 1993 103–149
South Pacific Tuna Act of 1988 100–330
Soviet Nuclear Threat Reduction Act of 1991 (title II) 102–228
Soviet Scientists Immigration Act of 1992 102–509
Special Drawing Rights Act 90–349
Special Foreign Assistance Act of 1971 91–652
Special Foreign Assistance Act of 1986 99–529
Special International Security Assistance Act of 1979 96–35
Spoils of War Act of 1994 (title V, part B) 103–236
State Department Basic Authorities Act of 1956 84–885
State Department/USIA Authorization Act, Fiscal Year 1975 93–475
Steel Import Stabilization Act (title VIII) 98–573
Strategic and Critical Materials Transaction Authorization Act of 1979 96–175
Striped Bass Conservation, Atlantic Coastal Fisheries Management and Marine Mammal Rescue Assistance Act of 2000 106–555
Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 105–261
Sudan Peace Act 107–245
Supplemental Appropriations Act of 1993 103–50
Supplemental Appropriations Act, 1984 98–181
Supplemental Appropriations Act, 1985 99–88

Support for East European Democracy (SEED) Act of 1989 101–179
Support for Overseas Cooperative Development Act (sec. 401) 106–309
Survival Assistance for Victims of Civil Strife in Central America 101–215
Sustainable Fisheries Act 104–297
Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 108–175
Taiwan's Participation in the World Health Organization 108–235
Taiwan's Participation in the World Health Organization 108–28
Taiwan Relations Act 96–8
Tariff Act of 1930 71–361
Tariff Suspension and Trade Act of 2000 106–476
Telecommunications Trade Act of 1988 (title I, subtitle C, part 4) 100–418
Termination of Trade Restrictions to Czechoslovakia and Hungary 102–182
Terrorist Bombings Convention Implementation Act of 2002 107–197
Tibetan Policy Act 2002 (division A, title VI, subtitle B) 107–228
To Provide Certain Authorities for the Department of State 109–140
To Provide for an Investigation of the Whereabouts of U.S. Citizens Missing From Cyprus Since 1974 103–372
Tonkin Gulf Resolution 88–408
Torture Victim Protection Act of 1991 102–256
Torture Victims Relief Reauthorization Act of 1999 106–87
Torture Victims Relief Reauthorization Act of 2005 109–165
Tourism Policy and Export Promotion Act of 1992 102–372
Trade Act of 1974 93–618
Trade Act of 2002 107–210
Trade Agreements Act of 1979 96–39
Trade and Development Act of 2000 106–200
Trade and Development Enhancement Act of 1983 (title VI, part C) 98–181
Trade and Tariff Act of 1984 98–573
Trade Deficit Review Commission Act (division A, sec. 127) 105–277
Trade Expansion Act of 1962 87–794
Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX) 106–387
Trading With the Enemy Act 65–91
Trafficking Victims Protection Act of 2000 (division A) 106–386
Trafficking Victims Protection Reauthorization Act of 2005 109–164
Trans-Alaska Pipeline Authorization Act 93–153
Transfer of Items To War Reserves Stockpile for Allies, Korea 109–159
Tropical Forest Conservation Act of 1998 (part V) 87–195
Tropical Forest Conservation Act Reauthorization 108–323

Trust Territory of the Pacific Islands Act 92–257
Tuna Conventions Act of 1950 81–764
United Nations Environment Program Participation Act of 1973 93–188
United Nations Headquarters Agreement Act 80–357
United Nations Participation Act of 1945 79–264
United Nations Reform Act of 1998 (division F, subdivision C) 105–277
United Nations Reform Act of 1999 (title IX, division A, H.R. 3427, enacted by reference) 106–113
United States-Australia Free Trade Agreement Implementation Act 108–286
United States-Canada Free Trade Agreement Implementation Act of 1988 100–449
United States-Chile Free Trade Agreement Implementation Act 108–77
United States Government Opposition to the Practice of Torture 98–447
United States Group of the North Atlantic Treaty Parliamentary Conferences—Participation Resolution ... 84–689
United States-Hong Kong Policy Act of 1992 102–383
United States-India Fund for Cultural, Educational, and Scientific Cooperation Act (title IX) 98–164
United States Information Agency Authorization for Fiscal Year 1977 (title II) 94–350
United States Information Agency Authorization for Fiscal Year 1978 (title II) 95–105
United States Information Agency Authorization Act, Fiscal Years 1982 and 1983 (title III) 97–241
United States Information Agency Authorization Act, Fiscal Years 1984 and 1985 (title II) 98–164
United States Information Agency Authorization Act, Fiscal Years 1986 and 1987 (title II) 99–93
United States Information Agency Authorization Act, Fiscal Years 1988 and 1989 (title II) 100–204
United States Information and Educational Exchange Act of 1948 80–402
United States Institute for Peace Act (title XVII) 98–525
United States International Broadcasting Act of 1994 (title III) 103–236
United States-Bahrain Free Trade Agreement Implementation Act 109–169
United States-Israel Free Trade Area Implementation Act of 1985 99–47
United States-Japan Fishery Agreement Approval Act of 1987 100–220
United States-Jordan Free Trade Area Implementation Act 107–43
United States-Korea Fishery Agreement 100–66
United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 108–25
United States-Macau Policy Act of 2000 (title II) 106–570
United States-Morocco Free Trade Agreement Implementation Act 108–302

United States Policy in Iraq Act (section 1227) 109–163
United States Policy Toward Haiti 103–423
United States Recognition and Participation in International Expositions 91–269
United States Scholarship Program for Developing Countries Authorization, Fiscal Years 1986 & 1987 (title VI) 99–93
Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 107–56
Urgent Assistance for Democracy in Panama Act of 1990 101–243
Uruguay Rounds Agreements Act 103–465
U.S.-China Relations Act of 2000 106–286
U.S. Holocaust Assets Commission Act of 1998 105–186
U.S. Participation in Certain International Organizations 81–806
U.S.-U.S.S.R. Fishing Agreement 100–629
Victims of Terrorism Compensation Act (title VIII) 99–399
Victims of Trafficking and Violence Protection Act of 2000 106–386
Vietnam Education Foundation Act of 2000 (title II) ... 106–554
Visa for Officials of Taiwan 103–416
War Powers Resolution 93–148
Weapons of Mass Destruction Control Act of 1992 (title XV) 102–484
Western Hemisphere Drug Elimination Act (division C, title VIII) 105–277
Western Hemisphere Drug Elimination Technical Corrections Act 106–35
Whaling Convention Act of 1949 81–676
Wild Bird Conservation Act of 1992 102–440
Wine Equity and Export Expansion Act of 1984 (title IX) 98–573
Withdrawal of MFN From Serbia and Montenegro 102–420
Wool Suit and Textile Trade Extension Act of 2004 (title IV) 108–429
World Food Day 103–108
Yukon River Salmon Act of 1995 (title VII) 104–43
Yukon River Salmon Act of 2000 106–450
Zimbabwe Democracy and Economic Recovery Act of 2001 107–99

USE OF THE INDEX

The index is organized by subject matter only. Each subject entry also includes the legal citation indicating the document to which it refers. These legal citations were not chosen on the basis of standard legal citation form, but rather for the amount of information they provided and for convenience in producing a computer-printed index.

Page references, wherever possible, indicate the exact page on which mention of the entry is made. Entries of a more general nature that refer to a large section or to an entire document are listed with the page on which the reference begins.

INDEX

A

ACEP. See Advisory Committee on Export Policy
ADB. See Asian Development Bank
Adjustment Assistance Coordinating Committee
  Establishment of ..... PL 93–618 Sec 281 343
Advisory Committee for Trade Policy and Negotiations
  Establishment of ..... PL 93–618 Sec 135(b) 279
  Meeting at conclusion of negotiations ..... PL 93–618 Sec 135(e) 281
Advisory Committee on Export Policy
  Establishment of ..... EO 12981 Sec 5 1447
  Operating Committee ..... EO 12981 Sec 5 1447
  Resolution procedures ..... EO 12981 Sec 5 1448
ADF. See African Development Fund
Afghanistan
  Agricultural export licensing ..... PL 106–387 Sec 906 1484
  Most-favored-nation treatment
    Authority to deny ..... PL 99–190 Sec 118 1638
    PL 99–190 Sec 552 1638
Africa
  South African Democratic Transition Support Act of 1993. PL 103–149 1628
    Apartheid sanctions laws, repeal of PL 103–149 Sec 4 1630
    Consultation with South Africans .... PL 103–149 Sec 10 1634
    Cooperative agreements ..... PL 103–149 Sec 8 1633
    Findings ..... PL 103–149 Sec 2 1628
    Information and educational exchange programs. PL 103–149 Sec 7 1633
    International financial institutions .. PL 103–149 Sec 9 1633
    Sanctions, repeal of ..... PL 103–149 Sec 4 1630
    Transition to a non-racial democracy, U.S. assistance. PL 103–149 Sec 5 1631
    U.S. investment and trade ..... PL 103–149 Sec 6 1633
    U.S. policy, sense of Congress ..... PL 103–149 Sec 3 1629
  Special Facility for Sub-Saharan Africa
    Appropriations authorization ..... PL 86–565 Sec 19 46
    Eighth replenishment of resources, U.S. payments to. PL 86–565 Sec 20 46
    Findings ..... PL 99–190 Sec 101 49
    Fourteenth replenishment of resources, U.S. payments to. PL 86–565 Sec 23 48
    Ninth replenishment of resources, U.S. payments to. PL 86–565 Sec 21 46
    Thirteenth replenishment of resources, U.S. payments to. PL 86–565 Sec 22 47
  Sub-Saharan Africa
    Designation for certain trade benefits. PL 93–618 Sec 506A 403
    Export-Import Bank of the United States commitments. PL 79–173 Sec 2(b) 1237

Africa—Continued		
Sub-Saharan Africa—Continued		
Financing human welfare and natural resource programs in connection with debt reduction and conversion, initiation of discussions.	PL 95–118 Sec 1609	182
Trade benefits termination	PL 93–618 Sec 506B	404
Trade and development policy	PL 103–465 Sec 134	675
African Development Bank. See Foreign Operations Appropriations Instructions, FY 2006; Funding for mines; International debt forgiveness and international financial institutions reform; International Financial Institutions Act		
African Development Bank Act	PL 97–35	96
Bretton Woods Agreements Act applicability.	PL 97–35 Sec 1335	97
Capital stock subscription	PL 97–35 Sec 1343	100
Director or alternate Director, allowances.	PL 97–35 Sec 1334	97
Effectiveness of agreement	PL 97–35 Sec 1340	99
Federal Reserve banks as depositories	PL 97–35 Sec 1337	97
Governor and alternate Governor	PL 97–35 Sec 1333	96
Jurisdiction of U.S. courts	PL 97–35 Sec 1339	98
Membership acceptance	PL 97–35 Sec 1332	96
Restrictions	PL 97–35 Sec 1336	97
Securities issued as exempt, filing with Securities and Exchange Commission.	PL 97–35 Sec 1341	99
Stock subscription	PL 97–35 Sec 1338	98
African Development Fund. See also International debt forgiveness and international financial institutions reform; International Financial Institutions Act		
Increased U.S. participation, use of renewable resources for energy production		
Findings	PL 96–259 Sec 601	148
U.S. policies	PL 96–259 Sec 602	149
Replenishment of	PL 100–461	144
Debt reduction for borrower countries, partial guarantees in connection with.	PL 100–461 Sec 5	146
Improving access of small businesses to World Bank procurement, sense of Congress.	PL 100–461 Sec 12	147
Policy based lending for debt reduction.	PL 100–461 Sec 3	144
World Bank policy based lending limitations.	PL 100–461 Sec 4	146
African Development Fund Act	PL 94–302	101
Actions not to be taken without authorization.	PL 94–302 Sec 205	102
Bretton Woods Agreements Act applicability.	PL 94–302 Sec 204	102
Effectiveness of agreement	PL 94–302 Sec 209	103
Federal Reserve banks as depositories	PL 94–302 Sec 206	102
Fifth replenishment of resources, U.S. contribution.	PL 94–302 Sec 215	105
First replenishment of resources, U.S. contribution.	PL 94–302 Sec 211	103
Fourth replenishment of resources, U.S. contribution.	PL 94–302 Sec 214	105
Governor and alternate Governor	PL 94–302 Sec 203	101
Jurisdiction of U.S. courts	PL 94–302 Sec 208	102
Membership acceptance	PL 94–302 Sec 202	101
Ninth replenishment of resources, U.S. contribution.	PL 94–302 Sec 217	106

African Development Fund Act—Continued
- Preventing loans or funds utilization for countries nullifying contracts or seizing property of U.S. citizens. — PL 94–302 Sec 210 103
- Second replenishment of resources, U.S. contribution. — PL 94–302 Sec 212 104
- Sixth replenishment of resources, U.S. contribution. — PL 94–302 Sec 216 105
- Subscription payment ..... PL 94–302 Sec 206 102
- Tenth replenishment of resources, U.S. contribution. — PL 94–302 Sec 218 106
- Third replenishment of resources, U.S. contribution. — PL 94–302 Sec 213 104

African Growth and Opportunity Act. See also AGOA Acceleration Act of 2004. — PL 106–200 1078
- Harmonized Tariff Schedule
  - Products of countries designated beneficiary developing countries. — Gen. note 16 889
- Implementation of ..... PL 107–210 Sec 353 617
  - Apparel articles assembled from fabrics or yarn not available in commercial quantities. — EO 13191 Sec 1 1105
  - Effective visa systems ..... EO 13191 Sec 5 1106
  - Handloomed, handmade, and folklore articles. — EO 13191 Sec 2 1105
  - Interlinings ..... EO 13191 Sec 3 1106
  - Penalties for transshipments ..... EO 13191 Sec 4 1106
- Sub-Saharan Africa trade benefits
  - Apparel articles ..... PL 106–200 Sec 112(b) 1089
  - Appropriations authorization ..... PL 106–200 Sec 113(d) 1095
  - Assistant United States Trade Representative for African Affairs. — PL 106–200 Sec 117 1096
  - Customs procedures and enforcement. — PL 106–200 Sec 113(b) 1093
  - Customs service enforcement ..... PL 106–200 Sec 113(c) 1094
  - Definitions ..... PL 106–200 Sec 112(e) 1092
  - Free trade agreements ..... PL 106–200 Sec 116 1095
  - Handloomed, handmade, folklore articles and ethnic printed fabrics. — PL 106–200 Sec 112(b) 1089
  - Limitations on benefits ..... PL 106–200 Sec 112(b) 1085
  - Preferential treatment ..... PL 106–200 Sec 112(a) 1084
    PL 106–200 Sec 113(a) 1092
  - Products covered ..... PL 106–200 Sec 112(b) 1084
  - Protections against transshipment .. PL 106–200 Sec 113 1092
  - Quotas on textile and apparel imports from Kenya and Mauritius, treatment of. — PL 106–200 Sec 112(c) 1091
  - Special rules ..... PL 106–200 Sec 112(b) 1086
    PL 106–200 Sec 112(d) 1091
  - Treatment of textiles and apparel ... PL 106–200 Sec 112 1084
- Sub-Saharan Africa trade policy
  - Eligibility requirements ..... PL 106–200 Sec 104 1079
  - Findings ..... PL 106–200 Sec 102 1078
  - Political entities referred to ..... PL 106–200 Sec 107 1082
  - Reporting requirement ..... PL 106–200 Sec 106 1082
  - Statement of policy ..... PL 106–200 Sec 103 1079
  - United States-Sub-Saharan Africa Trade and Economic Cooperation Forum. — PL 106–200 Sec 105 1080

Agency for International Development
- AID credit guarantees to finance capital projects, report. — PL 102–549 Sec 307 680
- Capital projects for poverty alleviation and environmental safety and sustainability. — PL 102–549 Sec 303 678
- Capital projects office ..... PL 102–549 Sec 302 677
  - Activities ..... PL 102–549 Sec 302(c) 678
  - Coordination ..... PL 102–549 Sec 304 679

Agency for International Development—Continued		
Capital projects office—Continued		
Definitions	PL 102–549 Sec 308	680
Establishment of	PL 102–549 Sec 302(a)	677
Funding for capital projects	PL 102–549 Sec 306	679
Purposes of	PL 102–549 Sec 302(b)	677
Reports on capital projects	PL 102–549 Sec 305	679
Credit guarantees to finance capital projects, report.	PL 102–549 Sec 307	680
AGOA. See African Growth and Opportunity Act		
AGOA Acceleration Act of 2004	PL 108–274	1097
Agricultural technical assistance	PL 108–274 Sec 13	1103
Definition	PL 108–274 Sec 6	1100
Development study and capacity building.	PL 108–274 Sec 9	1101
Entries of apparel articles pursuant to the AGOA.	PL 108–274 Sec 8	1100
Findings	PL 108–274 Sec 2	1097
Interpretation of textile and apparel provisions, sense of Congress.	PL 108–274 Sec 5	1100
Reciprocity and regional economic integration, sense of Congress.	PL 108–274 Sec 4	1099
Statement of policy	PL 108–274 Sec 3	1098
Trade advisory committee on Africa	PL 108–274 Sec 14	1104
Trade capacity and ecotourism infrastructure.	PL 108–274 Sec 10	1101
Transportation, energy, agriculture, and telecommunications infrastructure.	PL 108–274 Sec 11	1103
Transportation facilitation	PL 108–274 Sec 12	1103
Agricultural Adjustment Act		
Import restrictions	PL 100–418 Sec 1211(c)	718
Agricultural commodities		
Corn gluten, possible European Community tariff action, sense of Congress.	PL 98–573 Sec 245	787
Countervailable subsidies calculation	PL 71–361 Sec 771B	573
Export control exclusion	PL 96–72 Sec 5(q)	1363
Export-Import Bank of the United States assistance.	PL 79–173 Sec 2(b)	1236
Exports from beneficiary developing countries.	PL 93–618 Sec 506	403
Hogs and pork products from Canada	PL 98–573 Sec 250	789
Honey, study on imports	PL 98–573 Sec 246	788
Principal trade negotiating objectives	PL 100–418 Sec 1101(b)	692
Short supply export controls	PL 96–72 Sec 7(g)	1380
Special trade rules	PL 71–361 Sec 771	559
Trade adjustment assistance, report	PL 106–200 Sec 408	653
Trade consultations with Congress	PL 106–200 Sec 409(c)	654
Trade negotiating objectives	PL 106–200 Sec 409	653
United States-Canada Free-Trade Agreement Implementation Act		
Fresh fruits and vegetables, special tariff provisions for.	PL 100–449 Sec 301	999
Potato trade limitation negotiation	PL 100–449 Sec 304(d)	1007
Agriculture. See also Farmers		
Caribbean Basin agricultural infrastructure support.	PL 101–382 Sec 242	985
AID. See Agency for International Development		
Aid, Trade, and Competitiveness Act of 1992	PL 102–549 Title III	677
AIDS		
Enhanced HIPC Initiative, modification of.	PL 95–118 Sec 1625	196
HIV/AIDS pharmaceuticals	EO 13155	925
Policy	EO 13155 Sec 1	925
Rationale	EO 13155 Sec 2	925

AIDS—Continued		
HIV/AIDS pharmaceuticals—Continued		
Scope	EO 13155 Sec 3	926
Sub-Sahara Africa, effect on workforce	PL 106–200 Sec 105(e)	1081
Air pollution		
North American Development Bank financing of projects, sense of Congress.	PL 108–215 Sec 6	123
Air transportation		
Syria, prohibition of	EO 13338 Sec 2	1623
Aircraft, civil		
Condemnation of Cuban attack	PL 104–114 Sec 116	1532
Waiver of discriminatory purchasing requirements.	PL 96–39 Sec 303	834
Alaska		
Oil export study	PL 99–64 Sec 126	1431
Albania		
Normal trade relations	PL 102–363	1192
	PL 106–200 Sec 301	1178
Trade Act of 1974 waiver	EO 12809	1203
American Institute of Taiwan		
Commercial personnel	PL 100–418 Sec 2201	1284
Andean region		
Extension of trade benefits to	PL 101–382 Sec 243	986
Andean Trade Preference Act	PL 102–182	960
Authority to grant duty-free treatment	PL 102–182 Sec 202	960
Beneficiary country designation		
Definitions	PL 102–182 Sec 203(a)	960
Eligibility for	PL 102–182 Sec 203(b)	960
Factors affecting	PL 102–182 Sec 203(d)	962
Limitations on	PL 102–182 Sec 203(c)	961
Reporting requirements	PL 102–182 Sec 203(f)	964
Withdrawal or suspension of	PL 102–182 Sec 203(e)	963
Eligible articles		
Apparel and textile	PL 102–182 Sec 204(b)	967
Articles that are not import-sensitive.	PL 102–182 Sec 204(b)	966
Bilateral emergency actions	PL 102–182 Sec 204(b)	972
Certificate of Origin	PL 102–182 Sec 204(b)	974
Circumvention cooperation, report	PL 102–182 Sec 204(b)	974
Customs procedures	PL 102–182 Sec 204(b)	973
Definitions	PL 102–182 Sec 204(b)	974
Emergency relief with respect to perishable products.	PL 102–182 Sec 204(d)	977
Exceptions	PL 102–182 Sec 204(b)	966
Handloomed, handmade, and folklore.	PL 102–182 Sec 204(b)	971
Penalties for transshipment	PL 102–182 Sec 204	965
	PL 102–182 Sec 204(b)	971
Section 22 fees	PL 102–182 Sec 204(e)	978
Special rules	PL 102–182 Sec 204(b)	970
Suspension of duty-free treatment	PL 102–182 Sec 204(c)	976
Tariff-rate quotas	PL 102–182 Sec 204(f)	978
Tuna	PL 102–182 Sec 204(b)	972
Harmonized Tariff Schedule		
Products of countries designated beneficiary developing countries.	Gen. note 11	889
Rates of duty	Gen. note 3	879
International Trade Commission reports on impact of.	PL 102–182 Sec 206	978
Preferential treatment termination	PL 102–182 Sec 208	979
Secretary of Labor impact study	PL 102–182 Sec 207	979
Andean Trade Promotion and Drug Eradication Act.	PL 107–210	941
Findings	PL 107–210 Sec 3102	941
Petitions for review	PL 107–210 Sec 3103(d)	942
Termination	PL 107–210 Sec 3104	942

Angola
- Export-Import Bank of the United States, prohibition relating to. PL 79–173 Sec 2(b) 1238
- U.S. business transactions in, policy toward. PL 99–472 1636

Anguilla. See Caribbean Basin Economic Recovery Act

Animal welfare
- Dog and cat fur products, importation prohibition. PL 71–361 Sec 308 419

Antidumping duties
- Administrative review of determinations
  - Changed circumstances, reviews based on. PL 71–361 Sec 751(b) 529
  - Correction of ministerial errors ..... PL 71–361 Sec 751(h) 535
  - Determination that basis for suspension no longer exists. PL 71–361 Sec 751(f) 534
  - Five-year review ..... PL 71–361 Sec 751(c) 530
  - Hearings ..... PL 71–361 Sec 751(e) 534
  - Implementing results of subsidies enforcement proceeding. PL 71–361 Sec 751(g) 534
  - Periodic review of amount of duty ... PL 71–361 Sec 751(a) 527
  - Revocation of order or finding ..... PL 71–361 Sec 751(d) 533
  - Termination of suspended investigation. PL 71–361 Sec 751(d) 533
- Assessment of
  - Imposition of ..... PL 71–361 Sec 736(b) 519
  - Publication of order ..... PL 71–361 Sec 736(a) 519
  - Security in lieu of estimated duty pending early determination. PL 71–361 Sec 736(c) 520
  - Special rule for regional industries .. PL 71–361 Sec 736(d) 522
- Circumvention of orders, prevention of .. PL 71–361 Sec 781 602
- Conditional payment ..... PL 71–361 Sec 738 523
- Conduct of investigations and administrative reviews. PL 71–361 Sec 782 606
- Continued dumping and subsidy offset
  - Definitions ..... PL 71–361 Sec 752(b) 543
  - Distribution of duties ..... PL 71–361 Sec 754(a) 543
  - Distribution procedures ..... PL 71–361 Sec 754(c) 544
  - Parties eligible for distribution of duties. PL 71–361 Sec 754(d) 544
  - Special accounts ..... PL 71–361 Sec 754(e) 545
- Difference between deposit of estimated duty and final assessment. PL 71–361 Sec 737 522
- Final determinations
  - Administering authority ..... PL 71–361 Sec 735(a) 514
  - Affirmative determination effect ..... PL 71–361 Sec 735(c) 516
    PL 71–361 Sec 735(c) 518
  - Commission ..... PL 71–361 Sec 735(b) 515
  - Correction of ministerial errors ..... PL 71–361 Sec 735(e) 519
  - Determining estimated all-others rate. PL 71–361 Sec 735(c) 518
  - Effect of ..... PL 71–361 Sec 735(c) 516
  - Issuance of order ..... PL 71–361 Sec 735(c) 517
  - Negative determination effect ..... PL 71–361 Sec 735(c) 517
  - Publication of notice of determinations. PL 71–361 Sec 735(d) 518
- Imposition of ..... PL 71–361 Sec 731 497
- Investigations ..... PL 96–39 Sec 102 824
  - Administering authority ..... PL 71–361 Sec 732(a) 497
  - Information regarding critical circumstances. PL 71–361 Sec 732(e) 501
  - Notification to Commission of determination. PL 71–361 Sec 732(d) 501
  - Petition determination ..... PL 71–361 Sec 732(c) 499
  - Petition for ..... PL 71–361 Sec 732(b) 498

Antidumping duties—Continued
Investigation, termination or suspension of
Cease export of merchandise agreements. PL 71–361 Sec 734(b) 508
Determination not to take agreement into account. PL 71–361 Sec 734(j) 513
Effects of ..... PL 71–361 Sec 734(f) 510
Eliminating injurious efforts agreements. PL 71–361 Sec 734(c) 508
Eliminating sales at less than fair value agreements. PL 71–361 Sec 734(b) 508
Investigation to be continued upon request. PL 71–361 Sec 734(g) 511
Review of suspension ..... PL 71–361 Sec 734(h) 511
Rules and conditions ..... PL 71–361 Sec 734(d) 509
Special rule for nonmarket economy countries. PL 71–361 Sec 734(l) 513
Special rule for regional industry investigations. PL 71–361 Sec 734(m) 513
Suspension of investigation ..... PL 71–361 Sec 734(e) 509
Termination initiated by administering authority. PL 71–361 Sec 734(k) 513
Violation of agreement ..... PL 71–361 Sec 734(i) 512
Withdrawal of petition ..... PL 71–361 Sec 734(a) 507
Law enforcement ..... PL 100–418 Sec 1311 723
Petitions by third countries ..... PL 71–361 Sec 783 609
Preliminary determinations
Administering authority ..... PL 71–361 Sec 733(b) 502
PL 71–361 Sec 733(d) 505
Commission of reasonable indication of injury. PL 71–361 Sec 733(a) 502
Critical circumstances ..... PL 71–361 Sec 733(e) 506
Extension of period in extraordinarily complicated cases. PL 71–361 Sec 733(c) 504
Notice of ..... PL 71–361 Sec 733(f) 507
Proceedings
Definitions ..... PL 71–361 Sec 516A(f) 459
Determinations involving free trade area country merchandise, binational panel review. PL 71–361 Sec 516A(g) 460
Liquidation in accordance with final decision. PL 71–361 Sec 516A(e) 459
Liquidation of entries ..... PL 71–361 Sec 516A(c) 458
Review of determination ..... PL 71–361 Sec 516A(a) 454
Standards of review ..... PL 71–361 Sec 516A(b) 457
Standing ..... PL 71–361 Sec 516A(d) 459
Product categories for short life cycle merchandise. PL 71–361 Sec 739 523
Repeal of old law ..... PL 96–39 Sec 106 828
Requests for review of Canadian determinations. PL 100–449 Sec 408 1017
Special rules for reviews
Determination of likelihood of continuation or recurrence of dumping. PL 71–361 Sec 752(c) 538
Determination of likelihood of continuation or recurrence of material injury. PL 71–361 Sec 752(a) 535
Third-country dumping ..... PL 100–418 Sec 1317 723
Antigua and Barbuda. See Caribbean Basin Economic Recovery Act
Armenia
Normal trade relations
Termination of application of Title IV of the Trade Act of 1974. PL 108–429 Sec 2001 1170
Trade Act of 1974 waiver ..... EO 12798 1205

Arms embargo		
Rwanda	EO 12918 Sec 1	1664
Aruba. See Caribbean Basin Economic Recovery Act		
Asian Development Bank. See also Foreign Operations Appropriations Instructions, FY 2006; Funding for mines; International debt forgiveness and international financial institutions reform; International Financial Institutions Act		
Increased U.S. participation, use of renewable resources for energy production		
Findings	PL 96–259 Sec 601	148
U.S. policies	PL 96–259 Sec 602	149
Value of holdings maintained in terms of gold.	PL 92–268 Sec 3	242
Asian Development Bank Act	PL 89–369	83
Actions not to be taken without authorization.	PL 89–369 Sec 5	84
Asian Development Fund, U.S. contribution.	PL 89–369 Sec 23	89
	PL 89–369 Sec 24	89
	PL 89–369 Sec 26	90
	PL 89–369 Sec 28	91
	PL 89–369 Sec 29	92
Capital stock increase	PL 89–369 Sec 30	92
Capital stock subscription	PL 89–369 Sec 20	88
	PL 89–369 Sec 22	89
	PL 89–369 Sec 27	91
Depositories	PL 89–369 Sec 6	84
Eighth replenishment of resources, U.S. contribution.	PL 89–369 Sec 32	93
Gonzalez amendment	PL 89–369 Sec 18	87
Governor, alternate Governor, and Director.	PL 89–369 Sec 3	83
Illegal drug activity, and	PL 89–369 Sec 19	88
Increased U.S. participation	PL 96–259	148
Jurisdiction and venue of actions	PL 89–369 Sec 8	85
Membership acceptance	PL 89–369 Sec 2	83
Nullifying contracts or seizing property of U.S. citizens, and.	PL 89–369 Sec 18	87
Policies and operations of representatives of the United States, coordination of.	PL 89–369 Sec 4	84
Securities issued as exempt, filing with Securities and Exchange Commission.	PL 89–369 Sec 11	86
Securities issued as investment securities for national banks.	PL 89–369 Sec 10	85
Special funds, U.S. contribution	PL 89–369 Sec 21	89
	PL 89–369 Sec 31	93
Status, immunities and privileges	PL 89–369 Sec 9	85
Subscription payment	PL 89–369 Sec 7	84
Taiwan, membership retention, sense of Congress.	PL 89–369 Sec 25	90
United States Special Resources		
Appropriations authorization	PL 89–369 Sec 17	87
Letters of credit	PL 89–369 Sec 14	87
	PL 89–369 Sec 15	87
Right to withdraw resources	PL 89–369 Sec 16	87
U.S. contribution	PL 89–369 Sec 12	86
Uses for	PL 89–369 Sec 13	86

ATPA. See Andean Trade Preference Act
ATPDEA. See Andean Trade Promotion and Drug Eradication Act
Australia Free Trade Agreement Implementation Act. See United States-Australia Free Trade Agreement Implementation Act
Automobiles
Trade barriers established by auto producing countries and impact on U.S. market. PL 100–418 Sec 1936 743
Automotive parts
Fair Trade in Auto Parts Act of 1988 ..... PL 100–418 1282
Definition ..... PL 100–418 Sec 2122 1282
Expiration ..... PL 100–418 Sec 2125 1284
Japan ..... PL 100–418 Sec 2123 1282
PL 100–418 Sec 2124 1283
Fair Trade in Automotive Parts Act of 1998. PL 105–261 1271
Definitions ..... PL 105–261 Sec 3802 1271
Sales to Japan, re-establishment of initiative. PL 105–261 Sec 3803 1271
Special Advisory Committee on sales in Japanese and other Asian markets. PL 105–261 Sec 3804 1272
United States-Canada Free-Trade Agreement Implementation Act negotiating objectives. PL 100–449 Sec 304(c) 1007
Azerbaijan
Trade Act of 1974 waiver ..... EO 12809 1203

B

Bahamas. See Caribbean Basin Economic Recovery Act
Bahrain Free Trade Agreement Implementation Act. See United States-Bahrain Free Trade Agreement Implementation Act.
Balance of payments improvement
Appropriations authorization ..... PL 90–390 Sec 3 1333
Defense articles exception ..... PL 90–390 Sec 5 1333
Limitation of powers ..... PL 90–390 Sec 4 1333
Losses ..... PL 90–390 Sec 2 1332
Policy ..... PL 90–390 Sec 1 1332
Balkans. See Western Balkans
Baltic States
Export-Import Bank trade finance, report. PL 102–429 Sec 120 1277
Bank Export Services Act
Guarantees for export accounts receivable and inventory. PL 97–290 Sec 206 812
Investments in export trading companies, report. PL 97–290 Sec 205 812
Purpose of ..... PL 97–290 Sec 202 811
Bank for Economic Cooperation and Development in the Middle East and North Africa Act. PL 104–208 124
Middle East Development Bank
Bretton Woods Agreements Act applicability. PL 104–208 Sec 704 124
Effectiveness of agreement ..... PL 104–208 Sec 708 125
Federal Reserve banks as depositories. PL 104–208 Sec 705 124
Governor and alternate Governor .... PL 104–208 Sec 703 124
Jurisdiction and venue of actions ..... PL 104–208 Sec 707 125
Membership acceptance ..... PL 104–208 Sec 702 124
Securities issued as exempt ..... PL 104–208 Sec 709 126

Bank for Economic Cooperation and Development in the Middle East and North Africa Act—Continued		
Middle East Development Bank—Continued		
Stock subscription	PL 104–208 Sec 706	125
Technical amendments	PL 104–208 Sec 710	126
Barbados. See Caribbean Basin Economic Recovery Act		
Beef products		
Duty-free treatment under Caribbean Basin Economic Recovery Act.	PL 98–67 Sec 213(c)	1044
Belarus		
Trade Act of 1974 waiver	EO 13220	1201
Belize. See Caribbean Basin Economic Recovery Act		
Beneficiary developing countries		
Agricultural exports of	PL 93–618 Sec 506	403
Congressional notification	PL 93–618 Sec 502(f)	396
Countries ineligible for designation	PL 93–618 Sec 502(b)	393
Definitions	PL 93–618 Sec 507	404
Designation authority	PL 93–618 Sec 502(a)	393
Designation of sub-Saharan African countries for certain benefits.	PL 93–618 Sec 506A	403
Eligible articles designation	PL 93–618 Sec 503	397
Factors affecting country designation	PL 93–618 Sec 502(c)	395
Mandatory graduation of	PL 93–618 Sec 502(e)	396
Products of		
African Growth and Opportunity Act.	Gen. note 16	889
Andean Trade Preference Act	Gen. note 11	889
Caribbean Basin Economic Recovery Act.	Gen. note 7	888
Generalized System of Preferences	Gen. note 4	884
United States-Caribbean Basin Trade Partnership Act of 2000.	Gen. note 17	890
Report	PL 93–618 Sec 504	402
Review	PL 93–618 Sec 504	402
Termination of benefits for sub-Saharan African countries.	PL 93–618 Sec 506B	404
Withdrawal, suspension, or limitation of country designation.	PL 93–618 Sec 502(d)	396
Bicycle industry		
Foreign trade zone status	PL 98–573 Sec 231	786
Biological weapons. See also Chemical and biological weapons		
Export controls	PL 96–72 Sec 6(m)	1372
Bipartisan Trade Promotion Authority Act of 2002.	PL 107–210	617
Committee staff	PL 107–210 Sec 2109	645
Congressional Oversight Group		
Guidelines	PL 107–210 Sec 2107(b)	644
Members and functions	PL 107–210 Sec 2107(a)	643
Request for meeting	PL 107–210 Sec 2107(c)	644
Consultations and assessment		
Advisory committee reports	PL 107–210 Sec 2104(e)	638
Agriculture negotiations	PL 107–210 Sec 2104(b)	634
Consultation with Congress before agreements entered into.	PL 107–210 Sec 2104(d)	636
Fishing industry negotiations	PL 107–210 Sec 2104(b)	636
International Trade Commission assessment.	PL 107–210 Sec 2104(f)	638
Notice and consultation before negotiation.	PL 107–210 Sec 2104(a)	634
Special consultations on import sensitive products.	PL 107–210 Sec 2104(b)	635
Textiles negotiations	PL 107–210 Sec 2104(c)	636
Definitions	PL 107–210 Sec 2113	646

Bipartisan Trade Promotion Authority Act of 2002—Continued		
Findings	PL 107–210 Sec 2101	617
Impact of trade promotion authority, report.	PL 107–210 Sec 2111	646
Implementation and enforcement requirements.	PL 107–210 Sec 2108	645
Implementation of trade agreements		
Disclosure of commitments	PL 107–210 Sec 2105(a)	640
Limitations on trade authorities procedures.	PL 107–210 Sec 2105(b)	640
Notification and submission	PL 107–210 Sec 2105(a)	639
Procedures for considering resolutions.	PL 107–210 Sec 2105(b)	641
Reciprocal benefits	PL 107–210 Sec 2105(a)	640
Rules of House of Representatives and Senate.	PL 107–210 Sec 2105(c)	642
Supporting information	PL 107–210 Sec 2105(a)	639
Small business interest	PL 107–210 Sec 2112	646
Trade agreements authority		
Aggregate reduction	PL 107–210 Sec 2103(a)	630
Agreements regarding tariff and nontariff barriers.	PL 107–210 Sec 2103(a)	629
	PL 107–210 Sec 2103(b)	631
Authority under Uruguay Round Agreements Act not affected.	PL 107–210 Sec 2103(a)	631
Bills qualifying for trade authorities procedures.	PL 107–210 Sec 2103(b)	631
Commencement of negotiations	PL 107–210 Sec 2103(d)	633
Exemption from staging	PL 107–210 Sec 2103(a)	630
Extension disapproval process for Congressional trade authorities procedures.	PL 107–210 Sec 2103(c)	632
Extension disapproval resolutions	PL 107–210 Sec 2103(c)	633
Limitations	PL 107–210 Sec 2103(a)	630
Reports	PL 107–210 Sec 2103(c)	632
Rounding	PL 107–210 Sec 2103(a)	630
Trade negotiating objectives		
Adherence to obligations under Uruguay Round Agreements.	PL 107–210 Sec 2102(e)	629
Anti-corruption	PL 107–210 Sec 2102(b)	621
Border taxes	PL 107–210 Sec 2102(b)	627
Child labor	PL 107–210 Sec 2102(b)	627
Consultations	PL 107–210 Sec 2102(d)	628
Dispute settlement and enforcement	PL 107–210 Sec 2102(b)	625
Electronic commerce	PL 107–210 Sec 2102(b)	622
Improvement of World Trade Organization and multilateral trade agreements.	PL 107–210 Sec 2102(b)	622
Intellectual property	PL 107–210 Sec 2102(b)	620
Labor and the environment	PL 107–210 Sec 2102(b)	625
Objectives	PL 107–210 Sec 2102(a)	618
	PL 107–210 Sec 2102(b)	619
Promotion of certain priorities	PL 107–210 Sec 2102(c)	627
Reciprocal trade in agriculture	PL 107–210 Sec 2102(b)	623
Regulatory practices	PL 107–210 Sec 2102(b)	622
Textile negotiations	PL 107–210 Sec 2102(b)	627
Trade remedy laws	PL 107–210 Sec 2102(b)	626
Transparency	PL 107–210 Sec 2102(b)	621
WTO extended negotiations	PL 107–210 Sec 2102(b)	626
Treatment of trade agreements for which negotiations have begun.	PL 107–210 Sec 2106	642
Bolivia. See Andean Trade Preference Act		
Border Environment Cooperation Commission and the North American Development Bank Agreement.	EO 12916	1065
Cooperation promotion	EO 12916 Sec 2(c)	1065
Finance Committee	EO 12916 Sec 6	1066

Border Environment Cooperation Commission and the North American Development Bank Agreement—Continued		
Finance Committee—Continued		
	EO 12916 Sec 7	1066
	EO 12916 Sec 8	1067
	EO 12916 Sec 9	1067
Good Neighbor Environmental Board	EO 12916 Sec 10	1067
Intention of order	EO 12916 Sec 11	1067
Interagency coordination	EO 12916 Sec 2(b)	1065
Project loans, guarantees or grants	EO 12916 Sec 3(b)	1066
	EO 12916 Sec 3(c)	1066
	EO 12916 Sec 3(d)	1066
Secretary of Treasury functions	EO 12916 Sec 4	1066
	EO 12916 Sec 5	1066
U.S. representation	EO 12916 Sec 2(a)	1065
	EO 12916 Sec 3(a)	1065
Border Environmental Cooperation Commission		
Agreement on	PL 103–182 Sec 533	958
Bretton Woods Agreements Act	PL 79–171	3
Actions not to be taken without authorization.	PL 79–171 Sec 5	7
Adverse social and environmental impacts, alleviating potential for.	PL 79–171 Sec 55	30
African Development Bank applicability	PL 97–35 Sec 1335	97
African Development Fund Act applicability.	PL 94–302 Sec 204	102
Agricultural export subsidies, elimination of.	PL 79–171 Sec 44	24
Amendment acceptance	PL 79–171 Sec 24	15
	PL 79–171 Sec 57	31
Capital stock increase	PL 79–171 Sec 16(b)	12
	PL 79–171 Sec 19	14
	PL 79–171 Sec 23	14
	PL 79–171 Sec 27	15
	PL 79–171 Sec 39	20
	PL 79–171 Sec 51	28
	PL 79–171 Sec 52	28
	PL 79–171 Sec 53	29
Communist dictatorships, instructions to United States Executive Director involving credit to.	PL 79–171 Sec 43	23
Debt reductions for the poorest countries, approval of contributions for.	PL 79–171 Sec 62	34
Depositories	PL 79–171 Sec 6	8
Economic adjustment programs	PL 79–171 Sec 45	24
European Bank for Reconstruction and Development applicability.	PL 101–513 Sec 562	108
Exchange rate stability, promoting conditions for.	PL 79–171 Sec 40	21
Foreign governments in default, financial transactions with.	PL 79–171 Sec 9	10
Fund bailouts of banks, opposing	PL 79–171 Sec 46	26
Fund policy changes	PL 79–171 Sec 59	31
Governors, Executive Directors, and alternates, appointment of.	PL 79–171 Sec 3	4
IMF interest rates	PL 79–171 Sec 48	27
IMF lending, principles for	PL 79–171 Sec 63	35
Increasing productive participation of the poor.	PL 79–171 Sec 59	32
Information, obtaining and furnishing	PL 79–171 Sec 8	9
Information on monetary and financial problems, sense of Congress.	PL 79–171 Sec 42	22
Inter-American Investment Corporation applicability.	PL 98–473 Sec 204	79

