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RECIPROCAL TRADE AGREEMENTS ACT OF 1997

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Mr. ROTH, from the Committee on Finance, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1269]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, having considered legislation to renew the President's authority to proclaim changes in tariffs resulting from the negotiation of reciprocal trade agreements and to renew congressional procedures for implementing provisions of such agreements in United States law, reports favorably thereon and refers the bill to the full Senate with a recommendation that the bill do pass.

I. BACKGROUND

Article I, section 8, clause 2 of the Constitution delegates the power to regulate foreign commerce to Congress. Congress has historically exercised that power through legislation regulating imports of goods, services, and investment into the United States.

Beginning with the Reciprocal Trade Agreements Act of 1934, however, Congress introduced a new means of addressing the changing needs of American trade policy. Congress delegated authority to the President to proclaim changes in U.S. tariffs, within prescribed limits, based on the results of mutually beneficial trade agreements concluded with our foreign trading partners. Congress set the overall objectives of the negotiation, but offered the Presi-

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dent and our trading partners the assurance that, if the agreement reached was consistent with the objectives and conditions set by Congress, the agreement would be implemented in U.S. law.

With the progress of the Trade Agreements Program initiated by Secretary of State Cordell Hull (a former member of the Finance Committee) under the authority of the 1934 Act and of later rounds of multilateral negotiations within the framework of the General Agreement on Tariffs and Trade (GATT), U.S. negotiators achieved significant reductions in tariffs abroad. Those agreements called for significant reductions in U.S. tariffs as well. As tariff levels fell, particularly after the Kennedy Round of tariff negotiations concluded in 1967, it became clear that future rounds of trade talks would focus on the panoply of non-tariff measures that our trading partners used to bar or inhibit U.S. exports from reaching their markets.

That, in turn, posed a problem in terms of the implementation of any agreement that called for a reciprocal reduction in U.S. non-tariff measures limiting imports of foreign goods, services, and investment. In this Committee's view then and now, Congress could not, consistent with its constitutional responsibilities, delegate authority to the President to revise U.S. domestic law by proclamation in the manner it had delegated the authority to proclaim changes in tariffs. At the same time, Congress recognized that the President, as a practical matter, might be unable to conclude future trade agreements unless he could assure our trading partners that the agreement would not be amended by Congress after the fact.

In order to overcome that problem, Congress introduced what have become known as the "fast track" procedures for implementing trade agreements in the Trade Act of 1974. The procedures, referred to in the Committee's bill as the "trade agreement approval procedures," were designed to preserve Congress' constitutional role in the regulation of foreign commerce, while offering the President and our trading partners the assurance that a trade agreement requiring changes in U.S. law would receive an up-or-down vote within a time certain when brought before Congress.

Consistent with the approach of the Reciprocal Trade Agreements Act of 1934, Congress set the President's negotiating objectives. The President was then obliged to notify Congress prior to entry into any trade agreement, consult on the nature and scope of the accord, and submit the President's findings as to how the pact met the objectives set by Congress, together with legislation needed to implement the agreement in U.S. law.

Congress has preserved that basic structure each time it has renewed the trade agreement approval procedures. The procedures were renewed once for eight years by the Trade Agreements Act of 1979, and a second time for five years in the Omnibus Trade and Competitiveness Act of 1988. The authority granted by the 1988 Act was extended in 1993 for an additional six months in order to complete the Uruguay Round of multilateral trade negotiations. It has not been renewed since.

The fast track authority has been used on five occasions. Congress used the fast track procedures to implement the Tokyo and Uruguay Rounds of GATT multilateral trade negotiations, in 1979

and 1994 respectively. Congress also relied on the fast track to implement free trade accords with Israel in 1985 and Canada in 1988, and to implement the North American Free Trade Agreement (NAFTA) in 1993.

The Reciprocal Trade Agreements Act of 1997 would retain the same basic structure and authority for the President contained in prior extensions of the trade agreement approval procedures. It would, however, make several important changes designed to reemphasize the original purpose of the authority—the reduction of trade barriers and the expansion of market access for U.S. exports—as well as strengthen Congress' role in and oversight of the process.

The motivation and intent behind those changes is to restore the trade agreement approval procedures to their intended role. Those procedures were not designed and were never intended to provide a means to revise the fundamental objectives and contours of U.S. domestic law. Rather, the procedures are designed to implement changes in U.S. law necessary to conform to our obligations under a trade agreement.

Prior law allowed provisions in implementing legislation that were "necessary or appropriate" to the approval of the agreement or its implementation in U.S. law. The Committee's bill would clarify that the trade agreement approval procedures are available only to those measures necessary to approve and implement a trade agreement and those traded-related measures that are otherwise related to the implementation, enforcement, or adjustment to the effects of such agreement. Those measures would include such items as amendments to the unfair trade laws needed to ensure that U.S. goods and services do not face unfair competition from imports and implementation of the Trade Adjustment Assistance programs reauthorized with this legislation.

The Committee is confident that the framework established by the Reciprocal Trade Agreements Act of 1997 lays the proper foundation for the limited purpose the trade agreement approval procedures were originally designed to serve. The Act sets out specific negotiating objectives that the Committee expects the President to pursue with our trading partners. The Act strengthens existing notice and consultation requirements by mandating comprehensive consultations at the outset and at every succeeding stage of the negotiations. The Act provides a process by which Congress may disapprove of new negotiations that might otherwise be eligible for implementation under the fast track procedures. Finally, the Act limits the application of the fast track procedures to agreements that achieve one or more of the negotiating objectives set by Congress and those provisions that are directly related to trade and otherwise related to the implementation, enforcement and adjustment to the effects of any such accord.

The Reciprocal Trade Agreements Act of 1997 grants the President the authority he needs to offer the international leadership only America can provide on trade. At the same time, it assures that the trade agreement approval procedures will be used as originally intended—as a tool to assist in the reduction of barriers to U.S. trade.

II. Summary of the Bill

The legislation is divided into ten sections. Apart from section 1, which provides a short title for the bill, the provisions fall into three categories.