Bretton Woods Agreements Act—Continued		
Interest Subsidy Account of the Enhanced Structural Adjustment Facility of the International Monetary Fund, contribution to.	PL 79–171 Sec 54	29
International cooperation	PL 79–171 Sec 47	26
International economic relations, promotion of		
Debt rescheduling, comparability of treatment policy.	PL 79–171 Sec 29	16
Dollar-Special Drawing Rights substitution account, sense of Congress.	PL 79–171 Sec 35	19
Economic adjustment programs	PL 79–171 Sec 33	17
El Salvador and Nicaragua, assistance to, sense of Congress.	PL 79–171 Sec 38	20
Exempted securities	PL 79–171 Sec 15	12
Palestine Liberation Organization, denial of membership in the Fund.	PL 79–171 Sec 37	19
Purchases of currencies or gold by the United States from the International Monetary Fund, use of.	PL 79–171 Sec 18	14
Reports	PL 79–171 Sec 34	19
Special Drawing Rights	PL 79–171 Sec 17	13
Stabilization programs consultation	PL 79–171 Sec 30	16
Supplementary Financing Facility participation.	PL 79–171 Sec 28	15
Taiwan, membership in the Fund, sense of Congress.	PL 79–171 Sec 36	19
International Finance Corporation, loans to.	PL 79–171 Sec 21	14
Jurisdiction and venue of actions	PL 79–171 Sec 10	10
Medium-term financing, limitations on	PL 79–171 Sec 63	35
Membership acceptance	PL 79–171 Sec 2	4
Middle East Development Bank applicability.	PL 104–208 Sec 704	124
Military spending by developing nations, reduction of.	PL 79–171 Sec 60	33
Misreporting of information	PL 79–171 Sec 63	35
Multilateral Investment Guarantee Agency applicability.	PL 100–202 Sec 408	58
National Advisory Council on International Monetary and Financial Problems, establishment of.	PL 79–171 Sec 4	5
North American Development Bank applicability.	PL 103–182 Sec 541(d)	114
Policy audits	PL 79–171 Sec 59	32
Premium pricing	PL 79–171 Sec 63	35
Public access to information	PL 79–171 Sec 59	32
Quota increase	PL 79–171 Sec 16(a)	12
	PL 79–171 Sec 20	14
	PL 79–171 Sec 22	14
	PL 79–171 Sec 25	15
	PL 79–171 Sec 32	17
	PL 79–171 Sec 41	22
	PL 79–171 Sec 56	30
	PL 79–171 Sec 61	34
Reserve Account of the Enhanced Structural Adjustment Facility Trust, pledge to sell gold to provide resources for.	PL 79–171 Sec 58	31
Short-term balance of payments financing.	PL 79–171 Sec 63	35
Stabilization loans by the Bank	PL 79–171 Sec 12	11
Stabilization operations by the Fund	PL 79–171 Sec 13	11
Status, immunities and privileges	PL 79–171 Sec 11	10
Subscriptions payment	PL 79–171 Sec 7	8
Trade provisions	PL 79–171 Sec 49	27

Bretton Woods Agreements Act—Continued
U.S. policy ..... PL 79–171 Sec 14 11
Vote against establishment of a Council PL 79–171 Sec 26 15
Bretton Woods Agreements Act Amendments, 1978. PL 95–435 39
Congressional reaffirmation of budget outlays. PL 95–435 Sec 7 40
Genocide, U.S. disassociation from foreign governments engaging in, sense of Congress. PL 95–435 Sec 5 39
Terrorists, opposition to financial or technical assistance to any country permitting entry or failing to prevent acts. PL 95–435 Sec 6 39
Bretton Woods Agreements Act Amendments, 1980. PL 96–389 37
Fund salaries, level of ..... PL 96–389 Sec 9 37
Gold, role in international monetary systems. PL 96–389 Sec 10 38
Recycling balance-of-payments surpluses, sense of Congress. PL 96–389 Sec 4 37
Travel costs, minimizing ..... PL 96–389 Sec 9 37
Broadcasting, international
Cuba, television broadcasting to ..... PL 104–114 Sec 107 1526
International Anti-Bribery and Fair Competition Act of 1998
Organizations providing commercial communications services, treatment of. PL 105–366 Sec 5 1754
United States-China Relations Act of 2000
Capital improvements and operations, appropriations authorizations. PL 106–286 Sec 701 1158
Brothers to the Rescue
Condemnation of Cuban attack against aircraft. PL 104–114 Sec 116 1532
Bulgaria
Most-favored-nation treatment
Findings and supplemental action ... PL 104–162 Sec 1 1187
Termination of application of Title IV of the Trade Act of 1974. PL 104–162 Sec 2 1188
Trade Act of 1974 waiver ..... EO 12745 1208
Burma
Economic sanctions against ..... EO 13310 1652
PL 101–382 Sec 138 1650
PL 104–208 Sec 570 1647
Burmese Freedom and Democracy Act of 2003. PL 108–61 1640
Ban against trade supporting military regime. PL 108–61 Sec 3 1641
Condemnation of regime ..... PL 108–61 Sec 7 1644
Democracy activists, support for ..... PL 108–61 Sec 8 1644
Dissemination of information ..... PL 108–61 Sec 7 1644
Findings ..... PL 108–61 Sec 2 1640
Freezing assets of regime in United States. PL 108–61 Sec 4 1643
International financial institutions loans PL 108–61 Sec 5 1643
Sanctions, duration of ..... PL 108–61 Sec 9 1645
Visa ban, expansion of ..... PL 108–61 Sec 6 1643
Business capital assistance
Benefit information for businesses ..... PL 101–510 Sec 4304 1314
Export financing for goods and services produced by former defense production firms
Coordination with other agencies .... PL 101–510 Sec 4303(c) 1312
Export-Import Bank ..... PL 101–510 Sec 4303(a) 1312
Report ..... PL 101–510 Sec 4303(d) 1314

Business capital assistance—Continued
Export financing for goods and services produced by former defense production firms—Continued
Small Business Act use of authority PL 101–510 Sec 4303(a) 1312
Byelarus
Trade Act of 1974 waiver ..... EO 12802 1204

C

CAFTA. See Dominican Republic-Central America-United States Free Trade Agreement Implementation Act
California
North American Development Bank projects financing water conservation in the southern California area, sense of Congress. PL 108–215 Sec 4 122
Cambodia
Most-favored-nation treatment
Findings ..... PL 104–203 Sec 1 1183
Nondiscriminatory treatment, extension of. PL 104–203 Sec 2 1183
Report ..... PL 104–203 Sec 3 1184
Canada
Binational panel review of countervailing and antidumping duty proceedings. PL 71–361 Sec 516A(g) 460
Canadian Customs and Revenue Agency
Integrated Border Inspection Areas creation. PL 108–429 Sec 1560(b) 611
Hogs and pork products imported from .. PL 98–573 Sec 250 789
Trade relations with, sense of Congress PL 93–618 Sec 612 410
Canada Free-Trade Agreement. See United States-Canada Free-Trade Agreement
Canada Free Trade Agreement Implementation Act of 1988. See United States-Canada Free Trade Agreement Implementation Act of 1988
Canadian Customs and Revenue Agency
Integrated Border Inspection Areas creation. PL 108–429 Sec 1560(b) 611
Caribbean Basin Economic Recovery Act ..... PL 98–67 1023
Duty-free treatment
Apparel articles assembled from fabrics or yarn not available in commercial quantities. PL 98–67 Sec 213(b) 1036
Apparel articles assembled in beneficiary countries from United States and beneficiary country components. PL 98–67 Sec 213(b) 1038
Authority to grant ..... PL 98–67 Sec 211 1024
Beef products ..... PL 98–67 Sec 213(c) 1044
Beneficiary countries ..... PL 98–67 Sec 212 1024
Bilateral emergency actions ..... PL 98–67 Sec 213(b) 1039
Caribbean Trade Institute, feasibility study. PL 98–67 Sec 217 1051
Center for the Study of Western Hemispheric Trade. PL 98–67 Sec 219 1051
Certificate of Origin ..... PL 98–67 Sec 213(b) 1041
Circumvention cooperation, report ... PL 98–67 Sec 213(b) 1041
Customs procedures ..... PL 98–67 Sec 213(b) 1041
De minimis rule ..... PL 98–67 Sec 213(b) 1037
Definitions ..... PL 98–67 Sec 213(b) 1042
Development of procedure to ensure compliance. PL 98–67 Sec 213(b) 1035

Caribbean Basin Economic Recovery Act—Continued		
Duty-free treatment—Continued		
Eligible articles	PL 98–67 Sec 213	1029
Fees	PL 98–67 Sec 213(g)	1048
Filing import injury petitions	PL 98–67 Sec 213(f)	1047
Handloomed, handmade, and folklore articles.	PL 98–67 Sec 213(b)	1036
	PL 98–67 Sec 213(b)	1039
Import-sensitive articles	PL 98–67 Sec 213(b)	1031
International Trade Commission reports.	PL 98–67 Sec 215	1050
Limitation	PL 98–67 Sec 213(b)	1035
Penalties for transshipments	PL 98–67 Sec 213(b)	1039
Preferential treatment	PL 98–67 Sec 213(b)	1039
Puerto Rico and United States insular possessions, measures for.	PL 98–67 Sec 214	1049
Rate reductions	PL 98–67 Sec 213(h)	1048
Secretary of Labor, impact study	PL 98–67 Sec 216	1051
Special origin rule	PL 98–67 Sec 213(b)	1038
Special rules	PL 98–67 Sec 213(b)	1037
	PL 98–67 Sec 213(b)	1042
Sugar products	PL 98–67 Sec 213(c)	1044
Suspension of	PL 98–67 Sec 213(e)	1046
Tariff-rate quotas	PL 98–67 Sec 213(d)	1046
Textile luggage	PL 98–67 Sec 213(b)	1038
Transition period treatment of articles originating in beneficiary countries.	PL 98–67 Sec 213(b)	1040
Transition period treatment of textile and apparel articles.	PL 98–67 Sec 213(b)	1032
Harmonized Tariff Schedule		
Products of countries designated beneficiary developing countries.	Gen. note 7	888
Rates of duty	Gen. note 3	879
Tax provisions		
Caribbean Basin tax havens, report	PL 98–67 Sec 223	1054
Sugar imports, sense of Congress	PL 98–67 Sec 231	1054
Caribbean Basin Economic Recovery Expansion Act of 1990.	PL 101–382	981
Agricultural infrastructure support	PL 101–382 Sec 242	985
Andean region, extension of trade benefits to.	PL 101–382 Sec 243	986
Application in Eastern Caribbean area	PL 101–382 Sec 216	981
Findings	PL 101–382 Sec 202	981
Nicaragua, trade benefits for	PL 101–382 Sec 241	985
Pilot preclearance program	PL 101–382 Sec 233	984
Scholarships to Caribbean and Central American students, cooperative public and private sector program.	PL 101–382 Sec 231	982
Tourism promotion	PL 101–382 Sec 232	983
Caribbean Basin Initiative		
Findings and intent	PL 100–418 Sec 1909	740
Caribbean Basin Trade Partnership Act	PL 106–200	944
Definitions	PL 106–200 Sec 203	945
Findings	PL 106–200 Sec 201(a)	944
Harmonized Tariff Schedule		
Products of countries designated beneficiary developing countries.	Gen. note 17	890
Implementation	EO 13191	1072
Meetings of trade ministers and the United States Trade Representative.	PL 106–200 Sec 213	945
Policy	PL 106–200 Sec 201(b)	945
Caribbean region		
Increase in Inter-American Development Bank lending.	PL 86–147 Sec 36	77
Multilateral Investment Fund focus on low-income areas of.	PL 86–147 Sec 38	78

Caribbean Trade Institute
Feasibility study ..... PL 98–67 Sec 217 1051
Cayman Islands. See Caribbean Basin Economic Recovery Act
Center for the Study of Western Hemispheric Trade
Appropriations authorization ..... PL 103–182 Sec 515 956
Consultation and selection criteria ..... PL 98–67 Sec 219(c) 1052
Definitions ..... PL 98–67 Sec 219(e) 1053
Duration of grant ..... PL 98–67 Sec 219(g) 1053
Establishment of ..... PL 98–67 Sec 219(a) 1051
Fees for seminars and publications ..... PL 98–67 Sec 219(f) 1053
Programs and activities ..... PL 98–67 Sec 219(d) 1052
Report ..... PL 98–67 Sec 219(h) 1053
Scope of ..... PL 98–67 Sec 219(b) 1052
Central America
Scholarships to students, cooperative public and private sector program. PL 101–382 Sec 231 982
Central America-United States Free Trade Agreement Implementation Act. See Dominican Republic-Central America-United States Free Trade Agreement Implementation Act
Central Bank of Iraq
Protection of ..... EO 13364 1589
Central Europe
Export-Import Bank trade finance, report. PL 102–429 Sec 120 1277
Chemical and biological weapons
Export controls ..... PL 96–72 Sec 6(m) 1372
Proliferation sanctions
Consultations with foreign governments. PL 96–72 Sec 11C(b) 1409
Definition of foreign person ..... PL 96–72 Sec 11C(f) 1411
Description of ..... PL 96–72 Sec 11C(c) 1409
Exceptions ..... PL 96–72 Sec 11C(c) 1410
Imposition of ..... PL 96–72 Sec 11C(a) 1408
Termination of ..... PL 96–72 Sec 11C(d) 1410
Waiver ..... PL 96–72 Sec 11C(e) 1410
Child labor
Indentured child labor prohibition ..... EO 13126 920
Trade negotiating objectives ..... PL 107–210 Sec 2102(b) 627
Chile Free Trade Agreement. See United States-Chile Free Trade Agreement
Chile Free Trade Agreement Implementation Act. See United States-Chile Free Trade Agreement Implementation Act
China
Market orientation study ..... PL 100–418 Sec 1336(a) 724
China, People's Republic of
Action in response to trade diversion ..... PL 93–618 Sec 422 389
Congressional-Executive Commission on
Appropriations authorization ..... PL 106–286 Sec 307 1150
Appropriations expenditure ..... PL 106–286 Sec 305 1150
Establishment of ..... PL 106–286 Sec 301 1146
Functions ..... PL 106–286 Sec 302 1146
Membership ..... PL 106–286 Sec 303 1149
Printing and binding costs ..... PL 106–286 Sec 309 1151
Staff ..... PL 106–286 Sec 308 1150
Subpoenas issuance and administration of oaths. PL 106–286 Sec 306 1150
Votes of ..... PL 106–286 Sec 304 1150
Witness testimony and production of evidence. PL 106–286 Sec 306 1150
Export-import program prohibitions ..... PL 101–240 Sec 103 128
Most-favored-nation treatment
Conditions for renewal ..... EO 12850 1189

China, People's Republic of—Continued		
Normal trade relations		
Termination of application of Chapter 1 of Title IV of the Trade Act of 1974.	PL 106–286 Sec 101	1176
Opposition to loans or extension of financial and technical assistance, sense of Congress.	PL 101–240 Sec 604	136
Trade Act of 1974 waiver. See also individual country.	EO 12167	1212
Trade agreements with	PL 93–618 Sec 421(j)	387
United States-China Relations Act of 2000.	PL 106–286	1142
Administrative authorities	PL 106–286 Sec 512	1157
Appropriations authorization	PL 106–286 Sec 514	1157
Broadcasting capital improvements, appropriations authorizations.	PL 106–286 Sec 701(a)	1158
Commercial and labor rule of law development assistance.	PL 106–286 Sec 511	1156
Definitions	PL 106–286 Sec 204	1145
Findings	PL 106–286 Sec 202	1142
Human rights abuses prohibition	PL 106–286 Sec 513	1157
International broadcasting operations, appropriations authorizations.	PL 106–286 Sec 701(b)	1158
Policy	PL 106–286 Sec 203	1144
Taiwan, accession to the World Trade Organization.	PL 106–286 Sec 601	1158
Task force on prohibition of importation of products of forced or prison labor.	PL 106–286 Title V	1154
WTO commitments	PL 106–286 Title IV	1152
China, People's Republic of, Congressional-Executive Commission on		
Appropriations authorization	PL 106–286 Sec 307	1150
Establishment of	PL 106–286 Sec 301	1146
Expenditure of appropriations	PL 106–286 Sec 305	1150
Functions of	PL 106–286 Sec 302	1146
Membership of	PL 106–286 Sec 303	1149
Printing and binding costs	PL 106–286 Sec 309	1151
Staff	PL 106–286 Sec 308	1150
Subpoenas issuance and administration of oaths.	PL 106–286 Sec 306	1150
Votes of	PL 106–286 Sec 304	1150
Witness testimony and production of evidence.	PL 106–286 Sec 306	1150
Civil aircraft		
Condemnation of Cuban attack	PL 104–114 Sec 116	1532
Effect of Export Administration Act of 1979.	PL 96–72 Sec 17(c)	1422
Waiver of discriminatory purchasing requirements.	PL 96–39 Sec 303	834
Clarification of Normal Trade Relations	PL 105–206	668
Findings and policy	PL 105–206 Sec 5003(a)	668
Savings provisions	PL 105–206 Sec 5003(c)	669
Clean Diamond Trade Act	PL 108–19	1674
Definitions	PL 108–19 Sec 3	1675
Enforcement	PL 108–19 Sec 8	1678
Findings	PL 108–19 Sec 2	1674
GAO report	PL 108–19 Sec 13	1680
Implementation of		
Assignment of functions	EO 13312 Sec 2	1682
Definitions	EO 13312 Sec 4	1682
General provisions	EO 13312 Sec 5	1682
Prohibitions	EO 13312 Sec 1	1681
Importing and exporting authorities	PL 108–19 Sec 6	1677
Kimberley Process Implementation Coordinating Committee.	PL 108–19 Sec 11	1679

Clean Diamond Trade Act—Continued		
Regulatory authority	PL 108–19 Sec 5	1677
Reports	PL 108–19 Sec 12	1679
Rough diamonds, measures for importation and exportation of.	PL 108–19 Sec 4	1677
Sense of Congress	PL 108–19 Sec 10	1678
Statement of policy	PL 108–19 Sec 7	1678
Technical assistance	PL 108–19 Sec 9	1678
Coffee		
International Coffee Agreement Act of 1980.	PL 96–599	1734
Definition	PL 96–599 Sec 3	1735
Extension of	PL 100–418 Sec 1123	710
Presidential powers and duties	PL 96–599 Sec 2	1734
	PL 96–599 Sec 4	1735
Protection of interests of U.S. consumers.	PL 96–599 Sec 4	1735
Remedial action	PL 96–599 Sec 4	1735
Report	PL 96–599 Sec 5	1735
Colombia. See Andean Trade Preference Act		
Commerce, Department of		
Cuban Democracy Act implementation	EO 12854 Sec 4	1565
Export Trade, Office of	PL 97–290 Sec 104	811
International trade functions	RP No. 3 of 1979 Sec 2	894
United States Commercial Centers facilities relationship to operations in host countries.	PL 102–549 Sec 401(g)	681
Commercial Centers. See United States Commercial Centers		
Commercial Service Officers		
Increases in certain countries	PL 102–549 Sec 701	683
Committee on Foreign Investment in the United States.	EO 11858	1714
Authorities	EO 11858 Sec 3	1715
	EO 11858 Sec 8	1716
Confidentiality	EO 11858 Sec 5	1716
Effect of order	EO 11858 Sec 6	1716
Establishment of	EO 11858 Sec 1	1714
Investigations	EO 11858 Sec 7	1716
Report	EO 11858 Sec 7	1716
Responsibilities	EO 11858 Sec 2	1715
	EO 11858 Sec 4	1716
Commodities. See also Agricultural commodities; specific commodities by name		
Opposition of multilateral assistance for foreign surplus.	PL 99–472 Sec 22	1724
Community Adjustment and Investment Program Finance Committee.	EO 12916	1066
Competitiveness Policy Council Act		
Annual report	PL 100–418 Sec 5208	764
Appropriations authorization	PL 100–418 Sec 5209	765
Definitions	PL 100–418 Sec 5210	765
Details	PL 100–418 Sec 5206(d)	762
Duties of	PL 100–418 Sec 5204	758
Establishment of	PL 100–418 Sec 5203	758
Executive director	PL 100–418 Sec 5206(a)	762
Experts and consultants	PL 100–418 Sec 5206(b)	762
Findings and purposes	PL 100–418 Sec 5202	757
Membership	PL 100–418 Sec 5205	759
Powers of	PL 100–418 Sec 5207	762
Staff	PL 100–418 Sec 5206(b)	762
Computers, high performance		
Export controls	PL 105–85	1426
Approvals	PL 105–85 Sec 1211	1426
Congressional committees	PL 105–85 Sec 1215	1430
End user information assistance	PL 105–85 Sec 1214	1429
GAO study	PL 105–85 Sec 1214	1429

Computers, high performance—Continued		
Export controls—Continued		
Post-shipment verification	PL 105–85 Sec 1213	1429
Report	PL 105–85 Sec 1212	1428
Prohibition on supercomputer licensing with end-user designated as Iraq.	PL 101–515 Sec 608	1576
Software copyright protection	PL 98–573 Sec 251	789
Supercomputer trade dispute with Japan.	PL 100–418 Sec 1307	722
Congressional Oversight Group		
Guidelines	PL 107–210 Sec 2107(b)	644
Members and functions	PL 107–210 Sec 2107(a)	643
Request for meeting	PL 107–210 Sec 2107(c)	644
Constructed export price		
Adjustments for	PL 71–361 Sec 772(c)	574
	PL 71–361 Sec 772(d)	574
Defined	PL 71–361 Sec 772(a)	574
Determining profit, special rule	PL 71–361 Sec 772(f)	575
Merchandise with value added after importation, special rule.	PL 71–361 Sec 772(e)	575
Convention on the Settlement of Investment Disputes Act of 1966		
Appointment of representatives and panel members.	PL 89–532 Sec 2	245
Arbitral tribunal award	PL 89–532 Sec 3	245
Copper imports	PL 98–573 Sec 247	788
Copyright protection		
Computer software	PL 98–573 Sec 251	789
Corn gluten		
Possible European Community tariff action, sense of Congress.	PL 98–573 Sec 245	787
Corruption		
Foreign Corrupt Practices Act Amendments of 1988		
International agreement	PL 100–418 Sec 5003	1752
Foreign Corrupt Practices Act of 1977	PL 95–213	1741
Prohibited foreign trade practices by domestic concerns.	PL 95–213 Sec 104	1741
Prohibited foreign trade practices by persons other than issuers or domestic concerns.	PL 95–213 Sec 104A	1748
International Anti-Bribery and Fair Competition Act of 1998.	PL 105–366	1754
Enforcement and monitoring	PL 105–366 Sec 6	1756
International organizations providing commercial communications services, treatment of.	PL 105–366 Sec 5	1754
Costa Rica. See Caribbean Basin Economic Recovery Act		
Countervailable subsidies		
Agreements to eliminate or offset	PL 71–361 Sec 704(b)	483
Calculation on certain processed agricultural products.	PL 71–361 Sec 771B	573
Defined	PL 71–361 Sec 771	550
Determining likelihood of continuation or recurrence of.	PL 71–361 Sec 752(b)	538
Nature of, special rules	PL 71–361 Sec 771	559
Practices discovered during a proceeding	PL 71–361 Sec 775	585
Rate determination	PL 71–361 Sec 777A(e)	598
Upstream subsidies	PL 71–361 Sec 771A(c)	573
Countervailing duties		
Administrative review of determinations		
Correction of ministerial errors	PL 71–361 Sec 751(h)	535
Determination that basis for suspension no longer exists.	PL 71–361 Sec 751(f)	534
Five-year review	PL 71–361 Sec 751(c)	530
Hearings	PL 71–361 Sec 751(e)	534

Countervailing duties—Continued
Administrative review of determinations—Continued
Implementing results of subsidies enforcement proceeding. PL 71–361 Sec 751(g) 534
Periodic review of amount of duty ... PL 71–361 Sec 751(a) 527
Reviews based on changed circumstances. PL 71–361 Sec 751(b) 529
Revocation of order or finding ..... PL 71–361 Sec 751(d) 533
Termination of suspended investigation. PL 71–361 Sec 751(d) 533
Assessment of duty
Imposition of ..... PL 71–361 Sec 706(b) 495
Publication of countervailing duty order. PL 71–361 Sec 706(a) 494
Special rule for regional industries .. PL 71–361 Sec 706(c) 495
Circumvention of orders, prevention of .. PL 71–361 Sec 781 602
Conditional payment ..... PL 71–361 Sec 709 496
Conduct of investigations and administrative reviews. PL 71–361 Sec 782 606
Continued dumping and subsidy offset
Definitions ..... PL 71–361 Sec 754(b) 543
Distribution of duties ..... PL 71–361 Sec 754(a) 543
PL 71–361 Sec 754(c) 544
Parties eligible for distributions ..... PL 71–361 Sec 754(d) 544
Special accounts ..... PL 71–361 Sec 754(e) 545
Difference between deposit of estimated and final assessment. PL 71–361 Sec 707 495
Effect of derogation of Export-Import Bank financing. PL 71–361 Sec 708 496
Final determinations
Administering authority ..... PL 71–361 Sec 705(a) 489
Affirmative determination effect ..... PL 71–361 Sec 705(c) 491
PL 71–361 Sec 705(c) 493
Commission ..... PL 71–361 Sec 705(b) 490
Correction of ministerial errors ..... PL 71–361 Sec 705(e) 494
Determining the all-others rate and country-wide subsidy rate. PL 71–361 Sec 705(c) 493
Effect of ..... PL 71–361 Sec 705(c) 491
Negative effect ..... PL 71–361 Sec 705(c) 492
Publication of notice ..... PL 71–361 Sec 705(d) 494
Imposition of
General rule ..... PL 71–361 Sec 701(a) 470
Investigations involving imports not entitled to material injury determination. PL 71–361 Sec 701(c) 471
Subsidies Agreement country ..... PL 71–361 Sec 701(b) 470
Treatment of international consortia PL 71–361 Sec 701(d) 471
Upstream subsidy ..... PL 71–361 Sec 701(e) 471
Improvement in enforcement of laws ..... PL 100–418 Sec 1311 723
Pending investigations ..... PL 96–39 Sec 102 824
Preliminary determinations
Administering authority ..... PL 71–361 Sec 703(b) 476
PL 71–361 Sec 703(d) 479
Critical circumstances ..... PL 71–361 Sec 703(e) 480
De minimis countervailable subsidy exception. PL 71–361 Sec 703(b) 477
Extension of period in extraordinarily complicated cases. PL 71–361 Sec 703(c) 478
Notice of ..... PL 71–361 Sec 703(f) 481
Time period where upstream subsidization involved. PL 71–361 Sec 703(g) 481
Under waiver of verification ..... PL 71–361 Sec 703(b) 477
Procedures for initiating an investigation
Administering authority initiation ... PL 71–361 Sec 702(a) 472
Information regarding critical circumstances. PL 71–361 Sec 702(e) 475

Countervailing duties—Continued		
Procedures for initiating an investigation—Continued		
Notification to Commission	PL 71–361 Sec 702(d)	475
Petitions	PL 71–361 Sec 702(b)	472
	PL 71–361 Sec 702(c)	473
Proceedings		
Definitions	PL 71–361 Sec 516A(f)	459
Determinations involving free trade area country merchandise, binational panel review.	PL 71–361 Sec 516A(g)	460
Liquidation in accordance with final decision.	PL 71–361 Sec 516A(e)	459
Liquidation of entries	PL 71–361 Sec 516A(c)	458
Review of determination	PL 71–361 Sec 516A(a)	454
Standards of review	PL 71–361 Sec 516A(b)	457
Standing	PL 71–361 Sec 516A(d)	459
Requests for review of Canadian determinations.	PL 100–449 Sec 408	1017
Special rules for injury investigations		
Description of orders	PL 71–361 Sec 753(a)	540
Investigation by Commission upon request.	PL 71–361 Sec 753(a)	539
Pending and suspended	PL 71–361 Sec 753(c)	542
Procedure and schedule	PL 71–361 Sec 753(b)	540
Publication in Federal Register	PL 71–361 Sec 753(d)	542
Request for simultaneous expedited review.	PL 71–361 Sec 753(e)	542
Requirements of requests	PL 71–361 Sec 753(a)	540
Suspension of liquidation	PL 71–361 Sec 753(a)	540
Special rules for reviews		
Determination of likelihood of continuation or recurrence of countervailable subsidy.	PL 71–361 Sec 752(b)	538
Determination of likelihood of continuation or recurrence of material injury.	PL 71–361 Sec 752(a)	535
Termination or suspension of investigation		
Administering authority	PL 71–361 Sec 704(e)	485
	PL 71–361 Sec 704(k)	489
Cease exports of subject merchandise agreements.	PL 71–361 Sec 704(b)	483
Continued upon request	PL 71–361 Sec 704(g)	487
Determination not to take agreement into account.	PL 71–361 Sec 704(j)	489
Effects of	PL 71–361 Sec 704(f)	485
Eliminate or offset a countervailable subsidy agreements.	PL 71–361 Sec 704(b)	483
Eliminating injurious effect agreements.	PL 71–361 Sec 704(c)	483
Liquidation of entries	PL 71–361 Sec 704(f)	486
Review of	PL 71–361 Sec 704(h)	487
Rules and conditions	PL 71–361 Sec 704(d)	484
Special rule for regional industry investigations.	PL 71–361 Sec 704(l)	489
Violation of agreement	PL 71–361 Sec 704(i)	488
Withdrawal of petition	PL 71–361 Sec 704(a)	482
Transition rules for orders	PL 96–39 Sec 104	826
Court of International Trade		
Trade grievance jurisdiction	PL 93–618 Sec 284(c)	344
Crime control instruments		
Export controls	PL 96–72 Sec 6(n)	1373
Critical materials		
National Critical Materials Act of 1984	PL 98–373	1726
Advanced materials research and technology, program and policy.	PL 98–373 Sec 205	1729
Appropriations authorization	PL 98–373 Sec 211	1732

Critical materials—Continued		
National Critical Materials Act of 1984—Continued		
Authorities of Council	PL 98–373 Sec 204(b)	1729
Authority	PL 98–373 Sec 210	1732
Basic and advanced materials industries, innovation in.	PL 98–373 Sec 206	1730
Compensation of members	PL 98–373 Sec 207(a)	1731
Cooperative efforts	PL 98–373 Sec 204(c)	1729
Definition	PL 98–373 Sec 212	1733
Director, responsibilities and duties	PL 98–373 Sec 209	1732
Executive Director, position and authorities.	PL 98–373 Sec 208	1731
Findings	PL 98–373 Sec 202(a)	1726
National Critical Materials Council establishment.	PL 98–373 Sec 203	1727
Purpose	PL 98–373 Sec 202(b)	1727
Reimbursements	PL 98–373 Sec 207(b)	1731
Responsibilities of Council	PL 98–373 Sec 204(a)	1728
Strategic and Critical Materials Transaction Authorization Act of 1979		
Appropriations authorization	PL 96–175 Sec 2	1740
Authorities	PL 96–175 Sec 3	1740
	PL 96–175 Sec 4	1740
	PL 96–175 Sec 5	1740
Crude oil, domestically produced		
Exports of	PL 100–418 Sec 2424	1306
Short supply export controls	PL 96–72 Sec 7(d)	1378
Cuba		
Anchorage and movement of vessels, declaration of national emergency and emergency authority.	Pres. Proc. 6867	1554
Brothers to the Rescue		
Condemnation of Cuban attack against aircraft.	PL 104–114 Sec 116	1532
Enforcement of restrictions on imports from.	PL 100–418 Sec 1911	741
LIBERTAD Act of 1996	PL 104–114	1515
Prohibition on additional imports from	PL 106–387 Sec 909	1487
Tariff treatment of Cuban products	PL 87–456 Sec 401	1055
Trade agreements	PL 71–361 Sec 350(b)	452
Trade sanctions for state sponsors of international terrorism.	PL 106–387 Sec 906	1484
Travel-related transactions, requirements relating to.	PL 106–387 Sec 910	1487
Cuban Democracy Act of 1992	PL 102–484	1556
Cuban people, support for	PL 102–484 Sec 1705	1559
Definition	PL 102–484 Sec 1711	1564
Democratic government, policy toward	PL 102–484 Sec 1708	1562
Enforcement	PL 102–484 Sec 1710	1563
Existing claims not affected	PL 102–484 Sec 1709	1563
Findings	PL 102–484 Sec 1702	1556
Implementation of	EO 12854	1565
International cooperation	PL 102–484 Sec 1704	1558
Sanctions	PL 102–484 Sec 1706	1561
Statement of policy	PL 102–484 Sec 1703	1557
Transitional government, policy toward	PL 102–484 Sec 1707	1562
Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996.	PL 104–114	1515
Definitions	PL 104–114 Sec 4	1519
Exclusion of certain aliens		
Definitions	PL 104–114 Sec 401(b)	1552
Exemption	PL 104–114 Sec 401(c)	1553
Grounds for exclusion	PL 104–114 Sec 401(a)	1552
Findings	PL 104–114 Sec 2	1516
Free and independent Cuba, assistance to		
Assistance for Cuban people	PL 104–114 Sec 202	1535

Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996—Continued		
Free and independent Cuba, assistance to—Continued		
Assistance program coordination	PL 104–114 Sec 203	1537
Confiscated property, settlement of U.S. claims.	PL 104–114 Sec 207	1542
Democratically elected government, policy toward.	PL 104–114 Sec 201	1533
Democratically elected government requirements.	PL 104–114 Sec 206	1542
Economic embargo termination	PL 104–114 Sec 204	1539
Reports	PL 104–114 Sec 203(c)	1538
Reprogramming	PL 104–114 Sec 203(d)	1538
Transition government, policy toward.	PL 104–114 Sec 201	1533
Transition government requirements and factors.	PL 104–114 Sec 205	1540
Property rights of U.S. nationals, protection of		
Authorities	PL 104–114 Sec 306(c)	1551
Findings	PL 104–114 Sec 301	1543
Limitation of actions	PL 104–114 Sec 305	1550
Proof of ownership	PL 104–114 Sec 303	1549
Rescission of suspension	PL 104–114 Sec 306(d)	1551
Suspension authority	PL 104–114 Sec 306(b)	1550
Trafficking in confiscated property, liability.	PL 104–114 Sec 302	1544
Purposes	PL 104–114 Sec 3	1519
Sanctions against Castro government	PL 102–484 Sec 1706	1561
American aircraft, condemnation of Cuban attack.	PL 104–114 Sec 116	1532
Commerce with and assistance from other countries, reports.	PL 104–114 Sec 108	1526
Cuban Democracy Act of 1992	PL 102–484 Sec 1706	1561
Enforcement	PL 104–114 Sec 102	1523
Expulsion of criminals from Cuba	PL 104–114 Sec 113	1531
Family remittances and travel to Cuba, sense of Congress.	PL 104–114 Sec 112	1531
Importation safeguard against products.	PL 104–114 Sec 110	1528
Independent states of the former Soviet Union assistance.	PL 104–114 Sec 106	1525
Indirect financing prohibition	PL 104–114 Sec 103	1524
International financial institutions membership opposition.	PL 104–114 Sec 104	1524
Juragua nuclear supporters, withholding foreign assistance.	PL 104–114 Sec 111	1529
Lawful United States government activities.	PL 104–114 Sec 115	1532
News bureaus in Cuba	PL 104–114 Sec 114	1531
Organization of American States participation opposition.	PL 104–114 Sec 105	1525
Statement of policy	PL 104–114 Sec 101	1522
Support for democratic and human rights groups.	PL 104–114 Sec 109	1527
Television broadcasting	PL 104–114 Sec 107	1526
Severability	PL 104–114 Sec 5	1522
Cultural industries		
Identification of countries denying adequate protection or market access for intellectual property rights.	PL 93–618 Sec 182(f)	313
Customs and miscellaneous amendments	PL 98–573	786
Computer software, copyright protection	PL 98–573 Sec 251	789
Copper imports	PL 98–573 Sec 247	788

Customs and miscellaneous amendments—Continued
- Corn gluten, sense of Congress regarding possible European Community action. — PL 98–573 Sec 245 — 787
- Foreign trade zone provisions — PL 98–573 Sec 231 — 786
- Hogs and pork products imported from Canada. — PL 98–573 Sec 250 — 789
- Honey imports, study — PL 98–573 Sec 246 — 788

Customs and Trade Act of 1990
- East Germany
  - Nondiscriminatory treatment for products. — PL 101–382 Sec 142 — 1199
- Exemption of Israeli products from certain user fees. — PL 101–382 Sec 112 — 1132

Customs Cooperation Council
- U.S. participation — PL 100–418 Sec 1210 — 716

Customs Service
- Action in response to trade diversion — PL 93–618 Sec 422(a) — 389

Customs Service, Commissioner of
- Integrated Border Inspection Areas creation. — PL 108–429 Sec 1560(b) — 611

Customs valuation
- Presidential report on operation of the General Agreement on Tariffs and Trade. — PL 96–39 Sec 203 — 829
- Transition to standards — PL 96–39 Sec 204 — 829

Czech and Slovak Federal Republic
- Most-favored-nation treatment
  - Findings — PL 102–182 Sec 1(a) — 1194
  - Preparatory Presidential action — PL 102–182 Sec 1(b) — 1194
  - Termination of application of Title IV of the Trade Act of 1974. — PL 102–182 Sec 2 — 1195

Czechoslovakia
- Payment of amounts owed U.S. citizens and nationals. — PL 93–618 Sec 408 — 382
- Trade Act of 1974 waiver — EO 12702 — 1211

D

Defense articles
- Annual report on impact of offsets — 50 USC App Sec 2099 — 1435
- Declaration of offset policy — PL 102–558 Sec 123 — 1437
- Export controls — EO 13222 — 1440
- Export-Import Bank of the United States involvement in sale of. — PL 79–173 Sec 2(b) — 1233

Defense Production Act Amendments of 1992
- Declaration of offset policy — PL 102–558 Sec 123 — 1437

Democracy
- Burmese Freedom and Democracy Act of 2003. — PL 108–61 — 1640
- Cuban Democracy Act of 1992 — PL 102–484 — 1556

Denial of foreign tax credit — PL 99–514 — 1478

Depository institutions
- Regulation of, studies relating to — PL 100–418 Sec 3122 — 751
- Regulatory provisions — PL 100–418 Sec 3121 — 751

Developing countries. See also Beneficiary developing countries
- Exports to, report — PL 100–418 Sec 3303 — 1316
- International financial institutions promotion of human nutrition. — PL 95–118 Sec 901 — 156
- Principal trade negotiating objectives — PL 100–418 Sec 1101(b) — 692
- Reduction of military spending — PL 79–171 Sec 60 — 33
- Technology deployment in
  - Appropriations authorization — PL 101–240 Sec 738 — 142
  - Definitions — PL 101–240 Sec 731 — 138
  - Fellowship and exchange programs — PL 101–240 Sec 737 — 142

Developing countries—Continued		
Technology deployment in—Continued		
Greenhouse gas intensity	PL 101–240 Sec 732	138
	PL 101–240 Sec 734	140
	PL 101–240 Sec 735	140
Technology demonstration projects	PL 101–240 Sec 736	141
Trade agreements with	PL 93–618 Sec 106	265
Development Fund of Iraq		
Protection of		
Authorities	EO 13303 Sec 4	1581
Definitions	EO 13303 Sec 3	1581
Effect of order	EO 13303 Sec 1	1580
	EO 13303 Sec 2	1581
Modifying	EO 13364	1589
Diamonds. See Clean Diamond Trade Act		
Discriminatory Procurement Practices. See also Trade expansion priorities		
Annual report	EO 13116 Sec 1	917
Considerations in making identifications	EO 13116 Sec 2	917
Consultations and advice	EO 13116 Sec 2	919
Identification	EO 13116 Sec 1	917
Impact of noncompliance and denial of comparable treatment.	EO 13116 Sec 3	918
Initiation of investigations	EO 13116 Sec 5	918
Presidential direction	EO 13116 Sec 1	919
Resolution	EO 13116 Sec 4	918
Dominica. See Caribbean Basin Economic Recovery Act		
Dominican Republic. See Caribbean Basin Economic Recovery Act		
Dominican Republic-Central America-United States Free Trade Agreement Implementation Act.	PL 109–53	930
Approval of agreement	PL 109–53 Sec 101(a)	931
Claims arbitration	PL 109–53 Sec 106	934
Consultation and layover provisions for proclaimed actions.	PL 109–53 Sec 104	933
Definitions	PL 109–53 Sec 3	930
Dispute settlement proceedings administration.	PL 109–53 Sec 105	933
Entry into force of agreement	PL 109–53 Sec 101(b)	931
Implementing actions	PL 109–53 Sec 103(a)	932
Initial regulations	PL 109–53 Sec 103(b)	933
Labor obligations meetings	PL 109–53 Sec 403(b)	935
Purposes	PL 109–53 Sec 2	930
Relationship of agreement to United States and state law.	PL 109–53 Sec 102	931
Reports	PL 109–53 Sec 403(a)	934
Termination of	PL 109–53 Sec 107	934
Downstream products		
Action on basis of monitoring, reports	PL 71–361 Sec 780(c)	601
Monitoring by the Commission	PL 71–361 Sec 780(b)	601
Petition requesting monitoring	PL 71–361 Sec 780(a)	599
Drug control		
Asian Development Bank, preventing loans or funds utilization for countries allowing illegal drug activity.	PL 89–369 Sec 19	88
Foreign Narcotics Kingpin Designation Act.	PL 106–120	1489
Authorities	PL 106–120 Sec 806	1494
Blocking assets	PL 106–120 Sec 805	1493
Definitions	PL 106–120 Sec 808	1496
Enforcement	PL 106–120 Sec 807	1495
Findings and policy	PL 106–120 Sec 802	1489
Judicial Review Commission on Foreign Asset Control.	PL 106–120 Sec 810	1496
Prohibiting transactions	PL 106–120 Sec 805(c)	1494
Public identification	PL 106–120 Sec 804	1490

Drug control—Continued
Foreign Narcotics Kingpin Designation Act—Continued
Purpose ..... PL 106–120 Sec 803 1490
Reports ..... PL 106–120 Sec 804 1490
Inter-American Development Bank
Preventing loans or funds utilization for countries allowing illegal drug activity. PL 86–147 Sec 22 68
Reducing dependence on illicit narcotics through loans, sense of Congress. PL 101–240 Sec 103 128
International Bank for Reconstruction and Development, preventing loans or funds utilization for countries allowing illegal drug activity. PL 86–565 Sec 13 44
Linkage of debt reduction loans to reduction in drug trafficking. PL 101–240 Sec 407 132
List of foreign countries producing, processing, or transporting controlled substances. PL 93–618 Sec 606 408
Loan programs to reduce economic dependence on illicit narcotics. PL 95–118 Sec 1606 180
Narcotics Control Trade Act ..... PL 93–618 Sec 801 410
Definitions ..... PL 93–618 Sec 805 417
Progress reports ..... PL 93–618 Sec 804 417
Sugar quota ..... PL 93–618 Sec 803 417
Tariff treatment of products of uncooperative drug producing or transit countries. PL 93–618 Sec 802 411
Narcotics traffickers, sanctions against
Authorities ..... EO 12978 Sec 4 1501
Blocking assets ..... EO 12978 Sec 1 1500
Definitions ..... EO 12978 Sec 3 1501
Prohibiting transactions ..... EO 12978 Sec 2 1501
Drug eradication. See Andean Trade Promotion and Drug Eradication Act

E

East Germany
Nondiscriminatory treatment for products. PL 101–382 Sec 142 1199
East-West Foreign Trade Board
Abolition of ..... RP No. 3 of 1979 Sec 6 897
Trade Agreements Program administration. EO 11846 Sec 7 901
Eastern Europe
Export-Import Bank trade finance, report. PL 102–429 Sec 120 1277
EC. See European Community
Economic Development of the Southwest Border. See Interagency Task Force on the Economic Development of the Southwest Border
Economic policies
International Emergency Economic Powers Act. PL 95–223 1466
Authority to issue regulations ..... PL 95–223 Sec 205 1471
Consultation ..... PL 95–223 Sec 204 1470
Exercising authorities ..... PL 95–223 Sec 202 1467
Grants of authorities ..... PL 95–223 Sec 203 1468
Penalties ..... PL 95–223 Sec 206 1471
Report ..... PL 95–223 Sec 204(c) 1471
Savings provision ..... PL 95–223 Sec 207 1471
Trading With the Enemy Act amendments. PL 95–223 Sec 101 1466

Economic policies—Continued		
Iraq		
Confiscating and vesting property	EO 13290	1578
Sanctions against	PL 101–510 Sec 1458	1577
Iraq Sanctions Act of 1990	PL 101–513	1566
Consultations with Congress	PL 101–513 Sec 586B	1567
Embargo violations, penalties for	PL 101–513 Sec 586E	1569
Export license restrictions	PL 101–513 Sec 586I	1574
Invasion of Kuwait, declarations regarding.	PL 101–513 Sec 586A	1566
Reports	PL 101–513 Sec 586J	1574
Sanctions	PL 101–513 Sec 586G	1571
Trade embargo	PL 101–513 Sec 586C	1567
U.N. sanctions, compliance with	PL 101–513 Sec 586D	1568
Violations of international law, declarations regarding.	PL 101–513 Sec 586F	1569
Waiver authority	PL 101–513 Sec 586H	1572
Johnson Act		
Financial transactions with foreign governments.	PL 80–772	1690
Trading With the Enemy Act	PL 65–91	1458
Meaning of word “enemy”	PL 65–91 Sec 2	1458
Penalties for violations	PL 65–91 Sec 16	1463
Presidential authority	PL 65–91 Sec 5	1461
Prohibited actions	PL 65–91 Sec 3	1460
Economic policy coordination. See Exchange Rates and International Economic Policy Coordination Act of 1988		
Ecuador. See Andean Trade Preference Act		
Education		
Exchange programs		
South African	PL 103–149 Sec 7	1633
El Salvador. See also Caribbean Basin Economic Recovery Act		
International Monetary Fund/World Bank assistance to, sense of Congress.	PL 79–171 Sec 38	20
Electronic commerce		
Internet	PL 105–277 Sec 1203	667
Eligible articles		
Articles ineligible for designation	PL 93–618 Sec 503(b)	398
Competitive need limitation	PL 93–618 Sec 503(c)	399
Waiver of	PL 93–618 Sec 503(d)	400
Designation of	PL 93–618 Sec 503(a)	397
International Trade Commission advice	PL 93–618 Sec 503(e)	402
Withdrawal, suspension, or limitation of duty-free treatment.	PL 93–618 Sec 503(c)	399
Emergencies. See National emergencies; National Emergencies Act		
Emergency Protection for Iraqi Cultural Antiquities Act of 2004		
Emergency implementation of import restrictions.	PL 108–429 Sec 3002	613
Termination of authority	PL 108–429 Sec 3003	613
Employees. See Workers		
Employers. See Industries		
Employment		
Retraining programs, report	PL 106–200 Sec 401	651
Encryption products		
Export controls	EO 12981	1449
Enhanced Structural Adjustment Facility		
Contribution to Interest Subsidy Account.	PL 79–171 Sec 54	29
Pledge to sell gold to provide resources for Reserve Account.	PL 79–171 Sec 58	31
Reform of	PL 95–118 Sec 1624	194
Enterprise for the Americas Multilateral Investment Fund		
Contributions to	PL 86–147 Sec 37	77

Environmental issues
- Border Environment Cooperation Commission and the North American Development Bank Agreement. — EO 12916 — 1065
  - Good Neighbor Environmental Board. — EO 12916 Sec 10 — 1067
  - Intention of order — EO 12916 Sec 11 — 1067
  - Interagency coordination — EO 12916 Sec 2(b) — 1065
  - Policy — EO 12916 Sec 1 — 1065
  - Project loans, guarantees or grants — EO 12916 Sec 3(b) — 1066; EO 12916 Sec 3(c) — 1066; EO 12916 Sec 3(d) — 1066
  - Secretary of Treasury functions — EO 12916 Sec 4 — 1066; EO 12916 Sec 5 — 1066
  - U.S. representation — EO 12916 Sec 2(a) — 1065; EO 12916 Sec 3(a) — 1065
- Debt-for-development swaps for conservation, initiation of discussions to facilitate. — PL 95–118 Sec 1608 — 181
- Effect of pending multilateral development bank loans. — PL 95–118 Sec 1703 — 201
- Enhanced HIPC Initiative, modification of. — PL 95–118 Sec 1625 — 196
- Environmental trade promotion
  - Definition — PL 100–418 Sec 2313(k) — 1305
  - Environmental Technologies Trade Advisory Committee. — PL 100–418 Sec 2313(c) — 1301
  - Environmental Trade Promotion Working Group. — PL 100–418 Sec 2313(b) — 1300
  - Environmental training — PL 100–418 Sec 2313(g) — 1303
  - Export alliances — PL 100–418 Sec 2313(j) — 1305
  - Export plans for priority countries — PL 100–418 Sec 2313(d) — 1301
  - International regional environmental initiatives. — PL 100–418 Sec 2313(h) — 1303
  - Project advocacy calendar and information dissemination program. — PL 100–418 Sec 2313(i) — 1304
  - Statement of policy — PL 100–418 Sec 2313(a) — 1300
  - Technologies specialists in the United States and Foreign Commercial Service. — PL 100–418 Sec 2313(f) — 1302
  - Trade information — PL 100–418 Sec 2313(e) — 1302
- Export-Import Bank policy and procedures. — PL 79–173 Sec 11 — 1258
- Global Environmental Protection Assistance Act of 1989
  - Negotiations policy — PL 101–240 Sec 722 — 137
  - U.S. policy, sense of Congress — PL 101–240 Sec 721 — 137
- Greenhouse gas
  - Reducing technologies, trade-related barriers to export of. — PL 101–240 Sec 734 — 140
  - Reducing technology export initiative. — PL 101–240 Sec 735 — 140
  - Reduction of — PL 101–240 Sec 732 — 138
- Institution-building for non-governmental organizations concerned with the environment. — PL 95–118 Sec 1616 — 189
- International debt exchanges and the environment, sense of Congress. — PL 101–240 Sec 511 — 133
- International financial institutions
  - Assessment of benefits and costs of multilateral development bank actions. — PL 95–118 Sec 1306 — 160
  - Educational programs for multilateral development bank managers. — PL 95–118 Sec 1305 — 160
  - Findings — PL 95–118 Sec 1301 — 158
  - Impact of proposed multilateral development bank actions. — PL 95–118 Sec 1307 — 161

Environmental issues—Continued		
International financial institutions—Continued		
Multilateral development bank loans, determining impact of.	PL 95–118 Sec 1303	159
Strengthening environmental performance of the banks.	PL 95–118 Sec 1302	159
System for cooperative exchange of information.	PL 95–118 Sec 1304	160
Multilateral development banks and debt-for-nature exchanges.	PL 95–118 Sec 1614	187
North American Agreement on Environmental Cooperation		
U.S. participation in Commission	PL 103–182 Sec 532	957
North American Agreement on Environmental Cooperation Implementation.	EO 12915	1061
Consultation with states	EO 12915 Sec 2(e)	1063
Environmental effects of the North American Free Trade Agreement.	EO 12915 Sec 2(c)	1062
Judicial review	EO 12915 Sec 5	1064
National Advisory Committee	EO 12915 Sec 3	1063
Policy	EO 12915 Sec 1	1061
Priorities	EO 12915 Sec 2(a)	1061
Transparency and public participation.	EO 12915 Sec 2(d)	1062
U.S. contributions to the Commission.	EO 12915 Sec 4	1063
U.S. representation on the Council	EO 12915 Sec 2(b)	1062
North American Development Bank financing of projects, sense of Congress.	PL 108–215 Sec 6	123
Promotion of lending for the environment.	PL 95–118 Sec 1615	189
Renewable resources for energy production		
Findings	PL 96–259 Sec 601	148
U.S. policies	PL 96–259 Sec 602	149
Sub-Saharan Africa, initiation of discussions to facilitate financing of natural resource programs.	PL 95–118 Sec 1609	182
Environmental Review of Trade Agreements	EO 13141	923
ESAF. See Enhanced Structural Adjustment Facility		
Estonia		
Most-favored-nation treatment		
Findings	PL 102–182 Sec 101	1195
Nondiscriminatory treatment, extension of.	PL 102–182 Sec 102	1196
Prompt provision of Generalized System of Preferences treatment, sense of Congress.	PL 102–182 Sec 104	1197
Termination of application of Title IV of the Trade Act of 1974.	PL 102–182 Sec 103	1196
European Bank for Reconstruction and Development. See Foreign Operations Appropriations Instructions, FY 2006; International debt forgiveness and international financial institutions reform; International Financial Institutions Act		
European Bank for Reconstruction and Development Act.	PL 101–513	108
Bretton Woods Agreements Act applicability.	PL 101–513 Sec 562	108
Congressional consultations	PL 101–513 Sec 562	111
Effectiveness of agreement	PL 101–513 Sec 562	110
Federal Reserve banks as depositories	PL 101–513 Sec 562	109
Governor and alternate Governor	PL 101–513 Sec 562	108
Jurisdiction and venue of actions	PL 101–513 Sec 562	110
Membership acceptance	PL 101–513 Sec 562	108

European Bank for Reconstruction and Development Act—Continued		
Securities issued as exempt, filing with Securities and Exchange Commission.	PL 101–513 Sec 562	110
Stock subscription	PL 101–513 Sec 562	109
Technical amendments	PL 101–513 Sec 562	111
European Community		
Implementation of Agreement on Government Procurement.	EO 12849	1075
Possible action regarding tariff action on corn gluten, sense of Congress.	PL 98–573 Sec 245	787
United States-EC agreement on citrus and pasta implementation.	PL 100–418 Sec 1122	709
European Community and Government Procurement, implementation of Agreement		
Application of order	EO 12849 Sec 3	1075
	EO 12849 Sec 4	1075
Buy American Act provisions	EO 12849 Sec 1	1075
Rule of origin	EO 12849 Sec 2	1075
United States Trade Representative responsibilities.	EO 12849 Sec 5	1075
Exchange Rates and International Economic Policy Coordination Act of 1988		
Definitions	PL 100–418 Sec 3006	746
Findings	PL 100–418 Sec 3002	743
International negotiations	PL 100–418 Sec 3004	745
Reporting requirements	PL 100–418 Sec 3005	745
Statement of policy	PL 100–418 Sec 3003	744
Exchange stabilization fund		
Financial stabilization programs led by the International Monetary Fund, report.	PL 95–118 Sec 1704	201
Presidential certification regarding swap of currencies to Mexico.	PL 104–6 Sec 406	211
Special Drawing Rights		
Administration of	PL 90–349 Sec 3	243
Purchase of certificates	PL 90–349 Sec 4	243
Export Administration Act of 1969		
Administration of	EO 12002	1455
Authority delegation	EO 12002 Sec 1	1455
	EO 12002 Sec 2	1455
	EO 12002 Sec 5	1456
Export Administration Review Board.	EO 12002 Sec 3	1456
Export license matter referrals	EO 12002 Sec 4	1456
Force and effect of order	EO 12002 Sec 6	1456
Export Administration Act of 1979	PL 96–72	1336
Administration of	EO 12214	1451
Administrative authority	PL 96–72 Sec 15	1420
Administrative procedure		
Civil penalties and sanctions	PL 96–72 Sec 13(c)	1415
Exemption	PL 96–72 Sec 13(a)	1415
License denial appeals	PL 96–72 Sec 13(e)	1417
Public participation	PL 96–72 Sec 13(b)	1415
Temporary denial orders	PL 96–72 Sec 13(d)	1416
Annual report	PL 96–72 Sec 14	1417
Appropriations authorization	PL 96–72 Sec 18	1422
Authority delegation	PL 96–72 Sec 4(e)	1343
Chemical and biological weapons proliferation sanctions		
Consultations with foreign governments.	PL 96–72 Sec 11C(b)	1409
Definition of foreign person	PL 96–72 Sec 11C(f)	1411
Description of	PL 96–72 Sec 11C(c)	1409
Exceptions	PL 96–72 Sec 11C(c)	1410
Imposition of	PL 96–72 Sec 11C(a)	1408
Termination of	PL 96–72 Sec 11C(d)	1410
Waiver	PL 96–72 Sec 11C(e)	1410

Export Administration Act of 1979—Continued
Continuation of ..... EO 12981 1444
Control list ..... PL 96–72 Sec 4(b) 1342
Definitions ..... PL 96–72 Sec 16 1421
Effect on other acts ..... PL 96–72 Sec 17 1421
Enforcement
Authority ..... PL 96–72 Sec 12(a) 1411
Confidentiality ..... PL 96–72 Sec 12(c) 1413
Immunity ..... PL 96–72 Sec 12(b) 1413
Reporting requirements ..... PL 96–72 Sec 12(d) 1415
Simplification of regulations ..... PL 96–72 Sec 12(e) 1415
Fees ..... PL 96–72 Sec 4(g) 1343
Findings ..... PL 96–72 Sec 2 1337
Foreign availability ..... PL 96–72 Sec 4(c) 1342
Foreign boycotts
Foreign policy controls ..... PL 96–72 Sec 8(b) 1386
Preemption ..... PL 96–72 Sec 8(c) 1386
Prohibitions and exceptions ..... PL 96–72 Sec 8(a) 1384
Foreign policy controls
Alternative means ..... PL 96–72 Sec 6(e) 1365
Authority ..... PL 96–72 Sec 6(a) 1363
Chemical and biological weapons ..... PL 96–72 Sec 6(m) 1372
Congressional consultation ..... PL 96–72 Sec 6(f) 1365
Consultation with other countries ... PL 96–72 Sec 6(d) 1365
Control list ..... PL 96–72 Sec 6(o) 1373
Countries supporting international terrorism. PL 96–72 Sec 6(j) 1367
Crime control instruments ..... PL 96–72 Sec 6(n) 1373
Criteria ..... PL 96–72 Sec 6(b) 1364
Exclusion for medicine, medical supplies and food exports. PL 96–72 Sec 6(g) 1366
Existing contracts and licenses, effect on. PL 96–72 Sec 6(p) 1374
Expanded authority to impose controls. PL 96–72 Sec 6(r) 1374
Extension of controls ..... PL 96–72 Sec 6(q) 1374
Foreign availability ..... PL 96–72 Sec 6(h) 1367
Industry consultation ..... PL 96–72 Sec 6(c) 1364
International obligations ..... PL 96–72 Sec 6(i) 1367
Missile technology ..... PL 96–72 Sec 6(l) 1371
Negotiations with other countries .... PL 96–72 Sec 6(k) 1370
Spare parts ..... PL 96–72 Sec 6(s) 1375
Hardship relief from export controls ..... PL 96–72 Sec 9 1387
Judicial review ..... PL 96–72 Sec 13 1415
License application processing
Action by other departments and agencies. PL 96–72 Sec 10(e) 1389
Action by Secretary ..... PL 96–72 Sec 10(f) 1390
Action on applications ..... PL 96–72 Sec 10(c) 1389
Appeal and court action ..... PL 96–72 Sec 10(j) 1393
Exports to members of coordinating committee. PL 96–72 Sec 10(o) 1395
Initial screening ..... PL 96–72 Sec 10(b) 1388
Inquiries ..... PL 96–72 Sec 10(l) 1393
Multilateral controls ..... PL 96–72 Sec 10(h) 1392
Primary responsibility of Secretary PL 96–72 Sec 10(a) 1388
Records ..... PL 96–72 Sec 10(i) 1393
Referrals ..... PL 96–72 Sec 10(d) 1389
Reports ..... PL 96–72 Sec 10(n) 1394
Requirement changes ..... PL 96–72 Sec 10(k) 1393
Small business assistance ..... PL 96–72 Sec 10(m) 1394
Special procedures for Secretary of Defense. PL 96–72 Sec 10(g) 1391
License types ..... PL 96–72 Sec 4(a) 1341
Missile proliferation control
Definitions ..... PL 96–72 Sec 11B(c) 1406

Export Administration Act of 1979—Continued
- Missile proliferation control—Continued
  - Transfers of missile equipment or technology by foreign persons. PL 96–72 Sec 11B(b) 1404
  - U.S. persons ..... PL 96–72 Sec 11B(a) 1403
- National security controls
  - Agricultural commodities exclusion PL 96–72 Sec 5(q) 1363
  - Authority ..... PL 96–72 Sec 5(a) 1343
  - Commercial agreements with certain countries. PL 96–72 Sec 5(j) 1361
  - Control list ..... PL 96–72 Sec 5(c) 1346
  - Diversion of controlled goods or technology. PL 96–72 Sec 5(l) 1361
  - Export licenses ..... PL 96–72 Sec 5(e) 1350
  - Foreign availability ..... PL 96–72 Sec 5(f) 1351
  - Goods containing controlled parts and components. PL 96–72 Sec 5(m) 1362
  - Indexing ..... PL 96–72 Sec 5(g) 1357
  - Militarily critical technologies ..... PL 96–72 Sec 5(d) 1349
  - Multilateral export controls ..... PL 96–72 Sec 5(i) 1360
  - National Security Control Office ..... PL 96–72 Sec 5(p) 1362
  - Negotiations with countries ..... PL 96–72 Sec 5(k) 1361
  - Policy toward individual countries ... PL 96–72 Sec 5(b) 1345
  - Recordkeeping ..... PL 96–72 Sec 5(o) 1362
  - Security measures ..... PL 96–72 Sec 5(n) 1362
  - Technical advisory committees ..... PL 96–72 Sec 5(h) 1358
- Notification of the public ..... PL 96–72 Sec 4(f) 1343
- Policy declaration ..... PL 96–72 Sec 3 1338
- Regulations issuance ..... PL 96–72 Sec 19 1423
- Regulatory authority ..... PL 96–72 Sec 15 1420
- Right of export ..... PL 96–72 Sec 4(d) 1343
- Savings provisions ..... PL 96–72 Sec 21 1424
- Short supply controls
  - Agricultural commodities ..... PL 96–72 Sec 7(g) 1380
  - Authority ..... PL 96–72 Sec 7(a) 1375
  - Barter agreements ..... PL 96–72 Sec 7(h) 1382
  - Domestically produced crude oil ..... PL 96–72 Sec 7(d) 1378
  - Existing contracts, effect of controls on. PL 96–72 Sec 7(j) 1384
  - Monitoring ..... PL 96–72 Sec 7(b) 1375
  - Petitions ..... PL 96–72 Sec 7(c) 1376
  - Petroleum products ..... PL 96–72 Sec 7(f) 1380
  - Refined petroleum products ..... PL 96–72 Sec 7(e) 1379
  - Unprocessed red cedar ..... PL 96–72 Sec 7(i) 1383
- Termination date ..... PL 96–72 Sec 20 1423
- Violations
  - Actions for recovery of penalties ..... PL 96–72 Sec 11(f) 1398
  - Authorities ..... PL 96–72 Sec 11(i) 1399
  - Civil penalties ..... PL 96–72 Sec 11(c) 1397
  - Forfeiture of property interest and proceeds. PL 96–72 Sec 11(g) 1398
  - General provisions ..... PL 96–72 Sec 11(a) 1396
  - Payment of penalties ..... PL 96–72 Sec 11(d) 1398
  - Prior convictions ..... PL 96–72 Sec 11(h) 1399
  - Refunds ..... PL 96–72 Sec 11(e) 1398
  - Willful ..... PL 96–72 Sec 11(b) 1396
- Violations, multilateral export control
  - Compensation for diversion of militarily critical technologies. PL 96–72 Sec 11A(i) 1402
  - Damages ..... PL 96–72 Sec 11A(k) 1403
  - Definitions ..... PL 96–72 Sec 11A(e) 1401
    PL 96–72 Sec 11A(l) 1403
  - Determination by the President ..... PL 96–72 Sec 11A(a) 1399
  - Discretionary imposition of sanctions. PL 96–72 Sec 11A(h) 1402
  - Exceptions ..... PL 96–72 Sec 11A(c) 1400
  - Exclusion ..... PL 96–72 Sec 11A(d) 1401

Export Administration Act of 1979—Continued		
Violations, multilateral export control—Continued		
Presidential actions	PL 96–72 Sec 11A(j)	1402
Reports	PL 96–72 Sec 11A(g)	1402
Sanctions	PL 96–72 Sec 11A(b)	1400
Subsequent modifications of sanctions.	PL 96–72 Sec 11A(f)	1401
Export Administration Amendments Act of 1981		
Embargo authority	PL 97–145 Sec 7	1439
Export Administration Amendments Act of 1985.	PL 99–64	1431
Alaskan oil study	PL 99–64 Sec 126	1431
Export promotion programs		
Appropriations authorization	PL 99–64 Sec 202	1433
Barter arrangements	PL 99–64 Sec 203	1433
Prior authorization requirement	PL 99–64 Sec 201	1432
Export Administration Review Board		
Interagency dispute resolution	EO 12981 Sec 5	1446
Export controls		
Administration of	EO 12981	1444
Department or agency review	EO 12981 Sec 4	1446
Determinations	EO 12981 Sec 2	1444
Encryption products	EO 12981 Sec 6	1449
Initial processing	EO 12981 Sec 3	1445
Interagency dispute resolution	EO 12981 Sec 5	1446
Judicial review	EO 12981 Sec 8	1450
License review	EO 12981 Sec 1	1444
	EO 12981 Sec 7	1450
Encryption products		
Judicial review	EO 13026 Sec 3	1443
Treatment of	EO 13026 Sec 1	1442
High performance computers	PL 105–85	1426
Approvals	PL 105–85 Sec 1211	1426
Congressional committees	PL 105–85 Sec 1215	1430
End user information assistance	PL 105–85 Sec 1214	1429
GAO study	PL 105–85 Sec 1214	1429
Post-shipment verification	PL 105–85 Sec 1213	1429
Report	PL 105–85 Sec 1212	1428
Export controls, continuing	EO 13222	1440
Arms Export Control Act authority	EO 13222 Sec 3	1441
Authority delegations	EO 13222 Sec 1	1440
	EO 13222 Sec 2	1441
Export Enhancement Act. See Trade Sanctions Reform and Export Enhancement Act of 2000		
Export Enhancement Act of 1988	PL 100–418	1280
American Institute of Taiwan		
Commercial personnel	PL 100–418 Sec 2201	1284
Barter and countertrade	PL 100–418 Sec 2205	1286
Budget Act regulations	PL 100–418 Sec 2503	1311
Countries providing weaponry to belligerent countries in the Persian Gulf region, sense of Congress.	PL 100–418 Sec 2102	1282
Domestically produced crude oil, exports of.	PL 100–418 Sec 2424	1306
Environmental trade promotion		
Definition	PL 100–418 Sec 2313(k)	1305
Environmental technologies specialists in the United States and Foreign Commercial Service.	PL 100–418 Sec 2313(f)	1302
Environmental Technologies Trade Advisory Committee.	PL 100–418 Sec 2313(c)	1301
Environmental Trade Promotion Working Group.	PL 100–418 Sec 2313(b)	1300
Environmental training	PL 100–418 Sec 2313(g)	1303

Export Enhancement Act of 1988—Continued
Environmental trade promotion—Continued
Export alliances ..... PL 100–418 Sec 2313(j) 1305
Export plans for priority countries .. PL 100–418 Sec 2313(d) 1301
International regional environmental initiatives. PL 100–418 Sec 2313(h) 1303
Project advocacy calendar and information dissemination program. PL 100–418 Sec 2313(i) 1304
Statement of policy ..... PL 100–418 Sec 2313(a) 1300
Trade information ..... PL 100–418 Sec 2313(e) 1302
Export policy, report ..... PL 100–418 Sec 2314 1305
Export promotion programs appropriations authorization. PL 100–418 Sec 2305 1296
Export trading companies, report ..... PL 100–418 Sec 2311 1297
Fair Trade in Auto Parts Act of 1988
Definition ..... PL 100–418 Sec 2122 1282
Expiration date ..... PL 100–418 Sec 2125 1284
Japan ..... PL 100–418 Sec 2123 1282
PL 100–418 Sec 2124 1283
Indian tribes export promotion ..... PL 100–418 Sec 2307 1296
Intellectual property, protection of, sense of Congress. PL 100–418 Sec 2206 1288
Japan
Arab boycott of Israel, sense of Congress. PL 100–418 Sec 2209 1289
Importation of manufactured goods from less developed countries. PL 100–418 Sec 2208 1288
Jewelry trade, facilitation of, sense of Congress. PL 100–418 Sec 2210 1289
License application procedures ..... PL 100–418 Sec 2425 1308
Market Development Cooperator Program
Budget Act regulations ..... PL 100–418 Sec 2303(d) 1295
Cooperator Partnership Program ..... PL 100–418 Sec 2303(c) 1294
Implementation of ..... PL 100–418 Sec 2303(b) 1294
Secretary of Commerce authority .... PL 100–418 Sec 2303(a) 1293
Multilateral Export Control Enhancement
Findings ..... PL 100–418 Sec 2442 1310
Mandatory sanctions against Toshiba and Kongsberg. PL 100–418 Sec 2443 1310
National security export controls, study PL 100–418 Sec 2433 1308
Overseas Private Investment Corporation
Reaffirmation of support ..... PL 100–418 Sec 2203(a) 1284
Trade and Development Program
Administrative provisions ..... PL 100–418 Sec 2204 1284
Reaffirmation of support ..... PL 100–418 Sec 2204(a) 1284
Trade Promotion Coordinating Committee
Duties ..... PL 100–418 Sec 2312(b) 1298
Establishment and purpose ..... PL 100–418 Sec 2312(a) 1298
Member qualifications ..... PL 100–418 Sec 2312(e) 1299
Membership ..... PL 100–418 Sec 2312(d) 1299
Report ..... PL 100–418 Sec 2312(f) 1299
Strategic plan ..... PL 100–418 Sec 2312(c) 1298
Trade shows ..... PL 100–418 Sec 2304 1295
United States and Foreign Commercial Service
Audits ..... PL 100–418 Sec 2301(g) 1292
Cooperation in Federal financing and insurance programs. PL 100–418 Sec 2301(f) 1292
Definitions ..... PL 100–418 Sec 2301(j) 1293
Establishment of ..... PL 100–418 Sec 2301(a) 1289
Information dissemination ..... PL 100–418 Sec 2301(e) 1292
Offices ..... PL 100–418 Sec 2301(c) 1290

Export Enhancement Act of 1988—Continued		
United States and Foreign Commercial Service—Continued		
Pacific Rim Initiative	PL 100–418 Sec 2306	1296
Pay of Assistant Secretary and Director General.	PL 100–418 Sec 2301(i)	1293
Rank of Commercial Service officers in foreign missions.	PL 100–418 Sec 2301(d)	1291
Report	PL 100–418 Sec 2301(h)	1293
Statement of purpose	PL 100–418 Sec 2301(b)	1290
United States-Mexico Framework Agreement on Trade and Investment.	PL 100–418 Sec 2101	1282
Wood exports, monitoring	PL 100–418 Sec 2432	1308
Worker rights, report	PL 100–418 Sec 2207	1288
Export Enhancement Act of 1992	PL 102–429	1274
Export-Import Bank reauthorization		
Declaration of policy	PL 102–429 Sec 101	1274
Employee compensation	PL 102–429 Sec 117	1275
Financing of services, report	PL 102–429 Sec 119	1276
Regional offices, report	PL 102–429 Sec 118	1276
Trade finance for Baltic States, independent States of the former Soviet Union, and Europe.	PL 102–429 Sec 120	1277
Export promotion		
Environmental trade promotion, report on insurance feasibility.	PL 102–429 Sec 204	1278
Export Enhancement Act of 1999		
Trade Promotion Coordinating Committee		
Primary objectives, implementation of.	PL 106–158 Sec 6	1269
Export Expansion Advisory Committee	EO 11420 Sec 3	1334
Export-Import Bank		
Consultation with agencies	EO 12166 Sec 1–102	1328
Delegation of authority	EO 12166 Sec 1–101	1328
Denial of credit application	EO 12166 Sec 1–103	1328
Effect of derogation of financing on countervailing duties.	PL 71–361 Sec 708	496
Export financing for goods and services produced by former defense production firms, sense of Congress.	PL 101–510 Sec 4303(a)	1312
International trade functions	RP No. 3 of 1979 Sec 3	895
Reauthorization		
Declaration of policy	PL 102–429 Sec 101	1274
Employee compensation	PL 102–429 Sec 117	1275
Financing of services, report	PL 102–429 Sec 119	1276
Regional offices, report	PL 102–429 Sec 118	1276
Trade finance demand for Baltic States, independent States of the former Soviet Union, and Central and Eastern Europe.	PL 102–429 Sec 120	1277
Tied aid credit program establishment	PL 98–181 Sec 644	1320
U.S. balance of payments improvement		
Appropriations authorization	PL 90–390 Sec 3	1333
Defense articles exception	PL 90–390 Sec 5	1333
Limitation of powers	PL 90–390 Sec 4	1333
Losses	PL 90–390 Sec 2	1332
Policy	PL 90–390 Sec 1	1332
Export-Import Bank Act Amendments		
Export-import programs to the People's Republic of China, prohibitions.	PL 101–240 Sec 103	128
Loan loss reserves, report	PL 101–240 Sec 101(e)	127
Export-Import Bank Act Amendments of 1978.	PL 95–630	1325
Export credit competition		
Authorizations	PL 95–630 Sec 1908	1325

Export-Import Bank Act Amendments of 1978—Continued		
Export credit competition—Continued		
Impact of Bank activities on industries and employment, report.	PL 95–630 Sec 1911	1326
Noncompetitive financing offers	PL 95–630 Sec 1912	1326
Report	PL 95–630 Sec 1913	1327
Export-Import Bank Act Amendments of 1983.	PL 98–181	1319
Tied aid credit export subsidies		
Definitions	PL 98–181 Sec 647	1323
Export-Import Bank program establishment.	PL 98–181 Sec 644	1320
Implementation	PL 98–181 Sec 646	1323
Negotiating mandate	PL 98–181 Sec 643	1320
Statement of purpose	PL 98–181 Sec 642	1319
Trade and Development Agency program establishment.	PL 98–181 Sec 645	1321
Export-Import Bank Act Amendments of 1986		
Foreign surplus commodities and minerals, opposition of multilateral assistance for.	PL 99–472 Sec 22	1317
	PL 99–472 Sec 22	1724
Private insurance role, report	PL 99–472 Sec 16	1317
U.S. business transactions in, policy toward.	PL 99–472	1636
Export-Import Bank Act of 1945	PL 79–173	1215
Aggregate loan, guarantee and insurance authority.	PL 79–173 Sec 6	1246
Agricultural commodities export assistance.	PL 79–173 Sec 2(b)	1236
Angola, prohibition relating to	PL 79–173 Sec 2(b)	1238
Capital stock	PL 79–173 Sec 4	1245
Competitive opportunity for insurance companies.	PL 79–173 Sec 2(d)	1240
Debt reduction	PL 79–173 Sec 12	1260
Defense articles or services, sale of	PL 79–173 Sec 2(b)	1233
Electronic transactions system	PL 79–173 Sec 2(b)	1225
Enterprise for the Americas Initiative	PL 79–173 Sec 12	1260
Environmental policy and procedures		
Environmental effects consideration	PL 79–173 Sec 11(a)	1258
Inclusion in report to Congress	PL 79–173 Sec 11(c)	1259
Interpretation	PL 79–173 Sec 11(d)	1260
Programs to encourage certain exports.	PL 79–173 Sec 11(b)	1259
Export financing programs cooperation	PL 79–173 Sec 13	1262
Fees and premiums	PL 79–173 Sec 2(c)	1239
Financing in the national interest, Presidential determination.	PL 79–173 Sec 2(b)	1227
Fraud or corruption, authority to deny application for assistance.	PL 79–173 Sec 2(f)	1242
Functions and obligations subsequent to September 30, 2006.	PL 79–173 Sec 7	1249
Guarantees, insurance and extensions of credit.	PL 79–173 Sec 2(b)	1218
Independent agency status	PL 79–173 Sec 3	1243
Interest rates	PL 79–173 Sec 2(b)	1220
International commerce promotion	PL 79–173 Sec 2(b)	1222
Limitation on assistance which adversely affects the United States.	PL 79–173 Sec 2(e)	1241
Market windows	PL 79–173 Sec 15	1263
Marxist-Leninist countries, prohibition on aid to.	PL 79–173 Sec 2(b)	1225
Medium-term program, enhancement of	PL 79–173 Sec 2(a)	1218
Non-nuclear renewable energy resources activities.	PL 79–173 Sec 2(b)	1222

Export-Import Bank Act of 1945—Continued		
Nuclear safeguard violations, country identification.	PL 79–173 Sec 2(b)	1230
Outstanding obligations limit	PL 79–173 Sec 5	1246
Participation in operations or transactions.	PL 79–173 Sec 9	1251
Poorest, most heavily indebted countries, special debt relief for.	PL 79–173 Sec 14	1262
Prohibition of credit to countries engaged in armed conflict with the United States.	PL 79–173 Sec 2(b)	1232
Purpose of bank	PL 79–173 Sec 2(a)	1216
Purpose of transaction statement	PL 79–173 Sec 2(b)	1228
Renewable energy sources promotion	PL 79–173 Sec 2(b)	1225
Reports	PL 79–173 Sec 2(b)	1219
	PL 79–173 Sec 2(b)	1235
	PL 79–173 Sec 8	1249
Russian transfers of certain missile systems, prohibition relating to.	PL 79–173 Sec 2(b)	1239
Small and rural companies, program information.	PL 79–173 Sec 2(b)	1225
Small business programs	PL 79–173 Sec 2(b)	1222
Sub-Saharan Africa commitments	PL 79–173 Sec 2(b)	1237
Tied aid credit program		
Administration of	PL 79–173 Sec 10(b)	1253
Authorization	PL 79–173 Sec 10(e)	1256
Consistency with arrangement	PL 79–173 Sec 10(d)	1256
Coordination with other export financing.	PL 79–173 Sec 10(b)	1253
Countries which engage in official predatory financing.	PL 79–173 Sec 10(b)	1254
Definitions	PL 79–173 Sec 10(h)	1257
Establishment of	PL 79–173 Sec 10(b)	1252
Findings	PL 79–173 Sec 10(a)	1251
Fund	PL 79–173 Sec 10(c)	1256
Nonreviewability	PL 79–173 Sec 10(f)	1256
Principles, process, and standards governing use.	PL 79–173 Sec 10(b)	1254
Reconsideration of decisions	PL 79–173 Sec 10(b)	1255
Report	PL 79–173 Sec 10(g)	1256
Transferability of guarantees	PL 79–173 Sec 2(c)	1239
Export-Import Bank and Tied Aid Credit Amendments of 1988.	PL 100–418	1315
Exports to developing countries, report	PL 100–418 Sec 3303	1316
Tied aid credit provisions	PL 100–418 Sec 3302	1315
Export-Import Bank Reauthorization Act of 2002.	PL 107–189	1265
Administrative expenses, sense of Congress.	PL 107–189 Sec 4	1265
Comparative reserve practices of export credit agencies and private banks, GAO report.	PL 107–189 Sec 14	1267
Human rights impact of projects, sense of Congress.	PL 107–189 Sec 20	1267
Technology, report	PL 107–189 Sec 8(c)	1266
Tied Aid Credit Fund		
Expansion of authority to use	PL 107–189 Sec 10	1266
Tribute to John E. Robson, sense of Congress.	PL 107–189 Sec 23	1267
Export Policy, Advisory Committee. See Advisory Committee on Export Policy		
Export Trading Company Act of 1982	PL 97–290	809
Bank Export Services Act		
Guarantees for export accounts receivable and inventory.	PL 97–290 Sec 206	812
Investments in export trading companies, report.	PL 97–290 Sec 205	812
Purpose of	PL 97–290 Sec 202	811

Export Trading Company Act of 1982—Continued		
Certificates of review		
Amendment of	PL 97–290 Sec 304	815
Annual reports	PL 97–290 Sec 308	817
Application for issuance of	PL 97–290 Sec 302	813
Definitions	PL 97–290 Sec 311	818
Guidelines	PL 97–290 Sec 307	817
Information disclosure	PL 97–290 Sec 309	817
Issuance of	PL 97–290 Sec 303	814
Judicial review	PL 97–290 Sec 305	816
Protection conferred by	PL 97–290 Sec 306	816
Reporting requirement	PL 97–290 Sec 304	815
Revocation of	PL 97–290 Sec 304	815
Rules and regulations	PL 97–290 Sec 310	818
Secretary of Commerce export trade promotion duties.	PL 97–290 Sec 301	813
Definitions	PL 97–290 Sec 103	810
Findings and purpose	PL 97–290 Sec 102	809
Office of Export Trade in Department of Commerce, establishment of.	PL 97–290 Sec 104	811
Exports. See also specific Act by name		
Agricultural, from beneficiary developing countries.	PL 93–618 Sec 506	403
Burma, prohibiting transactions	EO 13310 Sec 2	1652
Clean Diamond Trade Act		
Importing and exporting authorities	PL 108–19 Sec 6	1677
Rough diamonds, measures for importation and exportation of.	PL 108–19 Sec 4	1677
Commercial service officers and multilateral development bank procurement.	PL 95–118 Sec 1803	205
Continuation of control regulations	EO 13222	1440
Arms Export Control Act authority	EO 13222 Sec 3	1441
Authority delegations	EO 13222 Sec 1	1440
	EO 13222 Sec 2	1441
Countertrade and barter	EO 12661 Sec 2–101	909
Defense Production Act Amendments of 1992		
Declaration of offset policy	PL 102–558 Sec 123	1437
Developing countries, report	PL 100–418 Sec 3303	1316
Environmental trade promotion, report on insurance feasibility.	PL 102–429 Sec 204	1278
Exchange rates and international economic policy coordination		
Definitions	PL 100–418 Sec 3006	746
Findings	PL 100–418 Sec 3002	743
International negotiations	PL 100–418 Sec 3004	745
Reporting requirements	PL 100–418 Sec 3005	745
Statement of policy	PL 100–418 Sec 3003	744
Filing information	13 USC Sec 304	1720
Iraq, prohibition on supercomputer licensing.	PL 101–515 Sec 608	1576
Japan		
Coal to	PL 100–418 Sec 1933	741
Purchases of U.S.-made automotive parts.	PL 100–418 Sec 1934	742
License restrictions for countries assisting Iraq's weapons capability.	PL 101–513 Sec 586I	1574
Military-related		
Annual report on impact of offsets	50 USC App Sec 2099	1435
Multilateral development bank procurement.	PL 95–118 Sec 1801	204
Office of Export Trade, establishment of	PL 97–290 Sec 104	811
Penalties for unlawful information activities		
Civil penalties	13 USC Sec 305	1721
Criminal penalties	13 USC Sec 305(a)	1721
Enforcement	13 USC Sec 305(d)	1722

Exports—Continued		
Penalties for unlawful information activities—Continued		
Exemption	13 USC Sec 305(f)	1722
Regulations	13 USC Sec 305(e)	1722
President's Export Council	EO 12131	1452
Administrative provisions	EO 12131 Sec 1–3	1453
Establishment of	EO 12131 Sec 1–1	1452
Functions	EO 12131 Sec 1–2	1452
General provisions	EO 12131 Sec 1–4	1453
Membership	EO 12131 Sec 1–1	1452
Price	PL 71–361 Sec 772	574
Procurement opportunities for U.S. firms.	PL 95–118 Sec 1802	205
Relief from unfair trade practices, alternative actions.	PL 93–618 Sec 305(b)	364
Small businesses	PL 100–418 Sec 8011	774
Steel, voluntary limitations on export to the United States.	PL 93–618 Sec 607	408
Syria, prohibition of certain goods	EO 13338 Sec 1	1623
Trade policy, study	PL 96–39 Sec 1110	865
Uniform statistical data	PL 93–618 Sec 608	409
Wine Equity and Export Expansion Act of 1984		
Definitions	PL 98–573 Sec 903	806
Designation of major wine trading countries.	PL 98–573 Sec 904	806
Findings and purposes	PL 98–573 Sec 902	805
Promotion for U.S. wine	PL 98–573 Sec 907	808
Required consultations	PL 98–573 Sec 906	808
Tariff and nontariff barriers affecting U.S. wine, actions to reduce or eliminate.	PL 98–573 Sec 905	807

F

Fair competition		
International Anti-Bribery and Fair Competition Act of 1998.	PL 105–366	1754
Enforcement and monitoring	PL 105–366 Sec 6	1756
International organizations providing commercial communications services, treatment.	PL 105–366 Sec 5	1754
Fair Trade in Auto Parts Act of 1988	PL 100–418	1282
Definition	PL 100–418 Sec 2122	1282
Expiration date	PL 100–418 Sec 2125	1284
Japan	PL 100–418 Sec 2123	1282
	PL 100–418 Sec 2124	1283
Fair Trade in Automotive Parts Act of 1998	PL 105–261	1271
Definitions	PL 105–261 Sec 3802	1271
Sales to Japan, re-establishment of initiative.	PL 105–261 Sec 3803	1271
Special Advisory Committee on sales in Japanese and other Asian markets.	PL 105–261 Sec 3804	1272
Farmers		
Trade adjustment assistance		
Definitions	PL 93–618 Sec 291	349
Group eligibility	PL 93–618 Sec 292	350
International Trade Commission investigation, Secretary of Agriculture study.	PL 93–618 Sec 294	352
Petitions	PL 93–618 Sec 292	350
Secretary of Agriculture determinations.	PL 93–618 Sec 293	351

FDA. See Food and Drug Administration		
FDIC. See Federal Deposit Insurance Corporation		
Federal Deposit Insurance Corporation		
Equal representation for	PL 98–181 Sec 912	233
Federal Reserve System		
Presidential certification regarding swap of currencies to Mexico.	PL 104–6 Sec 406	211
Federal Triangle Development Act	PL 100–113	779
International cultural and trade center		
Annual report	PL 100–113 Sec 8(h)	785
Budget	PL 100–113 Sec 8(h)	785
Establishment of	PL 100–113 Sec 8(b)	783
Lease of space	PL 100–113 Sec 8(a)	782
Rents and fees	PL 100–113 Sec 8(c)	784
Separate account	PL 100–113 Sec 8(d)	784
International Cultural and Trade Center Commission		
Duties of	PL 100–113 Sec 7(b)	779
Establishment of	PL 100–113 Sec 7(a)	779
Expenses limitation	PL 100–113 Sec 7(g)	782
Funding	PL 100–113 Sec 7(h)	782
Membership	PL 100–113 Sec 7(c)	779
Office space and supplies	PL 100–113 Sec 7(e)	781
Powers of	PL 100–113 Sec 7(f)	781
Staff	PL 100–113 Sec 7(d)	780
Financial Reports Act of 1988	PL 100–418	755
Bank loan loss reserves	PL 100–418 Sec 3604	756
Fair trade in financial services	PL 100–418 Sec 3603	756
Foreign treatment of U.S. financial institutions, quadrennial reports.	PL 100–418 Sec 3602	755
Fishery resources		
Conservation of	PL 71–361 Sec 323	423
Negotiations regarding Canadian controls.	PL 100–449 Sec 304(e)	1008
Food and Drug Administration		
Sanitary and phytosanitary measures		
Equivalence determinations	PL 96–39 Sec 492	862
Foreign commerce and trade statistics		
Collection	13 USC Sec 301	1717
Delayed filings	13 USC Sec 304	1720
Delegation of functions	13 USC Sec 306	1722
Filing export information	13 USC Sec 304	1720
Penalties for failure to file	13 USC Sec 304	1720
Penalties for unlawful export information activities		
Civil penalties	13 USC Sec 305	1721
Criminal penalties	13 USC Sec 305(a)	1721
Enforcement	13 USC Sec 305(d)	1722
Exemption	13 USC Sec 305(f)	1722
Regulations	13 USC Sec 305(e)	1722
Publication	13 USC Sec 301	1717
Relationship to general census law	13 USC Sec 307	1723
Rules, regulations, and orders	13 USC Sec 302	1719
Secretary of Treasury functions	13 USC Sec 303	1720
Foreign Commercial Service. See United States and Foreign Commercial Service		
Foreign Corrupt Practices Act Amendments of 1988		
International agreement	PL 100–418 Sec 5003	1752
Foreign Corrupt Practices Act of 1977	PL 95–213	1741
Prohibited foreign trade practices by domestic concerns		
Affirmative defenses	PL 95–213 Sec 104(c)	1743
Alternative jurisdiction	PL 95–213 Sec 104(i)	1747
Attorney General and	PL 95–213 Sec 104	1744
Definitions	PL 95–213 Sec 104(h)	1746