Sections 2 and 3 address the nature, purpose, and scope of the authority granted in this bill. Section 2 sets out the purposes for which the implementing procedures in section 3 are provided, specifies the principal trade negotiating objectives on which Congress expects the President to focus in future trade negotiations for which such procedures may be used, and identifies complementary international economic objectives that would reinforce the trade negotiations process. Section 3 includes two separate implementing procedures, one allowing the President to proclaim changes in U.S. tariffs resulting from trade agreements reached with our foreign trading partners, and another establishing a set of trade agreement approval procedures for congressional review of implementing legislation needed to make changes in U.S. law other than tariff changes (i.e., the fast track). Section 3 also defines what types of measures would qualify for expedited congressional review.

Sections 4 and 5 contain the procedural aspects of the measure, including those provisions intended to strengthen Congress' role in and oversight of the trade negotiations process. Section 4 sets out the notice and consultation requirements, which require the President to notify the Congress of the initiation of negotiations and the potential entry into an agreement and obligate the President to consult at every stage of the process. Section 5 sets out the implementing procedures themselves, including provisions allowing for congressional disapproval of negotiations under certain circumstances.

Sections 6 through 10 set out various provisions that are integral to the operation of the legislation or reinforce the principal purpose of the bill. Those include the waiver of notice requirements for negotiations already under way, reauthorization of Trade Adjustment Assistance programs, as well as definitions, conforming amendments, and provisions needed to comply with the Balanced Budget and Emergency Deficit Control Act of 1985.

III. General Description of the Bill

What follows is a section-by-section description of the bill.

A. Section 1: Short Title

Section 1 provides that, if enacted, the measure would be cited as the "Reciprocal Trade Agreements Act of 1997."

B. Section 2: Trade Negotiating Objectives of the United States

Section 2 of the Act, which sets out the trade negotiating objectives of the United States, is divided into three parts—a statement of purposes, the trade negotiating objectives themselves, and a complementary set of economic policy objectives designed to reinforce the trade agreements process.

1. Statement of Purposes

Subsection 2(a), the Statement of Purposes, provides the underlying rationale for which Congress grants access to the trade agreement approval procedures—expanding U.S. access to foreign markets, reducing barriers to trade, creating more effective international trade rules, and promoting economic growth, higher living standards and full employment in the United States, as well as economic growth and development among our trading partners that will lead to expanding markets for U.S. goods, services, and investments.

2. Principal Trade Negotiating Objectives

Subsection 2(b), the Principal Trade Negotiating Objectives, identifies the specific sectors and practices on which Congress expects U.S. negotiators to focus in their use of the authority provided to the President. The provision links access to the trade agreement approval procedures to agreements fulfilling one or more of the enumerated objectives.

While the Principal Trade Negotiating Objectives are largely self-explanatory, several deserve some additional comment. They include—

Trade in Goods: The provision clarifies that the principal objective of the United States with respect to trade in goods is reducing barriers to U.S. exports. The provision cites three specific examples: (1) the elimination of disparities between higher foreign and lower U.S. tariffs left over from previous rounds of multilateral tariff negotiations, (2) the elimination of those tariff and nontariff measures identified in the United States Trade Representative's (USTR) annual trade barriers study produced under section 181 of the Trade Act of 1974, and (3) the elimination of tariffs on those items specifically identified in section 111(b) of the Uruguay Round Agreements Act and the related Statement of Administrative Action as targets for the reciprocal elimination of tariffs on a tariff category-by-tariff category basis.

By specifying those examples, the Committee intends to provide particular focus to the President's efforts. They are not meant as a limit on the products or sectors covered by the negotiating objective. Rather, the Committee expects that the President will use the authority broadly to address all barriers that inhibit U.S. merchandise exports, including the barriers to be addressed in extended negotiations under World Trade Organization (WTO) auspices called for by section 135 of the Uruguay Round Agreements Act and the related Statement of Administrative Action on trade in civil aircraft.

Trade in Services: The principal negotiating objective on trade in services reinforces the Congress' direction to the President contained in prior law to expand access to foreign markets for U.S. service providers. The provision extends guidance for negotiators from prior law regarding U.S. domestic policy objectives in various areas, including health, safety, national security, environmental protection, consumer protection, and employment, but makes clear that the guidance should not be construed as authority to modify U.S. law related to those domestic policy objectives.

The Committee recognizes that the Uruguay Round represents a significant step toward achieving the goals set out both here and in prior law. The Committee retained the objective in order to underscore the need to expand the coverage of and participation in agreements reached in the Uruguay Round, to complete the negotiations called for in those agreements, and to encourage continuing bilateral efforts to eliminate barriers to U.S. service providers. With respect to future services agreements under the WTO, the Committee reemphasizes its expectation that the President shall agree solely to those arrangements benefiting U.S. interests on a mutual and reciprocal basis.

Investment: The principal negotiating objective with respect to foreign investment is the reduction of barriers to U.S. investment and the establishment of effective means for the equitable resolution of investment disputes. The guidance from prior law with respect to domestic policy objectives is extended here as well, along with the proviso noted above that the guidance should not be construed as authority to modify U.S. law.

Intellectual Property: The Committee intends to ensure that intellectual property protection, given its importance to the future of the U.S. economy and the ability of American firms to compete globally, remains a trade policy priority. As a consequence, the principal negotiating objective of the United States with respect to intellectual property protection continues to focus on the enactment and enforcement of adequate intellectual property protections abroad.

The surest route to that goal is the full implementation of the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). The full benefit of the TRIPS agreement has been delayed by the lengthy transition periods allowed for under that accord. The Committee expects that the President will use both the WTO and trade negotiations in other fora to accelerate the full implementation of those rules.

The Committee views Chapter 17 of the NAFTA as the baseline for future negotiations on intellectual property protection. The Committee expects future agreements, whether concluded in the WTO or in other contexts, to contain intellectual property protection at least as strong as that of NAFTA.