Foreign Corrupt Practices Act of 1977—Continued		
Prohibited foreign trade practices by domestic concerns—Continued		
Exception for routine governmental action.	PL 95–213 Sec 104(b)	1742
Injunctive relief	PL 95–213 Sec 104(d)	1743
Penalties	PL 95–213 Sec 104(g)	1745
Prohibition	PL 95–213 Sec 104(a)	1741
Prohibited foreign trade practices by persons other than issuers or domestic concerns		
Affirmative defenses	PL 95–213 Sec 104A(c)	1749
Definitions	PL 95–213 Sec 104A(f)	1750
Governmental action exception	PL 95–213 Sec 104A(b)	1749
Injunctive relief	PL 95–213 Sec 104A(d)	1749
Penalties	PL 95–213 Sec 104A	1748
	PL 95–213 Sec 104A(e)	1750
Prohibition	PL 95–213 Sec 104A(a)	1748
Foreign Currency Reports	31 USC	236
Civil penalties	31 USC Sec 5321	237
Coins and currency received in nonfinancial trade or business, reports.	31 USC Sec 5331	240
Injunctions	31 USC Sec 5320	237
Reports on foreign currency transactions	31 USC Sec 5315	236
Foreign Debt Reserving Act of 1989	PL 101–240 Title IV	129
Additional reserve requirements	PL 101–240 Sec 402	129
Agreements to reduce debt burden accompanied by trade liberalization, sense of Congress.	PL 101–240 Sec 406	131
Capital flight, study on elimination of	PL 101–240 Sec 404	130
Debt reduction for highly indebted countries, developing U.S. policy.	PL 101–240 Sec 405	131
Linkage of debt reduction loans to reduction in drug trafficking.	PL 101–240 Sec 407	132
Mark to market accounting, report requirements.	PL 101–240 Sec 403	129
Foreign direct investment		
Negotiating authority with respect to	PL 98–573 Sec 307	794
Foreign Direct Investment and International Financial Data Improvements Act of 1990.	PL 101–533	1706
Access to information	PL 101–533 Sec 8	1710
Confidentiality	PL 101–533 Sec 8	1710
Definitions	PL 101–533 Sec 10	1712
Effect of Act	PL 101–533 Sec 9(a)	1712
Findings	PL 101–533 Sec 2	1706
GAO report	PL 101–533 Sec 4	1709
Implementation	PL 101–533 Sec 9(b)	1712
Secretary of Commerce report	PL 101–533 Sec 3	1707
Foreign investment. See Committee on Foreign Investment in the United States		
Foreign Investment Study Act of 1974	PL 93–479	1691
Appropriations authorization	PL 93–479 Sec 11	1695
Authorities	PL 93–479 Sec 2	1691
	PL 93–479 Sec 4	1691
	PL 93–479 Sec 5	1691
	PL 93–479 Sec 6	1692
Definitions and limitations determination.	PL 93–479 Sec 3	1691
Enforcement	PL 93–479 Sec 8	1694
Powers	PL 93–479 Sec 7	1693
Report	PL 93–479 Sec 10	1695
Services of experts and consultants	PL 93–479 Sec 9	1695
Foreign missions		
Commercial Service officers rank	PL 100–418 Sec 2301(d)	1291
Foreign Narcotics Kingpin Designation Act	PL 106–120	1489

Foreign Narcotics Kingpin Designation Act—Continued		
Authorities	PL 106–120 Sec 806	1494
Blocking assets	PL 106–120 Sec 805	1493
Definitions	PL 106–120 Sec 808	1496
Enforcement	PL 106–120 Sec 807	1495
Findings and policy	PL 106–120 Sec 802	1489
Judicial Review Commission on Foreign Asset Control.	PL 106–120 Sec 810	1496
Prohibiting transactions	PL 106–120 Sec 805(c)	1494
Public identification	PL 106–120 Sec 804	1490
Purpose	PL 106–120 Sec 803	1490
Reports	PL 106–120 Sec 804	1490
Foreign Operations Appropriations Instructions, FY 2006.	PL 109–102	220
Anticorruption provisions	PL 109–102 Sec 599D	223
Special debt relief for the poorest	PL 109–102 Sec 565	222
Surplus commodities	PL 109–102 Sec 514	221
United States Executive Directors to international financial institutions, compensation for.	PL 109–102 Sec 501	220
War criminals	PL 109–102 Sec 561	221
Foreign Service Act of 1980		
International trade functions authority	EO 12188 Sec 1–104	905
Foreign Shipping Practices Act of 1988	PL 100–418	775
Foreign laws and practices		
Actions against foreign carriers	PL 100–418 Sec 10002(e)	776
	PL 100–418 Sec 10002(h)	777
Actions upon request of the Commission.	PL 100–418 Sec 10002(f)	777
Authority to conduct investigations	PL 100–418 Sec 10002(b)	775
Definitions	PL 100–418 Sec 10002(a)	775
Information requests	PL 100–418 Sec 10002(d)	776
Investigations	PL 100–418 Sec 10002(c)	775
Report	PL 100–418 Sec 10002(g)	777
Review of actions	PL 100–418 Sec 10002(i)	777
Foreign surplus commodities and minerals		
Opposition of multilateral assistance for	PL 99–472 Sec 22	1724
Foreign tax credit		
Denial of to certain countries	PL 99–514 Sec 901	1478
Free trade agreements. See United States free trade agreements by individual country		
Free trade area countries		
Binational panel review of countervailing duty and antidumping duty proceedings.	PL 71–361 Sec 516A(g)	460
FREEDOM Support Act of 1992	PL 102–511	212
Independent states of the former Soviet Union		
Debt held by commercial financial institutions, report.	PL 102–511 Sec 1007	213
Multilateral investment guarantees for.	PL 102–511 Sec 1009	213
Support for macroeconomic stabilization in.	PL 102–511 Sec 1004	212
Funding for mines		
Opposition to funding of copper commodity production.	PL 99–88 Sec 501	214
U.S. policies	PL 99–88 Sec 502	214

G

GAO. See Government Accountability Office
GATT. See General Agreement on Tariffs and Trade
General Accounting Office. See Government Accountability Office
General Agreement on Tariffs and Trade
Accession of state trading regimes ..... PL 100–418 Sec 1106 705
Appropriations authorization ..... PL 93–618 Sec 121 267
Coverage expansion ..... PL 96–39 Sec 304 834
Improvement of trade negotiation agreements. PL 100–418 Sec 1101(b) 691
Limitations on imposing sanctions ..... PL 96–39 Sec 305(h) 842
Monitoring and enforcement ..... PL 96–39 Sec 305 835
Operation of, Presidential report ..... PL 96–39 Sec 203 829
Renegotiation to secure full and open competition. PL 96–39 Sec 305(i) 842
Rules of origin ..... PL 96–39 Sec 305(b) 836
State trading regimes, accession of ..... EO 12661 Sec 1–101 908
Violations of ..... PL 96–39 Sec 305(f) 839
Working party on worker rights ..... PL 103–465 Sec 131 674
Generalized System of Preferences
Harmonized Tariff Schedule Gen. note 3 879
Gen. note 4 884
Harmonized Tariff Schedule transition .. PL 100–418 Sec 1211(b) 718
Prompt provision of treatment to products of Estonia, Latvia, and Lithuania, sense of Congress. PL 102–182 Sec 104 1197
Trade Agreements Program administration. EO 11846 Sec 8 902
Genocide
U.S. disassociation from foreign governments engaging in, sense of Congress. PL 95–435 Sec 5 39
Georgia
Normal trade relations
Findings ..... PL 106–476 Sec 3001 1174
Termination of application of Title IV of the Trade Act of 1974. PL 106–476 Sec 3002 1175
Trade Act of 1974 waiver ..... EO 12809 1203
German Democratic Republic
Trade Act of 1974 waiver ..... EO 12726 1210
Global Environmental Protection Assistance Act of 1989
Negotiations policy ..... PL 101–240 Sec 722 137
U.S. policy, sense of Congress ..... PL 101–240 Sec 721 137
Global Tobacco Control and Prevention ..... EO 13193 928
General provisions ..... EO 13193 Sec 3 929
Policy ..... EO 13193 Sec 1 928
Responsibilities of Federal departments and agencies. EO 13193 Sec 2 928
Gold Reserve Act of 1934
Subscriptions payment ..... PL 79–171 Sec 7 8
Gonzalez amendment ..... PL 86–565 Sec 12 44
PL 89–369 Sec 18 87
Good Neighbor Environmental Board
Establishment authority ..... EO 12916 Sec 10 1067
Government Accountability Office
Audit authority ..... PL 98–181 Sec 911 231
Clean Diamond Trade Act, report ..... PL 108–19 Sec 13 1680
Comparative reserve practices of export credit agencies and private banks, report. PL 107–189 Sec 14 1267
Export controls on high performance computers. PL 105–85 Sec 1214 1429
Foreign direct investment report ..... PL 101–533 Sec 4 1709
Trade adjustment assistance, report ..... PL 93–618 Sec 280 342

Government procurement		
Actions, report on	PL 96–39 Sec 305(k)	842
Civil aircraft, waiver of discriminatory purchasing requirements.	PL 96–39 Sec 303	834
Consultation	PL 96–39 Sec 305(e)	839
Definitions	PL 96–39 Sec 308	843
Discrimination procedures	PL 96–39 Sec 305(g)	841
Discrimination purchasing requirements, general authority to modify.	PL 96–39 Sec 301	830
European Community, implementation of agreement with		
Buy American Act provisions	EO 12849 Sec 1	1075
Order application	EO 12849 Sec 3	1075
	EO 12849 Sec 4	1075
Rule of origin	EO 12849 Sec 2	1075
United States Trade Representative responsibilities.	EO 12849 Sec 5	1075
Expansion of the coverage of the General Agreement on Tariffs and Trade.	PL 96–39 Sec 304	834
Federal Register notices of actions	PL 96–39 Sec 305(j)	842
Foreign discrimination, annual report	PL 96–39 Sec 305(d)	836
Information to Congressional advisers, availability of.	PL 96–39 Sec 307	843
Monitoring and enforcement	PL 96–39 Sec 305	835
Reciprocal competitive procurement practices, authority to encourage.	PL 96–39 Sec 302	831
Report to Congress	PL 96–39 Sec 305(c)	836
Rules of origin	PL 96–39 Sec 305(b)	836
Sanctions, limitations on imposing	PL 96–39 Sec 305(h)	842
Violations of the General Agreement on Tariffs and Trade.	PL 96–39 Sec 305(f)	839
Grassroots Collaboration Program		
Proposal for establishment	PL 95–118 Sec 1602(a)	176
Report	PL 95–118 Sec 1602(e)	177
Sense of Congress	PL 95–118 Sec 1602(b)	177
	PL 95–118 Sec 1602(c)	177
Greenhouse gases		
Intensity reducing technology export initiative.	PL 101–240 Sec 735	140
Reduction of intensity	PL 101–240 Sec 732	138
Trade-related barriers to export of intensity reducing technologies.	PL 101–240 Sec 734	140
Grenada. See Caribbean Basin Economic Recovery Act		
GSP. See Generalized System of Preferences		
Guatemala. See Caribbean Basin Economic Recovery Act		
Gum arabic		
From Sudan	PL 106–476 Sec 1464	1666
Guyana. See Caribbean Basin Economic Recovery Act		

H

Haiti. See Caribbean Basin Economic Recovery Act		
Harmonized Commodity Description and Coding System		
Commission review and recommendations.	PL 100–418 Sec 1205	714
Congressional approval of U.S. accession to the Convention.	PL 100–418 Sec 1203	712
Coordination of trade policy and the Convention.	PL 100–418 Sec 1209	716
Customs Cooperation Council regarding the Convention, U.S. participation.	PL 100–418 Sec 1210	716

Harmonized Commodity Description and Coding System—Continued		
Definitions	PL 100–418 Sec 1202	711
Harmonized Tariff Schedule		
Commission report on operation of	PL 100–418 Sec 1216	720
Enactment of	PL 100–418 Sec 1204	712
Existing executive actions	PL 100–418 Sec 1211(a)	717
GSP conversion	PL 100–418 Sec 1211(b)	718
Import restrictions under the Agricultural Adjustment Act.	PL 100–418 Sec 1211(c)	718
Protests and petitions under customs law.	PL 100–418 Sec 1211(d)	718
Publication of	PL 100–418 Sec 1207	715
Reference to	PL 100–418 Sec 1212	720
Import and export statistics	PL 100–418 Sec 1208	716
Presidential action on Commission recommendations.	PL 100–418 Sec 1206	715
Purposes	PL 100–418 Sec 1201	711
Harmonized Tariff Schedule		
Beneficiary developing countries, products of		
African Growth and Opportunity Act.	Gen. note 16	889
Andean Trade Preference Act	Gen. note 11	889
Caribbean Basin Economic Recovery Act.	Gen. note 7	888
Generalized System of Preferences	Gen. note 4	884
United States-Caribbean Basin Trade Partnership Act of 2000.	Gen. note 17	890
Commission report on operation of	PL 100–418 Sec 1216	720
Enactment of	PL 100–418 Sec 1204	712
Existing executive actions	PL 100–418 Sec 1211(a)	717
Freely associated states, products of	Gen. note 10	889
	PL 93–618 Sec 604	408
Publication of	PL 100–418 Sec 1207	715
Rates of duty	Gen. note 3	879
Reference to	PL 100–418 Sec 1212	720
Transition		
GSP conversion	PL 100–418 Sec 1211(b)	718
Import restrictions under the Agricultural Adjustment Act.	PL 100–418 Sec 1211(c)	718
Protests and petitions under customs law.	PL 100–418 Sec 1211(d)	718
United States-Australia Free Trade Agreement Implementation Act.	Gen. note 28	892
United States-Chile Free Trade Agreement.	Gen. note 26	891
United States-Israel Free Trade Implementation Act of 1985.	Gen. note 8	888
United States-Jordan Free Trade Area Implementation Act.	Gen. note 18	891
United States-Morocco Free Trade Agreement Implementation Act.	Gen. note 27	891
United States-Singapore Free Trade Agreement.	Gen. note 25	891
Health and Human Services Department		
Tobacco control and prevention, global responsibilities.	EO 13193 Sec 2	928
Heavily indebted poor countries		
Debt relief	PL 106–429 Sec 801	216
Enhanced HIPC Initiative, modification of.	PL 95–118 Sec 1625	196
Improvement of	PL 95–118 Sec 1623	193
Limited purpose Special Drawing Rights for.	PL 100–418 Sec 3123	752

HHS. See Health and Human Services Department
High technology products. See Technology
HIPC. See Heavily indebted poor countries
HIV/AIDS
Enhanced HIPC Initiative, modification of. PL 95–118 Sec 1625 196
Sub-Sahara Africa, effect on workforce .. PL 106–200 Sec 105(e) 1081
HIV/AIDS pharmaceuticals ..... EO 13155 925
Policy ..... EO 13155 Sec 1 925
Rationale ..... EO 13155 Sec 2 925
Scope ..... EO 13155 Sec 3 926
Hogs
Imports from Canada ..... PL 98–573 Sec 250 789
Honduras. See Caribbean Basin Economic Recovery Act
Honey
Imports study ..... PL 98–573 Sec 246 788
Hong Kong Policy Act of 1992 ..... PL 102–383 1160
Bilateral ties with the United States, sense of Congress. PL 102–383 Sec 101 1161
Commerce with the United States, sense of Congress. PL 102–383 Sec 103 1162
Consultation with Congress ..... PL 102–383 Sec 204 1166
Continued application of U.S. law ..... PL 102–383 Sec 201 1165
Cultural and educational exchanges, sense of Congress. PL 102–383 Sec 105 1164
Definitions ..... PL 102–383 Sec 3 1161
Findings and declarations ..... PL 102–383 Sec 2 1160
Participation in multilateral organizations, rights under international agreements, and trade status. PL 102–383 Sec 102 1162
Presidential order ..... PL 102–383 Sec 202 1165
Reports
Requirements ..... PL 102–383 Sec 301 1166
Separate part of country reports ..... PL 102–383 Sec 302 1167
Rules and regulations ..... PL 102–383 Sec 203 1166
Transportation, sense of Congress ..... PL 102–383 Sec 104 1164
HTS. See Harmonized Tariff Schedule
Human rights. See also individual country
Export-Import Bank project impact, sense of Congress. PL 107–189 Sec 20 1267
International financial institutions policies
Development of standard for protection of rights. PL 95–118 Sec 703 155
Salaries and benefits of employees .. PL 95–118 Sec 704 155
Standards to be considered in connection with applications for assistance. PL 95–118 Sec 705 156
U.S. policies ..... PL 95–118 Sec 701 152
Human welfare
International financial institutions
Debt-for-development swap ..... PL 95–118 Sec 1608 181
PL 95–118 Sec 1610 183
Enhanced HIPC Initiative, modification of. PL 95–118 Sec 1625 196
Enhanced Structural Adjustment Facility, reform of. PL 95–118 Sec 1624 194
Equal employment opportunities ..... PL 95–118 Sec 1619 191
Fair labor practices, encouragement of. PL 95–118 Sec 1621 191
Government-owned enterprises in countries receiving IADB loans, directives regarding. PL 95–118 Sec 1612 185
Government-owned enterprises in countries receiving World Bank loans, directives regarding. PL 95–118 Sec 1607 181

Human welfare—Continued
International financial institutions—Continued
Grassroots Collaboration Program, proposal for establishment. PL 95–118 Sec 1602 176
Guidelines ..... PL 95–118 Sec 1601 175
Heavily Indebted Poor Countries Initiative, improvement of. PL 95–118 Sec 1623 193
Illicit narcotics, loan programs to reduce economic dependence on. PL 95–118 Sec 1606 180
Impact of multilateral development bank activities on indigenous people. PL 95–118 Sec 1605 179
Increasing access of World Bank activities to the poor. PL 95–118 Sec 1603(a) 178
Increasing productive economic participation of the poor, reports. PL 95–118 Sec 1613 185
Interaction between the International Bank for Reconstruction and Development and nongovernmental organizations. PL 95–118 Sec 1617 190
Involvement of women in multilateral development bank activities. PL 95–118 Sec 1604 178
Microenterprise credit promotion activities, report. PL 95–118 Sec 1603(c) 178
Multilateral development bank definition. PL 95–118 Sec 1622 192
Population, health and nutrition programs. PL 95–118 Sec 1618 191
Program for the Financing of Small Projects. PL 95–118 Sec 1603(b) 178
Respect for indigenous peoples ..... PL 95–118 Sec 1620 191
Sub-Saharan Africa, initiation of discussions to facilitate financing of programs. PL 95–118 Sec 1609 182
Terrorist states, opposition to assistance to. PL 95–118 Sec 1621 192
Well-being of the poor, assistance to countries to develop statistical assessment of. PL 95–118 Sec 1611 184
Pending multilateral development bank loans, effect of. PL 95–118 Sec 1703 201
Special debt relief for the poorest ..... PL 109–102 Sec 565 222
Humanitarian relief
Cuba, condemnation of attack on American aircraft. PL 104–114 Sec 116 1532
Hungary
Most-favored-nation treatment
Findings ..... PL 102–182 Sec 1(a) 1194
Preparatory Presidential action ..... PL 102–182 Sec 1(b) 1194
Termination of application of Title IV of the Trade Act of 1974. PL 102–182 Sec 2 1195
Trade Act of 1974 waiver ..... EO 12051 1213

I

IADB. See Inter-American Development Bank
IBIAs. See Integrated Border Inspection Areas
IBRD. See International Bank for Reconstruction and Development

IDA. See International Development Association
IEEPA. See International Emergency Economic Powers Act
IFI. See International financial institutions
IMF. See International Monetary Fund; International Monetary Fund/World Bank Group
Immigration
Trade relations with certain countries
Freedom to emigrate ..... PL 93–618 Sec 402 371
PL 93–618 Sec 409 382
Imports. See also individual country; National Emergencies Act
Burma
Ban against trade supporting military regime. PL 108–61 Sec 3 1641
Prohibiting transactions ..... EO 13310 Sec 3 1653
Canada
Hogs and pork products ..... PL 98–573 Sec 250 789
Relief from articles ..... PL 100–449 Sec 302 1002
Certification methods study ..... PL 100–418 Sec 1429 737
Clean Diamond Trade Act ..... PL 108–19 1674
Definitions ..... PL 108–19 Sec 3 1675
Enforcement ..... PL 108–19 Sec 8 1678
Findings ..... PL 108–19 Sec 2 1674
GAO report ..... PL 108–19 Sec 13 1680
Implementation ..... EO 13312 1681
Importing and exporting authorities PL 108–19 Sec 6 1677
Kimberley Process Implementation Coordinating Committee. PL 108–19 Sec 11 1679
Regulatory authority ..... PL 108–19 Sec 5 1677
Reports ..... PL 108–19 Sec 12 1679
Rough diamonds, measures for importation and exportation of. PL 108–19 Sec 4 1677
Sense of Congress ..... PL 108–19 Sec 10 1678
Statement of policy ..... PL 108–19 Sec 7 1678
Technical assistance ..... PL 108–19 Sec 9 1678
Copper ..... PL 98–573 Sec 247 788
Cuba
Enforcement of restrictions ..... PL 100–418 Sec 1911 741
Prohibition on ..... PL 106–387 Sec 909 1487
Safeguard against certain products PL 104–114 Sec 110 1528
Discrimination by foreign countries
Additional duties ..... PL 71–361 Sec 338(a) 445
Application of proclamation ..... PL 71–361 Sec 338(c) 446
Ascertainment of discriminations .... PL 71–361 Sec 338(g) 447
Definitions ..... PL 71–361 Sec 338(i) 447
Duties to offset benefits to third country. PL 71–361 Sec 338(e) 446
Duties to offset commercial disadvantages. PL 71–361 Sec 338(d) 446
Exclusion from importation ..... PL 71–361 Sec 338(b) 446
Forfeiture of articles ..... PL 71–361 Sec 338(f) 447
Rules and regulations of Secretary of Treasury. PL 71–361 Sec 338(h) 447
Eligible articles designation ..... PL 93–618 Sec 503(b) 398
Gum arabic from the Sudan ..... PL 106–476 Sec 1464 1666
Honey, study on ..... PL 98–573 Sec 246 788
Import license auction ..... PL 96–39 Sec 1102 864
Imposition of small uniform fee ..... PL 100–418 Sec 1428 736
Industries injured by competition
Action by President ..... PL 93–618 Sec 203 326
Action with regard to other provisions. PL 93–618 Sec 204(e) 334
Agreements ..... PL 93–618 Sec 203(f) 332
Commission recommendations ..... PL 93–618 Sec 202(e) 323
Commission report ..... PL 93–618 Sec 202(f) 324

Imports—Continued
Industries injured by competition—Continued
Evaluation of effectiveness of action PL 93–618 Sec 204(d) 334
Expedited consideration of adjustment assistance petitions. PL 93–618 Sec 202(g) 325
Extension of action ..... PL 93–618 Sec 204(c) 334
Implementation of action recommended by Commission. PL 93–618 Sec 203(c) 329
Investigations and determinations by Commission. PL 93–618 Sec 202(b) 317
PL 93–618 Sec 202(c) 318
Limitations on actions ..... PL 93–618 Sec 203(e) 330
Limitations on investigations ..... PL 93–618 Sec 202(h) 326
Limited disclosure of confidential business information under protective order. PL 93–618 Sec 202(i) 326
Monitoring of action ..... PL 93–618 Sec 204(a) 333
Petitions and adjustment plans ..... PL 93–618 Sec 202(a) 315
Positive adjustment to import competition, action to facilitate. PL 93–618 Sec 201 314
Provisional relief ..... PL 93–618 Sec 202(d) 320
Reduction, modification, and termination of action. PL 93–618 Sec 204(b) 333
Regulations ..... PL 93–618 Sec 203(g) 332
Time for taking effect of certain relief. PL 93–618 Sec 203(d) 329
International Coffee Agreement Act of 1980
Presidential powers and duties ..... PL 96–599 Sec 2 1734
Iraqi cultural antiquities, emergency protection of. PL 108–429 Sec 3002 613
Lamb meat ..... PL 100–418 Sec 1937 743
Machine tool import arrangements enforcement. PL 100–418 Sec 1501 738
Prohibited
Convict-made goods ..... PL 71–361 Sec 307 418
Dog and cat fur products ..... PL 71–361 Sec 308 419
Sanctions for export violations ..... PL 87–794 Sec 233 870
Steel
United States Trade Representative functions. EO 12661 Sec 1–301 908
Steel imports into the United States
Findings ..... PL 105–277 Sec 111(a) 665
Sense of Congress ..... PL 105–277 Sec 111(b) 666
Trade barriers established by auto producing countries and impact on U.S. market. PL 100–418 Sec 1936 743
Unfair practices in trade ..... PL 71–361 Sec 337 435
Cease and desist orders ..... PL 71–361 Sec 337(f) 441
Complaints ..... PL 71–361 Sec 337(g) 441
Confidential information ..... PL 71–361 Sec 337(n) 445
Definition of United States ..... PL 71–361 Sec 337(m) 444
Determinations ..... PL 71–361 Sec 337(c) 438
Exclusion of articles from entry ..... PL 71–361 Sec 337 439
Forfeiture ..... PL 71–361 Sec 337(i) 442
Importation by or for the United States. PL 71–361 Sec 337(l) 444
Investigations of violations by Commission. PL 71–361 Sec 337(b) 436
Period of effectiveness ..... PL 71–361 Sec 337(k) 444
Referrals to the President ..... PL 71–361 Sec 337(j) 443
Review ..... PL 71–361 Sec 337(c) 438
Sanctions ..... PL 71–361 Sec 337(h) 442
Uniform fee ..... EO 12661 Sec 1–501 908
Uniform statistical data ..... PL 93–618 Sec 608 409

Imports—Continued		
Wool articles		
Refund of duties	PL 106–200 Sec 505	656
Wool Research, Development, and Promotion Trust Fund.	PL 106–200 Sec 506	657
Yugoslavia		
Prohibiting transactions	PL 104–208 Sec 533	1656
Indentured child labor prohibition	EO 13126	920
Independent states of the former Soviet Union		
Cuban government, assistance to	PL 104–114 Sec 106	1525
Debt held by commercial financial institutions, report.	PL 102–511 Sec 1007	213
Export-Import Bank trade finance, report.	PL 102–429 Sec 120	1277
International Finance Corporation support for economic restructuring.	PL 84–350 Sec 15	55
Multilateral investment guarantees for	PL 102–511 Sec 1009	213
Support for macroeconomic stabilization in.	PL 102–511 Sec 1004	212
Indian tribes		
Export promotion	PL 100–418 Sec 2307	1296
Industries		
Trade adjustment assistance		
Action where there is affirmative finding.	PL 93–618 Sec 264	341
International Trade Commission investigation, study by Secretary of Commerce.	PL 93–618 Sec 264	341
Petitions and determinations	PL 93–618 Sec 251	340
Technical assistance	PL 93–618 Sec 265	342
Integrated Border Inspection Areas		
Creation of	PL 108–429 Sec 1560(b)	611
Intellectual property rights		
Identification of countries denying adequate protection or market access for.	PL 93–618 Sec 182	310
Identification of countries denying protection of.	PL 100–418 Sec 1303	720
Principal trade negotiating objectives	PL 100–418 Sec 1101(b)	694
Protection of		
Findings and purposes	PL 100–418 Sec 1341	725
Sense of Congress	PL 100–418 Sec 2206	1288
Protection under Tariff Act of 1930	PL 100–418 Sec 1342	725
Trade negotiating objectives	PL 107–210 Sec 2102	620
United States-Canada Free-Trade Agreement Implementation Act negotiating objectives.	PL 100–449 Sec 304(b)	1006
Inter-American Development Bank. See also Foreign Operations Appropriations Instructions, FY 2006; Funding for mines; Inter-American Development Bank Act; International debt forgiveness and international financial institutions reform; International Financial Institutions Act		
Government-owned enterprises in countries receiving loans, directives regarding.	PL 95–118 Sec 1612	185
Increased U.S. participation, use of renewable resources for energy production		
Findings	PL 96–259 Sec 601	148
U.S. policies	PL 96–259 Sec 602	149
Reducing dependence on illicit narcotics through loans, sense of Congress.	PL 101–240 Sec 103	128
Value of holdings maintained in terms of gold.	PL 92–268 Sec 3	242
Inter-American Development Bank Act	PL 86–147	61
Audit	PL 86–147 Sec 14	65

Inter-American Development Bank Act—Continued		
Authorization requirements	PL 86–147 Sec 5	62
Capital stock increases	PL 86–147 Sec 13	65
Depositories	PL 86–147 Sec 6	62
Fund for Special Operations of the Bank		
Admission of nonregional countries	PL 86–147 Sec 23	69
Bahamas and Guyana, membership for.	PL 86–147 Sec 24	69
Capital stock increase	PL 86–147 Sec 17	67
	PL 86–147 Sec 18	67
	PL 86–147 Sec 26	69
	PL 86–147 Sec 27	70
	PL 86–147 Sec 29	71
	PL 86–147 Sec 31	72
	PL 86–147 Sec 33	73
Caribbean Development Bank lending.	PL 86–147 Sec 25	69
Caribbean region, increase in lending to.	PL 86–147 Sec 36	77
Executive Directors, election of	PL 86–147 Sec 20	68
Human capital investment	PL 86–147 Sec 34	76
Increase in resources	PL 86–147 Sec 15	66
	PL 86–147 Sec 16	66
	PL 86–147 Sec 18	67
	PL 86–147 Sec 26	69
	PL 86–147 Sec 29	71
	PL 86–147 Sec 31	72
	PL 86–147 Sec 33	73
Inter-regional capital stock creation	PL 86–147 Sec 23	69
Latin America and the Caribbean, focus on low-income areas.	PL 86–147 Sec 38	78
Light-capital or intermediate technologies development and utilization.	PL 86–147 Sec 28	70
Membership provisions	PL 86–147 Sec 20	68
Merger of inter-regional and ordinary capital resources.	PL 86–147 Sec 32	73
Multilateral Investment Fund contributions.	PL 86–147 Sec 37	77
Policy based lending limitations	PL 86–147 Sec 35	76
U.S. annual installments	PL 86–147 Sec 19	67
U.S. contribution	PL 86–147 Sec 230	72
Governor, alternate Governor, and Executive Director.	PL 86–147 Sec 3	61
Illegal drug activity, and	PL 86–147 Sec 22	68
Jurisdiction and venue of actions	PL 86–147 Sec 8	63
Membership acceptance	PL 86–147 Sec 2	61
National Advisory Council on International Monetary and Financial Problems.	PL 86–147 Sec 4	62
Nullifying contracts or seizing property of U.S. citizens, and.	PL 86–147 Sec 21	68
Securities issued as exempt, filing report with Securities and Exchange Commission.	PL 86–147 Sec 11	64
Securities issued as investment securities for national banks.	PL 86–147 Sec 10	64
Status, immunities, and privileges	PL 86–147 Sec 9	64
Subscription payment	PL 86–147 Sec 7	63
Inter-American Investment Corporation. See Inter-American Investment Corporation Act; International debt forgiveness and international financial institutions reform; International Financial Institutions Act		
Inter-American Investment Corporation Act	PL 98–473	79
Agreement effectiveness	PL 98–473 Sec 209	81

Inter-American Investment Corporation Act—Continued		
Bretton Woods Agreements Act applicability.	PL 98–473 Sec 204	79
Federal Reserve banks as depositories	PL 98–473 Sec 206	80
Governor, Executive Director and alternates.	PL 98–473 Sec 203	79
Jurisdiction of U.S. courts	PL 98–473 Sec 208	81
Membership acceptance	PL 98–473 Sec 202	79
Restrictions	PL 98–473 Sec 205	80
Securities issued as exempted, filing report with Securities and Exchange Commission.	PL 98–473 Sec 210	81
Stock subscription	PL 98–473 Sec 207	80
Interagency Group on Countertrade		
Establishment of	EO 12661 Sec 2–101	909
Interagency Task Force on the Economic Development of the Southwest Border.	EO 13122	1068
Interagency Trade Data Advisory Committee		
Chairman	PL 100–418 Sec 5402(c)	766
Designees	PL 100–418 Sec 5402(d)	766
Establishment of	PL 100–418 Sec 5402(a)	766
Functions of	PL 100–418 Sec 5403	766
Membership	PL 100–418 Sec 5402(b)	766
International Anti-Bribery and Fair Competition Act of 1998.	PL 105–366	1754
Enforcement and monitoring	PL 105–366 Sec 6	1756
International organizations providing commercial communications services, treatment of.	PL 105–366 Sec 5	1754
International Bank for Reconstruction and Development. See also Foreign Operations Appropriations Funding for mines; Instructions, FY 2006; International debt forgiveness and international financial institutions reform; International Financial Institutions Act		
Anticorruption provisions	PL 109–102 Sec 599D	223
Capital stock increase	PL 100–461	144
Debt reduction for borrower countries, partial guarantees in connection with.	PL 100–461 Sec 5	146
Improving access of small businesses to World Bank procurement, sense of Congress.	PL 100–461 Sec 12	147
Policy based lending for debt reduction.	PL 100–461 Sec 3	144
World Bank policy based lending limitations.	PL 100–461 Sec 4	146
Illegal drug activity, and	PL 86–565 Sec 13	44
Improvement of interaction with nongovernmental organizations.	PL 95–118 Sec 1617	190
International Finance Corporation lending to or borrowing from, removing prohibition against.	PL 84–350 Sec 10	53
Loan requests from Poland, sense of Congress.	PL 101–240 Sec 601	135
Nullifying contracts or seizing property of U.S. citizens, and.	PL 86–565 Sec 12	44
Population, health and nutrition programs.	PL 95–118 Sec 1618	191
Respect for indigenous peoples	PL 95–118 Sec 1620	191
Transmission to Congress of operating summaries.	PL 95–118 Sec 1702	201
Value of holdings maintained in terms of gold.	PL 92–268 Sec 3	242

International broadcasting operations. See Broadcasting, international		
International Coffee Agreement Act of 1980	PL 96–599	1734
Definition	PL 96–599 Sec 3	1735
Extension of	PL 100–418 Sec 1123	710
Presidential powers and duties and	PL 96–599 Sec 2	1734
	PL 96–599 Sec 4	1735
Protection of interests of U.S. consumers	PL 96–599 Sec 4	1735
Remedial action	PL 96–599 Sec 4	1735
Report	PL 96–599 Sec 5	1735
International Convention on the Harmonized Commodity Description and Coding System		
Commission report on operation of Harmonized Tariff Schedule.	PL 100–418 Sec 1216	720
Commission review and recommendations.	PL 100–418 Sec 1205	714
Congressional approval of U.S. accession to the Convention.	PL 100–418 Sec 1203	712
Coordination of trade policy and the Convention.	PL 100–418 Sec 1209	716
Customs Cooperation Council regarding the Convention, U.S. participation.	PL 100–418 Sec 1210	716
Definitions	PL 100–418 Sec 1202	711
Harmonized Tariff Schedule		
Enactment	PL 100–418 Sec 1204	712
Existing executive actions	PL 100–418 Sec 1211(a)	717
Generalized System of Preferences	PL 100–418 Sec 1211(b)	718
Import restrictions	PL 100–418 Sec 1211(c)	718
Protests and petitions	PL 100–418 Sec 1211(d)	718
Publication	PL 100–418 Sec 1207	715
Reference	PL 100–418 Sec 1212	720
Import and export statistics	PL 100–418 Sec 1208	716
Presidential action on Commission recommendations.	PL 100–418 Sec 1206	715
Purposes	PL 100–418 Sec 1201	711
International Criminal Tribunal		
International financial institutions funds prohibition to countries failing to meet legal obligations.	PL 109–102 Sec 561	221
International Cultural and Trade Center Commission		
Duties of	PL 100–113 Sec 7(b)	779
Establishment of	PL 100–113 Sec 7(a)	779
Expenses limitation	PL 100–113 Sec 7(g)	782
Funding	PL 100–113 Sec 7(h)	782
International Cultural and Trade Center		
Annual report	PL 100–113 Sec 8(h)	785
Budget	PL 100–113 Sec 8(h)	785
Establishment of	PL 100–113 Sec 8(b)	783
Lease of space	PL 100–113 Sec 8(a)	782
Rents and fees	PL 100–113 Sec 8(c)	784
Separate account	PL 100–113 Sec 8(d)	784
Membership	PL 100–113 Sec 7(c)	779
Office space and supplies	PL 100–113 Sec 7(e)	781
Powers of	100–113 Sec 7(f)	781
Staff	PL 100–113 Sec 7(d)	780
International debt		
Limited purpose Special Drawing Rights for the poorest heavily indebted countries.	PL 100–418 Sec 3123	752
Provisions relating to the regulation of depository institutions.	PL 100–418 Sec 3121	751
Regulation of depository institutions, studies relating to.	PL 100–418 Sec 3122	751
International debt forgiveness and international financial institutions reform.	PL 106–429	216

International debt forgiveness and international financial institutions reform—Continued		
Debt relief under the Heavily Indebted Poor Countries Initiative.	PL 106–429 Sec 801	216
Definitions	PL 106–429 Sec 806	219
Monitoring funds use by multilateral development banks, strengthening procedures for.	PL 106–429 Sec 802	217
Policies, operations and management of international financial institutions, reports.	PL 106–429 Sec 803	218
International Debt Management Act of 1988	PL 100–418	746
Findings	PL 100–418 Sec 3102	747
Purposes	PL 100–418 Sec 3103	747
Statement of policy	PL 100–418 Sec 3104	748
International Debt Management Authority		
Actions to facilitate creation of the Authority.	PL 100–418 Sec 3112	750
Directive	PL 100–418 Sec 3111(a)	748
Final reports	PL 100–418 Sec 3111(d)	749
IMF-World Bank review	PL 100–418 Sec 3113	750
Interim reports	PL 100–418 Sec 3111(c)	749
Objectives	PL 100–418 Sec 3111(b)	749
International Development and Finance Act of 1989.	PL 101–240	127
Assistance by multilateral lending institutions to establish financial institutions in Poland, sense of Congress.	PL 101–240 Sec 602	135
Conditional financial assistance by multilateral lending institutions to Poland, sense of Congress.	PL 101–240 Sec 603	136
Debt-for-development swaps, encouragement through local currency repayment.	PL 101–240 Sec 531	134
Export-Import Bank Act Amendments		
Export-import programs to the People's Republic of China, prohibitions.	PL 101–240 Sec 103	128
Loan loss reserves, report	PL 101–240 Sec 101(e)	127
Global Environmental Protection Assistance Act of 1989		
Negotiations policy	PL 101–240 Sec 722	137
U.S. policy, sense of Congress	PL 101–240 Sec 721	137
Inter-American Development Bank		
Reducing dependence on illicit narcotics through loans, sense of Congress.	PL 101–240 Sec 103	128
International debt exchanges and the environment, sense of Congress.	PL 101–240 Sec 511	133
International debt provisions		
Additional reserve requirements	PL 101–240 Sec 402	129
Agreements to reduce debt burden accompanied by trade liberalization.	PL 101–240 Sec 406	131
Capital flight, study on elimination of.	PL 101–240 Sec 404	130
Debt reduction for highly indebted countries, developing U.S. policy.	PL 101–240 Sec 405	131
Linkage of debt reduction loans to reduction in drug trafficking.	PL 101–240 Sec 407	132
Mark to market accounting, report requirements.	PL 101–240 Sec 403	129
Loan requests from Poland to International Bank for Reconstruction and Development and the International Monetary Fund, sense of Congress.	PL 101–240 Sec 601	135

International Development and Finance Act of 1989—Continued
Loans or extension of financial and technical assistance to the People's Republic of China, sense of Congress. PL 101–240 Sec 604 136
Technology deployment in developing countries
Appropriations authorization ..... PL 101–240 Sec 738 142
Definitions ..... PL 101–240 Sec 731 138
Fellowship and exchange programs PL 101–240 Sec 737 142
Greenhouse gas intensity ..... PL 101–240 Sec 732 138
PL 101–240 Sec 734 140
PL 101–240 Sec 735 140
Technology demonstration projects .. PL 101–240 Sec 736 141
Technology inventory ..... PL 101–240 Sec 733 140
International Development Association. See also Funding for mines; International Development Association Act; International Financial Institutions Act
Anticorruption provisions ..... PL 109–102 Sec 599D 223
Value of holdings maintained in terms of gold. PL 92–268 Sec 3 242
International Development Association Act .. PL 86–565 41
Authorization requirements ..... PL 86–565 Sec 5 42
Depositories ..... PL 86–565 Sec 6 42
Governor, Executive Director, and alternates. PL 86–565 Sec 3 41
Jurisdiction and venue of actions ..... PL 86–565 Sec 8 43
Membership acceptance ..... PL 86–565 Sec 2 41
National Advisory Council on International Monetary and Financial Problems. PL 86–565 Sec 4 42
Special Facility for Sub-Saharan Africa
Appropriations authorization ..... PL 86–565 Sec 19 46
Eighth replenishment of resources, U.S. payments to. PL 86–565 Sec 20 46
Fourteenth replenishment of resources, U.S. payments to. PL 86–565 Sec 23 48
Ninth replenishment of resources, U.S. payments to. PL 86–565 Sec 21 46
Thirteenth replenishment of resources, U.S. payments to. PL 86–565 Sec 22 47
Status, immunities, and privileges
Fifth replenishment of resources ..... PL 86–565 Sec 16 45
Force and effect of provisions ..... PL 86–565 Sec 9 43
Fourth replenishment of resources .. PL 86–565 Sec 14 45
Gonzalez amendment ..... PL 86–565 Sec 12 44
Illegal drug activity, and ..... PL 86–565 Sec 13 44
Nullifying contracts or seizing property of U.S. citizens, and. PL 86–565 Sec 12 44
Seventh replenishment of resources PL 86–565 Sec 18 46
Sixth replenishment of resources ..... PL 86–565 Sec 17 45
Third replenishment of resources .... PL 86–565 Sec 11 44
U.S. contribution ..... PL 86–565 Sec 10 43
Subscription payment
Appropriations authorization ..... PL 86–565 Sec 7(a) 42
Payments to the United States by the Association. PL 86–565 Sec 7(d) 43
Special notes ..... PL 86–565 Sec 7(c) 43
U.S. contribution ..... PL 86–565 Sec 7(b) 42
International Economic Policy Coordination. See Exchange Rates and International Economic Policy Coordination Act of 1988
International Emergency Economic Powers Act. See also National Emergencies Act. PL 95–223 1466
Authority to issue regulations ..... PL 95–223 Sec 205 1471
Consultation ..... PL 95–223 Sec 204 1470
Exercising authorities ..... PL 95–223 Sec 202 1467

International Emergency Economic Powers Act—Continued		
Grants of authorities	PL 95–223 Sec 203	1468
Penalties	PL 95–223 Sec 206	1471
Report	PL 95–223 Sec 204(c)	1471
Savings provision	PL 95–223 Sec 207	1471
Trading With the Enemy Act amendments.	PL 95–223 Sec 101	1466
International Finance Corporation. See also International debt forgiveness and international financial institutions reform; International Finance Corporation Act; International Financial Institutions Act		
Assistance establishing financial institutions in Poland, sense of Congress.	PL 101–240 Sec 602	135
Conditional financial assistance to Poland, sense of Congress.	PL 101–240 Sec 603	136
International Bank for Reconstruction and Development lending to or borrowing from, removing prohibition against.	PL 84–350 Sec 10	53
Loans to	PL 79–171 Sec 21	14
International Finance Corporation Act	PL 84–350	51
Authorization requirements	PL 84–350 Sec 5	52
Capital stock increase		
Appropriations authorization	PL 84–350 Sec 11(b)	53
	PL 84–350 Sec 12(b)	54
Authority to agree to amendments to the Articles of Agreement.	PL 84–350 Sec 16	55
Limitations on appropriations authorization.	PL 84–350 Sec 14(b)	55
Securities issued as exempt, filing report with Securities and Exchange Commission.	PL 84–350 Sec 13	54
Subscription authorization	PL 84–350 Sec 14(a)	54
Support for economic restructuring in the independent states of the former Soviet Union.	PL 84–350 Sec 15	55
Vote authorization	PL 84–350 Sec 11(a)	53
	PL 84–350 Sec 12(a)	54
Depositories	PL 84–350 Sec 6	52
Governor, Executive Director, and alternates.	PL 84–350 Sec 3	51
Jurisdiction and venue of actions	PL 84–350 Sec 8	53
Membership acceptance	PL 84–350 Sec 2	51
National Advisory Council on International Monetary and Financial Problems.	PL 84–350 Sec 4	51
Status, immunities, and privileges		
Allowing lending to or borrowing from International Bank for Reconstruction and Development.	PL 84–350 Sec 10	53
Force and effect of provisions	PL 84–350 Sec 9	53
Subscription payment	PL 84–350 Sec 7	52
International Financial Data Improvements Act. See Foreign Direct Investment and International Financial Data Improvements Act of 1990		
International financial institutions. See Foreign Operations Appropriations Instructions, FY 2006; individual institution; International debt forgiveness and international financial institutions reform; International Financial Institutions Act		
International Financial Institutions Act	PL 95–118	150
Administrative provisions	PL 95–118 Sec 1504	172
Agricultural and commodity production		
Findings	PL 95–118 Sec 1401	164