Along with the rights themselves, holders of intellectual property rights need access to effective enforcement mechanisms to ensure that other private parties do not violate the rights that accrue under domestic law. The provisions of the bill with respect to enforcement mechanisms are not intended to prejudge the nature of the those mechanisms or the sanctions, whether civil or criminal, that might apply as a result of an infringement. The objective is to ensure that the means are available, however designed, to ensure that U.S. holders of intellectual property rights can enforce those rights against infringing parties.

The objective reflected in the Act is designed to ensure the fullest possible protection for U.S. holders of intellectual property rights as those rights relate to international trade in goods and services and to international investment. Nothing in the Act should be construed to imply endorsement of agreements or conventions arising

in contexts other than international trade which may serve to limit such rights through compulsory licensing or other methods.

Agriculture: Despite the accomplishments of the Uruguay Round Agreement on Agriculture, the agricultural sector remains blighted by the trade distorting policies of foreign governments. The overarching goal of U.S. negotiators should continue to be achieving more open and fair conditions of trade by reducing barriers to trade in agricultural products. In the Committee's view, that means such actions as eliminating trade distorting practices of state trading enterprises (particularly those that limit price transparency) and addressing a variety of other market distorting practices that unfairly decrease U.S. market access opportunities.

The Committee also expects that the President will address the proliferation of regulatory and commercial practices affecting new technologies. In practical terms, that means eliminating discriminatory standards or labeling requirements that unfairly bar access of U.S. farm products to particular markets.

While the primary objective should be expanding the scope of international disciplines over trade distorting practices in agricultural markets, the Committee expects that the President will focus on improving existing arrangements as well. That means ensuring the enforcement of the rules that do exist and addressing particular issues, such as the lack of adequate safeguards under existing rules for domestic producers of seasonal and perishable agricultural products due to the nature of their product.

Unfair Trade Practices: The principal objective of the United States with respect to unfair trade practices is intentionally outward-looking. The Committee intends the focus of U.S. negotiators to be the elimination of the unfair trade practices abroad, not changes in or weakening of U.S. law at home. The goal should be to enhance existing international disciplines against unfair trade practices such as dumping and trade-distorting subsidies and ensuring the aggressive enforcement of those disciplines through the WTO agreements or any other trade agreement the President may conclude under the authority granted by this legislation.

Over the nearly six decades in which the Trade Agreements Program has been in place, the United States has seen a dramatic expansion of trade and a larger than ever percentage of the U.S. economy is affected by imports and exports. The core purpose of the unfair trade laws is to ensure that, in the process of liberalizing trade between the United States and its trading partners, the United States retains the ability to deter unfair import competition in its home market. As a consequence, the Committee does not intend that the authority granted in this Act be used to weaken the ability of U.S. unfair trade laws to deter such practices. The Committee expects the President to consult closely on the issue of the review of administrative determinations under the unfair trade laws in future trade agreements.

Improvement of the WTO and Multilateral Trade Agreements: In the Committee's view, the work within the WTO is far from complete despite the progress made in the Uruguay Round. Expanding the coverage of and participation in the WTO agreements is of paramount importance. The Committee expects further attention to compliance with existing agreements in order to ensure that the

United States receives the full benefit of the underlying bargain it struck in supporting the creation of the WTO and in negotiating the various WTO agreements.

The Committee wants to ensure that U.S. negotiators adopt a similar approach to any other existing multilateral accords or any they may negotiate in the future. It is just as important to seek constant improvement in the existing framework of our trading arrangements as it is to negotiate new ones. Support for future trade-liberalizing agreements depends on adequately addressing problems with the function of existing arrangements.

Dispute Settlement: The basic objective of the United States in the area of dispute settlement remains the same—ensuring the effectiveness of trade dispute settlement procedures for the enforcement of U.S. rights, particularly within the WTO. Absent the effective enforcement of U.S. rights, international trade agreements are meaningless. The Committee encourages the President to consult closely on the means for enforcing U.S. trade agreements, whether in regard to changes in existing law or the resources dedicated to enforcement and compliance.

Transparency: The Committee recognizes that, absent access to foreign trade laws, regulations, and administrative proceedings, U.S. exporters, service providers, or investors have no means of ensuring that they are receiving the market access that the letter of our trade agreements provide. Similarly, absent an understanding of the processes of international institutions like the WTO, it is difficult for the public to see how U.S. interests are being protected (e.g., whether the United States has received a fair hearing on its trade complaints and the benefit of its bargain in the implementation of any trade agreement). Accordingly, the Committee expects the President to ensure that trade laws, regulations, and processes among our trading partners, and dispute settlement processes within international institutions like the WTO, provide for appropriate public access.

Regulatory Competition: Successive rounds of multilateral trade negotiations and bilateral accords with Israel, Canada, and Mexico have gradually reduced or eliminated tariffs and other border measures used by governments to deter competition and international trade. That raises the risk (already evident in certain sectors such as agriculture) that governments will increasingly rely on government regulation as a means of discriminating against U.S. goods, services, and investment.

Such practices can take the form of direct limits on commerce, such as limits on distribution and retail sales, or the toleration of anticompetitive practices which otherwise hinder the sale of U.S. exports in particular markets. Such practices can also involve less direct means by foreign governments to afford a commercial advantage to their domestic producers, service providers, or investors, such as the use of health, safety, labor and environmental standards to discriminate in favor of domestically produced goods or lowering of or derogating from such standards in order to attract investment or inhibit U.S. exports.

Like the Act's treatment of unfair trade practices discussed above, the negotiating objective in this context is consciously outward-looking. The Committee intends that the provisions be used

to address foreign government practices that discriminate against U.S. goods, services, and investment abroad or lower or derogate from existing health, safety, labor, environmental or other regulatory standards to attract investment or inhibit exports.

With respect to foreign government practices designed to attract investment or inhibit U.S. exports through the lowering of or derogating from such standards, the Committee emphasizes that the negotiating objective should not be construed to permit the inclusion of any provision in an implementing bill submitted under the trade agreement approval procedures set out in subsection 3(b) of the Act, or in any agreement that would be the subject of an implementing bill submitted under those procedures, that would restrict the autonomy of the United States in those areas. Such provision should not be construed to call for negotiation of agreements providing for international enforcement of or changes to U.S. health, safety, labor or environmental standards. Nor would that provision authorize the imposition of any limit on the sovereign right of individual U.S. states to establish their own levels of health, safety, labor, environmental, land use, tax, or other regulatory standards as they deem appropriate.