International Financial Institutions Act—Continued
Agricultural and commodity production—Continued
Multilateral development bank activities. PL 95–118 Sec 1402 164
Projects resulting in surplus in world markets. PL 95–118 Sec 1403 164
Reduction of barriers to international trade. PL 95–118 Sec 1404 165
Congressional consultations ..... PL 95–118 Sec 1201 158
Consolidated reporting requirements
Effect of pending multilateral development bank loans. PL 95–118 Sec 1703 201
Financial stabilization programs led by the International Monetary Fund, financing from stabilization fund. PL 95–118 Sec 1704 201
Multilateral development banks, operating summaries of. PL 95–118 Sec 1702 201
National Advisory Council on International Monetary and Financial Policies. PL 95–118 Sec 1701 198
State of international financial system, IMF reform, and IMF agreements compliance. PL 95–118 Sec 1705 203
Environmental issues
Assessment of benefits and costs of multilateral development bank actions. PL 95–118 Sec 1306 160
Debt-for-development swaps, initiation of discussions to facilitate conservation. PL 95–118 Sec 1608 181
Educational programs for multilateral development bank managers. PL 95–118 Sec 1305 160
Findings ..... PL 95–118 Sec 1301 158
Impact of proposed multilateral development bank actions. PL 95–118 Sec 1307 161
Institution-building for non-governmental organizations concerned with the environment. PL 95–118 Sec 1616 189
Multilateral development bank loans, determining impact of. PL 95–118 Sec 1303 159
Multilateral development banks and debt-for-nature exchanges. PL 95–118 Sec 1614 187
Promotion of lending for the environment. PL 95–118 Sec 1615 189
Strengthening environmental performance of the banks. PL 95–118 Sec 1302 159
Sub-Saharan Africa, initiation of discussions to facilitate financing of natural resources programs. PL 95–118 Sec 1609 182
System for cooperative exchange of information. PL 95–118 Sec 1304 160
Export enhancement
Commercial service officers and multilateral development bank procurement. PL 95–118 Sec 1803 205
Multilateral development bank procurement. PL 95–118 Sec 1801 204
Procurement opportunities for U.S. firms. PL 95–118 Sec 1802 205
Human nutrition in developing countries PL 95–118 Sec 901 156
Human rights
Development of standard for protection of. PL 95–118 Sec 703 155

International Financial Institutions Act—Continued
Human rights—Continued
Salaries and benefits of financial institution employees. PL 95–118 Sec 704 155
Standards to be considered in connection with applications for assistance. PL 95–118 Sec 705 156
U.S. policies ..... PL 95–118 Sec 701 152
Human welfare
Debt-for-development swaps, and .... PL 95–118 Sec 1608 181
PL 95–118 Sec 1610 183
Enhanced HIPC Initiative, modification of. PL 95–118 Sec 1625 196
Enhanced Structural Adjustment Facility, reform of. PL 95–118 Sec 1624 194
Equal employment opportunities ..... PL 95–118 Sec 1619 191
Fair labor practices, encouragement of. PL 95–118 Sec 1621 191
Government-owned enterprises in countries receiving IADB loans, directives regarding. PL 95–118 Sec 1612 185
Government-owned enterprises in countries receiving World Bank loans, directives regarding. PL 95–118 Sec 1607 181
Grassroots Collaboration Program, proposal for establishment. PL 95–118 Sec 1602 176
Guidelines ..... PL 95–118 Sec 1601 175
Heavily Indebted Poor Countries Initiative, improvement of. PL 95–118 Sec 1623 193
Illicit narcotics, loan programs to reduce economic dependence on. PL 95–118 Sec 1606 180
Impact of multilateral development bank activities on indigenous people. PL 95–118 Sec 1605 179
Increasing access of World Bank activities to the poor. PL 95–118 Sec 1603(a) 178
Increasing productive economic participation of the poor, reports. PL 95–118 Sec 1613 185
Interaction between the International Bank for Reconstruction and Development and nongovernmental organizations. PL 95–118 Sec 1617 190
Involvement of women in multilateral development bank activities. PL 95–118 Sec 1604 178
Microenterprise credit promotion activities, report. PL 95–118 Sec 1603(c) 178
Multilateral development bank definition. PL 95–118 Sec 1622 192
Population, health and nutrition programs. PL 95–118 Sec 1618 191
Program for the Financing of Small Projects. PL 95–118 Sec 1603(b) 178
Respect for indigenous peoples ..... PL 95–118 Sec 1620 191
Sub-Saharan Africa, initiation of discussions to facilitate financing of programs. PL 95–118 Sec 1609 182
Terrorist states, opposition to assistance to. PL 95–118 Sec 1621 192
Well-being of the poor, assistance to countries to develop statistical assessment of. PL 95–118 Sec 1611 184
Institutional reforms regarding lending policies. PL 95–118 Sec 1501 165
International Monetary Fund, advocacy of policies to enhance effectiveness of. PL 95–118 Sec 1503 167
Light capital technology ..... PL 95–118 Sec 801 156

International Financial Institutions Act—Continued		
Military spending by recipient countries	PL 95–118 Sec 1502	167
Personnel practices	PL 95–118 Sec 1901	206
Policy goals promotion	PL 95–118 Sec 1505	173
Targeting assistance to the needy		
Findings	PL 95–118 Sec 1101	157
Guidelines	PL 95–118 Sec 1102	157
U.S. participation in fostering economic development in less developed countries, sense of Congress.	PL 95–118 Sec 101	151
International Investment and Trade in Services Act		
Authorities	EO 11961	1713
International Investment and Trade in Services Survey Act.	PL 94–472	1696
Access to information	PL 94–472 Sec 5	1702
Appropriations authorization	PL 94–472 Sec 9	1705
Authority	PL 94–472 Sec 4	1698
Consultations	PL 94–472 Sec 8	1704
Definitions	PL 94–472 Sec 3	1697
Duties	PL 94–472 Sec 4	1698
Enforcement	PL 94–472 Sec 6	1703
Findings	PL 94–472 Sec 2(a)	1696
Purpose	PL 94–472 Sec 2(b)	1697
Rules and regulations	PL 94–472 Sec 5	1702
Use of experts and administrative support services.	PL 94–472 Sec 7	1704
International Lending Supervision Act of 1983.	PL 98–181	225
Accounting for fees on international loans.	PL 98–181 Sec 906	228
Additional reserve requirements	PL 98–181 Sec 905A	227
Authorities	PL 98–181 Sec 910	231
Capital adequacy	PL 98–181 Sec 908	229
Definitions	PL 98–181 Sec 903	225
Federal Deposit Insurance Corporation, equal representation for.	PL 98–181 Sec 912	233
Foreign loan evaluations	PL 98–181 Sec 909	230
GAO audit authority	PL 98–181 Sec 911	231
International lending data, collection and disclosure of.	PL 98–181 Sec 907	229
Policy declaration	PL 98–181 Sec 902	225
Reserves	PL 98–181 Sec 905	226
Strengthened supervision of international lending.	PL 98–181 Sec 904	226
International monetary and financial policies. See National Advisory Council on International Monetary and Financial Policies		
International Monetary Fund. See also Foreign Operations Appropriations Instructions, FY 2006; Funding for mines; International Monetary Fund/World Bank Group		
Advocacy of policies to enhance effectiveness of.	PL 95–118 Sec 1503	167
Conditional financial assistance to Poland, sense of Congress.	PL 101–240 Sec 601	135
Financial stabilization programs with financing from the exchange stabilization fund, report.	PL 95–118 Sec 1704	201
International Debt Management Authority review.	PL 100–418 Sec 3113	750
Loan requests from Poland, sense of Congress.	PL 101–240 Sec 601	135
Special Drawing Rights Act		
Administration of	PL 90–349 Sec 3	243

International Monetary Fund—Continued		
Special Drawing Rights Act—Continued		
Allocation authority	PL 90–349 Sec 6	244
Effectiveness of agreement	PL 90–349 Sec 7	244
Establishment of	PL 90–349 Sec 2	243
Purchase of certificates	PL 90–349 Sec 4	243
State of international financial system, IMF reform, and IMF agreements compliance.	PL 95–118 Sec 1705	203
International Monetary Fund/World Bank Group		
Bretton Woods Agreements Act		
Actions not to be taken without authorization.	PL 79–171 Sec 5	7
Adverse social and environmental impacts, alleviating potential for.	PL 79–171 Sec 55	30
Agricultural export subsidies, elimination of.	PL 79–171 Sec 44	24
Amendment acceptance	PL 79–171 Sec 24	15
	PL 79–171 Sec 57	31
Appointment of governors, executive directors, and alternates.	PL 79–171 Sec 3	4
Capital stock increase	PL 79–171 Sec 16(b)	12
	PL 79–171 Sec 19	14
	PL 79–171 Sec 23	14
	PL 79–171 Sec 27	15
	PL 79–171 Sec 39	20
	PL 79–171 Sec 51	28
	PL 79–171 Sec 52	28
	PL 79–171 Sec 53	29
Communist dictatorships, instructions to United States Executive Director involving credit to.	PL 79–171 Sec 43	23
Debt reductions for the poorest countries, approval of contributions for.	PL 79–171 Sec 62	34
Debt rescheduling, comparability of treatment policy.	PL 79–171 Sec 29	16
Depositories	PL 79–171 Sec 6	8
Dollar-Special Drawing Rights substitution account, sense of Congress.	PL 79–171 Sec 35	19
Economic adjustment programs	PL 79–171 Sec 33	17
	PL 79–171 Sec 45	24
El Salvador and Nicaragua, assistance to, sense of Congress.	PL 79–171 Sec 38	20
Exchange rate stability, promoting conditions for.	PL 79–171 Sec 40	21
Exempted securities	PL 79–171 Sec 15	12
Foreign governments in default, financial transactions with.	PL 79–171 Sec 9	10
Fund bailouts of banks, opposing	PL 79–171 Sec 46	26
Fund policy changes	PL 79–171 Sec 59	31
IMF interest rates	PL 79–171 Sec 48	27
IMF lending, principles for	PL 79–171 Sec 63	35
Increasing productive participation of the poor.	PL 79–171 Sec 59	32
Information, obtaining and furnishing.	PL 79–171 Sec 8	9
Information on monetary and financial problems, sense of Congress.	PL 79–171 Sec 42	22
Interest Subsidy Account of the Enhanced Structural Adjustment Facility of the International Monetary Fund.	PL 79–171 Sec 54	29
International cooperation	PL 79–171 Sec 47	26
Jurisdiction and venue of actions	PL 79–171 Sec 10	10

International Monetary Fund/World Bank Group—Continued		
Bretton Woods Agreements Act—Continued		
Loans to International Finance Corporation.	PL 79–171 Sec 21	14
Medium-term financing, limitations on.	PL 79–171 Sec 63	35
Membership acceptance	PL 79–171 Sec 2	4
Military spending by developing nations, reduction of.	PL 79–171 Sec 60	33
Misreporting of information	PL 79–171 Sec 63	35
National Advisory Council on International Monetary and Financial Problems.	PL 79–171 Sec 4	5
Palestine Liberation Organization, denial of membership in the Fund.	PL 79–171 Sec 37	19
Policy audits	PL 79–171 Sec 59	32
Premium pricing	PL 79–171 Sec 63	35
Promotion of international economic relations.	PL 79–171 Sec 14	11
Public access to information	PL 79–171 Sec 59	32
Purchases of currencies or gold by the United States from the International Monetary Fund, use of.	PL 79–171 Sec 18	14
Quota increase	PL 79–171 Sec 16(a)	12
	PL 79–171 Sec 20	14
	PL 79–171 Sec 22	14
	PL 79–171 Sec 25	15
	PL 79–171 Sec 32	17
	PL 79–171 Sec 41	22
	PL 79–171 Sec 56	30
	PL 79–171 Sec 61	34
Reports	PL 79–171 Sec 34	19
Reserve Account of the Enhanced Structural Adjustment Facility Trust, providing resources.	PL 79–171 Sec 58	31
Short-term balance of payments financing.	PL 79–171 Sec 63	35
Special Drawing Rights	PL 79–171 Sec 17	13
Stabilization loans by the Bank	PL 79–171 Sec 12	11
Stabilization operations by the Fund	PL 79–171 Sec 13	11
Stabilization programs consultation	PL 79–171 Sec 30	16
Status, immunities and privileges	PL 79–171 Sec 11	10
Subscription payment	PL 79–171 Sec 7	8
Supplementary Financing Facility participation.	PL 79–171 Sec 28	15
Taiwan, membership in the Fund, sense of Congress.	PL 79–171 Sec 36	19
Trade provisions	PL 79–171 Sec 49	27
Vote against establishment of a Council.	PL 79–171 Sec 26	15
International Natural Rubber Agreement Appropriation Authorization.	PL 96–271	1737
International standards organizations		
Representation of U.S. interests	PL 96–39 Sec 413	848
International Sugar Agreement, 1977, implementation.	PL 96–236	1738
Agreement implementation	PL 96–236 Sec 2	1738
Criminal offenses	PL 96–236 Sec 4	1739
Definitions	PL 96–236 Sec 1	1738
Delegation of powers and duties	PL 96–236 Sec 3	1739
International Trade and Investment Act. See also Trade Act of 1974.	PL 98–573	791
Foreign direct investment, negotiating authority with respect to.	PL 98–573 Sec 307	794
High technology industries, negotiation of agreements.	PL 98–573 Sec 308	795

International Trade and Investment Act—Continued
Service industry, provisions relating to international trade. PL 98–573 Sec 306 792
Statement of purposes ..... PL 98–573 Sec 302 791
International Trade Commission
Action in response to trade diversion ..... PL 93–618 Sec 422 389
Adjustment assistance
Farmers, Secretary of Agriculture study. PL 93–618 Sec 294 352
Firms, Secretary of Commerce study PL 93–618 Sec 264 341
Workers, Secretary of Labor study .. PL 93–618 Sec 224 338
Affirmative determinations by divided Commission. PL 71–361 Sec 771 565
Andean Trade Preference Act impact, reports. PL 102–182 Sec 206 978
Antidumping duties determinations ..... PL 71–361 Sec 733(a) 502
PL 71–361 Sec 735(b) 515
Assessment of trade remedy laws ..... PL 107–210 Sec 2104(f) 638
Authorities ..... PL 93–618 Sec 603 408
Caribbean Basin Economic Recovery Act impact, reports. PL 98–67 Sec 215 1050
Chairman's responsibilities ..... PL 71–361 Sec 331(a) 427
Circumvention of antidumping and countervailing duty orders, advice in preventing. PL 71–361 Sec 780(e) 605
Civil service law application ..... PL 71–361 Sec 331(b) 428
Cooperation with other agencies ..... PL 71–361 Sec 334 432
Countervailing duties determinations .... PL 71–361 Sec 703(a) 476
PL 71–361 Sec 705(b) 490
Definitions ..... PL 71–361 Sec 332(e) 430
Determination of cost of crude petroleum to oil refineries. PL 71–361 Sec 332(f) 430
Discrimination by foreign countries
Additional duties ..... PL 71–361 Sec 338(a) 445
Application of proclamation ..... PL 71–361 Sec 338(c) 446
Ascertainment of discriminations .... PL 71–361 Sec 338(g) 447
Definitions ..... PL 71–361 Sec 338(i) 447
Duties to offset benefits to third country. PL 71–361 Sec 338(e) 446
Duties to offset commercial disadvantages. PL 71–361 Sec 338(d) 446
Exclusion from importation ..... PL 71–361 Sec 338(b) 446
Forfeiture of articles ..... PL 71–361 Sec 338(f) 447
Rules and regulations of Secretary of Treasury. PL 71–361 Sec 338(h) 447
Downstream product monitoring ..... PL 71–361 Sec 780(b) 601
Eligible articles advice ..... PL 93–618 Sec 503(e) 402
Equalization of costs of production ..... PL 71–361 Sec 336 433
Expenses ..... PL 71–361 Sec 331(c) 428
Information for President and Congress PL 71–361 Sec 332(d) 429
Investigations ..... PL 71–361 Sec 332(a) 429
Investigations, determinations, and recommendations of import injury caused by competition. PL 93–618 Sec 202 315
Market disruption
Determinations, time for ..... PL 93–618 Sec 406(e) 385
Investigations ..... PL 93–618 Sec 406 378
Recommendations ..... PL 93–618 Sec 406(f) 385
Report ..... PL 93–618 Sec 406(g) 385
Negotiations advice ..... PL 93–618 Sec 131 275
New York office ..... PL 71–361 Sec 331(e) 428
Notification of antidumping duties determination. PL 71–361 Sec 732(d) 501
Notification of countervailing duties determination. PL 71–361 Sec 702(d) 475
Official seal ..... PL 71–361 Sec 331(f) 428

International Trade Commission—Continued		
Organization of		
Appropriations authorization	PL 71–361 Sec 330(e)	426
Chairman and vice chairman	PL 71–361 Sec 330(c)	424
Membership	PL 71–361 Sec 330(a)	423
Quorum	PL 71–361 Sec 330(c)	424
Regulatory independence	PL 71–361 Sec 330(f)	427
Terms of office	PL 71–361 Sec 330(b)	423
Voting procedures	PL 71–361 Sec 330(d)	425
Paris Economy Pact investigations	PL 71–361 Sec 332(c)	429
Principal office at Washington	PL 71–361 Sec 331(d)	428
Production of papers	PL 71–361 Sec 333	431
Recommendations on Harmonized Tariff Schedule.	PL 100–418 Sec 1206	715
Reports	EO 12661 Sec 5–301	911
	PL 71–361 Sec 332(a)	429
	PL 71–361 Sec 332(g)	430
	PL 93–618 Sec 163(c)	306
Rules and regulations	PL 71–361 Sec 335	433
Tariff relations investigations	PL 71–361 Sec 332(b)	429
Testimony	PL 71–361 Sec 333	431
Trade agreements authority, report	PL 107–210 Sec 2103(c)	632
Trade Remedy Assistance Office	PL 71–361 Sec 339	447
Unfair practices in import trade	PL 71–361 Sec 337	435
Cease and desist orders	PL 71–361 Sec 337(f)	441
Complaints	PL 71–361 Sec 337(g)	441
Confidential information	PL 71–361 Sec 337(n)	445
Definition of United States	PL 71–361 Sec 337(m)	444
Determinations	PL 71–361 Sec 337(c)	438
Exclusion of articles from entry	PL 71–361 Sec 337(d)	439
	PL 71–361 Sec 337(e)	440
Forfeiture	PL 71–361 Sec 337(i)	442
Importation by or for the United States.	PL 71–361 Sec 337(l)	444
Investigations of violations	PL 71–361 Sec 337(b)	436
Period of effectiveness	PL 71–361 Sec 337(k)	444
Referrals to the President	PL 71–361 Sec 337(j)	443
Review	PL 71–361 Sec 337(c)	438
Sanctions	PL 71–361 Sec 337(h)	442
International Trade Functions. See also Reorganization Plan No. 3 of 1979.	EO 12188	903
Authority under the Foreign Service Act and related laws.	EO 12188 Sec 1–104	905
Delegation of	EO 12188 Sec 1–103	905
Incidental transfers and reassignments	EO 12188 Sec 1–106	906
Prior Executive Orders and determination.	EO 12188 Sec 1–105	905
Trade Policy Committee	EO 12188 Sec 1–102	904
United States Trade Representative	EO 12188 Sec 1–101	903
Internet		
Foreign tariffs, trade barriers, and other restrictions.	PL 105–277 Sec 1203	667
Investment disputes settlement. See Convention on the Settlement of Investment Disputes Act of 1966		
Investments. See also Committee on Foreign Investment in the United States; Foreign direct investment; Foreign Investment Study Act of 1974; International Investment and Trade in Services Survey Act		
United States-Canada Free-Trade Agreement Implementation Act negotiating objectives.	PL 100–449 Sec 304(b)	1006
Iran		
Blocking government property	EO 12170	1603
Prohibiting transactions		
Authorities	EO 12959 Sec 3	1609

Iran—Continued		
Prohibiting transactions—Continued		
Definitions	EO 12959 Sec 2	1609
Effect of order	EO 12959 Sec 6	1610
Petroleum resources development	EO 12957	1606
Response to actions	EO 12959 Sec 7	1610
Transactions included	EO 12959 Sec 1	1608
Prohibiting transactions, consolidation		
Authorities	EO 13059 Sec 5	1613
	EO 13059 Sec 6	1613
Definitions	EO 13059 Sec 4	1613
Effect of order	EO 13059 Sec 7	1613
	EO 13059 Sec 8	1614
Licenses, continuation of	EO 13059 Sec 3	1612
Response to actions	EO 13059 Sec 9	1614
Transactions included	EO 13059 Sec 1	1611
	EO 13059 Sec 2	1611
Iran and Libya Sanctions Act of 1996	PL 104–172	1591
Advisory opinions	PL 104–172 Sec 7	1596
Declaration of policy	PL 104–172 Sec 3	1592
Definitions	PL 104–172 Sec 14	1600
Determinations not reviewable	PL 104–172 Sec 11	1599
Exclusion of activities	PL 104–172 Sec 12	1599
Findings	PL 104–172 Sec 2	1591
Multilateral regime	PL 104–172 Sec 4	1592
Presidential waiver	PL 104–172 Sec 9	1597
Reports	PL 104–172 Sec 10	1598
Sanctions	PL 104–172 Sec 5	1593
	PL 104–172 Sec 6	1595
	PL 104–172 Sec 8	1596
Sunset	PL 104–172 Sec 13	1599
Iraq		
Confiscating and vesting property	EO 13290	1578
Development Fund protection		
Authorities	EO 13303 Sec 4	1581
Definitions	EO 13303 Sec 3	1581
Effect of order	EO 13303 Sec 1	1580
	EO 13303 Sec 2	1581
Modifying	EO 13364	1589
Economic sanctions against	PL 101–510 Sec 1458	1577
	PL 101–513	1566
Emergency Protection for Iraqi Cultural Antiquities Act of 2004		
Emergency implementation of import restrictions.	PL 108–429 Sec 3002	613
Termination of authority	PL 108–429 Sec 3003	613
Property of former regime, senior officials and family members		
Authorities	EO 13315 Sec 2	1584
	EO 13315 Sec 7	1585
	EO 13315 Sec 8	1585
Blocking	EO 13315 Sec 1	1583
Definitions	EO 13315 Sec 4	1584
Donations prohibition	EO 13315 Sec 5	1585
Effect of order	EO 13315 Sec 9	1585
	EO 13315 Sec 10	1585
	EO 13315 Sec 11	1585
Prior notice requirement	EO 13315 Sec 6	1585
Prohibitions	EO 13315 Sec 3	1584
Supercomputer licensing prohibition	PL 101–515 Sec 608	1576
Termination of national emergency		
Authorities	EO 13350 Sec 7	1587
	EO 13350 Sec 8	1587
Donations prohibition	EO 13350 Sec 5	1587
Effect of order	EO 13350 Sec 1	1586
	EO 13350 Sec 9	1588
Prior notice requirement	EO 13350 Sec 6	1587

Iraq—Continued		
Termination of national emergency—Continued		
Property ownership or possession, prohibition of.	EO 13350 Sec 4	1587
Iraq Sanctions Act of 1990	PL 101–513	1566
Consultations with Congress	PL 101–513 Sec 586B	1567
Embargo violations, penalties for	PL 101–513 Sec 586E	1569
Export license restrictions	PL 101–513 Sec 586I	1574
Invasion of Kuwait, declarations regarding.	PL 101–513 Sec 586A	1566
Reports	PL 101–513 Sec 586J	1574
Sanctions	PL 101–513 Sec 586G	1571
Trade embargo	PL 101–513 Sec 586C	1567
U.N. sanctions, compliance with	PL 101–513 Sec 586D	1568
Violations of international law, declarations regarding.	PL 101–513 Sec 586F	1569
Waiver authority	PL 101–513 Sec 586H	1572
Israel		
Japanese compliance with Arab boycott, sense of Congress.	PL 100–418 Sec 2209	1289
Trade with Israel	PL 98–573	1128
Application of trade law provisions	PL 98–573 Sec 403	1129
Construction of title	PL 98–573 Sec 405	1131
Duty-free treatment of articles, criteria for.	PL 98–573 Sec 402	1128
Perishable articles, fast track procedures for.	PL 98–573 Sec 404	1130
United States-Israel Free Trade Implementation Act of 1985		
Harmonized Tariff Schedule	Gen. note 8	888
User fees, exemption of products	PL 101–382 Sec 112	1132
Israel Free Trade Agreement. See United States-Israel Free Trade Agreement		
Israel Free Trade Implementation Act of 1985. See United States-Israel Free Trade Implementation Act of 1985		
ITC. See International Trade Commission		

J

Jackson-Vanik amendment	PL 93–618 Sec 402	371
Jamaica. See Caribbean Basin Economic Recovery Act		
Japan		
Auto parts sales		
Establishment of initiative	PL 100–418 Sec 2123	1282
Re-establishment of initiative	PL 105–261 Sec 3803	1271
Coal exports to	PL 100–418 Sec 1933	741
Compliance with Arab boycott of Israel, sense of Congress.	PL 100–418 Sec 2209	1289
Importation of manufactured goods from less developed countries.	PL 100–418 Sec 2208	1288
Investigation of barriers to certain U.S. services.	PL 100–418 Sec 1305	721
Purchases of U.S.-made automotive parts.	PL 100–418 Sec 1934	742
Special Advisory Committee on automotive parts sales.	PL 105–261 Sec 3804	1272
Supercomputer trade dispute	PL 100–418 Sec 1307	722
Trade and economic relations with	PL 100–418 Sec 1306	721
United States and Foreign Commercial Service Initiative.	PL 100–418 Sec 2306	1296
Jewelry		
Facilitation of trade, sense of Congress	PL 100–418 Sec 2210	1289
Jobs Through Exports Act of 1992	PL 102–549	677

Jobs Through Exports Act of 1992—Continued		
Capital projects		
Agency for International Development credit guarantees to finance, report.	PL 102–549 Sec 307	680
Coordination	PL 102–549 Sec 304	679
Definitions	PL 102–549 Sec 308	680
Funding for	PL 102–549 Sec 306	679
Office within the Agency for International Development.	PL 102–549 Sec 302	677
Poverty alleviation and environmental safety and sustainability.	PL 102–549 Sec 303	678
Reports	PL 102–549 Sec 305	679
Export promotion activities	PL 102–549 Sec 501	682
Impact on employment in the United States.	PL 102–549 Sec 801	684
Trade promotion expansion		
Commercial Service Officers	PL 102–549 Sec 701	683
United States Commercial Centers		
Appropriations authorization	PL 102–549 Sec 401(i)	682
Definitions	PL 102–549 Sec 401(k)	682
Establishment of	PL 102–549 Sec 401(a)	680
Facilities relationship to Department of Commerce operations in host countries.	PL 102–549 Sec 401(g)	681
Functions of	PL 102–549 Sec 401(c)	680
Purpose of	PL 102–549 Sec 401(b)	680
Specific services to be provided	PL 102–549 Sec 401(d)	681
Staffing of	PL 102–549 Sec 401(f)	681
Trade promotion activities	PL 102–549 Sec 401(e)	681
Use of Market Development Cooperator Program.	PL 102–549 Sec 401(h)	682
Worker rights, internationally recognized.	PL 102–549 Sec 802	684
Johnson Act		
Financial transactions with foreign governments.	PL 80–772	1690
Jordan Free Trade Area Implementation Act	PL 107–43	1115
Appropriations authorization	PL 107–43 Sec 402	1119
Definitions	PL 107–43 Sec 3	1115
Harmonized Tariff Schedule	Gen. note 18	891
Implementing regulations	PL 107–43 Sec 403	1119
Processing operations, direct costs of	PL 107–43 Sec 102(b)	1116
Purposes	PL 107–43 Sec 2	1115
Relationship of agreement to United States and state law.	PL 107–43 Sec 401	1119
Rules of origin		
Direct costs of processing operations	PL 107–43 Sec 102(b)	1116
Eligible articles	PL 107–43 Sec 102(a)	1116
Exclusion	PL 107–43 Sec 102(d)	1118
General provisions	PL 107–43 Sec 102(a)	1116
Textile and apparel articles	PL 107–43 Sec 102(c)	1117
Tariff modifications	PL 107–43 Sec 101	1115
Termination effect	PL 107–43 Sec 404	1120
Judicial Review Commission on Foreign Asset Control		
Compensation and travel expenses	PL 106–120 Sec 810(f)	1498
Duties	PL 106–120 Sec 810(c)	1497
Establishment of	PL 106–120 Sec 810(a)	1496
Funding	PL 106–120 Sec 810(j)	1499
Inapplicability of administrative provisions.	PL 106–120 Sec 810(i)	1499
Membership	PL 106–120 Sec 810(b)	1496
Powers	PL 106–120 Sec 810(d)	1497
Procedural matters	PL 106–120 Sec 810(b)	1496
Report	PL 106–120 Sec 810(g)	1498
Staff	PL 106–120 Sec 810(e)	1498

Judicial Review Commission on Foreign Asset Control—Continued		
Termination	PL 106–120 Sec 810(h)	1499

K

Kazakhstan		
Trade Act of 1974 waiver	EO 12809	1203
Kenya		
Quotas on textile and apparel imports, treatment of.	PL 106–200 Sec 112(c)	1091
Kimberley Process Certification Scheme. See Clean Diamond Trade Act		
Kimberley Process Implementation Coordinating Committee		
Establishment of	PL 108–19 Sec 11	1679
Kongsberg Trading Company		
Sanctions	EO 12661 Sec 2–201	909
	PL 100–418 Sec 2443	1310
Kuwait		
Iraq invasion of, declarations regarding	PL 101–513 Sec 586A	1566
Kyrgyzstan		
Normal trade relations	PL 106–200 Sec 302	1179
Trade Act of 1974 waiver	EO 12802	1204

L

Labor, Department of		
Steel industry worker assistance plan	PL 98–573 Sec 807	804
Labor issues		
Cooperation agreement	PL 103–182 Sec 531	957
Laos		
Normal trade relations, extension of	PL 108–429 Sec 2005	1171
Latin America		
Multilateral Investment Fund focus on low-income areas.	PL 86–147 Sec 38	78
Latvia		
Most-favored-nation treatment		
Findings	PL 102–182 Sec 101	1195
Nondiscriminatory treatment, extension of.	PL 102–182 Sec 102	1196
Prompt provision of GSP treatment, sense of Congress.	PL 102–182 Sec 104	1197
Termination of application of Title IV of the Trade Act of 1974.	PL 102–182 Sec 103	1196
Lebanon. See Syria Accountability and Lebanese Sovereignty Restoration Act of 2003		
Liberia		
Prohibiting transactions	EO 13348	1684
LIBERTAD Act of 1996. See Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996		
Libya		
Iran and Libya Sanctions Act of 1996	PL 104–172	1591
Advisory opinions	PL 104–172 Sec 7	1596
Declaration of policy	PL 104–172 Sec 3	1592
Definitions	PL 104–172 Sec 14	1600
Determinations not reviewable	PL 104–172 Sec 11	1599
Exclusion of activities	PL 104–172 Sec 12	1599
Findings	PL 104–172 Sec 2	1591
Multilateral regime	PL 104–172 Sec 4	1592
Presidential waiver	PL 104–172 Sec 9	1597
Reports	PL 104–172 Sec 10	1598
Sanctions	PL 104–172 Sec 5	1593

Libya—Continued
Iran and Libya Sanctions Act of 1996—Continued
Sanctions—Continued
PL 104–172 Sec 6 1595
PL 104–172 Sec 8 1596
PL 104–172 Sec 9 1597
Sunset ..... PL 104–172 Sec 13 1599
Lithuania
Most-favored-nation treatment
Findings ..... PL 102–182 Sec 101 1195
Nondiscriminatory treatment, extension of. PL 102–182 Sec 102 1196
Prompt provision of GSP treatment, sense of Congress. PL 102–182 Sec 104 1197
Termination of application of Title IV of the Trade Act of 1974. PL 102–182 Sec 3 1196

M

Market Development Cooperator Program
Budget Act regulations ..... PL 100–418 Sec 2303(d) 1295
Cooperator Partnership Program ..... PL 100–418 Sec 2303(c) 1294
Implementation of ..... PL 100–418 Sec 2303(b) 1294
Secretary of Commerce authority ..... PL 100–418 Sec 2303(a) 1293
United States Commercial Centers use .. PL 102–549 Sec 401(h) 682
Market disruption
Action to address ..... PL 93–618 Sec 421 383
China, People's Republic of, agreements PL 93–618 Sec 421(j) 387
Commission report ..... PL 93–618 Sec 421(g) 385
Critical circumstances ..... PL 93–618 Sec 421(i) 386
Extension of action ..... PL 93–618 Sec 421(o) 388
Factors in determination ..... PL 93–618 Sec 421(d) 384
Initiation of investigations ..... PL 93–618 Sec 421(b) 384
International Trade Commission investigations. PL 93–618 Sec 406 378
Modifications of relief ..... PL 93–618 Sec 421(n) 388
Opportunity to present views and evidence on proposed measure. PL 93–618 Sec 421(h) 386
Publication of decision and reports ..... PL 93–618 Sec 421(l) 388
Recommendations of Commission on proposed remedies. PL 93–618 Sec 421(f) 385
Standard for Presidential action ..... PL 93–618 Sec 421(k) 387
Time for Commission determinations ..... PL 93–618 Sec 421(e) 385
Marxist Popular Movement for the Liberation of Angola
Findings ..... PL 99–472 1636
Mauritius
Quotas on textile and apparel imports, treatment of. PL 106–200 Sec 112(c) 1091
MDB. See Multilateral development banks
MEC. See Myanmar Economic Corporation
Medical technologies. See HIV/AIDS pharmaceuticals
Medicine and medical supplies
Export control exclusions ..... PL 96–72 Sec 6(g) 1366
Trade sanctions reform ..... PL 106–387 1481
Mexican Debt Disclosure Act of 1995 ..... PL 104–6 208
Definitions ..... PL 104–6 Sec 407 211
Findings ..... PL 104–6 Sec 402 208
Presidential certification regarding swap of currencies through exchange stabilization fund or Federal Reserve. PL 104–6 Sec 406 211
Presidential reports ..... PL 104–6 Sec 403 209
Secretary of the Treasury, reports ..... PL 104–6 Sec 404 209

Mexican Debt Disclosure Act of 1995—Continued		
Termination of reporting requirements	PL 104–6 Sec 405	210
Mexico		
Bilateral Framework Agreement on Trade and Investment.	PL 100–418 Sec 2101	1282
Binational panel review of countervailing and antidumping duty proceedings.	PL 71–361 Sec 516A(g)	460
Border Environment Cooperation Commission and the North American Development Bank Agreement.	EO 12916	1065
Cooperation promotion	EO 12916 Sec 2(c)	1065
Finance Committee	EO 12916 Sec 6	1066
	EO 12916 Sec 7	1066
	EO 12916 Sec 8	1067
	EO 12916 Sec 9	1067
Good Neighbor Environmental Board.	EO 12916 Sec 10	1067
Intention of order	EO 12916 Sec 11	1067
Interagency coordination	EO 12916 Sec 2(b)	1065
Policy	EO 12916 Sec 1	1065
Project loans, guarantees or grants	EO 12916 Sec 3(b)	1066
	EO 12916 Sec 3(c)	1066
	EO 12916 Sec 3(d)	1066
Secretary of Treasury functions	EO 12916 Sec 4	1066
	EO 12916 Sec 5	1066
U.S. representation	EO 12916 Sec 2(a)	1065
	EO 12916 Sec 3(a)	1065
Middle East		
Terrorists who threaten to disrupt peace process	EO 12947	1509
Middle East Development Bank		
Bretton Woods Agreements Act applicability.	PL 104–208 Sec 704	124
Effectiveness of agreement	PL 104–208 Sec 708	125
Federal Reserve Banks as depositories	PL 104–208 Sec 705	124
Governor and alternate Governor	PL 104–208 Sec 703	124
Jurisdiction and venue of actions	PL 104–208 Sec 707	125
Membership acceptance	PL 104–208 Sec 702	124
Securities issued as exempt, filing with Securities and Exchange Commission.	PL 104–208 Sec 709	126
Stock subscription	PL 104–208 Sec 706	125
Technical amendments	PL 104–208 Sec 710	126
Military expenditures		
Reducing spending by developing nations.	PL 79–171 Sec 60	33
Military-related exports		
Annual report on impact of offsets	50 USC App Sec 2099	1435
Minerals		
Opposition of multilateral assistance for foreign surplus.	PL 99–472 Sec 22	1724
Mines and mining		
Opposition to funding of copper commodity production.	PL 99–88 Sec 501	214
U.S. policies	PL 99–88 Sec 502	214
Miscellaneous Trade and Technical Corrections Act of 2004.	PL 108–429	611
Iraqi cultural antiquities		
Emergency implementation of import restrictions.	PL 108–429 Sec 3002	613
Termination of authority	PL 108–429 Sec 3003	613
Tariff provisions		
Clarification of designation of normal trade relations.	PL 108–429 Sec 1560	611
Integrated Border Inspection Areas, creation of.	PL 108–429 Sec 1560(b)	611

Miscellaneous Trade and Technical Corrections Act of 2004—Continued
Wool Trust Fund ..... PL 108–429 Sec 4002(c) 613
Missile proliferation control violations
Definitions ..... PL 96–72 Sec 11B(c) 1406
Transfers of missile equipment or technology by foreign persons. PL 96–72 Sec 11B(b) 1404
Violations by U.S. persons ..... PL 96–72 Sec 11B(a) 1403
Missile technology
Export controls ..... PL 96–72 Sec 6(l) 1371
Moldova
Trade Act of 1974 waiver ..... EO 12809 1203
Monetary and financial policies. See National Advisory Council on International Monetary and Financial Policies
Money laundering
Civil penalties ..... 31 USC Sec 5321 239
Mongolia
Normal trade relations
Nondiscriminatory treatment, extension of. PL 102–157 1198
PL 106–36 Sec 2424 1181
Trade Act of 1974 waiver ..... EO 12746 1207
Montenegro
Most-favored-nation treatment
Withdrawal of status ..... PL 102–420 Sec 1 1191
Montserrat. See Caribbean Basin Economic Recovery Act
Morocco Free Trade Agreement Implementation Act. See United States-Morocco Free Trade Agreement Implementation Act.
Most-favored-nation treatment. See also Normal trade relations
Afghanistan
Authority to deny ..... PL 99–190 Sec 118 1638
PL 99–190 Sec 552 1638
Bulgaria
Findings and supplemental action ... PL 104–162 Sec 1 1187
Termination of application of Title IV of the Trade Act of 1974. PL 104–162 Sec 2 1188
Cambodia
Findings ..... PL 104–203 Sec 1 1183
Nondiscriminatory treatment, extension of. PL 104–203 Sec 2 1183
Report ..... PL 104–203 Sec 3 1184
China, People's Republic of
Conditions for renewal ..... EO 12850 1189
Czech and Slovak Federal Republic
Findings ..... PL 102–182 Sec 1(a) 1194
Preparatory Presidential action ..... PL 102–182 Sec 1(b) 1194
Termination of application of Title IV of the Trade Act of 1974. PL 102–182 Sec 2 1195
Estonia
Findings ..... PL 102–182 Sec 101 1195
Nondiscriminatory treatment, extension of. PL 102–182 Sec 102 1196
Prompt provision of GSP treatment, sense of Congress. PL 102–182 Sec 104 1197
Termination of application of Title IV of the Trade Act of 1974. PL 102–182 Sec 103 1196
Hungary
Findings ..... PL 102–182 Sec 1(a) 1194
Preparatory Presidential action ..... PL 102–182 Sec 1(b) 1194
Termination of application of Title IV of the Trade Act of 1974. PL 102–182 Sec 2 1195
Latvia
Findings ..... PL 102–182 Sec 101 1195

Most-favored-nation treatment—Continued
Latvia—Continued
Nondiscriminatory treatment, extension of. PL 102–182 Sec 102 1196
Prompt provision of GSP treatment, sense of Congress. PL 102–182 Sec 104 1197
Termination of application of Title IV of the Trade Act of 1974. PL 102–182 Sec 103 1196
Lithuania
Findings ..... PL 102–182 Sec 101 1195
Nondiscriminatory treatment, extension of. PL 102–182 Sec 102 1196
Prompt provision of GSP treatment, sense of Congress. PL 102–182 Sec 104 1197
Termination of application of Title IV of the Trade Act of 1974. PL 102–182 Sec 3 1196
Montenegro
Withdrawal of status ..... PL 102–420 Sec 1 1191
Romania
Findings ..... PL 104–171 Sec 1 1185
Termination of application of Title IV of the Trade Act of 1974. PL 104–171 Sec 2 1186
Serbia
Withdrawal of status ..... PL 102–420 Sec 1 1191
Motor vehicles. See Automobiles; Automotive parts
MPLA. See Marxist Popular Movement for the Liberation of Angola
Multilateral development banks. See also International debt forgiveness and international financial institutions reform; International Financial Institutions Act
Personnel practices ..... PL 98–181 Sec 1006 235
Sense of Congress ..... PL 98–181 234
Study ..... PL 98–181 Sec 1005 234
Multilateral Export Control Enhancement Amendments Act. PL 100–418 1309
Findings ..... PL 100–418 Sec 2442 1310
Mandatory sanctions against Toshiba and Kongsberg. PL 100–418 Sec 2443 1310
Multilateral export control violations
Compensation for diversion of militarily critical technologies. PL 96–72 Sec 11A(i) 1402
Damages ..... PL 96–72 Sec 11A(k) 1403
Definitions ..... PL 96–72 Sec 11A(e) 1401
PL 96–72 Sec 11A(l) 1403
Determination by the President ..... PL 96–72 Sec 11A(a) 1399
Discretionary imposition of sanctions ..... PL 96–72 Sec 11A(h) 1402
Exceptions ..... PL 96–72 Sec 11A(c) 1400
Exclusion ..... PL 96–72 Sec 11A(d) 1401
Presidential actions ..... PL 96–72 Sec 11A(j) 1402
Reports ..... PL 96–72 Sec 11A(g) 1402
Sanctions ..... PL 96–72 Sec 11A(b) 1400
Subsequent modifications of sanctions ... PL 96–72 Sec 11A(f) 1401
Multilateral Investment Fund
Contributions to ..... PL 86–147 Sec 37 77
Focus on low-income areas of Latin America and the Caribbean. PL 86–147 Sec 38 78
Multilateral Investment Guarantee Agency. See also International debt forgiveness and international financial institutions reform; International Financial Institutions Act; Multilateral Investment Guarantee Agency Act
Assistance establishing financial institutions in Poland, sense of Congress. PL 101–240 Sec 602 135
Conditional financial assistance to Poland, sense of Congress. PL 101–240 Sec 603 136

Multilateral Investment Guarantee Agency Act.	PL 100–202	56
Arbitral awards enforcement	PL 100–202 Sec 412	59
Arbitral tribunal award	PL 100–202 Sec 414	60
Bretton Woods Agreements Act applicability.	PL 100–202 Sec 408	58
Consultations with private sector and labor organization representatives.	PL 100–202 Sec 407	58
Federal Reserve banks as depositories	PL 100–202 Sec 410	58
Force and effect of Articles	PL 100–202 Sec 413	60
Governor and alternate Governor	PL 100–202 Sec 404	56
Jurisdiction of U.S. courts	PL 100–202 Sec 412	59
Membership acceptance	PL 100–202 Sec 403	56
Restrictions	PL 100–202 Sec 409	58
Secretary of the Treasury responsibilities.	PL 100–202 Sec 406	57
Stock subscription	PL 100–202 Sec 411	58
United States Director, instructions for	PL 100–202 Sec 405	56
Myanmar Economic Corporation		
Import restrictions	PL 108–61 Sec 3	1642