3. International Economic Policy Objectives Designed to Reinforce the Trade Agreements Process

Recent events have underscored the fact that trade negotiations and trade agreements do not operate in a vacuum. Subsection 2(c) of the Act introduces a new subsection relating to international economic policy objectives that would reinforce the trade negotiations process. Those objectives would, for example, include—(1) work within international monetary institutions to encourage currency stability and coordination between trade and monetary institutions, (2) efforts in international contexts other than the WTO TRIPS agreement to strengthen standards for protection of intellectual property rights, (3) the promotion of respect for workers' rights, such as use of the ILO to monitor its members adherence to certain accepted labor standards (e.g., the prohibition on exploitative child labor), and (4) expanding trade to ensure the optimal use of the world's resources, while seeking to protect and preserve the environment and to enhance the international means for doing so. The provision makes clear, however, that subsection 2(c) does not authorize the use of the trade agreement approval procedures (i.e., the fast track) to modify U.S. law.

As the Committee has in prior law, the Act highlights the link between international trade and monetary policies. Recent events have underscored the need to promote policies among our trading partners that encourage stability in international currency markets. The Committee recognizes that significant shifts in exchange rates result from domestic economic policies, not trade agreements negotiated under authority of the sort granted in this Act. Nonetheless, such shifts can have a dramatic impact on the trade opportunities available to U.S. producers, service providers, and investors that trade agreements are otherwise designed to provide. The purpose of the provisions on currency stability reported by the Committee is simply to encourage U.S. efforts bilaterally and multilaterally through the appropriate international monetary institutions

to help protect against the adverse consequences of excessive currency movements. It is the Committee's expectation that the President will consult on an ongoing basis regarding such matters as they relate to trade.

The Committee also wants to emphasize its recognition of the fact that, in the context of intellectual property protection, the WTO TRIPS agreement is not the only international forum in which the United States should pursue its goal of providing adequate and effective protection for U.S. holders of intellectual property rights. The Committee wants to encourage progress in other contexts, such as the World Intellectual Property Organization, the Paris, Rome, and Berne Conventions, and the Treaty on Intellectual Property in Respect of Integrated Circuits, that would complement the efforts of the United States within the WTO, the TRIPS agreement, and the intellectual property provisions of other international trade agreements.

As held true for the specific negotiating objective on intellectual property rights contained in subsection 2(b) discussed above, the goal should be to afford the broadest protection possible for U.S. holders of intellectual property rights. Accordingly, nothing in the broader economic objective of subsection 2(c) on intellectual property should be construed to imply endorsement of any accord reached in other contexts that would limit such rights by compulsory licensing requirements or other means.

The provisions on worker rights and the environment are intended to encourage the President, outside of the context of trade agreements subject to fast track approval, to develop initiatives that would complement the agenda that the Committee's bill would establish for future trade negotiations. The examples cited with respect to worker rights are not intended to be exhaustive; rather, they are intended to identify two means by which the President might pursue complementary policies in the context of worker rights. The provision on the environment acknowledges the role that appropriate agreements between governments on the environment can play in protecting against environmental damage or encouraging conservation, such as agreements on international trade in endangered species, while at the same time ensuring that due weight is given to the valuable role trade can play in conservation efforts by ensuring the optimal use of the world's resources.

C. Section 3: Trade Agreement Negotiating Authority

Section 3 of the Act contains two different procedures for implementing trade agreements—one for implementing the results of tariff negotiations and one for implementing the results of trade agreements that require other changes in U.S. law.

The first of those two, commonly referred to as "tariff proclamation authority," permits the President to "proclaim" the results of tariff negotiations directly into U.S. law without further review by Congress. The second set of procedures, designed for changes in U.S. law not covered by tariff proclamation authority, represents what are referred to in the Act as the "trade agreement approval procedures," but are commonly referred to as the "fast track." Those procedures apply to all changes in U.S. law required to im-

plement the agreement other than the tariff modifications proclaimed by the President.

1. Agreements Regarding Tariff Barriers

Tariff negotiating authority contained in subsection 3(a) of the Act tracks prior grants of negotiating authority contained in every extension of tariff negotiating authority since the Reciprocal Trade Agreements Act of 1934. It authorizes the President to modify U.S. duties resulting from any trade agreement reached with our foreign trading partners before October 1, 2001. The Act would allow for a single extension until October 1, 2005 under the procedures set out in subsection 3(c).

Subsection 3(a) imposes various limits on the President's tariff proclamation authority. It limits the maximum amount by which the President can cut any individual tariff (for U.S. tariffs over 5 percent, the President can cut the tariff by no more than half) and the aggregate reduction that can go into effect in any given year. Tariff cuts may be "staged" or phased-in over a maximum ten-year period. The provision includes rules on rounding to ensure the administrability of the staged tariff cuts provided for under subsection 3(a).

Subsection 3(a) also provides a new grant of tariff proclamation authority that would, notwithstanding the limitations noted above, authorize the President to eliminate or harmonize all tariffs on certain articles for which members of the affected U.S. industry have requested so-called "zero-for-zero" negotiations or tariff harmonization. Under subsection 3(a), such negotiations must result in the reciprocal elimination or harmonization of duties within the same tariff categories.

The new tariff authority would be subject to the notice and consultation requirements applicable to agreements that would normally be subject to consideration under the separate trade agreement approval procedures of subsection 3(b) (i.e., the fast track). In particular, the President could use the authority to proclaim changes only in those tariff categories for which the President had provided notice to Congress before initiating the negotiations or those that are authorized by section 6 of the Committee's bill.

Any tariff agreement negotiated under paragraph (6) of subsection 3(a) would also be subject to the consultation and layover requirements set out in section 115 of the Uruguay Round Agreements Act, which ensure additional congressional and private sector input and review by the United States International Trade Commission (ITC) before the changes go into effect. The authority is, in addition, circumscribed by the requirements that all such negotiations take place in the context of the WTO or as an interim step toward a free trade agreement.