N

NAFTA. See North American Free Trade Agreement		
Nairobi Protocol		
Implementation of		
Duty-free treatment authority	PL 100–418 Sec 1121	708
Purpose	PL 100–418 Sec 1121(a)	707
Reference	PL 100–418 Sec 1121(a)	707
Statistical information	PL 100–418 Sec 1121(i)	709
Narcotics. See Drug control		
Narcotics Control Trade Act. See also Drug control.	PL 93–618 Sec 801	410
Definitions	PL 93–618 Sec 805	417
Progress reports	PL 93–618 Sec 804	417
Sugar quota	PL 93–618 Sec 803	417
Tariff treatment of products of uncooperative drug producing or transit countries		
Duration of action	PL 93–618 Sec 802(c)	415
Presidential action regarding aviation.	PL 93–618 Sec 802(d)	416
Required action by President	PL 93–618 Sec 802(a)	411
	PL 93–618 Sec 802(b)	411
Secretary of State guidelines	PL 93–618 Sec 802(e)	416
Narcotics traffickers		
Authorities	EO 12978 Sec 4	1501
Blocking assets	EO 12978 Sec 1	1500
Definitions	EO 12978 Sec 3	1501
Foreign Narcotics Kingpin Designation Act.	PL 106–120	1489
Authorities	PL 106–120 Sec 806	1494
Blocking assets	PL 106–120 Sec 805	1493
Definitions	PL 106–120 Sec 808	1496
Enforcement	PL 106–120 Sec 807	1495
Findings and policy	PL 106–120 Sec 802	1489
Judicial Review Commission on Foreign Asset Control.	PL 106–120 Sec 810	1496
Prohibiting transactions	PL 106–120 Sec 805(c)	1494
Public identification	PL 106–120 Sec 804	1490
Purpose	PL 106–120 Sec 803	1490
Reports	PL 106–120 Sec 804	1490
Prohibiting transactions	EO 12978 Sec 2	1501
National Advisory Council on International Monetary and Financial Policies.	EO 11269	246
Chairman's annual report	PL 95–118 Sec 1701	198

National Advisory Council on International Monetary and Financial Policies—Continued		
Establishment of	EO 11269 Sec 1	246
	PL 79–171 Sec 4	5
Functions of	EO 11269 Sec 2	246
Information transmittal	EO 11269 Sec 4	248
Inter-American Development Bank applicability.	PL 86–147 Sec 4	62
International Development Association applicability.	PL 86–565 Sec 4	42
International Finance Corporation Act applicability.	PL 84–350 Sec 4	51
Secretary of State, functions of	EO 11269 Sec 7	248
Secretary of the Treasury, functions of	EO 11269 Sec 3	247
National Critical Materials Act of 1984	PL 98–373	1726
Advanced materials research and technology, program and policy.	PL 98–373 Sec 205	1729
Appropriations authorization	PL 98–373 Sec 211	1732
Authorities of Council	PL 98–373 Sec 204(b)	1729
Authority	PL 98–373 Sec 210	1732
Basic and advanced materials industries, innovation in.	PL 98–373 Sec 206	1730
Compensation of members	PL 98–373 Sec 207(a)	1731
Cooperative efforts	PL 98–373 Sec 204(c)	1729
Definition	PL 98–373 Sec 212	1733
Director, responsibilities and duties	PL 98–373 Sec 209	1732
Executive Director, position and authorities.	PL 98–373 Sec 208	1731
Findings	PL 98–373 Sec 202(a)	1726
National Critical Materials Council establishment.	PL 98–373 Sec 203	1727
Purpose	PL 98–373 Sec 202(b)	1727
Reimbursements	PL 98–373 Sec 207(b)	1731
Responsibilities of Council	PL 98–373 Sec 204(a)	1728
National Defense Authorization Act for FY 1991.	PL 101–510	1312
Benefit information for businesses	PL 101–510 Sec 4304	1314
Export financing for goods and services produced by former defense production firms		
Coordination	PL 101–510 Sec 4303(c)	1313
Export-Import Bank	PL 101–510 Sec 4303(a)	1312
Report	PL 101–510 Sec 4303(d)	1314
Small Business Act	PL 101–510 Sec 4303(b)	1313
National emergencies		
Anchorage and movement of vessels into Cuban territory.	Pres. Proc. 6867	1554
Burma	EO 13310	1652
Clean Diamond Trade Act	EO 13312	1681
Export Administration Act Continuation	EO 12981	1444
Iran	EO 12170	1603
	EO 12613	1605
	EO 12957	1606
	EO 12959	1608
	EO 13059	1611
Iraq	EO 13290	1578
	EO 13303	1580
	EO 13315	1583
	EO 13364	1589
Iraq emergency, termination of	EO 13350	1587
Liberia	EO 13348	1684
Libya	EO 13357	1635
Narcotics traffickers	EO 12978	1500
National Emergencies Act. See also International Emergency Economic Powers Act.	PL 94–412	1473

National emergencies—Continued		
National Emergencies Act—Continued		
Declarations of future emergencies		
Authorities	PL 94–412 Sec 201	1473
Termination of	PL 94–412 Sec 202	1474
Exercise of emergency powers and authorities.	PL 94–412 Sec 301	1475
Presidential accountability and reporting requirements.	PL 94–412 Sec 401	1475
Terminating existing declared emergencies.	PL 94–412 Sec 101	1473
Proliferation	EO 13382	1512
Russia	EO 13159	1671
Sudan	EO 13067	1668
Syria	EO 13338	1623
Terrorists	EO 12947	1509
	EO 13224	1504
	EO 13372	1503
Western Balkans	EO 13219	1660
Zimbabwe	EO 13288	1687
National Emergencies Act. See also International Emergency Economic Powers Act.	PL 94–412	1473
Declarations of future emergencies		
Authorities	PL 94–412 Sec 201	1473
Termination of	PL 94–412 Sec 202	1474
Exercise of emergency powers and authorities.	PL 94–412 Sec 301	1475
Presidential accountability and reporting requirements.	PL 94–412 Sec 401	1475
Terminating existing declared emergencies.	PL 94–412 Sec 101	1473
National League for Democracy	PL 108–61 Sec 2	1640
National security		
Export controls		
Agricultural commodities exclusion	PL 96–72 Sec 5(q)	1363
Authority	PL 96–72 Sec 5(a)	1343
Commercial agreements with certain countries.	PL 96–72 Sec 5(j)	1361
Control list	PL 96–72 Sec 5(c)	1346
Diversion of controlled goods or technology.	PL 96–72 Sec 5(l)	1361
Export licenses	PL 96–72 Sec 5(e)	1350
Foreign availability	PL 96–72 Sec 5(f)	1351
Goods containing controlled parts and components.	PL 96–72 Sec 5(m)	1362
Indexing	PL 96–72 Sec 5(g)	1357
Militarily critical technologies	PL 96–72 Sec 5(d)	1349
Multilateral export controls	PL 96–72 Sec 5(i)	1360
National Security Control Office	PL 96–72 Sec 5(p)	1362
Negotiations with countries	PL 96–72 Sec 5(k)	1361
Policy toward individual countries	PL 96–72 Sec 5(b)	1345
Recordkeeping	PL 96–72 Sec 5(o)	1362
Security measures	PL 96–72 Sec 5(n)	1362
Technical advisory committees	PL 96–72 Sec 5(h)	1358
Export controls, study	PL 100–418 Sec 2433	1308
Import sanctions for export violations	PL 87–794 Sec 233	870
Machine tool import arrangements enforcement.	PL 100–418 Sec 1501	738
Trade agreements	PL 87–794 Sec 232	867
National Security Control Office		
Export controls	PL 96–72 Sec 5(p)	1362
National Trade Data Bank		
Access to information	PL 100–418 Sec 5412	770
Collection of data	PL 100–418 Sec 5411	770
Consultation with private sector and government officials.	PL 100–418 Sec 5404	766
Cooperation among executive agencies	PL 100–418 Sec 5405	766
Definitions	PL 100–418 Sec 5401	765

National Trade Data Bank—Continued
Establishment of ..... PL 100–418 Sec 5406 767
Exclusion of information ..... PL 100–418 Sec 5409 769
Fees ..... PL 100–418 Sec 5412 770
Interagency Trade Data Advisory Committee
Functions of ..... PL 100–418 Sec 5402 766
PL 100–418 Sec 5403 766
Nonduplication ..... PL 100–418 Sec 5410 769
Operation of ..... PL 100–418 Sec 5407 768
Report ..... PL 100–418 Sec 5413 770
Service sector information ..... PL 100–418 Sec 5408 769
Natural resources. See Environmental issues
Netherlands Antilles. See Caribbean Basin Economic Recovery Act
News media
Cuba, news bureaus in ..... PL 104–114 Sec 114 1531
Nicaragua. See also Caribbean Basin Economic Recovery Act
International Monetary Fund/World Bank assistance to, sense of Congress. PL 79–171 Sec 38 20
Trade benefits for ..... PL 101–382 Sec 241 985
NLD. See National League for Democracy
Nongovernmental organizations
Improvement of interaction with the International Bank for Reconstruction and Development. PL 95–118 Sec 1617 190
Institution-building for organizations concerned with the environment. PL 95–118 Sec 1616 189
Normal trade relations. See also Most-favored-nation treatment PL 108–429 1170
Albania ..... PL 102–363 1192
PL 106–200 Sec 301 1178
Armenia
Termination of application of Title IV of the Trade Act of 1974. PL 108–429 Sec 2001 1170
China, People's Republic of
Termination of application of Chapter 1 of Title IV of the Trade Act of 1974. PL 106–286 Sec 101 1176
Findings and policy ..... PL 105–206 Sec 5003(a) 668
Georgia
Findings ..... PL 106–476 Sec 3001 1174
Termination of application of Title IV of the Trade Act of 1974. PL 106–476 Sec 3002 1175
Kyrgyzstan ..... PL 106–200 Sec 302 1179
Laos
Extension of trade relations ..... PL 108–429 Sec 2005 1171
Mongolia
Nondiscriminatory treatment, extension of. PL 102–157 1198
PL 106–36 Sec 2424 1181
Savings provisions ..... PL 105–206 Sec 5003(c) 669
Union of Soviet Socialist Republics ..... PL 102–197 1193
Vietnam ..... PL 107–52 1173
Normal value
Adjustments ..... PL 71–361 Sec 773(a) 578
Constructed value ..... PL 71–361 Sec 773(e) 582
PL 71–361 Sec 773(f) 583
Cost of production calculation, special rules. PL 71–361 Sec 773(f) 583
Determination of ..... PL 71–361 Sec 773(a) 576
Exportation from an intermediate country. PL 71–361 Sec 773(a) 577
Fictitious markets ..... PL 71–361 Sec 773(a) 577
Indirect sales or offers for sale ..... PL 71–361 Sec 773(a) 578
Nonmarket economy countries ..... PL 71–361 Sec 773(c) 581
Price ..... PL 71–361 Sec 773(a) 576

Normal value—Continued		
Sales at less than cost of production	PL 71–361 Sec 773(b)	579
Special rule for multinational corporations.	PL 71–361 Sec 773(d)	581
Third country sales	PL 71–361 Sec 773(a)	577
Use of constructed value	PL 71–361 Sec 773(a)	578
North American Agreement on Environmental Cooperation		
Implementation	EO 12915	1061
Consultation with states	EO 12915 Sec 2(e)	1063
Environmental effects of the North American Free Trade Agreement.	EO 12915 Sec 2(c)	1062
Judicial review	EO 12915 Sec 5	1064
National Advisory Committee	EO 12915 Sec 3	1063
Policy	EO 12915 Sec 1	1061
Priorities	EO 12915 Sec 2(a)	1061
Transparency and public participation.	EO 12915 Sec 2(d)	1062
U.S. contributions to the Commission.	EO 12915 Sec 4	1063
U.S. representation on the Council	EO 12915 Sec 2(b)	1062
U.S. participation in Commission	PL 103–182 Sec 532	957
North American countries		
Trade relations with, sense of Congress	PL 93–618 Sec 612	410
North American Development Bank. See Border Environment Cooperation Commission and the North American Development Bank Agreement; Foreign Operations Appropriations Instructions, FY 2006; North American Development Bank Act; North American Development Bank Amendments		
North American Development Bank Act	PL 103–182	113
Actions not to be taken without authorization.	PL 103–182 Sec 541(e)	114
Board members compensation	PL 103–182 Sec 541(c)	114
Border Environment Cooperation Agreement		
Authority to agree to certain amendments.	PL 103–182 Sec 545	118
Definition	PL 103–182 Sec 544	118
Bretton Woods Agreements Act applicability.	PL 103–182 Sec 541(d)	114
Community adjustment and investment program		
Advisory committee	PL 103–182 Sec 543(b)	116
Ombudsman	PL 103–182 Sec 543(c)	118
President	PL 103–182 Sec 543(a)	116
Reporting requirement	PL 103–182 Sec 543(d)	118
Federal Reserve banks as depositories	PL 103–182 Sec 541(f)	114
Grants out of paid-in capital resources	PL 103–182 Sec 546	118
Jurisdiction of U.S. courts	PL 103–182 Sec 541(g)	114
Membership acceptance	PL 103–182 Sec 541(a)	113
Securities issued as exempt, filing with Securities and Exchange Commission.	PL 103–182 Sec 541(h)	115
Status, immunities, and privileges	PL 103–182 Sec 542	116
Stock subscription	PL 103–182 Sec 541(b)	113
North American Development Bank Amendments.	PL 108–215	120
Annual report	PL 108–215 Sec 2	120
Financing projects, sense of Congress	PL 108–215 Sec 6	123
Water conservation in	PL 108–215 Sec 3	121
	PL 108–215 Sec 4	122
	PL 108–215 Sec 5	122
North American Free Trade Agreement		
Binational panel review of countervailing and antidumping duty proceedings.	PL 71–361 Sec 516A(g)	460
Definitions	PL 96–39 Sec 481	861

North American Free Trade Agreement—Continued
Proprietary information disclosure
Comment by consumers and industrial users. PL 71–361 Sec 777(h) 596
Contents of protective orders ..... PL 71–361 Sec 777(f) 593
Issuance of protective orders ..... PL 71–361 Sec 777(f) 591
Prohibited acts ..... PL 71–361 Sec 777(f) 593
Publication of determinations ..... PL 71–361 Sec 777(i) 596
Requirements for final determinations. PL 71–361 Sec 777(i) 596
Sanctions ..... PL 71–361 Sec 777 593
Testimony and production of papers PL 71–361 Sec 777(f) 594
Sanitary and phytosanitary measures
Definitions ..... PL 96–39 Sec 463 858
General provisions ..... PL 96–39 Sec 461 857
Inquiry point ..... PL 96–39 Sec 462 857
Standards-related measures
Definitions ..... PL 96–39 Sec 473 860
General provisions ..... PL 96–39 Sec 471 859
Inquiry point ..... PL 96–39 Sec 472 859
North American Free Trade Agreement Implementation Act. See also Border Environment Cooperation Commission and the North American Development Bank Agreement PL 103–182 947
Acceptance by President of panel and committee decisions. EO 12889 Sec 2 1057
Appointments to Chapter 20 panel proceedings. PL 103–182 Sec 106 952
Approval of agreement ..... PL 103–182 Sec 101(a) 948
Border Environmental Cooperation Commission agreement. PL 103–182 Sec 533 958
Center for the Study of Western Hemispheric Trade
Appropriations authorization ..... PL 103–182 Sec 515 956
Conditions for entry into force of agreement. PL 103–182 Sec 101(b) 948
Congressional intent regarding future accessions. PL 103–182 Sec 108 952
Consultation and layover requirements for proclaimed actions. PL 103–182 Sec 103 950
Definitions ..... PL 103–182 Sec 2 947
Environmental Cooperation Agreement PL 103–182 Sec 532 957
Government procurement procedures ..... EO 12889 Sec 5 1058
Government use of patented technology EO 12889 Sec 6 1058
Implementing actions in anticipation of entry into force. PL 103–182 Sec 104(a) 951
Initial regulations ..... PL 103–182 Sec 104(b) 951
Judicial review ..... EO 12889 Sec 7 1059
Labor cooperation agreement ..... PL 103–182 Sec 531 957
NAFTA Secretariat, establishment of United States section. EO 12889 Sec 1 1057
PL 103–182 Sec 105 951
Operation and effects of the agreement, review of. PL 103–182 Sec 512 955
Relationship of agreement to United States and state law. PL 103–182 Sec 102 948
Safeguard provisions for textile and apparel goods. EO 12889 Sec 3 1057
Technical regulations and sanitary and phytosanitary measures, publication of proposed rules. EO 12889 Sec 4 1057
Termination of NAFTA status ..... PL 103–182 Sec 109 954
NTR. See Normal trade relations
Nuclear power plants
Cuba, withholding foreign assistance from supporters of Juragua plant. PL 104–114 Sec 111 1529

Nuclear weapons		
Blocking property of the government of the Russian Federation relating to the disposition of highly enriched uranium.	EO 13159	1671
Nutrition		
International Bank for Reconstruction and Development programs.	PL 95–118 Sec 1618	191
International financial institutions promotion in developing countries.	PL 95–118 Sec 901	156

O

OECD. See Organization for Economic Coordination and Development		
Omnibus Trade and Competitiveness Act of 1988.	PL 100–418	685
	PL 100–418	1280
Accession of state trading regimes to the General Agreement on Tariffs and Trade or the World Trade Organization.	PL 100–418 Sec 1106	705
American Institute of Taiwan		
Commercial personnel	PL 100–418 Sec 2201	1284
Antidumping and countervailing duty law enforcement		
Reference to Title VII of the Tariff Act of 1930.	PL 100–418 Sec 1311	723
Third-country dumping	PL 100–418 Sec 1317	723
Barter and countertrade	PL 100–418 Sec 2205	1286
Budget Act regulations	PL 100–418 Sec 2503	1311
Caribbean Basin Initiative	PL 100–418 Sec 1909	740
China, market orientation study	PL 100–418 Sec 1336(a)	724
Competitiveness impact statements	PL 100–418 Sec 5421	771
Competitiveness Policy Council Act		
Annual report	PL 100–418 Sec 5208	764
Appropriations authorization	PL 100–418 Sec 5209	765
Definitions	PL 100–418 Sec 5210	765
Details	PL 100–418 Sec 5206(d)	762
Duties of	PL 100–418 Sec 5204	758
Establishment of	PL 100–418 Sec 5203	758
Executive director	PL 100–418 Sec 5206(a)	762
Experts and consultants	PL 100–418 Sec 5206(b)	762
Findings and purposes	PL 100–418 Sec 5202	757
Membership	PL 100–418 Sec 5205	759
Powers of	PL 100–418 Sec 5207	762
Staff	PL 100–418 Sec 5206(b)	762
Countries providing weaponry to belligerent countries in the Persian Gulf region, sense of Congress.	PL 100–418 Sec 2102	1282
Crude oil production and refining capacity in the United States, effect of imports.	PL 100–418 Sec 1935	742
Cuba, enforcement of restrictions on imports from.	PL 100–418 Sec 1911	741
Currency exchange rate negotiations	PL 100–418 Sec 1124	710
Definitions	PL 100–418 Sec 1107	706
Domestically produced crude oil, exports of.	PL 100–418 Sec 2424	1306
Duty-free sales enterprises	PL 100–418 Sec 1901	739
Environmental trade promotion		
Definition	PL 100–418 Sec 2313(k)	1305
Environmental Technologies Trade Advisory Committee.	PL 100–418 Sec 2313(c)	1301
Environmental Trade Promotion Working Group.	PL 100–418 Sec 2313(b)	1300
Environmental training	PL 100–418 Sec 2313(g)	1303
Export alliances	PL 100–418 Sec 2313(j)	1305

Omnibus Trade and Competitiveness Act of 1988—Continued
- Environmental trade promotion—Continued
  - Export plans for priority countries .. PL 100–418 Sec 2313(d) 1301
  - International regional environmental initiatives. PL 100–418 Sec 2313(h) 1303
  - Project advocacy calendar and information dissemination program. PL 100–418 Sec 2313(i) 1304
  - Statement of policy ..... PL 100–418 Sec 2313(a) 1300
  - Technologies specialists in the United States and Foreign Commercial Service. PL 100–418 Sec 2313(f) 1302
  - Trade information ..... PL 100–418 Sec 2313(e) 1302
- Ethyl alcohol studies ..... PL 100–418 Sec 1910 740
- Exchange rates and international economic policy coordination
  - Definitions ..... PL 100–418 Sec 3006 746
  - Findings ..... PL 100–418 Sec 3002 743
  - International negotiations ..... PL 100–418 Sec 3004 745
  - Reporting requirements ..... PL 100–418 Sec 3005 745
  - Statement of policy ..... PL 100–418 Sec 3003 744
- Export policy, report ..... PL 100–418 Sec 2314 1305
- Export promotion programs appropriations authorization. PL 100–418 Sec 2305 1296
- Export trading companies, report ..... PL 100–418 Sec 2311 1297
- Fair Trade in Auto Parts Act of 1988
  - Definition ..... PL 100–418 Sec 2122 1282
  - Expiration date ..... PL 100–418 Sec 2125 1284
  - Japan ..... PL 100–418 Sec 2123 1282
    PL 100–418 Sec 2124 1283
- Financial reports
  - Bank loan loss reserves ..... PL 100–418 Sec 3604 756
  - Fair trade in financial services ..... PL 100–418 Sec 3603 756
  - Foreign treatment of U.S. financial institutions, quadrennial reports. PL 100–418 Sec 3602 755
- Foreign shipping practices
  - Foreign laws and practices ..... PL 100–418 Sec 10002 775
- Harmonized Tariff Schedule
  - Commission report on operation of .. PL 100–418 Sec 1216 720
  - Commission review and recommendations. PL 100–418 Sec 1205 714
  - Congressional approval of U.S. accession to the Convention. PL 100–418 Sec 1203 712
  - Coordination of trade policy and the Convention. PL 100–418 Sec 1209 716
  - Customs Cooperation Council regarding the Convention, U.S. participation. PL 100–418 Sec 1210 716
  - Definitions ..... PL 100–418 Sec 1202 711
  - Enactment of ..... PL 100–418 Sec 1204 712
  - Import and export statistics ..... PL 100–418 Sec 1208 716
  - Interim informational use of classifications. PL 100–418 Sec 1204(d) 714
  - Modifications to ..... PL 100–418 Sec 1204(b) 712
  - Presidential action on Commission recommendations. PL 100–418 Sec 1206 715
  - Publication of ..... PL 100–418 Sec 1207 715
  - Purposes ..... PL 100–418 Sec 1201 711
  - Reference to ..... PL 100–418 Sec 1212 720
  - Status of ..... PL 100–418 Sec 1204(c) 713
  - Transition to ..... PL 100–418 Sec 1211 717
- Implementation of ..... EO 12661 908
  - Accession of state trading regimes to the General Agreement on Tariffs and Trade. EO 12661 Sec 1–101 908
  - Countertrade and barter ..... EO 12661 Sec 2–101 909
  - Executive oversight ..... EO 12661 Sec 5–101 910

Omnibus Trade and Competitiveness Act of 1988—Continued
Implementation of—Continued
International Trade Commission report. EO 12661 Sec 5–301 911
Offsets ..... EO 12661 Sec 5–201 910
Regulatory review ..... EO 12661 Sec 5–102 910
Reporting functions ..... EO 12661 Sec 5–202 911
Sanctions against Toshiba and Kongsberg. EO 12661 Sec 2–201 909
Steel imports ..... EO 12661 Sec 1–301 908
Strengthening international institutions. EO 12661 Sec 5–401 911
Telecommunications trade ..... EO 12661 Sec 1–401 908
Uniform fee on imports ..... EO 12661 Sec 1–501 908
Wine barriers ..... EO 12661 Sec 1–201 908
Import competition adjustment
Certification methods study ..... PL 100–418 Sec 1429 737
Imposition of small uniform fee on all imports. PL 100–418 Sec 1428 736
Indian tribes export promotion ..... PL 100–418 Sec 2307 1296
Intellectual property rights
Findings and purposes ..... PL 100–418 Sec 1341 725
Identification of countries denying protection of. PL 100–418 Sec 1303 720
Protection of, sense of Congress ..... PL 100–418 Sec 2206 1288
Protection under Tariff Act of 1930 PL 100–418 Sec 1342 725
International Coffee Agreement Act of 1980 extension. PL 100–418 Sec 1123 710
International debt
Findings ..... PL 100–418 Sec 3102 747
Limited purpose Special Drawing Rights for the poorest heavily indebted countries. PL 100–418 Sec 3123 752
Provisions relating to the regulation of depository institutions. PL 100–418 Sec 3121 751
Purposes ..... PL 100–418 Sec 3103 747
Regulation of depository institutions, studies relating to. PL 100–418 Sec 3122 751
Statement of policy ..... PL 100–418 Sec 3104 748
International Debt Management Authority
Actions to facilitate creation of the Authority. PL 100–418 Sec 3112 750
Directive ..... PL 100–418 Sec 3111(a) 748
Final report ..... PL 100–418 Sec 3111(d) 749
International Monetary Fund-World Bank review. PL 100–418 Sec 3113 750
Interim reports ..... PL 100–418 Sec 3111(c) 749
Objectives ..... PL 100–418 Sec 3111(b) 749
Japan
Arab boycott of Israel, sense of Congress. PL 100–418 Sec 2209 1289
Coal exports to ..... PL 100–418 Sec 1933 741
Importation of manufactured goods from less developed countries. PL 100–418 Sec 2208 1288
Investigation of barriers to certain U.S. services. PL 100–418 Sec 1305 721
Purchases of U.S.-made automotive parts. PL 100–418 Sec 1934 742
Supercomputer trade dispute ..... PL 100–418 Sec 1307 722
Trade and economic relations with .. PL 100–418 Sec 1306 721
Jewelry trade, facilitation of, sense of Congress. PL 100–418 Sec 2210 1289
Lamb meat imports ..... PL 100–418 Sec 1937 743
Legislative history of H.R. 3 applicable .. PL 100–418 Sec 2 690
License application procedures ..... PL 100–418 Sec 2425 1308

Omnibus Trade and Competitiveness Act of 1988—Continued
- Market Development Cooperator Program
  - Budget Act regulations ..... PL 100–418 Sec 2303(d) 1295
  - Cooperator Partnership Program ..... PL 100–418 Sec 2303(c) 1294
  - Implementation of ..... PL 100–418 Sec 2303(b) 1294
  - Secretary of Commerce authority .... PL 100–418 Sec 2303(a) 1293
- Mixtures for fuel use studies ..... PL 100–418 Sec 1910 740
- Multilateral Export Control Enhancement
  - Findings ..... PL 100–418 Sec 2442 1310
  - Mandatory sanctions against Toshiba and Kongsberg. PL 100–418 Sec 2443 1310
- Nairobi Protocol implementation
  - Duty-free treatment ..... PL 100–418 Sec 1121(g) 708
    PL 100–418 Sec 1121(h) 708
  - Purpose ..... PL 100–418 Sec 1121(a) 707
  - Reference ..... PL 100–418 Sec 1121(a) 707
  - Statistical information ..... PL 100–418 Sec 1121(i) 709
- National defense expenditures, impact on international competitiveness. PL 100–418 Sec 5423 772
- National security
  - Machine tool import arrangements enforcement. PL 100–418 Sec 1501 738
- National security export controls, study PL 100–418 Sec 2433 1308
- National Trade Data Bank
  - Access to information ..... PL 100–418 Sec 5412 770
  - Collection of data ..... PL 100–418 Sec 5411 770
  - Consultation with private sector and government officials. PL 100–418 Sec 5404 766
  - Cooperation among executive agencies. PL 100–418 Sec 5405 766
  - Definitions ..... PL 100–418 Sec 5401 765
  - Establishment of ..... PL 100–418 Sec 5406 767
  - Exclusion of information ..... PL 100–418 Sec 5409 769
  - Fees ..... PL 100–418 Sec 5412 770
  - Interagency Trade Data Advisory Committee. PL 100–418 Sec 5402 766
    - Functions of ..... PL 100–418 Sec 5403 766
  - Nonduplication ..... PL 100–418 Sec 5410 769
  - Operation of ..... PL 100–418 Sec 5407 768
  - Report ..... PL 100–418 Sec 5413 770
  - Service sector information ..... PL 100–418 Sec 5408 769
- Overall trade negotiating objectives ..... PL 100–418 Sec 1101(a) 691
- Overseas Private Investment Corporation
  - Reaffirmation of support ..... PL 100–418 Sec 2203(a) 1284
- Primary dealers
  - Requirement of national treatment in underwriting government debt instruments. PL 100–418 Sec 3502 754
- Principal trade negotiating objectives
  - Access to high technology ..... PL 100–418 Sec 1101(b) 695
  - Agriculture ..... PL 100–418 Sec 1101(b) 692
  - Border taxes ..... PL 100–418 Sec 1101(b) 696
  - Current account surpluses ..... PL 100–418 Sec 1101(b) 692
  - Developing countries ..... PL 100–418 Sec 1101(b) 692
  - Dispute settlement ..... PL 100–418 Sec 1101(b) 691
  - Foreign direct investment ..... PL 100–418 Sec 1101(b) 694
  - Improvement of GATT and multilateral trade negotiation agreements. PL 100–418 Sec 1101(b) 691
  - Intellectual property ..... PL 100–418 Sec 1101(b) 694
  - Safeguards ..... PL 100–418 Sec 1101(b) 695
  - Specific barriers ..... PL 100–418 Sec 1101(b) 695
  - Trade and monetary coordination .... PL 100–418 Sec 1101(b) 692
  - Trade in services ..... PL 100–418 Sec 1101(b) 693
  - Transparency ..... PL 100–418 Sec 1101(b) 692

Omnibus Trade and Competitiveness Act of 1988—Continued
- Principal trade negotiating objectives—Continued
  - Unfair trade practices ..... PL 100–418 Sec 1101(b) 693
  - Worker rights ..... PL 100–418 Sec 1101(b) 695
- Reciprocal nondiscriminatory treatment PL 100–418 Sec 1105 704
- Sematech, study and report by Advisory Council on Federal Participation in. PL 100–418 Sec 5422 771
- Small business
  - Globalization of production ..... PL 100–418 Sec 8009 772
  - National seminar on exports ..... PL 100–418 Sec 8011 774
  - Promulgation of regulations ..... PL 100–418 Sec 8013 774
  - Trade negotiations ..... PL 100–418 Sec 8012 774
  - Trade remedy assistance ..... PL 100–418 Sec 8010 773
- Telecommunications trade
  - Action to ensure compliance ..... PL 100–418 Sec 1380 734
  - Actions to be taken if no foreign trade agreement obtained. PL 100–418 Sec 1376 730
  - Compensation authority ..... PL 100–418 Sec 1378 733
  - Consultations ..... PL 100–418 Sec 1379 733
  - Definitions ..... PL 100–418 Sec 1373 727
  - Findings and purposes ..... PL 100–418 Sec 1371 726
  - Foreign trade barriers, investigation of. PL 100–418 Sec 1374 728
  - International obligations ..... PL 100–418 Sec 1382 735
  - Negotiations in response to foreign trade barriers investigation. PL 100–418 Sec 1375 728
  - Review of trade agreement implementation by Trade Representative. PL 100–418 Sec 1377 732
  - Submission of data ..... PL 100–418 Sec 1380 734
  - Telecommunications competitiveness in the U.S. study. PL 100–418 Sec 1381 735
- Trade, customs, and tariff laws
  - Findings and purposes ..... PL 100–418 Sec 1001 690
- Trade agreement negotiating authority
  - Agreements regarding nontariff barriers. PL 100–418 Sec 1102(b) 697
  - Agreements regarding tariff barriers PL 100–418 Sec 1102(a) 696
  - Bilateral agreements regarding tariff and nontariff barriers. PL 100–418 Sec 1102(c) 698
  - Consultation with Congress before agreements entered into. PL 100–418 Sec 1102(d) 698
  - Uruguay Round trade negotiations, special provisions regarding. PL 100–418 Sec 1102(e) 699
- Trade agreements implementation
  - Computation of periods of time ..... PL 100–418 Sec 1103(d) 704
  - Congressional "fast track" procedures. PL 100–418 Sec 1103(b) 701
  - House of Representatives and Senate rules. PL 100–418 Sec 1103(d) 703
  - Limitations on use of "fast track" procedures. PL 100–418 Sec 1103 700
    PL 100–418 Sec 1103(c) 702
- Trade agreements termination and reservation authority. PL 100–418 Sec 1105 704
- Trade and Development Program
  - Administrative provisions ..... PL 100–418 Sec 2204(d) 1285
  - Funding levels ..... PL 100–418 Sec 2204(b) 1284
  - Reaffirmation of support ..... PL 100–418 Sec 2204(a) 1284
- Trade barriers established by auto producing countries and impact on U.S. market, study of. PL 100–418 Sec 1936 743
- Trade Promotion Coordinating Committee
  - Duties ..... PL 100–418 Sec 2312(b) 1298
  - Establishment and purpose ..... PL 100–418 Sec 2312(a) 1298

Omnibus Trade and Competitiveness Act of 1988—Continued		
Trade Promotion Coordinating Committee—Continued		
Member qualifications	PL 100–418 Sec 2312(e)	1299
Membership	PL 100–418 Sec 2312(d)	1299
Report	PL 100–418 Sec 2312(f)	1299
Strategic plan	PL 100–418 Sec 2312(c)	1298
Trade shows	PL 100–418 Sec 2304	1295
United States and Foreign Commercial Service		
Audits	PL 100–418 Sec 2301(g)	1292
Cooperation in Federal financing and insurance programs.	PL 100–418 Sec 2301(f)	1292
Definitions	PL 100–418 Sec 2301(j)	1293
Establishment of	PL 100–418 Sec 2301(a)	1289
Information dissemination	PL 100–418 Sec 2301(e)	1292
Offices	PL 100–418 Sec 2301(c)	1290
Pacific Rim Initiative	PL 100–418 Sec 2306	1296
Pay of Assistant Secretary and Director General.	PL 100–418 Sec 2301(i)	1293
Rank of Commercial Service officers in foreign missions.	PL 100–418 Sec 2301(d)	1291
Report	PL 100–418 Sec 2301(h)	1293
Statement of purpose	PL 100–418 Sec 2301(b)	1290
United States-EC agreement on citrus and pasta implementation.	PL 100–418 Sec 1122	709
United States-Mexico Framework Agreement on Trade and Investment.	PL 100–418 Sec 2101	1282
Wine trade barriers, reports on negotiations to eliminate.	PL 100–418 Sec 1125	710
Wood exports, monitoring	PL 100–418 Sec 2432	1308
Worker rights, report	PL 100–418 Sec 2207	1288
Organization for Economic Coordination and Development		
Environmental protection assistance negotiations.	PL 101–240 Sec 722	137
Organization of American States		
Emergency fund	PL 104–114 Sec 109(b)	1527
Opposition to Cuban government participation.	PL 104–114 Sec 105	1525
Overseas Private Investment Corporation		
International trade functions	RP No. 3 of 1979 Sec 4	895
Reaffirmation of support	PL 100–418 Sec 2203(a)	1284

P

Palestine Liberation Organization		
International Monetary Fund membership, denial of.	PL 79–171 Sec 37	19
Panama. See Caribbean Basin Economic Recovery Act		
Par Value Modification Act		
International financial institutions holdings maintained in terms of gold.	PL 92–268 Sec 3	242
Paris Economy Pact		
International Trade Commission investigations.	PL 71–361 Sec 332(c)	429
Pelosi amendment	PL 95–118 Sec 1307	161
People's Republic of China. See China, People's Republic of		
Persian Gulf		
Trade relations with countries providing weaponry to belligerent countries, sense of Congress.	PL 100–418 Sec 2102	1282

Peru. See Andean Trade Preference Act
Petroleum products
Prohibiting transactions with respect to development of Iranian resources. EO 12957 1606
Short supply export controls ..... PL 96–72 Sec 7(e) 1379
PL 96–72 Sec 7(f) 1380
Petroleum refining
Effect of imports on capacity in the United States. PL 100–418 Sec 1935 742
Pharmaceuticals. See HIV/AIDS pharmaceuticals
Phytosanitary measures. See Sanitary and phytosanitary measures
PLO. See Palestine Liberation Organization
Poland
Assistance by multilateral lending institutions to establish financial institutions, sense of Congress. PL 101–240 Sec 602 135
Conditional financial assistance by multilateral lending institutions, sense of Congress. PL 101–240 Sec 603 136
Loan requests to International Bank for Reconstruction and Development and the International Monetary Fund, sense of Congress. PL 101–240 Sec 601 135
Pork products
Imports from Canada ..... PL 98–573 Sec 250 789
Poverty
Export-Import Bank special debt relief for poorest, most heavily indebted countries. PL 79–173 Sec 14 1262
Heavily Indebted Poor Countries Initiative
Improvement of ..... PL 95–118 Sec 1623 193
Modification of ..... PL 95–118 Sec 1625 196
Presidential action
Import injury caused by competition ..... PL 93–618 Sec 203 326
PL 93–618 Sec 203(b) 329
International Trade Commission recommendations on Harmonized Tariff Schedule. PL 100–418 Sec 1206 715
Market disruption ..... PL 93–618 Sec 421(k) 387
Mexican debt
Certification regarding swap of currencies through exchange stabilization fund or Federal Reserve. PL 104–6 Sec 406 211
Report of short- and long-term currency swaps. PL 104–6 Sec 403 209
Tariff treatment of products of uncooperative drug producing or transit countries. PL 93–618 Sec 802 411
Trade diversion ..... PL 93–618 Sec 422(h) 391
President's Export Council ..... EO 12131 1452
Primary Dealers Act of 1988
Requirement of national treatment in underwriting government debt instruments. PL 100–418 Sec 3502 754
Production
Equalization of costs ..... PL 71–361 Sec 336 433
Uniform statistical data ..... PL 93–618 Sec 608 409
Proprietary information
Access to ..... PL 71–361 Sec 777(b) 587
Disclosure under protective orders issued pursuant to the North American Free Trade Agreement or the United States-Canada Agreement
Comment by consumers and industrial users. PL 71–361 Sec 777(h) 596

Proprietary information—Continued		
Disclosure under protective orders issued pursuant to the North American Free Trade Agreement or the United States-Canada Agreement—Continued		
Contents of orders	PL 71–361 Sec 777(f)	593
Enforcement of sanctions	PL 71–361 Sec 777(f)	594
Issuance of orders	PL 71–361 Sec 777(f)	591
Prohibited acts	PL 71–361 Sec 777(f)	593
Publication of determinations	PL 71–361 Sec 777(i)	596
Requirements for final determinations.	PL 71–361 Sec 777(i)	596
Review of sanctions	PL 71–361 Sec 777(f)	594
Sanctions for violation of protective orders.	PL 71–361 Sec 777(f)	593
Testimony and production of papers	PL 71–361 Sec 777(f)	594
Violations of protective orders and sanctions.	PL 71–361 Sec 777(g)	595
Limited disclosure of certain information under protective order.	PL 71–361 Sec 777(c)	589
Service	PL 71–361 Sec 777(d)	591
Public health		
Effect of pending multilateral development bank loans.	PL 95–118 Sec 1703	201
Enhanced HIPC Initiative, modification of.	PL 95–118 Sec 1625	196
Puerto Rico		
Duty-free treatment under Caribbean Basin Economic Recovery Act.	PL 98–67 Sec 214	1049

R

Red cedar, unprocessed		
Short supply export controls	PL 96–72 Sec 7(i)	1383
Regional development banks		
African Development Bank depositories	PL 97–35 Sec 1337	97
African Development Fund depositories	PL 94–302 Sec 207	102
European Bank for Reconstruction and Development depositories.	PL 101–513 Sec 562	109
Inter-American Investment Corporation depositories.	PL 98–473 Sec 206	80
International Development Association depositories.	PL 86–565 Sec 6	42
International Monetary Fund/World Bank Group depositories.	PL 79–171 Sec 6	8
Middle East Development Bank depositories.	PL 104–208 Sec 705	124
Multilateral Investment Guarantee Agency depositories.	PL 100–202 Sec 410	58
North American Development Bank depositories.	PL 103–182 Sec 541(f)	114
Reorganization Plan No. 3 of 1979		
International trade functions	RP No. 3 1979	893
Department of Commerce	RP No. 3 1979 Sec 2	894
East-West Foreign Trade Board abolition.	RP No. 3 1979 Sec 6	897
Export-Import Bank of the United States.	RP No. 3 1979 Sec 3	895
Incidental transfers	RP No. 3 1979 Sec 8	897
Interim officers	RP No. 3 1979 Sec 8	897
Overseas Private Investment Corporation.	RP No. 3 1979 Sec 4	895
Secretary of State responsibility	RP No. 3 1979 Sec 7	897
Transfer of functions	RP No. 3 1979 Sec 5	895
United States Trade Representative, Office of.	RP No. 3 1979 Sec 1	893

Reports to Congress
- Africa trade and development policy ..... PL 103–465 Sec 134(b) 675
- African Development Bank securities issued as exempt. PL 97–35 Sec 1341 99
- Agricultural commodity producers trade adjustment assistance. PL 106–200 Sec 408 653
- AID credit guarantees to finance capital projects, feasibility of. PL 102–549 Sec 307 680
- Andean Trade Preference Act
  - Beneficiary countries ..... PL 102–182 Sec 203(f) 964
  - Impact of ..... PL 102–182 Sec 206 978
- Anti-bribery and fair competition enforcement and monitoring. PL 105–366 Sec 6 1756
- Asian Development Bank securities issued as exempt. PL 89–369 Sec 11 86
- Barriers to market access, estimates of .. PL 93–618 Sec 181(b) 309
- Beneficiary developing countries ..... PL 93–618 Sec 504 402
- Burma
  - Economic sanctions against ..... PL 101–382 Sec 138 1650
  - Freezing assets of Burmese regime in the United States. PL 108–61 Sec 4 1643
  - Policy toward ..... PL 104–208 Sec 570(d) 1648
  - Support for democracy activists ..... PL 108–61 Sec 8 1644
- Cambodia
  - Most-favored-nation treatment ..... PL 104–203 Sec 3 1184
- Capital flight, elimination of ..... PL 101–240 Sec 404(c) 130
- Capital projects ..... PL 102–549 Sec 305 679
- Caribbean Basin tax havens, use of ..... PL 98–67 Sec 223 1054
- Center for the Study of Western Hemispheric Trade. PL 98–67 Sec 219(h) 1053
- China, People's Republic of
  - Compliance with WTO obligations ... PL 106–286 Sec 421 1154
  - Task force on prohibition of importation of products of forced or prison labor. PL 106–286 Sec 505 1156
- Competitiveness Policy Council ..... PL 100–418 Sec 5208 764
- Congressional-Executive Commission on the People's Republic of China. PL 106–286 Sec 302(g) 1148
- Controlled substances, list of foreign countries producing, processing, or transporting. PL 93–618 Sec 606 408
- Cuba
  - Assistance program coordination ..... PL 104–114 Sec 203(c) 1538
  - Commerce with and assistance from other countries. PL 104–114 Sec 108 1526
- Debt reduction for highly indebted countries, developing U.S. policy. PL 101–240 Sec 405 131
- Denial of foreign tax credit to certain countries. PL 99–514 Sec 901 1480
- Diamond import and export control ..... PL 108–19 Sec 12 1679
- Discriminatory procurement practices .... EO 13116 Sec 1 917
- Dominican Republic-Central America-United States Free Trade Agreement Implementation Act. PL 109–53 Sec 403(a) 934
- Employment and trade adjustment assistance. PL 106–200 Sec 401 651
- Environmental impact of proposed multilateral development bank actions, assessment of. PL 95–118 Sec 1307(f) 163
- Environmental trade promotion, insurance feasibility. PL 102–429 Sec 204 1278
- European Bank for Reconstruction and Development securities issued as exempt. PL 101–513 Sec 562 111
- Exchange rates and international economic policy coordination. PL 100–418 Sec 3005 745
- Export-Import Bank
  - Assistance to small businesses ..... PL 107–189 Sec 8(c) 1266