The Committee underscores its understanding that the new authority granted in paragraph (6) of subsection 3(a) will only be used to the extent requested by industry. The President shall take into account the ongoing competitive conditions facing particular domestic products, the extent to which they have faced or continue to face foreign unfair or trade distorting practices, and the extent to which sectors producing such products are currently adjusting to changes in competitive conditions resulting from prior tariff or non-tariff

agreements (e.g., agricultural products, particularly perishables, citrus fruit, and fruit juices).

2. Agreements Regarding Tariff and Non-Tariff Barriers

The Act provides a single track for implementing any changes in U.S. law (other than those subject to the President's tariff proclamation authority) required by a trade agreement negotiated by the President pursuant to the conditions set out in the Committee's bill, and then applies a common set of implementing procedures to all such agreements. The Act provides for an initial grant of authority through October 1, 2001, with the possibility of an extension of the procedures until October 1, 2005, as provided for in subsection 3(c).

The Act imposes several conditions on access to the trade agreement approval procedures. First, consistent with every grant of trade negotiating authority since 1974, the agreement must be one that reduces foreign trade barriers. Agreements that do not fulfill that basic condition, such as arrangements in other areas that might refer to trade incidentally as an enforcement mechanism, would not qualify under this provision because their only potential impact would be trade restrictive.

Second, access to the fast track is tied directly to fulfillment of the principal trade negotiating objectives set out in subsection 2(b). An agreement, and its implementing legislation, would qualify for fast track only when it made progress toward fulfilling one or more of the principal negotiating objectives set out in that subsection.

Third, before an agreement and its implementing legislation would qualify for the trade agreement approval procedures, the President would have to have satisfied the notice and consultation provision of section 4 of the Act. Thus, the President would have had to have provided notice and consulted with Congress and the appropriate industry sector advisory groups prior to initiating the talks as to their scope, and have consulted with Congress at every stage of the negotiations (including immediately prior to initialing any accord) in order to gain access to the trade agreement approval procedures.

Fourth, subsection 3(a) would limit access to the trade agreement approval procedures solely to those provisions of the implementing legislation that are (1) required to approve an agreement that achieves one or more of the principal negotiating objectives and any related statement of administrative action; (2) necessary to implement such agreement; (3) otherwise related to the implementation, enforcement, or adjustment to the effects of such trade agreement and are directly related to trade; or (4) needed to comply with the Balanced Budget and Emergency Deficit Control Act of 1985.

In that regard, the Committee intends that the language allow solely for those trade-related items that have traditionally been a part of the implementation, enforcement or adjustment to new competitive conditions created by trade agreements. Those include, for example, trade adjustment assistance, provisions of the U.S. unfair trade laws (including the antidumping and countervailing duty laws and the provisions of section 337 of the Tariff Act of 1930), and congressional guidance on future negotiations. The language would also cover those items necessary to define or clarify the rela-

tionship between the agreement and U.S. law, such as provisions defining the relationship between federal and state law, preclusion of private rights of action based on the agreement itself, judicial procedures, or the establishment of administrative, consulting, or reporting mechanisms to carry out U.S. obligations under the agreement.

3. Extension Procedures

Subsection 3(c) of the Act provides a process for extending both the tariff proclamation authority of subsection 3(a) and the trade agreement approval procedures of subsection 3(b) that is consistent with prior law. The President must request the extension, provide his reasons for that request, along with an explanation of the trade agreements for which he expects to need fast track authority, and a description of the progress he has made to date toward achieving the principal negotiating objectives set out in subsection 2(b). The President must also notify the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974, which then must file its own report with Congress.

The authority would be extended unless either House of Congress approves a "resolution of disapproval." Any member of Congress could introduce such a resolution in his or her respective House of Congress. Such resolutions would be referred, in the Senate, to the Committee on Finance, and in the House, jointly to the Committees on Rules and Ways and Means. Floor action on such resolutions would be out of order unless the resolution had been reported by the aforementioned committees.

D. Section 4: Notice and Consultations

Section 4 revises and strengthens the notice and consultation requirements that had been included in the 1988 Act. The Committee acknowledges that the Executive Branch, over the course of the negotiations that were covered by the previous authority, frequently briefed the Committee on the status of trade negotiations. Although the Committee continues to believe that its Members and staff should be briefed frequently as trade negotiations progress, it is the Committee's view that regular briefings alone are not sufficient to ensure the type of consultation that will guarantee Congress a meaningful role in the trade agreements process.

Accordingly, in addition to the notice and consultation provisions that had been included in the 1988 Act, section 4 adds a number of new requirements to help ensure close coordination and consultation at every stage of the negotiations. The 1988 Act required the President to provide written notice to this Committee and the House Ways and Means Committee of bilateral trade agreement negotiations at least 60 days before providing the required 90-day notice to the House of Representatives and the Senate of his intention to enter into a resulting agreement, and to consult with the two committees regarding such negotiations. Subsection 4(a) requires the President to provide written notice to the Congress as a whole of his intention to begin multilateral as well as bilateral trade negotiations, at least 90 days before so doing. The notice must specify the date the President intends to begin such negotiations, the specific objectives for the negotiations, and whether the

President intends to negotiate a new agreement or modify an existing agreement. Failure to provide such notice may trigger the introduction and consideration of a "procedural disapproval resolution" under the provisions of subsection 5(b) of this bill, which, if approved, would deny the use of the trade agreement approval procedures (i.e., the fast track) for legislation implementing such an agreement.

Subsection 4(a) also requires the President to consult with the Senate Finance and House Ways and Means Committees, as well with other committees the President deems appropriate, before and promptly after providing notice of his intention to begin negotiations. The Committee believes that the broadest possible consultation is desirable and that other committees that have an interest in the subject matter of a negotiation are entitled to be heard. As a consequence, the Committee's bill also requires the President to consult with any other committees that request such consultations in writing. The bill includes as well the requirement that the President must consult with appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 before beginning negotiations. In the view of the Committee, a mandate for broad consultations will help ensure that all interested parties are kept fully apprised of proposed negotiations.

Under subsection 4(b), before entering into a trade agreement, the President is required to consult with the Senate Finance and House Ways and Means Committees, as well as with other committees that have jurisdiction over legislation involving subject matters that would be affected by the trade agreement under negotiation. In addition to the requirements stemming from the 1988 Act—that the consultations must include discussions as to the nature of the agreement and a detailed assessment of how and to what extent the agreement meets the purposes, policies and objectives set forth in section 2 of this bill—the consultations must include a discussion of all matters related to the implementation of the agreement. These include an assessment as to whether the agreement includes subject matters that will require implementing legislation that does not qualify for the fast track procedures authorized by this bill.

To provide an adequate understanding of the context in which the negotiations will take place, the Committee expects that, with respect to free trade agreement negotiations, the consultations required in section 4 will include an overview of the macroeconomic situations of the countries with which the United States is proposing to negotiate and any implications for relevant exchange rates. The Committee expects the President to keep it apprised of developments in this area as negotiations progress.

In addition, because the Committee is aware that a number of separate agreements on specific topics were concluded in conjunction with the implementing legislation for the three agreements most recently considered under the fast track procedures—the U.S.-Canada Free Trade Agreement, the NAFTA, and the Uruguay Round Agreements—the Committee has added a new consultation requirement. The President must consult with respect to any other agreement he has entered into or intends to enter into with the country or countries in question.

The Committee believes that the Congress and the American public are entitled to know the full range of understandings and agreements that accompany the formal text of a trade agreement. The Committee intends that the term "agreement," as used in this context, be broadly construed to encompass all kinds of agreements, ranging from formal side agreements entered into pursuant to the President's executive power, to exchanges of letters (with the country or countries in question and with Members of Congress and other interested parties), to any agreed interpretations of the provisions of a trade agreement or any other agreement entered into in conjunction with a trade agreement.

Section 135(e) of the Trade Act of 1974 is amended in sections 4 and 7 of this bill to require the Advisory Committee for Trade Policy and Negotiations, appropriate policy advisory committees, and each sectoral or functional advisory committee affected by such negotiations to submit a report to the President, the Congress and the United States Trade Representative on any trade agreement entered into under the authority provided in subsections 3(a) or (b) of this bill. Such reports are to include an advisory opinion on whether and the extent to which an agreement promotes the economic interests of the United States and achieves the applicable purposes and principal negotiating objectives set forth in section 2 of this bill. The sectoral and functional advisory committees are to provide advisory opinions as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

Under the 1988 Act, the advisory committee reports were required to be submitted no later than the date on which the President notified the Congress of his intention to enter into an agreement. In recognition of the fact that important terms of trade agreements often are not determined before the final hours of the negotiations, the Committee's six-month extension of the trade agreement approval procedures for purposes of concluding the Uruguay Round negotiations allowed the private sector advisory committees to file their reports 30 days after the President transmitted his notification. In the view of the Committee, the 30-day delay was helpful in that it allowed the advisory committees to factor in the final terms of the trade agreements in their analysis of the results. The Committee has adopted that approach in this bill. Advisory committees will be required to submit their reports not more than 30 days after the President notifies Congress of his intention to enter into a trade agreement.

Subsection 4(d) requires the USTR to consult regularly, promptly, and closely with the congressional advisers for trade policy and negotiations appointed pursuant to section 161 of the Trade Act of 1974, as well as with the Senate Finance and House Ways and Means Committees as a whole, and keep the advisers and committees fully apprised of the negotiations. As noted above, consultations should afford Congress a meaningful opportunity to evaluate the negotiations at their final stages—the point at which key, and often controversial, matters are resolved. It is the Committee's view that comprehensive, detailed consultations are required particularly at that point.

In that connection, the Committee expects that the USTR will enter into a formal arrangement, in the form of procedures similar to that agreed to by the Executive Branch in 1975, that will implement this section and section 161 of the Trade Act of 1974 in a manner that will ensure that the advice of the trade advisers and Committee members will be taken fully into account so that they may play a meaningful role once negotiations begin, and, in particular, as they reach a conclusion. In addition, the Committee expects that the trade advisers, as required by section 161, will be fully accredited advisers to United States delegations to international conferences, meetings, and negotiating sessions relating to all trade agreements.

The Committee expects that the USTR will, consistent with past practice, commit to a set of procedures for supplying Members and properly cleared staff with the following documents, whether classified or unclassified: relevant incoming and outgoing cables, statements of Executive Branch position, and formal submissions from the other countries engaged in the negotiations.

In addition, the Committee believes strongly that consultations must be improved in particular as trade negotiations enter their final stages. The Committee is aware that, in many cases, important and controversial issues often are not settled until the final hour of negotiations. Although the Committee recognizes that this is the nature of negotiations, the Committee nonetheless believes that there should be a mechanism in place for more formalized consultation with Committee Members at this critical stage.

Accordingly, it is the Committee's expectation that the USTR will work with Committee Members to develop a set of procedures whereby the USTR or appropriate staff will brief Committee Members and staff on the state of negotiations as they enter their final days. Committee Members will then have the opportunity to provide the USTR with their views as to any potential concerns regarding the status of the negotiations at that time and possible trade-offs that are likely to occur in the waning hours.

The Committee recognizes that both the Executive Branch and the Congress bear the responsibility for ensuring that these consultations are meaningful. Executive Branch negotiators must offer detailed information in a timely manner; Congressional trade advisers and Committee Members must make themselves available when the negotiations enter their final stage, and the requirement to consult is contingent upon such availability.

E. Section 5: Implementation of Trade Agreements

Subsection 5(a) establishes the basic requirements regarding notification and submission of the agreement and implementing legislation that must be met before a trade agreement subject to the trade agreement approval procedures of this bill (i.e., the fast track procedures) enters into force for the United States. As was the case in the 1988 Act, the President is required to notify the House of Representatives and the Senate of his intention to enter into a trade agreement at least 90 days before doing so, and to publish promptly in the Federal Register notice of his intention. The purpose of this advance notification is to give the Congress an opportunity to review the outcome of the negotiations and assess, before

the agreement becomes final, whether the objectives set forth in this Act have been met. The 90-day advance notification is intended to allow sufficient time for the Congress to make its views known and, if necessary, for the Executive Branch to seek modifications to the agreement before the negotiations are formally concluded.