Reports to Congress—Continued		
Export-Import Bank—Continued		
Employee compensation	PL 102–429 Sec 117(c)	1276
Environmental policy and procedures.	PL 79–173 Sec 11(c)	1259
Export credit competition	PL 95–630 Sec 1913	1327
Financing in the national interest, Presidential determination.	PL 79–173 Sec 2(b)	1228
Financing of services	PL 102–429 Sec 119	1276
Loan loss reserves	PL 79–173 Sec 2(b)	1219
	PL 79–173 Sec 8	1249
	PL 101–240 Sec 101(e)	127
Private insurance role	PL 99–472 Sec 16	1317
Regional offices	PL 102–429 Sec 118	1276
Sale of defense articles or services	PL 79–173 Sec 2(b)	1235
Trade finance demand for Baltic States, independent States of the former Soviet Union, and Central and Eastern Europe.	PL 102–429 Sec 120	1277
Exports		
Administration	PL 96–72 Sec 14	1417
Controls on high performance computers.	PL 105–85 Sec 1212	1428
Developing countries	PL 100–418 Sec 3303	1316
Financing for goods and services produced by former defense production firms.	PL 101–510 Sec 4303(d)	1314
License application processing	PL 96–72 Sec 10(n)	1394
Policy	PL 100–418 Sec 2314	1305
Promotion barter arrangements	PL 99–64 Sec 203(e)	1434
Trade certificates of review	PL 97–290 Sec 304	815
Trading companies	PL 97–290 Sec 205	812
	PL 100–418 Sec 2311	1297
Financial stabilization programs led by the International Monetary Fund with financing from the exchange stabilization fund.	PL 95–118 Sec 1704	201
Foreign corrupt practices international agreement.	PL 100–418 Sec 5003	1752
Foreign currency transactions	31 USC Sec 5315	236
Foreign direct investment		
Government Accountability Office	PL 101–533 Sec 4	1709
Secretary of Commerce	PL 101–533 Sec 3	1707
Foreign investment study	PL 93–479 Sec 10	1695
Foreign laws and practices	PL 100–418 Sec 10002(g)	777
Foreign narcotics kingpin public identification.	PL 106–120 Sec 804	1490
Foreign treatment of U.S. financial institutions.	PL 100–418 Sec 3602	755
General Agreement on Tariffs and Trade		
Negotiations	PL 96–39 Sec 304(d)	835
Operation of	PL 96–39 Sec 203	829
	PL 96–39 Sec 453	857
Rules of origin	PL 96–39 Sec 305(c)	836
Government Accountability Office		
Comparative reserve practices of export credit agencies and private banks.	PL 107–189 Sec 14	1267
Trade adjustment assistance	PL 93–618 Sec 280	342
Government-owned enterprises in countries receiving World Bank loans.	PL 95–118 Sec 1607	181
Government procurement trade agreements.	PL 96–39 Sec 305(k)	842
Grassroots Collaboration Program, establishment and operation.	PL 95–118 Sec 1602(e)	177
Greenhouse gas intensity	PL 101–240 Sec 732	138

Reports to Congress—Continued
Greenhouse gas intensity—Continued
PL 101–240 Sec 734 140
PL 101–240 Sec 735 140
Harmonized Tariff Schedule operation ... PL 100–418 Sec 1216 720
Hong Kong Policy Act of 1992
Requirements ..... PL 102–383 Sec 301 1166
Separate part of country reports ..... PL 102–383 Sec 302 1167
IBRD policy based lending for debt reduction. PL 100–461 Sec 3 144
Impact of trade promotion authority ..... PL 107–210 Sec 2111 646
Import injury caused by competition, action by President. PL 93–618 Sec 203(b) 329
Import prohibition enforcement, dog and cat fur products. PL 71–361 Sec 308 419
Increasing productive economic participation of the poor. PL 95–118 Sec 1613(b) 186
Indentured child labor prohibition ..... EO 13126 Sec 4 921
Independent states of the former Soviet Union
Debt held by commercial financial institutions. PL 102–511 Sec 1007 213
Intellectual property rights, identification of countries denying adequate protection or market access for. PL 93–618 Sec 182(g) 314
Inter-American Development Bank
Audit ..... PL 86–147 Sec 14 65
Development and utilization of light-capital or intermediate technologies. PL 86–147 Sec 28 70
Securities issued as exempt ..... PL 86–147 Sec 11 64
Inter-American Investment Corporation securities issued as exempted. PL 98–473 Sec 210(b) 82
International Coffee Agreement ..... PL 96–599 Sec 5 1735
International Cultural and Trade Center Commission. PL 100–113 Sec 8(h) 785
International Debt Management Authority. PL 100–418 Sec 3111 749
International Emergency Economic Powers authorities. PL 95–223 Sec 204(c) 1471
International Finance Corporation securities issued as exempt. PL 84–350 Sec 13 54
International financial institutions
Administrative provisions ..... PL 95–118 Sec 1504(b) 173
Development of standard for protection of human rights. PL 95–118 Sec 703 155
Loans ..... PL 95–118 Sec 701(c) 153
Microenterprise credit promotion activities. PL 95–118 Sec 1603(c) 178
Policies, operations and management. PL 106–429 Sec 803 218
International financial system, IMF reform, and IMF agreements compliance, state of. PL 95–118 Sec 1705 203
International Trade Commission
Caribbean Basin Economic Recovery Act impact. EO 12661 Sec 5–301 911
PL 98–67 Sec 215 1050
Investigations ..... PL 71–361 Sec 332(g) 430
PL 93–618 Sec 202(f) 324
Trade agreements program ..... PL 93–618 Sec 163(c) 306
Involvement of women in multilateral development bank activities. PL 95–118 Sec 1604 178
Iran and Libya Sanctions Act of 1996 .... PL 104–172 Sec 10 1598
Iraq sanctions ..... PL 101–513 Sec 586J 1574
Japan, purchases of U.S.-made automotive parts. PL 100–418 Sec 1934(c) 742

Reports to Congress—Continued

Judicial Review Commission on Foreign Asset Control.	PL 106–120 Sec 810(g)	1498
Limited purpose Special Drawing Rights for the poorest heavily indebted countries.	PL 100–418 Sec 3123	752
Linkage of debt reduction loans to reduction in drug trafficking.	PL 101–240 Sec 407	132
Mark to market accounting	PL 101–240 Sec 403	129
Mexican debt		
Presidential report of short- and long-term currency swaps.	PL 104–6 Sec 403	209
Secretary of the Treasury report of short- and long-term currency swaps.	PL 104–6 Sec 404	209
Middle East Development Bank securities issued as exempt.	PL 104–208 Sec 709	126
Military-related exports, impact of offsets.	50 USC App Sec 2099	1435
Multilateral development bank loans, effect of pending loans on environment, natural resources, public health, and indigenous peoples.	PL 95–118 Sec 1703	201
Multilateral development banks, operating summaries of.	PL 95–118 Sec 1702	201
Multilateral export control violations	PL 96–72 Sec 11A(g)	1402
Narcotics control progress concerning drug producing or transit countries.	PL 93–618 Sec 804	417
National Advisory Council on International Monetary and Financial Policies.	PL 79–171 Sec 59(b)	33
	PL 95–118 Sec 1701	198
National Trade Data Bank	PL 100–418 Sec 5413	770
North American Development Bank		
Community adjustment and investment program.	PL 103–182 Sec 543(d)	118
	PL 108–215 Sec 2	120
Securities	PL 103–182 Sec 541(h)	115
Reciprocal competitive procurement practices impact.	PL 96–39 Sec 302(c)	833
Secretary of the Treasury, IMF resources.	PL 79–171 Sec 34	19
Sematech, Advisory Council on Federal Participation in.	PL 100–418 Sec 5422	771
Sub-saharan Africa, trade benefits to	PL 106–200 Sec 106	1082
Syria accountability and Lebanese sovereignty restoration.	PL 108–175 Sec 6	1622
Technology inventory in developing countries.	PL 101–240 Sec 733	140
Tied aid credit program	PL 79–173 Sec 10(g)	1256
	PL 100–418 Sec 3302(c)	1315
Trade agreements authority	PL 107–210 Sec 2103(c)	632
Trade agreements program and national trade policy agenda.	PL 93–618 Sec 163(a)	304
Trade barriers established by auto producing countries and impact on U.S. market.	PL 100–418 Sec 1936	743
Trade Deficit Review Commission	PL 105–277 Sec 127(e)	663
Trade expansion priorities	EO 12901 Sec 4	913
	EO 13116 Sec 1	916
Trade projection report	PL 93–618 Sec 163(b)	305
Trade Promotion Coordinating Committee.	EO 12870 Sec 6	1330
	PL 100–418 Sec 2312(f)	1299
Trade remedy laws	PL 107–210 Sec 2104(d)	636

Reports to Congress—Continued
Trade remedy laws—Continued
PL 107–210 Sec 2104(e) 638
Trade sanctions against Toshiba and Kongsberg. EO 12661 Sec 2–201 910
Trade sanctions for state sponsors of international terrorism. PL 106–387 Sec 906 1485
United States and Foreign Commercial Service. PL 100–418 Sec 2301(h) 1293
United States and Foreign Commercial Service Pacific Rim Initiative. PL 100–418 Sec 2306 1296
United States-Canada Free-Trade Agreement negotiations regarding certain sectors. PL 100–449 Sec 304(f) 1008
United States-EC agreement on citrus and pasta implementation. PL 100–418 Sec 1122(d) 710
United States-Israel Free Trade Agreement. PL 107–210 1127
United States Trade Representative
Modification and termination of actions concerning unfair trade practices. PL 93–618 Sec 307(b) 367
Uruguay Round trade agreement negotiating authority. PL 100–418 Sec 1102(e) 699
Wine trade barriers, negotiations to eliminate. PL 100–418 Sec 1125 710
Wool Research, Development, and Promotion Trust Fund. PL 106–200 Sec 506(e) 658
Worker rights ..... PL 100–418 Sec 2207 1288
Working party on worker rights ..... PL 103–465 Sec 131(c) 674
Reserve Account of the Enhanced Structural Adjustment Facility Trust
Fund pledge to sell gold to provide resources for. PL 79–171 Sec 58 31
Robson, John E.
Export-Import Bank tribute, sense of Congress. PL 107–189 Sec 23 1267
Romania
Most-favored-nation treatment
Findings ..... PL 104–171 Sec 1 1185
Termination of application of Title IV of the Trade Act of 1974. PL 104–171 Sec 2 1186
Trade Act of 1974 waiver ..... EO 11854 1214
EO 12772 1206
Rubber
International Natural Rubber Agreement Appropriation Authorization. PL 96–271 1737
Russian Federation
Blocking government property relating to the disposition of highly enriched uranium extracted from nuclear weapons. EO 13159 1671
Export-Import Bank of the United States prohibition relating to. PL 79–173 Sec 2(b) 1239
Rwanda
Prohibiting transactions ..... EO 12918 1664

S

Saint Lucia. See Caribbean Basin Economic Recovery Act
Saint Vincent and the Grenadines. See Caribbean Basin Economic Recovery Act
Salaries and compensation
United States and Foreign Commercial Service Assistant Secretary and Director General. PL 100–418 Sec 2301(i) 1293

Sanctions. See individual countries; National emergencies		
Sanitary and phytosanitary measures		
Definitions	PL 96–39 Sec 463	858
General provisions	PL 96–39 Sec 461	857
Inquiry point	PL 96–39 Sec 462	857
International standard-setting activities		
Definitions	PL 96–39 Sec 493	863
Equivalence determinations	PL 96–39 Sec 492	862
Notice of U.S. participation	PL 96–39 Sec 491	861
Secretary of Agriculture		
International Trade Commission investigation study.	PL 93–618 Sec 294	352
Trade adjustment assistance for farmers determinations.	PL 93–618 Sec 293	351
Secretary of Commerce		
Export trade promotion duties	PL 97–290 Sec 301	813
Foreign direct investment report	PL 101–533 Sec 3	1707
International Trade Commission investigation study.	PL 93–618 Sec 264	341
Market Development Cooperator Program authority.	PL 100–418 Sec 2303(a)	1293
Secretary of Defense		
Export license application processing procedures.	PL 96–72 Sec 10(g)	1391
Secretary of Labor		
Andean Trade Preference Act impact study.	PL 102–182 Sec 207	979
Caribbean Basin Economic Recovery Act impact study.	PL 98–67 Sec 216	1051
International Trade Commission investigation study.	PL 93–618 Sec 224	338
Trade adjustment assistance for workers, determination of petition eligibility.	PL 93–618 Sec 223	338
Secretary of State		
Export license application processing	PL 96–72 Sec 10(a)	1388
	PL 96–72 Sec 10(f)	1390
Functions of	EO 11269 Sec 7	248
Guidelines for tariff treatment of products of uncooperative drug producing or transit countries.	PL 93–618 Sec 802(e)	416
International trade functions	RP No. 3 of 1979 Sec 7	897
Secretary of the Treasury		
Agricultural export subsidies, elimination of.	PL 79–171 Sec 44	24
Debt rescheduling, comparability of treatment policy.	PL 79–171 Sec 29	16
Dollar-Special Drawing Rights substitution account, sense of Congress.	PL 79–171 Sec 35	19
Foreign commerce and trade statistics functions.	13 USC Sec 303	1720
Functions of	EO 11269 Sec 3	247
Fund bailouts of banks, opposing	PL 79–171 Sec 46	26
IMF interest rates, adoption of	PL 79–171 Sec 48	27
IMF report	PL 79–171 Sec 34	19
Import discrimination by foreign countries, rules and regulations.	PL 71–361 Sec 338(h)	447
Inter-American Development Bank Act audit.	PL 86–147 Sec 14	65
International cooperation	PL 79–171 Sec 47	26
Mexican debt, report of short- and long-term currency swaps.	PL 104–6 Sec 404	209
Multilateral Investment Guarantee Agency responsibilities.	PL 100–202 Sec 406	57
	PL 100–202 Sec 407	58
Payment of U.S. subscription to the International Monetary Fund.	PL 79–171 Sec 7	8

Secretary of the Treasury—Continued
Stabilization programs consultation ..... PL 79–171 Sec 30 16
Trade provisions ..... PL 79–171 Sec 49 27
Securities
Foreign Corrupt Practices Act Amendments of 1988
International agreement ..... PL 100–418 Sec 5003 1752
Foreign Corrupt Practices Act of 1977 .... PL 95–213 1741
Prohibited foreign trade practices by domestic concerns. PL 95–213 Sec 104 1741
Prohibited foreign trade practices by persons other than issuers or domestic concerns. PL 95–213 Sec 104A 1748
Securities and Exchange Commission
African Development Bank Act exempt securities, report. PL 97–35 Sec 1341 99
Asian Development Bank securities issued as exempt, report. PL 89–369 Sec 11 86
European Bank for Reconstruction and Development securities issued as exempt, report. PL 101–513 Sec 562 110
Inter-American Development Bank Act issued exempt securities, report. PL 86–147 Sec 11 64
Inter-American Investment Corporation Act securities, report. PL 98–473 Sec 210(b) 82
International Finance Corporation issued exempt securities, report. PL 84–350 Sec 13 54
Middle East Development Bank securities issued as exempt, report. PL 104–208 Sec 709 126
North American Development Bank Act securities issued as exempt, report. PL 103–182 Sec 541(h) 115
Security. See National security
Sematech
Study and report by Advisory Council on Federal Participation in. PL 100–418 Sec 5422 771
Serbia
Most-favored-nation treatment
Withdrawal of status ..... PL 102–420 Sec 1 1191
Restriction on U.S. assistance for reconstruction in the Balkans region. PL 106–113 Sec 599B 1659
Sanctions against ..... PL 106–113 Sec 599 1657
Service industry
International trade ..... PL 98–573 Sec 306 792
United States-Canada Free-Trade Agreement Implementation Act negotiating objectives. PL 100–449 Sec 304(b) 1006
Sierra Leone
Clean Diamond Trade Act ..... PL 108–19 1674
Definitions ..... PL 108–19 Sec 3 1675
Delegation of authorities ..... PL 108–19 Sec 14 1680
Enforcement ..... PL 108–19 Sec 8 1678
Findings ..... PL 108–19 Sec 2 1674
GAO report ..... PL 108–19 Sec 13 1680
Importing and exporting authorities PL 108–19 Sec 6 1677
Kimberley Process Implementation Coordinating Committee. PL 108–19 Sec 11 1679
Regulatory authority ..... PL 108–19 Sec 5 1677
Reports ..... PL 108–19 Sec 12 1679
Rough diamonds, measures for importation and exportation of. PL 108–19 Sec 4 1677
Sense of Congress ..... PL 108–19 Sec 10 1678
Statement of policy ..... PL 108–19 Sec 7 1678
Technical assistance ..... PL 108–19 Sec 9 1678
Clean Diamond Trade Act implementation
Assignment of functions ..... EO 13312 Sec 2 1682
Definitions ..... EO 13312 Sec 4 1682

Sierra Leone—Continued		
Clean Diamond Trade Act implementation—Continued		
General provisions	EO 13312 Sec 5	1682
Prohibitions	EO 13312 Sec 1	1681
Singapore Free Trade Agreement. See United States-Singapore Free Trade Agreement		
Singapore Free Trade Agreement Implementation Act. See United States-Singapore Free Trade Agreement Implementation Act		
Small Business Act		
Export financing for goods and services produced by former defense production firms.	PL 101–510 Sec 4303(b)	1313
Small Business International Trade and Competitiveness Act.	PL 100–418	772
Globalization of production	PL 100–418 Sec 8009	772
National seminar on exports	PL 100–418 Sec 8011	774
Promulgation of regulations	PL 100–418 Sec 8013	774
Trade negotiations	PL 100–418 Sec 8012	774
Trade remedy assistance	PL 100–418 Sec 8010	773
Small businesses		
Export-Import Bank		
Assistance	PL 107–189 Sec 8(c)	1266
Programs	PL 79–173 Sec 2(b)	1222
Reports	PL 79–173 Sec 8	1250
Export license application processing assistance.	PL 96–72 Sec 10(m)	1394
Software		
Copyright protection	PL 98–573 Sec 251	789
South African Democratic Transition Support Act of 1993.	PL 103–149	1628
Apartheid sanctions laws, repeal of	PL 103–149 Sec 4	1630
Consultation with South Africans	PL 103–149 Sec 10	1634
Cooperative agreements	PL 103–149 Sec 8	1633
Findings	PL 103–149 Sec 2	1628
International financial institutions	PL 103–149 Sec 9	1633
Sanctions, repeal of	PL 103–149 Sec 4	1630
Transition to a non-racial democracy, U.S. assistance.	PL 103–149 Sec 5	1631
U.S. policy, sense of Congress	PL 103–149 Sec 3	1629
South Korea		
United States and Foreign Commercial Service Initiative.	PL 100–418 Sec 2306	1296
Southwest Border. See Interagency Task Force on the Economic Development of the Southwest Border		
Southwestern United States		
North American Development Bank projects financing water conservation for irrigators and agricultural producers, sense of Congress.	PL 108–215 Sec 5	122
Soviet Union		
Trade Act of 1974 waiver	EO 12740	1209
SPDC. See State Peace and Development Council		
Special Drawing Rights		
For the poorest heavily indebted countries, limited purpose.	PL 100–418 Sec 3123	752
Special Drawing Rights Act	PL 90–349	243
Administration of	PL 90–349 Sec 3	243
Allocation authority	PL 90–349 Sec 6	244
Effectiveness of agreement	PL 90–349 Sec 7	244
Establishment of	PL 90–349 Sec 2	243
Purchase of certificates	PL 90–349 Sec 4	243

Special Facility for Sub-Saharan Africa		
Appropriations authorization	PL 86–565 Sec 19	46
Eighth replenishment of resources, U.S. payments to.	PL 86–565 Sec 20	46
Findings	PL 99–190 Sec 101	49
Fourteenth replenishment of resources, U.S. payments to.	PL 86–565 Sec 23	48
Ninth replenishment of resources, U.S. payments to.	PL 86–565 Sec 21	46
Thirteenth replenishment of resources, U.S. payments to.	PL 86–565 Sec 22	47
Special Representative for Trade Negotiations		
Trade Agreements Program administration.	EO 11846 Sec 2	898
St. Kitts and Nevis. See Caribbean Basin Economic Recovery Act		
Standards information center		
Establishment and functions of	PL 96–39 Sec 414	850
State, Department of		
Cuban Democracy Act implementation	EO 12854 Sec 2	1565
State Peace and Development Council	PL 108–61 Sec 2	1640
Steel Import Stabilization Act	PL 98–573	798
Definitions	PL 98–573 Sec 804	800
Department of Labor worker assistance plan.	PL 98–573 Sec 807	804
Effective period of title	PL 98–573 Sec 806	803
Enforcement authority	PL 98–573 Sec 805	800
Findings and purposes	PL 98–573 Sec 802	798
Steel trade liberalization program, sense of Congress.	PL 98–573 Sec 803	799
Steel imports		
Negotiations regarding Canadian products.	PL 100–449 Sec 309	1009
Steel imports into the United States	PL 105–277	665
Findings	PL 105–277 Sec 111(a)	665
Sense of Congress	PL 105–277 Sec 111(b)	666
United States Trade Representative functions.	EO 12661 Sec 1–301	908
Voluntary limitations on export to the United States.	PL 93–618 Sec 607	408
Strategic and Critical Materials Transaction Authorization Act of 1979		
Appropriations authorization	PL 96–175 Sec 2	1740
Authorities	PL 96–175 Sec 3	1740
	PL 96–175 Sec 4	1740
	PL 96–175 Sec 5	1740
Sub-Saharan Africa. See also Special Facility for Sub-Saharan Africa		
Designation of countries for certain trade benefits.	PL 93–618 Sec 506A	403
Export-Import Bank of the United States commitments.	PL 79–173 Sec 2(b)	1237
Financing human welfare and natural resource programs in connection with debt reduction and conversion, initiation of discussions.	PL 95–118 Sec 1609	182
Trade policy		
Benefits	PL 106–200	1084
Eligibility requirements	PL 106–200 Sec 104	1079
Findings	PL 106–200 Sec 102	1078
Political entities referred to	PL 106–200 Sec 107	1082
Reporting requirement	PL 106–200 Sec 106	1082
Statement of policy	PL 106–200 Sec 103	1079
Termination of benefits	PL 93–618 Sec 506B	404
United States-Sub-Saharan Africa Trade and Economic Cooperation Forum.	PL 106–200 Sec 105	1080

Sudan
- Blocking government property ..... EO 13067 Sec 1 1668
- Gum arabic importation ..... PL 106–476 Sec 1464 1666
- Prohibiting transactions ..... EO 13067 1668

Sugar products
- Duty-free treatment under Caribbean Basin Economic Recovery Act. PL 98–67 Sec 213(c) 1044
- Imports from Communist countries in the Caribbean Basin, sense of Congress. PL 98–67 Sec 231 1054
- International Sugar Agreement, 1977, implementation. PL 96–236 1738
  - Agreement implementation ..... PL 96–236 Sec 2 1738
  - Criminal offenses ..... PL 96–236 Sec 4 1739
  - Definitions ..... PL 96–236 Sec 1 1738
  - Delegation of powers and duties ..... PL 96–236 Sec 3 1739

Sugar quota
- Treatment of uncooperative drug producing or transit countries. PL 93–618 Sec 803 417

Supercomputers
- Prohibition on licensing with end-user designated as Iraq. PL 101–515 Sec 608 1576
- Trade dispute with Japan ..... PL 100–418 Sec 1307 722

Supplementary Financing Facility
- U.S. participation in ..... PL 79–171 Sec 28 15

Suriname. See Caribbean Basin Economic Recovery Act

Surplus commodities and minerals
- Opposition of multilateral assistance for PL 99–472 Sec 22 1724

Syria
- Exports to
  - Blocking property of certain persons EO 13338 1623

Syria Accountability and Lebanese Sovereignty Restoration Act of 2003. PL 108–175 1615
- Appropriate congressional committees defined. PL 108–175 Sec 7 1622
- Authority to provide assistance ..... PL 108–175 Sec 5(c) 1621
- Certification ..... PL 108–175 Sec 5(d) 1621
- Findings ..... PL 108–175 Sec 2 1615
- Penalties ..... PL 108–175 Sec 5(a) 1620
- Report ..... PL 108–175 Sec 6 1622
- Sense of Congress ..... PL 108–175 Sec 3 1619
- Statement of policy ..... PL 108–175 Sec 4 1620
- Waiver ..... PL 108–175 Sec 5(b) 1621

T

Taiwan
- Accession to the World Trade Organization. PL 106–286 Sec 601 1158
- Asian Development Bank Act membership retention, sense of Congress. PL 89–369 Sec 25 90
- International Monetary Fund membership, sense of Congress. PL 79–171 Sec 36 19
- United States and Foreign Commercial Service Initiative. PL 100–418 Sec 2306 1296

Tajikistan and Turkmenistan
- Trade Act of 1974 waiver ..... EO 12811 1202

Taliban
- Trade sanctions for state sponsors of international terrorism. PL 106–387 Sec 906 1484

Tariff Act of 1930 ..... PL 71–361 418
- Administrative review of determinations
  - Correction of ministerial errors ..... PL 71–361 Sec 751(h) 535
  - Determination that basis for suspension no longer exists. PL 71–361 Sec 751(f) 534
  - Five-year review ..... PL 71–361 Sec 751(c) 530

Tariff Act of 1930—Continued
Administrative review of determinations—Continued
Hearings ..... PL 71–361 Sec 751(e) 534
Implementing results of subsidies enforcement proceeding. PL 71–361 Sec 751(g) 534
Periodic review of amount of duty ... PL 71–361 Sec 751(a) 527
Reviews based on changed circumstances. PL 71–361 Sec 751(b) 529
Revocation of order or finding ..... PL 71–361 Sec 751(d) 533
Termination of suspended investigation. PL 71–361 Sec 751(d) 533
Antidumping duties
Assessment of ..... PL 71–361 Sec 736 519
Conditional payment ..... PL 71–361 Sec 738 523
Difference between deposit of estimated and final assessment. PL 71–361 Sec 737 522
Establishment of product categories for short life cycle merchandise. PL 71–361 Sec 739 523
Final determinations ..... PL 71–361 Sec 735 514
Imposition of ..... PL 71–361 Sec 731 497
Initiating an investigation ..... PL 71–361 Sec 732 497
Preliminary determinations ..... PL 71–361 Sec 733 502
Termination or suspension of investigation. PL 71–361 Sec 734 507
Continued dumping and subsidy offset .. PL 71–361 Sec 754 543
Countervailing duties
Assessment of ..... PL 71–361 Sec 706 494
Conditional payment ..... PL 71–361 Sec 709 496
Derogation of Export-Import Bank financing, effect of. PL 71–361 Sec 708 496
Difference between deposit of estimated and final assessment. PL 71–361 Sec 707 495
Final determinations ..... PL 71–361 Sec 705 489
Imposition of ..... PL 71–361 Sec 701 470
Preliminary determinations ..... PL 71–361 Sec 703 476
Procedures for initiating an investigation. PL 71–361 Sec 702 472
Termination or suspension of investigation. PL 71–361 Sec 704 482
Countervailing duty and antidumping duty proceedings, judicial review
Definitions ..... PL 71–361 Sec 516A(f) 459
Determinations involving free trade area country merchandise. PL 71–361 Sec 516A(g) 460
Liquidation in accordance with final decision. PL 71–361 Sec 516A(e) 459
Liquidation of entries ..... PL 71–361 Sec 516A(c) 458
Review of determination ..... PL 71–361 Sec 516A(a) 454
Standards of ..... PL 71–361 Sec 516A(b) 457
Standing ..... PL 71–361 Sec 516A(d) 459
Fishery resources, conservation of ..... PL 71–361 Sec 323 423
Foreign trade agreements
Altering import restrictions ..... PL 71–361 Sec 350(a) 448
Authority of President ..... PL 71–361 Sec 350(a) 448
Cuba ..... PL 71–361 Sec 350(b) 452
Decrease of rates ..... PL 71–361 Sec 350(b) 452
Definitions ..... PL 71–361 Sec 350(c) 453
Information and advice from industry, agriculture, and labor. PL 71–361 Sec 350(f) 453
Modification and decrease of duties PL 71–361 Sec 350(a) 448
Preferential customs treatment ..... PL 71–361 Sec 350(b) 452
Rate basis for additional increases or decreases. PL 71–361 Sec 350(d) 453
Restoration of terminated treaties forbidden. PL 71–361 Sec 350(d) 453
General provisions
Access to information ..... PL 71–361 Sec 777 587

Tariff Act of 1930—Continued
General provisions—Continued
Affirmative determinations by divided Commission. PL 71–361 Sec 771 565
Agricultural products, special rules PL 71–361 Sec 771 559
Antidumping petitions by third countries. PL 71–361 Sec 783 609
Application to governmental importations. PL 71–361 Sec 771 568
Attribution of merchandise to country of manufacture or production. PL 71–361 Sec 771 565
Averaging PL 71–361 Sec 777A 597
Calculation rules PL 71–361 Sec 771 554
Captive production PL 71–361 Sec 771 559
Circumvention of antidumping and countervailing duty orders, prevention of. PL 71–361 Sec 781 602
Conduct of investigations and administrative reviews. PL 71–361 Sec 782 606
Consideration of post-petition information. PL 71–361 Sec 771 563
Constructed export price PL 71–361 Sec 772 574
Countervailable subsidy PL 71–361 Sec 771 559
PL 71–361 Sec 771B 573
PL 71–361 Sec 775 585
PL 71–361 Sec 777A(e) 598
Cumulation for determining material injury. PL 71–361 Sec 771 562
Cumulation for determining threat of material injury. PL 71–361 Sec 771 563
Currency conversion PL 71–361 Sec 773A 584
Definitions PL 71–361 Sec 771 547
Determination of less than fair value. PL 71–361 Sec 777A(d) 598
Determinations on the basis of the facts available. PL 71–361 Sec 776 586
Downstream product monitoring PL 71–361 Sec 780 599
Drawback treatment PL 71–361 Sec 779 599
Equivalency of leases to sales PL 71–361 Sec 771 567
Export price PL 71–361 Sec 772 574
Hearings PL 71–361 Sec 774 585
Interest on overpayments and underpayments. PL 71–361 Sec 778 599
Measurement of economic development. PL 71–361 Sec 771 555
Negligible imports PL 71–361 Sec 771 569
Noncountervailable subsidies categories. PL 71–361 Sec 771 553
Normal value PL 71–361 Sec 773 576
Notified subsidy program PL 71–361 Sec 771 556
Provisional applications PL 71–361 Sec 771 556
Sampling PL 71–361 Sec 777A 597
Special rules PL 71–361 Sec 771 547
Subsidies PL 71–361 Sec 771 550
Threat of material injury PL 71–361 Sec 771 560
Upstream subsidies PL 71–361 Sec 771A 572
Volume and consequent impact PL 71–361 Sec 771 557
Weighted average dumping margin determination. PL 71–361 Sec 777A(c) 597
Importation prohibition
Convict-made goods PL 71–361 Sec 307 418
Dog and cat fur products PL 71–361 Sec 308 419
International Trade Commission
Cooperation with other agencies PL 71–361 Sec 334 432
Discrimination by foreign countries PL 71–361 Sec 338 445
Equalization of costs of production PL 71–361 Sec 336 433
General powers PL 71–361 Sec 331 427
Investigations PL 71–361 Sec 332 429

Tariff Act of 1930—Continued		
International Trade Commission—Continued		
Organization of	PL 71–361 Sec 330	423
Production of papers	PL 71–361 Sec 333	431
Rules and regulations	PL 71–361 Sec 335	433
Testimony	PL 71–361 Sec 333	431
Trade Remedy Assistance Office	PL 71–361 Sec 339	447
Unfair practices in import trade	PL 71–361 Sec 337	435
Quantitative restriction agreements		
Required consultations	PL 71–361 Sec 761	546
Required determinations	PL 71–361 Sec 762	546
Special rules for injury investigations for countervailing duty orders and investigations.	PL 71–361 Sec 753	539
Special rules for reviews	PL 71–361 Sec 752	535
Tariff treatment of Cuban products	PL 87–456 Sec 401	1055
Tariffs, Trade Barriers, and the Internet		
Declaration that the Internet should be free of foreign tariffs, trade barriers, and other restrictions.	PL 105–277 Sec 1203	667
Tax Reform Act of 1986		
Denial of foreign tax credit to certain countries.	PL 99–514 Sec 901	1478
Technology		
Deployment in developing countries		
Appropriations authorization	PL 101–240 Sec 738	142
Definitions	PL 101–240 Sec 731	138
Fellowship and exchange programs	PL 101–240 Sec 737	142
Greenhouse gas intensity	PL 101–240 Sec 732	138
	PL 101–240 Sec 734	140
	PL 101–240 Sec 735	140
Technology demonstration projects	PL 101–240 Sec 736	141
Technology inventory	PL 101–240 Sec 733	140
Duties on, modification and continuance of treatment with respect to high technology products.	PL 93–618 Sec 128	274
International financial institutions promotion of light capital technology.	PL 95–118 Sec 801	156
Negotiating objectives for trade in high technology products.	PL 93–618 Sec 104A(c)	264
Negotiation of agreements concerning high technology industries.	PL 98–573 Sec 308	795
Telecommunications		
United States Trade Representative functions.	EO 12661 Sec 1–401	908
Telecommunications Trade Act of 1988	PL 100–418	726
Action to ensure compliance	PL 100–418 Sec 1380	734
Actions to be taken if no foreign trade agreement obtained.	PL 100–418 Sec 1376	730
Compensation authority	PL 100–418 Sec 1378	733
Consultations	PL 100–418 Sec 1379	733
Definitions	PL 100–418 Sec 1373	727
Findings and purposes	PL 100–418 Sec 1371	726
Foreign trade barriers, investigation of	PL 100–418 Sec 1374	728
International obligations	PL 100–418 Sec 1382	735
Negotiations in response to foreign trade barriers investigation.	PL 100–418 Sec 1375	728
Review of trade agreement implementation by Trade Representative.	PL 100–418 Sec 1377	732
Submission of data	PL 100–418 Sec 1380	734
Telecommunications competitiveness in the U.S. study.	PL 100–418 Sec 1381	735
Terrorism		
Blocking property and prohibiting transactions with terrorists.	EO 13224	1504
	EO 13372	1503
Transactions blocked	EO 13224 Sec 2	1505

Terrorism—Continued
Export controls
Countries supporting international terrorism. PL 96–72 Sec 6(j) 1367
Iraq, declarations regarding violations of international law. PL 101–513 Sec 586F(c) 1570
Middle East, terrorists who threaten to disrupt peace process. EO 12947 1509
Opposition to financial or technical assistance to any country permitting entry of terrorists or failing to prevent acts. PL 95–435 Sec 6 39
Opposition to international financial institution assistance to terrorist states. PL 95–118 Sec 1621 192
Trade sanctions for state sponsors of international terrorism. PL 106–387 Sec 906 1484
Texas
North American Development Bank projects financing water conservation for irrigators and agricultural producers in the lower Rio Grande River valley, sense of Congress. PL 108–215 Sec 3 121
Tied Aid Credit Fund
Expansion of authority to use ..... PL 107–189 Sec 10 1266
Tied aid credit program
Administration of ..... PL 79–173 Sec 10(b) 1253
Authorization ..... PL 79–173 Sec 10(e) 1256
Consistency with arrangement ..... PL 79–173 Sec 10(d) 1256
Coordination with other export financing PL 79–173 Sec 10(b) 1253
Countries which engage in official predatory financing. PL 79–173 Sec 10(b) 1254
Definitions ..... PL 79–173 Sec 10(h) 1257
PL 98–181 Sec 647 1323
Establishment of ..... PL 79–173 Sec 10(b) 1252
Export-Import Bank and Tied Aid Credit Amendments of 1988. PL 100–418 Sec 3302 1315
Export-Import Bank program establishment. PL 98–181 Sec 644 1320
Findings ..... PL 79–173 Sec 10(a) 1251
Fund ..... PL 79–173 Sec 10(c) 1256
Implementation ..... PL 98–181 Sec 646 1323
Negotiating mandate ..... PL 98–181 Sec 643 1320
Nonreviewability ..... PL 79–173 Sec 10(f) 1256
Principles, process, and standards governing use. PL 79–173 Sec 10(b) 1254
Reconsideration of decisions ..... PL 79–173 Sec 10(b) 1255
Report ..... PL 79–173 Sec 10(g) 1256
Statement of purpose ..... PL 98–181 Sec 642 1319
Trade and Development Agency program establishment. PL 98–181 Sec 645 1321
Timber
Short supply export controls ..... PL 96–72 Sec 7(i) 1383
Tobacco Control and Prevention ..... EO 13193 928
General provisions ..... EO 13193 Sec 3 929
Responsibilities of Federal departments and agencies. EO 13193 Sec 2 928
Toshiba Machine Company
Mandatory sanctions against ..... PL 100–418 Sec 2443 1310
Trade sanctions against ..... EO 12661 Sec 2–201 909
TPCC. See Trade Promotion Coordinating Committee
Trade Act of 1974. See also International Trade and Investment Act. PL 93–618 256
Access supplies ..... PL 93–618 Sec 108 266
Adjustment Assistance Coordinating Committee. PL 93–618 Sec 281 343
Adjustment assistance for farmers
Definitions ..... PL 93–618 Sec 291 349

Trade Act of 1974—Continued
Adjustment assistance for farmers—Continued
Group eligibility ..... PL 93–618 Sec 292 350
International Trade Commission investigation, Secretary of Agriculture study. PL 93–618 Sec 294 352
Petitions ..... PL 93–618 Sec 292 350
Secretary of Agriculture determinations. PL 93–618 Sec 293 351
Adjustment assistance for firms
Action where there is affirmative finding. PL 93–618 Sec 264 341
International Trade Commission investigation, Secretary of Commerce study. PL 93–618 Sec 264 341
Petitions and determinations ..... PL 93–618 Sec 251 340
Technical assistance to industries ... PL 93–618 Sec 265 342
Adjustment assistance for workers
Benefit information ..... PL 93–618 Sec 225 339
Downstream producers ..... PL 93–618 Sec 222(c) 337
Group eligibility requirements ..... PL 93–618 Sec 222 336
International Trade Commission investigation, Secretary of Labor study. PL 93–618 Sec 224 338
Petitions ..... PL 93–618 Sec 221 335
Secondary workers ..... PL 93–618 Sec 222(b) 336
Secretary of Labor, determinations by. PL 93–618 Sec 223 338
Suppliers ..... PL 93–618 Sec 222(c) 337
Advisory Committee for Trade Policy and Negotiations
Meeting at conclusion of negotiations. PL 93–618 Sec 135(e) 281
Balance-of-payments authority ..... PL 93–618 Sec 122 267
Barriers to and distortions of trade ..... PL 93–618 Sec 102 258
Barriers to market access, estimates of .. PL 93–618 Sec 181 307
Bilateral trade agreements ..... PL 93–618 Sec 105 265
Compensation authority ..... PL 93–618 Sec 123 269
Congressional advisers for trade policy and negotiations. PL 93–618 Sec 161 302
Congressional procedures
Bills implementing trade agreements of non-tariff barriers. PL 93–618 Sec 151 292
Resolutions approving commercial agreements with community countries. PL 93–618 Sec 151 292
Resolutions disapproving certain actions. PL 93–618 Sec 152 296
Resolutions relating to extension of waiver authority under section 402. PL 93–618 Sec 153 299
Special rules ..... PL 93–618 Sec 154 301
Definitions ..... PL 93–618 Sec 601 406
Developing countries, trade agreements with. PL 93–618 Sec 106 265
Exports of steel to the United States, voluntary limitations on. PL 93–618 Sec 607 408
Fees, imposition of ..... PL 93–618 Sec 287 348
Firms relocating in foreign countries, notice requirements. PL 93–618 Sec 283 343
GATT revision, authorization of appropriations. PL 93–618 Sec 121 267
Generalized System of Preferences
Agricultural exports of beneficiary developing countries. PL 93–618 Sec 506 403
Authority to extend preferences ..... PL 93–618 Sec 501 392

Trade Act of 1974—Continued
Generalized System of Preferences—Continued
Beneficiary developing countries designation. PL 93–618 Sec 502 393
Date of termination ..... PL 93–618 Sec 505 402
Definitions ..... PL 93–618 Sec 507 404
Eligible articles designation ..... PL 93–618 Sec 503 397
Report ..... PL 93–618 Sec 504 402
Review ..... PL 93–618 Sec 504 402
Sub-Saharan African countries, designation for certain benefits. PL 93–618 Sec 506A 403
Sub-Saharan African countries, termination of benefits. PL 93–618 Sec 506B 404
Government Accountability Office, report. PL 93–618 Sec 280 342
High technology products, modification and continuance of treatment with respect to duties on. PL 93–618 Sec 128 274
Import injury caused by competition, relief from
Action by President ..... PL 93–618 Sec 203 326
Action with regard to other provisions. PL 93–618 Sec 204(e) 334
Agreements ..... PL 93–618 Sec 203(f) 332
Commission recommendations ..... PL 93–618 Sec 202(e) 323
Commission report ..... PL 93–618 Sec 202(f) 324
Evaluation of effectiveness of action PL 93–618 Sec 204(d) 334
Expedited consideration of adjustment assistance petitions. PL 93–618 Sec 202(g) 325
Extension of action ..... PL 93–618 Sec 204(c) 334
Implementation of action recommended by Commission. PL 93–618 Sec 203(c) 329
Investigations and determinations by Commission. PL 93–618 Sec 202(b) 317
PL 93–618 Sec 202(c) 318
Limitations on actions ..... PL 93–618 Sec 203(e) 330
Limitations on investigations ..... PL 93–618 Sec 202(h) 326
Limited disclosure of confidential business information under protective order. PL 93–618 Sec 202(i) 326
Monitoring of action ..... PL 93–618 Sec 204(a) 333
Petitions and adjustment plans ..... PL 93–618 Sec 202(a) 315
Positive adjustment to import competition, action to facilitate. PL 93–618 Sec 201 314
Provisional relief ..... PL 93–618 Sec 202(d) 320
Reduction, modification, and termination of action. PL 93–618 Sec 204(b) 333
Regulations ..... PL 93–618 Sec 203(g) 332
Time for taking effect of certain relief. PL 93–618 Sec 203(d) 329
Imports, exports, and production, uniform statistical data. PL 93–618 Sec 608 409
Intellectual property rights, identification of countries denying adequate protection or market access for. PL 93–618 Sec 182 310
International drug control ..... PL 93–618 Sec 606 408
International safeguard procedures ..... PL 93–618 Sec 107 265
International Trade Commission
Appropriations authorization ..... PL 93–618 Sec 175 307
Authorities ..... PL 93–618 Sec 603 408
Change of name of Tariff Commission. PL 93–618 Sec 171 307
Reports ..... PL 93–618 Sec 163(c) 306
Judicial review ..... PL 93–618 Sec 284 344
Narcotics Control Trade Act ..... PL 93–618 Sec 801 410
Definitions ..... PL 93–618 Sec 805 417
Progress reports ..... PL 93–618 Sec 804 417