As in the past, the fast track procedures established in this bill do not require the President to submit the agreement and implementing legislation to the Congress within a time certain. The Committee is of the view, however, that the Congress ought to be apprised soon after the agreement is entered into of the changes to U.S. law that will be required in order to implement it. Accordingly, the Committee has added a new provision: within 60 days after entering into an agreement, the President must submit to the Congress a description of the changes to U.S. laws that he considers necessary for the United States to comply with the agreement.

Once the President is ready to send the agreement and proposed implementing legislation to the Congress, subsection 5(a) requires, as did the 1988 Act, that the President submit the final legal text of the agreement, together with a draft of the implementing bill, a statement of the administrative actions that will be proposed to implement the agreement, and additional supporting information. The supporting information must include: (1) an explanation as to how the implementing bill and proposed administrative action will modify U.S. law; and (2) an assertion that the agreement makes progress in achieving the objectives of this Act, setting forth specific reasons as to how and the extent to which such objectives are met and why and to what extent other objectives are not, how the agreement serves the interests of U.S. commerce, why the implementing bill qualifies for fast track procedures, and the reasons for any proposed administrative action. In addition, the Committee has added a requirement that the President identify whether and how the agreement changes provisions of a previously-negotiated agreement.

It is the Committee's expectation that the supporting information as to how the agreement serves the interests of U.S. commerce will include a report prepared by the ITC, to be requested by the President pursuant to the authority provided under section 332 of the Tariff Act of 1930 or section 131 of the Trade Act of 1974, that will assess the probable economic impact of the concluded agreement on United States' interests relating to specific industries and sectors. The Committee believes that such a report, completed after the negotiations have concluded, should allow for an objective assessment of the final results of the negotiations. It is the Committee's expectation that adequate time will be provided after conclusion of the negotiations for the ITC to complete its report. The Committee further expects that the President will provide, at the time he transmits the ITC's report to the Congress, recommendations with respect to the operation and effects of the agreement.

Subsection 5(a) carries over a provision from the 1988 Act a requirement that the President recommend that the benefits and obligations of any trade agreement eligible for the procedures authorized by this bill be applied solely to the parties to the agreement, in order to minimize the "free rider" problem that arises when the

benefits of trade agreements are extended even to those countries that are not parties to the agreement and that have not themselves made binding commitments. This provision also authorizes the President to recommend that the benefits and obligations of an agreement not apply uniformly to all parties to an agreement, if such a distinction is permissible under the terms of the agreement.

Subsection 5(b) establishes important checks on the use of the trade agreement approval procedures, prior to the commencement of negotiations, as well as during the course of such negotiations. Paragraph (1) expands upon a provision included in the 1988 Act that disallowed the use of such procedures with respect to implementing legislation for bilateral trade agreements if either this Committee or the House Ways and Means Committee disapproved of the negotiation of such an agreement within 60 days of the President's notification of his intention to begin negotiations. Under the Committee's bill, the Committees' oversight of the commencement of negotiations would extend to all trade agreements, and not merely bilateral trade agreements. However, as disallowing the use of the trade agreement approval procedures is a serious step, the Committee has provided that both the Senate Finance and Ways and Means Committees must disapprove of their use.

Subsection 5(b) also incorporates the "procedural disapproval resolution" included in the 1988 Act, which provides for consideration, under expedited procedures, of a resolution denying the use of the trade agreement approval procedures to implement the results of any trade agreement with respect to which the President has failed or refused to consult with the Congress. The Committee's bill expands this provision to apply as well where the President has failed to notify the Congress in accordance with the provisions of section 4 of this bill. The Committee anticipates that the mere availability of this procedure will provide a further incentive for close and continuing consultations with the Congress.

The process for Congressional consideration of procedural disapproval resolutions remains unchanged from the 1988 Act. In the event that both Houses of Congress pass resolutions of disapproval within 60 session days of each other, the use of the trade agreement approval procedures to implement the results of the trade negotiation at issue will be denied. There is no limitation on when the resolution may be introduced or acted upon. These procedures are intended as a check on the Executive Branch throughout the course of the negotiations. Both the Ways and Means Committee and the Finance Committee would be privileged to report a resolution of their respective House at any time the trade agreement approval procedures are in effect. The resolution may originate only with the appropriate Committee in each House of Congress. Once reported by the Finance or Ways and Means Committee, each resolution would itself be considered under expedited procedures analogous to the trade agreement approval procedures potentially applicable to trade agreements, i.e., it would be a privileged matter and could not be amended or delayed. The resolution would be effective only if reported in exactly the form set out in the bill and subject to the time limits noted above.

F. Section 6: Treatment of Certain Trade Agreements

Section 4(a) of this bill requires the President to notify the Congress 90 days before commencing negotiations on a trade agreement the implementation of which would be eligible for the fast track approval procedures provided by this Act. Section 6 waives this requirement for three sets of negotiations: 1) those negotiations under the auspices of the WTO regarding trade in information technology products that will have commenced before the enactment of this bill; (2) negotiations or work programs that have commenced pursuant to the "built-in" agenda of the agreements administered by the WTO; and 3) an agreement with Chile, completing the negotiations that had begun in 1995.

Because these negotiations have either been initiated or will have commenced by the time this bill is enacted, it is the view of the Committee that no practical purpose would be served by requiring the President to notify the Congress of his intention to begin such negotiations. With respect to the second category of negotiations—those that form part of the WTO's "built-in" agenda, it is the Committee's understanding that those that have commenced (and for which notice is, therefore, not required) are the work program on rules of origin and the negotiations on financial services.

The Committee wishes to emphasize that all of the other notice and consultation requirements of this bill, as well as the procedural disapproval resolution procedures of section 5, will apply to each of the negotiations covered by section 6.