Trade Act of 1974—Continued
Narcotics Control Trade Act—Continued
Sugar quota ..... PL 93–618 Sec 803 417
Tariff treatment of products of uncooperative drug producing or transit countries. PL 93–618 Sec 802 411
Negotiating objectives
Definition of barriers and other distortions. PL 93–618 Sec 104A(d) 265
Foreign direct investment, trade in PL 93–618 Sec 104A(b) 263
High technology products, trade in .. PL 93–618 Sec 104A(c) 264
Overall ..... PL 93–618 Sec 103 262
Sector ..... PL 93–618 Sec 104 262
Services, trade in ..... PL 93–618 Sec 104A(a) 263
Negotiations advice
Advisory Committee for Trade Policy and Negotiations. PL 93–618 Sec 135(b) 279
PL 93–618 Sec 135(e) 281
Advisory committee support ..... PL 93–618 Sec 135(h) 283
Advisory committees, scope of member participation. PL 93–618 Sec 135(k) 284
Advisory committees established by Department of Agriculture. PL 93–618 Sec 135(l) 284
Consultation with advisory committees. PL 93–618 Sec 135(i) 284
Executive departments and other sources. PL 93–618 Sec 132 277
Federal Advisory Committee Act, application of. PL 93–618 Sec 135(f) 282
General policy, sectoral, or functional advisory committees. PL 93–618 Sec 135(c) 280
International Trade Commission ..... PL 93–618 Sec 131 275
Policy, technical, and other advice and information. PL 93–618 Sec 135(d) 281
Prerequisites for offers ..... PL 93–618 Sec 134 278
Private and public sector information and advice. PL 93–618 Sec 135 278
Private organizations or groups ..... PL 93–618 Sec 135(j) 284
Public hearings ..... PL 93–618 Sec 133 277
Trace secrets and confidential information. PL 93–618 Sec 135(g) 282
North American countries, trade relations with, sense of Congress. PL 93–618 Sec 612 410
Reciprocal nondiscriminatory treatment PL 93–618 Sec 126 273
Relation to other laws ..... PL 93–618 Sec 602 407
Reports ..... PL 93–618 Sec 163 304
Reservation of articles for national security or other reasons. PL 93–618 Sec 127 274
Rounding authority ..... PL 93–618 Sec 109 266
Russian Federation waiver ..... EO 12802 1204
Separability ..... PL 93–618 Sec 605 408
Staging requirements ..... PL 93–618 Sec 109 266
Statement of purposes ..... PL 93–618 Sec 2 257
Tariff schedules, consequential changes in. PL 93–618 Sec 604 408
Termination assistance ..... PL 93–618 Sec 285 345
Termination authority ..... PL 93–618 Sec 125 272
Trade Adjustment Assistance Trust Fund. PL 93–618 Sec 286 346
Trade agreements, basic authority for .... PL 93–618 Sec 101 258
Trade monitoring system ..... PL 93–618 Sec 282 343
Trade relations with certain countries
Authority to enter into commercial agreements. PL 93–618 Sec 405 377
China, People's Republic of, agreements with. PL 93–618 Sec 421(j) 387
Congressional action on extension of nondiscriminatory treatment. PL 93–618 Sec 407 381

Trade Act of 1974—Continued
Trade relations with certain countries—Continued
Czechoslovakia, payment of amounts owed U.S. citizens and nationals. PL 93–618 Sec 408 382
Exception of products of certain countries or areas. PL 93–618 Sec 401 371
Extension of nondiscriminatory treatment. PL 93–618 Sec 404 376
Freedom of emigration in east-west trade. PL 93–618 Sec 402 371
Freedom to emigrate to join close relative in the United States. PL 93–618 Sec 409 382
Jackson-Vanik amendment ..... PL 93–618 Sec 402 371
Market disruption ..... PL 93–618 Sec 406 378
PL 93–618 Sec 421 383
Presidential reports ..... PL 93–618 Sec 407 381
Regulations ..... PL 93–618 Sec 423 392
Southeast Asia, cooperation concerning U.S. personnel missing in action. PL 93–618 Sec 403 375
Termination of provision ..... PL 93–618 Sec 423 392
Trade diversion, action in response to. PL 93–618 Sec 422 389
Transmission of agreements to Congress PL 93–618 Sec 162 304
Two-year residual authority to negotiate duties. PL 93–618 Sec 124 271
Unfair trade practices, relief from
Administration ..... PL 93–618 Sec 309 368
Consultation upon initiation of investigation. PL 93–618 Sec 303 360
Determinations by the Trade Representative. PL 93–618 Sec 304 361
Identification of trade expansion priorities. PL 93–618 Sec 310 369
Implementation of actions ..... PL 93–618 Sec 305 363
Investigations initiation ..... PL 93–618 Sec 302 359
Modification and termination of actions. PL 93–618 Sec 307 366
Monitoring of foreign compliance ..... PL 93–618 Sec 306 365
Request for information ..... PL 93–618 Sec 308 367
Retaliation list, revision of ..... PL 93–618 Sec 307(b) 365
Review of necessity ..... PL 93–618 Sec 307(c) 367
United States Trade Representative actions. PL 93–618 Sec 301 353
United States Trade Representative, Office of
Appropriations authorization ..... PL 93–618 Sec 141(g) 290
Establishment of ..... PL 93–618 Sec 141 285
United States Trade Representative PL 93–618 Sec 141 286
Waivers
Albania ..... EO 12809 1203
Armenia ..... EO 12798 1205
Azerbaijan ..... EO 12809 1203
Belarus ..... EO 13220 1201
Bulgaria ..... EO 12745 1208
Byelarus ..... EO 12802 1204
China, People's Republic of ..... EO 12167 1212
Czechoslovakia ..... EO 12702 1211
Georgia ..... EO 12809 1203
German Democratic Republic ..... EO 12726 1210
Hungarian People's Republic ..... EO 12051 1213
Kazakhstan ..... EO 12809 1203
Kyrgyzstan ..... EO 12802 1204
Moldova ..... EO 12809 1203
Mongolia ..... EO 12746 1207
Romania ..... EO 11854 1214

Trade Act of 1974—Continued		
Waivers—Continued		
Romania—Continued		
	EO 12772	1206
Russian Federation	EO 12802	1204
Soviet Union	EO 12740	1209
Tajikistan and Turkmenistan	EO 12811	1202
Ukraine	EO 12809	1203
Uzbekistan	EO 12809	1203
Withdrawal authority	PL 93–618 Sec 125	272
Trade Act of 2002	PL 107–210	616
Fund for WTO dispute settlements	PL 107–210 Sec 5201	649
Textile transshipment provisions		
African Growth and Opportunity Act, implementation of.	PL 107–210 Sec 353	617
Trade promotion authority		
Committee staff	PL 107–210 Sec 2109	645
Congressional Oversight Group	PL 107–210 Sec 2107	643
Consultations and assessment	PL 107–210 Sec 2104	634
Definitions	PL 107–210 Sec 2113	646
Findings	PL 107–210 Sec 2101	617
Impact of trade promotion authority, report.	PL 107–210 Sec 2111	646
Implementation and enforcement requirements.	PL 107–210 Sec 2108	645
Implementation of trade agreements	PL 107–210 Sec 2105	639
Interests of small business	PL 107–210 Sec 2112	646
Trade agreements authority	PL 107–210 Sec 2103	629
Trade negotiating objectives	PL 107–210 Sec 2102	618
Treatment of trade agreements for which negotiations have begun.	PL 107–210 Sec 2106	642
Trade adjustment assistance		
Certification of eligibility for workers required for decommissioning or closure of facility.	PL 106–200 Sec 402	652
Trade Adjustment Assistance Trust Fund		
Establishment of	PL 93–618 Sec 286	346
Trade agreements. See also Trade Act of 1974		
Altering import restrictions	PL 71–361 Sec 350(a)	448
Authority of President	PL 71–361 Sec 350(a)	448
Cuba	PL 71–361 Sec 350(b)	452
Decrease of rates	PL 71–361 Sec 350(b)	452
Definitions	PL 71–361 Sec 350(c)	453
Information and advice from industry, agriculture, and labor.	PL 71–361 Sec 350(f)	453
Modification and decrease of duties	PL 71–361 Sec 350(a)	448
Preferential customs treatment	PL 71–361 Sec 350(b)	452
Rate basis for additional increases or decreases.	PL 71–361 Sec 350(d)	453
Restoration of terminated treaties forbidden.	PL 71–361 Sec 350(d)	453
United States-Mexico Framework Agreement on Trade and Investment.	PL 100–418 Sec 2101	1282
Trade Agreements Act of 1979	PL 96–39	820
Approval of trade agreements	PL 96–39 Sec 2	820
Consultations with representatives of domestic interests.	PL 96–39 Sec 417	852
Contracts and grants	PL 96–39 Sec 415	851
Countervailing and antidumping duties		
Conforming changes	PL 96–39 Sec 106	828
Pending investigations	PL 96–39 Sec 102	824
Transition rules	PL 96–39 Sec 104	826
Customs valuation		
Presidential report on operation of the General Agreement on Tariffs and Trade.	PL 96–39 Sec 203	829
Transition to standards	PL 96–39 Sec 204	829

Trade Agreements Act of 1979—Continued
Definitions ..... PL 96–39 Sec 451 855
PL 96–39 Sec 481 861
Exemptions under title ..... PL 96–39 Sec 452 856
Export trade policy, study ..... PL 96–39 Sec 1110 865
Government procurement
Annual report on foreign discrimination. PL 96–39 Sec 305(d) 836
Availability of information to congressional advisers. PL 96–39 Sec 307 843
Civil aircraft, waiver of discriminatory purchasing requirements. PL 96–39 Sec 303 834
Consultation ..... PL 96–39 Sec 305(e) 839
Definitions ..... PL 96–39 Sec 308 843
Discrimination procedures ..... PL 96–39 Sec 305(g) 841
Discrimination purchasing requirements, general authority to modify. PL 96–39 Sec 301 830
Expansion of the coverage of the General Agreement on Tariffs and Trade. PL 96–39 Sec 304 834
Federal Register notices of actions .. PL 96–39 Sec 305(j) 842
Limitations on imposing sanctions .. PL 96–39 Sec 305(h) 842
Monitoring and enforcement ..... PL 96–39 Sec 305 835
Reciprocal competitive procurement practices, authority to encourage. PL 96–39 Sec 302 831
Renegotiation of the General Agreement on Tariffs and Trade to secure full and open competition. PL 96–39 Sec 305(i) 842
Reports ..... PL 96–39 Sec 305(c) 836
PL 96–39 Sec 305(k) 842
Rules of origin ..... PL 96–39 Sec 305(b) 836
Violations of the General Agreement on Tariffs and Trade. PL 96–39 Sec 305(f) 839
Import license auction ..... PL 96–39 Sec 1102 864
International standard-setting activities
Definitions ..... PL 96–39 Sec 493 863
Equivalence determinations ..... PL 96–39 Sec 492 862
Notice of U.S. participation ..... PL 96–39 Sec 491 861
International standards organizations, representation of U.S. interests. PL 96–39 Sec 413 848
International trade functions of the United States government, reorganizing and restructuring. PL 96–39 Sec 1109 864
Operation of the General Agreement on Tariffs and Trade, reports. PL 96–39 Sec 453 857
Purposes ..... PL 96–39 Sec 1 820
Relationship of agreements to U.S. law .. PL 96–39 Sec 3 823
Sanitary and phytosanitary measures
Definitions ..... PL 96–39 Sec 463 858
General provisions ..... PL 96–39 Sec 461 857
Inquiry point ..... PL 96–39 Sec 462 857
Standards information center ..... PL 96–39 Sec 414 850
Standards-related activities
Findings of reciprocity required in administrative proceedings. PL 96–39 Sec 441 854
Not cause for stay ..... PL 96–39 Sec 442 854
Standards-related measures
Definitions ..... PL 96–39 Sec 473 860
General provisions ..... PL 96–39 Sec 471 859
Inquiry point ..... PL 96–39 Sec 472 859
Technical assistance ..... PL 96–39 Sec 416 852
Technical barriers to trade PL 96–39 846
Technical offices, establishment and operation of. PL 96–39 Sec 412 848
Trade Representative functions ..... PL 96–39 Sec 411 848

Trade Agreements Act of 1979—Continued		
Violations of U.S. obligations		
Action after receipt of representations.	PL 96–39 Sec 423	853
Procedure after finding by international forum.	PL 96–39 Sec 424	854
Representations	PL 96–39 Sec 422	853
Right of action	PL 96–39 Sec 421	853
Trade Agreements Program	EO 11846	898
Administration of		
Activities of	EO 11846 Sec 1	898
East-West Foreign Trade Board	EO 11846 Sec 7	901
Generalized System of Preferences	EO 11846 Sec 8	902
Import relief and market disruption	EO 11846 Sec 5	901
Prior Executive Orders	EO 11846 Sec 9	902
Special Representative for Trade Negotiations.	EO 11846 Sec 2	898
Trade negotiations under Title I of the Act.	EO 11846 Sec 4	900
Trade Policy Committee	EO 11846 Sec 3	899
Trade and Development Act of 2000	PL 106–200	650
Agricultural trade negotiating objectives		
Consultations with Congress	PL 106–200 Sec 409(c)	654
Findings	PL 106–200 Sec 409	653
Sense of Congress	PL 106–200 Sec 409(d)	655
Trade adjustment assistance		
Agricultural commodity producers, report.	PL 106–200 Sec 408	653
Certification of eligibility for workers required for decommissioning or closure of facility.	PL 106–200 Sec 402	652
Employment and, report	PL 106–200 Sec 401	651
Wool article imports		
Refund of duties	PL 106–200 Sec 505	656
Wool Research, Development, and Promotion Trust Fund.	PL 106–200 Sec 506	657
Trade and Development Agency		
Tied aid credit program establishment	PL 98–181 Sec 645	1321
Trade and Development Enhancement Act of 1983.	PL 98–181	1319
Tied aid credit export subsidies		
Definitions	PL 98–181 Sec 647	1323
Export-Import Bank program establishment.	PL 98–181 Sec 644	1320
Implementation	PL 98–181 Sec 646	1323
Negotiating mandate	PL 98–181 Sec 643	1320
Statement of purpose	PL 98–181 Sec 642	1319
Trade and Development Agency program establishment.	PL 98–181 Sec 645	1321
Trade and Development Program		
Administrative provisions	PL 100–418 Sec 2204(d)	1285
Funding levels	PL 100–418 Sec 2204(b)	1284
Reaffirmation of support	PL 100–418 Sec 2204(a)	1284
Trade and Environment Policy Advisory Committee.	EO 12905	914
Administration	EO 12905 Sec 4	914
Establishment of	EO 12905 Sec 1	914
Functions	EO 12905 Sec 3	914
Membership	EO 12905 Sec 2	914
Termination of	EO 12905 Sec 5	915
Trade Deficit Review Commission Act	PL 105–277 Sec 127	659
Trade diversion		
Actions described	PL 93–618 Sec 422(c)	389
Basis for determination of significant diversion.	PL 93–618 Sec 422(d)	389
Commission determination	PL 93–618 Sec 422(e)	390
Duration of action	PL 93–618 Sec 422(i)	392
Initiation of investigation	PL 93–618 Sec 422(b)	389

Trade diversion—Continued		
Monitoring by Customs Service	PL 93–618 Sec 422(a)	389
Presidential action	PL 93–618 Sec 422(h)	391
Public comment	PL 93–618 Sec 422(f)	391
Recommendation to President	PL 93–618 Sec 422(g)	391
Review of circumstances	PL 93–618 Sec 422(j)	392
Trade Expansion Act of 1962	PL 87–794	866
Basic authority for trade agreements	PL 87–794 Sec 201	866
Definitions	PL 87–794 Sec 405	878
Financial assistance administration	PL 87–794 Sec 316	874
Interagency trade organization	PL 87–794 Sec 242	871
National security		
Import sanctions for export violations.	PL 87–794 Sec 233	870
Safeguarding	PL 87–794 Sec 232	867
Normal trade relations	PL 87–794 Sec 251	872
Penalties	PL 87–794 Sec 319	875
Protective provisions	PL 87–794 Sec 318	874
References	PL 87–794 Sec 258	873
Relation to other laws	PL 87–794 Sec 257	872
Statement of purposes	PL 87–794 Sec 102	866
Suits	PL 87–794 Sec 320	875
Tariff adjustment		
Authority	PL 87–794 Sec 351	875
Orderly marketing agreements	PL 87–794 Sec 352	878
Termination	PL 87–794 Sec 255	872
Trade expansion priorities. See also Discriminatory Procurement Practices.	EO 12901	912
	EO 13116	916
Agreements for the elimination of barriers.	EO 12901 Sec 3	913
Annual report	EO 13116 Sec 1	916
Consultations and advice	EO 13116 Sec 2	919
Identification	EO 12901 Sec 1	912
	EO 13116 Sec 1	916
Initiation of investigations	EO 12901 Sec 2	913
	EO 13116 Sec 3	917
Presidential direction	EO 12901 Sec 5	913
	EO 13116 Sec 1	919
Reports	EO 12901 Sec 4	913
Resolution	EO 13116 Sec 2	917
Trade in services. See International Investment and Trade in Services Survey Act		
Trade issues		
International Monetary Fund/World Bank Group		
Bretton Woods Agreements Act	PL 79–171 Sec 49	27
Trade law reform	PL 98–573	796
Adjustments study	PL 98–573 Sec 624	796
Industrial targeting studies	PL 98–573 Sec 625	797
Trade Policy Committee		
International trade functions	EO 12188 Sec 1–102	904
Trade Agreements Program administration.	EO 11846 Sec 3	899
Trade Promotion Coordinating Committee	EO 12870	1329
Chairperson	EO 12870 Sec 2	1329
Duties	EO 12870 Sec 4	1330
	PL 100–418 Sec 2312(b)	1298
Establishment and purpose	PL 100–418 Sec 2312(a)	1298
Establishment of	EO 12870 Sec 1	1329
Member qualifications	PL 100–418 Sec 2312(e)	1299
Membership	PL 100–418 Sec 2312(d)	1299
Primary objectives, implementation of	PL 106–158 Sec 6	1269
Purpose	EO 12870 Sec 3	1329
Report	EO 12870 Sec 6	1330
Strategic plan	EO 12870 Sec 5	1330

Trade Promotion Coordinating Committee—Continued		
Strategic plan—Continued		
	PL 100–418 Sec 2312(c)	1298
Trade relations		
Clarification of designation of normal trade relations		
Findings and policy	PL 105–206 Sec 5003(a)	668
Savings provisions	PL 105–206 Sec 5003(c)	669
Fair Trade in Automotive Parts Act of 1998.	PL 105–261	1271
Definitions	PL 105–261 Sec 3802	1271
Japan	PL 105–261 Sec 3803	1271
	PL 105–261 Sec 3804	1272
Trade Remedy Assistance Office		
Establishment of	PL 71–361 Sec 339	447
Trade Representative. See United States Trade Representative		
Trade Sanctions Reform and Export Enhancement Act of 2000.	PL 106–387	1481
Congressional procedures	PL 106–387 Sec 907	1485
Cuba		
Prohibition on additional imports from.	PL 106–387 Sec 909	1487
Travel-related transactions, requirements relating to.	PL 106–387 Sec 910	1487
Definitions	PL 106–387 Sec 902	1482
Exceptions	PL 106–387 Sec 904	1483
Prohibition on U.S. assistance and financing.	PL 106–387 Sec 908	1486
Restriction	PL 106–387 Sec 903	1483
State sponsors of international terrorism	PL 106–387 Sec 906	1484
Termination of sanctions	PL 106–387 Sec 905	1484
Trade statistics		
Collection	13 USC Sec 301	1717
Delayed filings	13 USC Sec 304	1720
Filing export information	13 USC Sec 304	1720
Penalties for failure to file	13 USC Sec 304	1720
Penalties for unlawful export information activities.	13 USC Sec 305	1721
Publication	13 USC Sec 301	1717
Rules, regulations, and orders	13 USC Sec 302	1719
Secretary of Treasury functions	13 USC Sec 303	1720
Trade with Israel	PL 98–573	1128
Application of trade law provisions	PL 98–573 Sec 403	1129
Construction of title	PL 98–573 Sec 405	1131
Duty-free treatment of articles, criteria for.	PL 98–573 Sec 402	1128
Fast track procedures for perishable articles.	PL 98–573 Sec 404	1130
Trading With the Enemy Act	PL 65–91	1458
Meaning of word “enemy”	PL 65–91 Sec 2	1458
Penalties for violations	PL 65–91 Sec 16	1463
Presidential authority	PL 65–91 Sec 5	1461
Prohibited actions	PL 65–91 Sec 3	1460
Removal of national emergency powers	PL 95–223 Sec 101	1466
Treasury, Department of		
Cuban Democracy Act implementation	EO 12854 Sec 3	1565
Trinidad and Tobago. See Caribbean Basin Economic Recovery Act		
Turks and Caicos Islands. See Caribbean Basin Economic Recovery Act		

U

Ukraine		
Trade Act of 1974 waiver	EO 12809	1203

Union of Myanmar Economics Holdings Incorporated		
Import restrictions	PL 108–61 Sec 3	1642
Union of Soviet Socialist Republics		
Normal trade relations	PL 102–197	1193
United Nations		
Iraq, compliance with sanctions against	PL 101–513 Sec 586D	1568
United States and Foreign Commercial Service		
Audits	PL 100–418 Sec 2301(g)	1292
Cooperation in Federal financing and insurance programs.	PL 100–418 Sec 2301(f)	1292
Environmental technologies specialists	PL 100–418 Sec 2313(f)	1302
Establishment of	PL 100–418 Sec 2301(a)	1289
Offices	PL 100–418 Sec 2301(c)	1290
Pacific Rim Initiative	PL 100–418 Sec 2306	1296
Report	PL 100–418 Sec 2301(h)	1293
Statement of purpose	PL 100–418 Sec 2301(b)	1290
United States-Australia Free Trade Agreement Implementation Act.	PL 108–286	1133
Approval and entry into force of agreement.	PL 108–286 Sec 101	1133
Consultation and layover provisions for proclaimed actions.	PL 108–286 Sec 104	1135
Definitions	PL 108–286 Sec 3	1133
Dispute settlement proceedings	PL 108–286 Sec 105	1136
Harmonized Tariff Schedule	Gen. note 28	892
Implementing actions in anticipation of entry into force.	PL 108–286 Sec 103(a)	1134
Initial regulations	PL 108–286 Sec 103(b)	1135
Purposes	PL 108–286 Sec 2	1133
Relationship of agreement to United States and state law.	PL 108–286 Sec 102	1134
Termination effect	PL 108–286 Sec 106	1136
United States-Bahrain Free Trade Agreement Implementation Act.	PL 109–169	1107
Approval and entry into force of agreement.	PL 109–169 Sec 101	1107
Consultation and layover provisions for proclaimed actions.	PL 109–169 Sec 104	1109
Definitions	PL 109–169 Sec 3	1107
Dispute settlement proceedings	PL 109–169 Sec 105	1110
Implementing actions in anticipation of entry into force and initial regulations.	PL 109–169 Sec 103	1108
Purposes	PL 109–169 Sec 2	1107
Relationship of agreement to United States and state law.	PL 109–169 Sec 102	1108
Termination effect	PL 109–169 Sec 106	1110
United States-Canada Free-Trade Agreement		
Proprietary orders	PL 71–361 Sec 777	593
United States-Canada Free Trade Agreement Implementation Act of 1988.	PL 100–449	987
Acceptance by President of panel and committee decisions.	EO 12662 Sec 3	1056
Acts identified in national trade estimates.	PL 100–449 Sec 303	1005
Agriculture, special tariff provisions for fresh fruits and vegetables.	PL 100–449 Sec 301	999
Appointment of individuals to panels and committees.	PL 100–449 Sec 405(a)	1010
Appropriations authorization for Secretariat, panels, and committees.	PL 100–449 Sec 406	1015
Approval of agreement	PL 100–449 Sec 101	987
Automotive products, production-based duty remission programs.	PL 100–449 Sec 207	998
Consultation and lay-over requirements for proclaimed actions.	PL 100–449 Sec 103	989

United States-Canada Free Trade Agreement Implementation Act of 1988—Continued		
Drawback	PL 100–449 Sec 204	997
Enforcement	PL 100–449 Sec 205	998
Extraordinary challenges, testimony and production of papers.	PL 100–449 Sec 407	1016
Harmonized system	PL 100–449 Sec 104	990
Immunity of panelists	PL 100–449 Sec 405(c)	1014
Implementing actions in anticipation of entry into force.	PL 100–449 Sec 105	991
Imports, relief from	PL 100–449 Sec 302	1002
Judicial review	EO 12662 Sec 3	1056
Negotiations regarding certain sectors		
Automotive products	PL 100–449 Sec 304(c)	1007
Biennial report	PL 100–449 Sec 304(f)	1008
Fish, Canadian controls on	PL 100–449 Sec 304(e)	1008
General provisions	PL 100–449 Sec 304(a)	1006
Intellectual property rights	PL 100–449 Sec 304(b)	1006
Potato trade limitation	PL 100–449 Sec 304(d)	1007
Services and investments	PL 100–449 Sec 304(b)	1006
Purposes	PL 100–449 Sec 2	987
Regulations necessary to implement chapters 18 and 19.	PL 100–449 Sec 405(d)	1014
Relationship of agreement to U.S. law	PL 100–449 Sec 102	988
Requests for review of antidumping and countervailing duty determinations.	PL 100–449 Sec 408	1017
Rules of origin		
Annex rules	PL 100–449 Sec 202(d)	994
Application to apparel	PL 100–449 Sec 202(g)	997
Automotive products	PL 100–449 Sec 202(e)	994
Definitions	PL 100–449 Sec 202(f)	994
General provisions	PL 100–449 Sec 202(a)	992
Interpretation	PL 100–449 Sec 202(c)	993
Transshipment	PL 100–449 Sec 202(b)	993
Severability	PL 100–449 Sec 502	1022
Status of panelists	PL 100–449 Sec 405(b)	1014
Steel products	PL 100–449 Sec 309	1009
Subsidies		
Identification of industries facing subsidized imports.	PL 100–449 Sec 409(b)	1019
Negotiating authority	PL 100–449 Sec 409(a)	1017
Tariff modifications	PL 100–449 Sec 201	991
Temporary entry for business persons	PL 100–449 Sec 307	1009
Termination of agreement	PL 100–449 Sec 410	1020
Transition provisions	PL 100–449 Sec 410(b)	1021
United States Secretariat, establishment of.	EO 12662 Sec 2	1056
	PL 100–449 Sec 405(e)	1015
United States-Caribbean Basin Trade Partnership Act.	PL 106–200	944
Definitions	PL 106–200 Sec 203	945
Findings	PL 106–200 Sec 201(a)	944
Harmonized Tariff Schedule		
Products of countries designated beneficiary developing countries.	Gen. note 17	890
Meetings of trade ministers and the United States Trade Representative.	PL 106–200 Sec 213	945
Policy	PL 106–200 Sec 201(b)	945
United States-Chile Free Trade Agreement		
Harmonized Tariff Schedule	Gen. note 26	891
United States-Chile Free Trade Agreement Implementation Act.	PL 108–77	937
Approval of agreement	PL 108–77 Sec 101(a)	937
Claims arbitration	PL 108–77 Sec 106	940
Consultation and layover provisions for proclaimed actions.	PL 108–77 Sec 103	938
Definitions	PL 108–77 Sec 3	937

United States-Chile Free Trade Agreement Implementation Act—Continued		
Dispute settlement proceedings administration.	PL 108–77 Sec 105	940
Entry into force of agreement	PL 108–77 Sec 101(b)	938
Implementing actions	PL 108–77 Sec 104(a)	939
Initial regulations	PL 108–77 Sec 104(b)	939
Purposes	PL 108–77 Sec 2	937
Relationship of agreement to United States and state law.	PL 108–77 Sec 102	938
Termination of	PL 108–77 Sec 107	940
United States-China Relations Act of 2000	PL 106–286	1142
Broadcasting capital improvements, appropriations authorizations.	PL 106–286 Sec 701(a)	1158
Commercial and labor rule of law development assistance		
Administrative authorities	PL 106–286 Sec 512	1157
Appropriations authorization	PL 106–286 Sec 514	1157
Human rights abuses prohibition	PL 106–286 Sec 513	1157
Technical assistance and rule of law program establishment.	PL 106–286 Sec 511	1156
Congressional-Executive Commission on the People's Republic of China		
Appropriations authorization	PL 106–286 Sec 307	1150
Establishment of	PL 106–286 Sec 301	1146
Expenditure of appropriations	PL 106–286 Sec 305	1150
Functions of	PL 106–286 Sec 302	1146
Membership of	PL 106–286 Sec 303	1149
Printing and binding costs	PL 106–286 Sec 309	1151
Staff	PL 106–286 Sec 308	1150
Subpoenas issuance and administration of oaths.	PL 106–286 Sec 306	1150
Votes of	PL 106–286 Sec 304	1150
Witness testimony and production of evidence.	PL 106–286 Sec 306	1150
Definitions	PL 106–286 Sec 204	1145
Findings	PL 106–286 Sec 202	1142
International broadcasting operations, appropriations authorizations.	PL 106–286 Sec 701(b)	1158
Policy	PL 106–286 Sec 203	1144
Report on compliance with WTO obligations.	PL 106–286 Sec 421	1154
Taiwan		
Accession to the World Trade Organization.	PL 106–286 Sec 601	1158
Task force on prohibition of importation of products of forced or prison labor		
Appropriations authorization	PL 106–286 Sec 504	1156
Composition of	PL 106–286 Sec 503	1155
Establishment of	PL 106–286 Sec 501	1154
Functions of	PL 106–286 Sec 502	1154
Reports	PL 106–286 Sec 505	1156
WTO agreements, authorization to promote compliance		
Appropriations authorization	PL 106–286 Sec 413	1152
Findings	PL 106–286 Sec 411	1152
Purpose	PL 106–286 Sec 412	1152
WTO commitments		
Review of membership	PL 106–286 Sec 401	1152
United States Commercial Centers		
Appropriations authorization	PL 102–549 Sec 401(i)	682
Definitions	PL 102–549 Sec 401(k)	682
Establishment of	PL 102–549 Sec 401(a)	680
Facilities relationship to Department of Commerce operations in host countries.	PL 102–549 Sec 401(g)	681
Functions of	PL 102–549 Sec 401(c)	680
Purpose of	PL 102–549 Sec 401(b)	680

United States Commercial Centers—Continued		
Specific services to be provided	PL 102–549 Sec 401(d)	681
Staffing of	PL 102–549 Sec 401(f)	681
Trade promotion activities	PL 102–549 Sec 401(e)	681
Use of Market Development Cooperator Program.	PL 102–549 Sec 401(h)	682
United States-Dominican Republic-Central America Free Trade Agreement Implementation Act. See Dominican Republic-Central America-United States Free Trade Agreement Implementation Act.		
United States-Hong Kong Policy Act of 1992	PL 102–383	1160
Bilateral ties, sense of Congress	PL 102–383 Sec 101	1161
Commerce, sense of Congress	PL 102–383 Sec 103	1162
Consultation with Congress	PL 102–383 Sec 204	1166
Continued application of U.S. law	PL 102–383 Sec 201	1165
Cultural and educational exchanges, sense of Congress.	PL 102–383 Sec 105	1164
Definitions	PL 102–383 Sec 3	1161
Findings and declarations	PL 102–383 Sec 2	1160
Participation in multilateral organizations, rights under international agreements, and trade status.	PL 102–383 Sec 102	1162
Presidential order	PL 102–383 Sec 202	1165
Reports		
Requirements	PL 102–383 Sec 301	1166
Separate part of country reports	PL 102–383 Sec 302	1167
Rules and regulations	PL 102–383 Sec 203	1166
Transportation, sense of Congress	PL 102–383 Sec 104	1164
United States Information Agency		
South African programs	PL 103–149 Sec 7	1633
United States Information Service		
Dissemination of United States-Sub-Saharan Africa Trade and Economic Cooperation Forum information.	PL 106–200 Sec 105(d)	1081
United States International Trade Commission. See International Trade Commission		
United States-Israel Free Trade Agreement		
Report to Congress	PL 107–210	1127
United States-Israel Free Trade Implementation Act of 1985.	PL 99–47	1121
Applicability of provisions of agreement	PL 99–47 Sec 9(b)	1124
Approval of agreement	PL 99–47 Sec 3	1121
Duties, elimination or modifications of	PL 99–47 Sec 9(a)	1123
Elimination or modifications of duties	PL 99–47 Sec 9(a)	1123
Harmonized Tariff Schedule	Gen. note 8	888
Proclamation authority	PL 99–47 Sec 4	1122
Purposes	PL 99–47 Sec 2	1121
Relationship of agreement to U.S. law	PL 99–47 Sec 5	1122
Shipment of articles of Israel through West Bank or Gaza Strip.	PL 99–47 Sec 9(c)	1126
Termination	PL 99–47 Sec 6	1123
Treatment of cost or value of materials	PL 99–47 Sec 9(d)	1126
United States-Jordan Free Trade Area Implementation Act.	PL 107–43	1115
Appropriations authorization	PL 107–43 Sec 402	1119
Definitions	PL 107–43 Sec 3	1115
Direct costs of processing operations	PL 107–43 Sec 102(b)	1116
Harmonized Tariff Schedule	Gen. note 18	891
Implementing regulations	PL 107–43 Sec 403	1119
Purposes	PL 107–43 Sec 2	1115
Relationship of agreement to United States and state law.	PL 107–43 Sec 401	1119
Rules of origin		
Direct costs of processing operations	PL 107–43 Sec 102(b)	1116
Exclusion	PL 107–43 Sec 102(d)	1118
General provisions	PL 107–43 Sec 102(a)	1116

United States-Jordan Free Trade Area Implementation Act—Continued		
Rules of origin—Continued		
Textile and apparel articles	PL 107–43 Sec 102(c)	1117
Tariff modifications	PL 107–43 Sec 101	1115
Termination effect	PL 107–43 Sec 404	1120
United States-Morocco Free Trade Agreement Implementation Act.	PL 108–302	1111
Approval and entry into force of agreement.	PL 108–302 Sec 101	1111
Arbitration of claims	PL 108–302 Sec 106	1114
Consultation and layover provisions for proclaimed actions.	PL 108–302 Sec 104	1113
Definitions	PL 108–302 Sec 3	1111
Dispute settlement proceedings	PL 108–302 Sec 105	1114
Harmonized Tariff Schedule	Gen. note 27	891
Implementing actions in anticipation of entry into force.	PL 108–302 Sec 103(a)	1112
Initial regulations	PL 108–302 Sec 103(b)	1113
Purposes	PL 108–302 Sec 2	1111
Relationship of agreement to United States and state law.	PL 108–302 Sec 102	1112
Termination effect	PL 108–302 Sec 107	1114
United States Secretariat		
Appropriations authorization	PL 100–449 Sec 406	1015
Establishment of	EO 12662 Sec 2	1056
	PL 100–449 Sec 405(e)	1015
United States-Singapore Free Trade Agreement		
Harmonized Tariff Schedule	Gen. note 25	891
United States-Singapore Free Trade Agreement Implementation Act.	PL 108–78	1137
Approval and entry into force of agreement.	PL 108–78 Sec 101	1137
Claims arbitration	PL 108–78 Sec 106	1140
Consultation and layover provisions for proclaimed actions.	PL 108–78 Sec 103	1138
Definitions	PL 108–78 Sec 3	1137
Dispute settlement proceedings	PL 108–78 Sec 105	1139
Harmonized Tariff Schedule	Gen. note 25	891
Implementing actions in anticipation of entry into force.	PL 108–78 Sec 104(a)	1139
Initial regulations	PL 108–78 Sec 104(b)	1139
Nonimmigrant traders and investors	PL 108–78 Sec 401	1140
Purposes	PL 108–78 Sec 2	1137
Relationship of agreement to United States and state law.	PL 108–78 Sec 102	1138
Termination effect	PL 108–78 Sec 107	1140
United States-Sub-Saharan Africa Trade and Economic Cooperation Forum		
Declaration of policy	PL 106–200 Sec 105(a)	1080
Dissemination of information by United States Information Service.	PL 106–200 Sec 105(d)	1081
Establishment of	PL 106–200 Sec 105(b)	1081
HIV/AIDS effect on workforce	PL 106–200 Sec 105(e)	1081
Requirements	PL 106–200 Sec 105(c)	1081
United States Tariff Commission. See International Trade Commission		
United States Trade Representative		
Appointment of	PL 93–618 Sec 141(b)	285
Appropriations authorization	PL 93–618 Sec 141(g)	290
Assistant United States Trade Representative for African Affairs.	PL 106–200 Sec 117	1096
Authority to pay WTO dispute settlements.	PL 107–210 Sec 5201(b)	649
Establishment of Office	PL 93–618 Sec 141(a)	285

United States Trade Representative—Continued		
European Community and Government Procurement implementation responsibilities.	EO 12849 Sec 5	1075
Functions of	PL 96–39 Sec 411	848
International trade functions	EO 12188 Sec 1–101	903
	RP No. 3 of 1979 Sec 1	893
Meetings with trade ministers of Caribbean Basin Trade Partnership Act beneficiary countries.	PL 106–200 Sec 213	945
Relief from unfair trade practices		
Administration	PL 93–618 Sec 309	368
Consultation upon initiation of investigation.	PL 93–618 Sec 303	360
Definitions and special rules	PL 93–618 Sec 301(d)	356
Determinations	PL 93–618 Sec 304	361
Discretionary action	PL 93–618 Sec 301(b)	354
Identification of trade expansion priorities.	PL 93–618 Sec 310	369
Implementation of actions	PL 93–618 Sec 305	363
Investigations initiation	PL 93–618 Sec 302	359
Mandatory action	PL 93–618 Sec 301(a)	353
Modification and termination of actions.	PL 93–618 Sec 307	366
Monitoring of foreign compliance	PL 93–618 Sec 306	365
Request for information	PL 93–618 Sec 308	367
Retaliation list, revision of	PL 93–618 Sec 307(b)	365
Review of necessity	PL 93–618 Sec 307(c)	367
Scope of authority	PL 93–618 Sec 301(c)	354
Responsibilities of	PL 93–618 Sec 141(c)	286
	PL 93–618 Sec 141(d)	287
	PL 93–618 Sec 141(e)	288
	PL 93–618 Sec 141(f)	289
Upstream subsidies		
Defined	PL 71–361 Sec 771A(a)	572
Determination of competitive benefit	PL 71–361 Sec 771A(b)	573
Inclusion of amount of countervailable subsidy.	PL 71–361 Sec 771A(c)	573
Uranium		
Blocking property of the government of the Russian Federation relating to the disposition of highly enriched uranium extracted from nuclear weapons.	EO 13159	1671
Uruguay Round Agreements		
Adherence to obligations	PL 107–210 Sec 2102(e)	629
Trade agreement negotiating authority	PL 100–418 Sec 1102(e)	699
Uruguay Round Agreements Act	PL 103–465	671
Africa trade and development policy	PL 103–465 Sec 134	675
Appropriations authorization	PL 103–465 Sec 101(c)	672
Approval of agreements and statement of administrative action.	PL 103–465 Sec 101(a)	672
Definitions	PL 103–465 Sec 2	671
Entry into force	PL 103–465 Sec 101(b)	672
Implementing actions in anticipation of entry into force.	PL 103–465 Sec 103(a)	673
Membership in the World Trade Organization of boycotting countries, sense of Congress.	PL 103–465 Sec 133	675
Regulations	PL 103–465 Sec 103(b)	674
Relationship of the agreements to United States and state law.	PL 103–465 Sec 102	673
Rules of origin work program, implementation of.	PL 103–465 Sec 132	674
Statement of administrative action	PL 103–465 Sec 101(a)	672
Trade agreements to which this Act applies.	PL 103–465 Sec 101(d)	672
Working party on worker rights	PL 103–465 Sec 131	674

USAID. See Agency for International Development
USIS. See United States Information Service
USTR. See United States Trade Representative
Uzbekistan
Trade Act of 1974 waiver ..... EO 12809 1203

V

Vessels
Anchorage and movement of, declaration of national emergency and emergency authority. Pres. Proc. 6867 1554
Vietnam
Normal trade relations ..... PL 107–52 1173
Virgin Islands, British. See Caribbean Basin Economic Recovery Act
Visas
Burma, expansion of ban ..... PL 108–61 Sec 6 1643

W

Water conservation
North American Development Bank projects. PL 108–215 Sec 3 121
PL 108–215 Sec 4 122
PL 108–215 Sec 5 122
Weapons. See Chemical and biological weapons; Defense articles
Weapons of mass destruction
Proliferators and their supporters ..... EO 13382 1512
Western Balkans
Blocking property of persons who threaten international stabilization efforts. EO 13219 1661
Wine
Trade barriers, reports on negotiations to eliminate. PL 100–418 Sec 1125 710
United States Trade Representative functions. EO 12661 Sec 1–201 908
Wine Equity and Export Expansion Act of 1984. PL 98–573 805
Definitions ..... PL 98–573 Sec 903 806
Designation of major wine trading countries. PL 98–573 Sec 904 806
Export promotion ..... PL 98–573 Sec 907 808
Findings and purposes ..... PL 98–573 Sec 902 805
Required consultations ..... PL 98–573 Sec 906 808
Tariff and nontariff barriers affecting U.S. wine, actions to reduce or eliminate. PL 98–573 Sec 905 807
Wood exports
Monitoring ..... PL 100–418 Sec 2432 1308
Wool
Imports
Refund of duties ..... PL 106–200 Sec 505 656
Wool Research, Development, and Promotion Trust Fund. PL 106–200 Sec 506 657
Wool Suit and Textile Trade Extension Act of 2004
Extension of duty refunds ..... PL 108–429 Sec 4002(c) 613
Wool Trust Fund, establishment of PL 108–429 Sec 4002(c) 613
Workers
Rules of origin work program, implementation of. PL 103–465 Sec 132 674

Workers—Continued
Trade adjustment assistance
Benefit information ..... PL 93–618 Sec 225 339
Downstream producers ..... PL 93–618 Sec 222(c) 337
Group eligibility requirements ..... PL 93–618 Sec 222 336
International Trade Commission investigation, study by Secretary of Labor. PL 93–618 Sec 224 338
Petitions ..... PL 93–618 Sec 221 335
Secondary workers ..... PL 93–618 Sec 222(b) 336
Secretary of Labor, determinations by. PL 93–618 Sec 223 338
Suppliers ..... PL 93–618 Sec 222(c) 337
Worker rights
Principal trade negotiating objectives. PL 100–418 Sec 1101(b) 695
Report ..... PL 100–418 Sec 2207 1288
Working party on ..... PL 103–465 Sec 131(c) 674
World Bank
Anticorruption provisions ..... PL 109–102 Sec 599D 223
Government-owned enterprises in countries receiving loans, directives regarding. PL 95–118 Sec 1607 181
Improving access of small businesses to procurement, sense of Congress. PL 100–461 Sec 12 147
International Debt Management Authority review. PL 100–418 Sec 3113 750
Policy based lending limitations ..... PL 100–461 Sec 4 146
World Bank Group. See International Monetary Fund/World Bank Group
World Trade Organization
Accession of state trading regimes ..... PL 100–418 Sec 1106 705
Action in response to trade diversion ..... PL 93–618 Sec 422 389
China, People's Republic of
Authorization to promote compliance with agreements. PL 106–286 Title IV 1152
Report on compliance with obligations. PL 106–286 Sec 421 1154
Review of membership ..... PL 106–286 Sec 401 1152
Extended negotiations ..... PL 107–210 Sec 2102(b) 626
Fund for dispute settlements ..... PL 107–210 Sec 5201 649
Implementation of Article VIII of the Agreement establishing the Organization. EO 13042 1070
Improvement of trade agreements ..... PL 107–210 Sec 2102(b) 622
Membership of boycotting countries, sense of Congress. PL 103–465 Sec 133 675
Taiwan accession ..... PL 106–286 Sec 601 1158
Transparency, General Council policies PL 105–174 Sec 10006 670
Unfair trade practices dispute settlement. PL 93–618 Sec 306(b) 365
Working party on worker rights ..... PL 103–465 Sec 131 674
World Trade Organization legal capacity
Implementation of Article VIII of the Agreement establishing the Organization. EO 13042 1070
WTO. See World Trade Organization

Y

Yugoslavia
International financial institutions funds prohibition to countries failing to cooperate with the International Criminal Tribunal. PL 109–102 Sec 561 221
Prohibiting transactions ..... PL 104–208 Sec 533 1656

Yugoslavia—Continued
Restriction on U.S. assistance for reconstruction in the Balkans region. PL 106–113 Sec 599B 1659

Z

Zimbabwe
Blocking property of persons undermining democratic processes or institutions. EO 13288 1687

○

E D G E I N D E X

To use the index on the left, bend the publication over and locate the desired section by following the black markers.

INTERNATIONAL FINANCIAL INSTITUTIONS (p. 1)

FOREIGN ECONOMIC POLICY: TARIFF AND TRADE LAWS (p. 249)

APPENDICES (p. 1759)

INDEX (p. 1805)