G. Section 7: Conforming Amendments

Section 7 makes conforming changes to a number of provisions of the Trade Act of 1974, as amended, to ensure that the provisions applicable to past extensions of fast track procedures continue to apply. These changes provide, for example, that the usual requirements for advice from the ITC and the private sector advisory committees will continue to apply to agreements negotiated pursuant to the authority provided in this bill.

H. Section 8: Trade Adjustment Assistance

Trade Adjustment Assistance (TAA) programs have been an integral part of American trade policy since they were first established in the Trade Expansion Act of 1962. Premised on the belief that trade agreements for the reciprocal reduction of trade barriers benefit the economy as a whole, the TAA programs seek to provide assistance to those individual workers and firms that might be adversely affected by the consequences of import competition. The two programs first established in the 1962 Act—the TAA program for workers and the TAA program for firms—as well as the NAFTA worker adjustment assistance program established in the North American Free Trade Agreement Implementation Act—are authorized through September 30, 1998. In the view of the Committee, it is vital to ensure that these programs continue beyond their current expiration dates, and thus maintain their role as a key element of our national trade policy. Accordingly, the Committee has included in this bill a two-year extension of the three programs, through September 30, 2000.

I. Section 9: Fees for Certain Customs Services

Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) establishes a $5 fee on passengers arriving in the United States from abroad on commercial vessels or aircraft. COBRA section 13031(b), as initially enacted, provided that passengers arriving from Mexico, Canada, Caribbean nations and U.S. territories (other than Puerto Rico) were exempt from the fee. Section 521 of the North American Free Trade Agreement Implementation Act temporarily increased the fee to $6.50 and applied it as well to passengers previously exempt from the fee. These modifications terminated on September 30, 1997. Section 9 provides that the current fee (which reverted to $5 on October 1, 1997) will apply to passengers arriving from Mexico, Canada, the Caribbean and the territories through August 31, 1998. The revenue thus generated is sufficient to offset the costs of the extension of the TAA programs under section 8 of this bill.

The Committee notes that the amendments to COBRA section 13031 by section 38 of the Miscellaneous Trade and Technical Corrections Act of 1996, Pub. L. No. 104–295, 110 Stat. 3514, 3539, continue to apply. Specifically, these amendments provided that the Customs Service may collect passenger processing fees only one time for each passenger aboard a commercial vessel in the course of a single voyage involving two or more United States ports.

J. Section 10: Definitions

Section 10 defines a number of the terms used in this bill. Definitions are provided for the following: "distortion," "trade," "Uruguay Round Agreements," "World Trade Organization," "WTO agreement," and "WTO and WTO member."

IV. Congressional Action

On June 3, 1997, the Committee held a hearing on the renewal of trade agreement approval procedures. On September 17, 1997, the Committee held a hearing on the September 16 proposal of the President for renewal of those procedures. On October 1, the Committee considered and approved an original bill proposed by Mr. Roth.

V. Vote of the Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that the legislation was ordered favorably reported by a voice vote on October 1, 1997.

VI. Budgetary Impact

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office on the budgetary impact of the bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 7, 1997

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Reciprocal Trade Agreements Act of 1997, as ordered reported by the Senate Committee on Finance on October 1, 1997.

Sincerely,

JUNE E. O'NEILL, DIRECTOR.

SUMMARY

This bill would restore the President's authority to enter into multilateral and bilateral trade agreements with Congressional approval or rejection of, but not amendment to, those agreements. In addition, the bill would extend the trade adjustment assistance (TAA) program, which will expire on September 30, 1998. The bill would also extend the customs user fees established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). CBO estimates that enacting this bill would reduce direct spending by $8 million over the 1998–2002 period. Because enacting the bill would affect direct spending pay-as-you-go procedure would apply.

The bill contains no new private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), and would not impose any costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the bill is shown in the following table.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002
REVENUES					
Restoration of Fast Track Authority	0	0	0	0	0
OUTLAYS					
Extension of Trade Adjustment Assistance	0	39	48	12	3
Extension of COBRA Customs User Fee	−87	−23	0	0	0

BASIS OF ESTIMATE

Revenues

Before their expiration on June 1, 1993, sections 1102 and 1103 of the Omnibus Trade and Competitiveness Act of 1988 granted the President the authority to enter into multilateral and bilateral trade agreements. The President could reduce certain tariffs by proclamation within specified bounds prescribed by the law. For provisions subject to Congressional approval, Congress could not amend implementing legislation once it was introduced. Furthermore, as long as the President met statutory requirements concerning Congressional consultation during the negotiation process,

Congress was required to act on the legislation following a strict timetable. This consideration process was known as the "fast track" procedure. P.L. 103–40 temporarily extended these provisions through April 16, 1994, for any trade agreement resulting from the Uruguay Round negotiations taking place under the General Agreement on Tariffs and Trade.

The Reciprocal Trade Agreements Act of 1997 would restore the President's authority to implement certain tariff changes. The bill would have no direct effect on revenues, because future trade agreements would require implementing legislation. The effect of any changes implemented by the President would be attributed to the legislation implementing the agreement.

Outlays

The Trade Adjustment Assistance (TAA) program, which was established by the Trade Expansion Act of 1962, and was most recently extended until September 30, 1998, by the Omnibus Budget Reconciliation Act of 1993, provides transitional adjustment assistance for workers and firms dislocated as a result of a federal policy of reducing barriers to foreign trade. The bill would extend the program through fiscal year 2000 at a cost of $102 million over the 1998–2002 period. This figure reflects only the cost of assistance under the North American Free Trade Agreement Implementation Act. The other costs of extending TAA are included in the baseline, as provided by the Balanced Budget Act of 1985.

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) established a schedule of flat fees for processing conveyances and passengers entering the United States. This bill would direct the Customs Service to collect a passenger processing fee of $5 from persons arriving by commercial vessel or aircraft from Mexico, Canada, and certain other areas. These fees would be collected through August 31, 1998. CBO estimates that this provision would result in additional offsetting receipts of about $87 million in fiscal year 1998 and $23 million in fiscal year 1999.

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The projected changes in direct spending through 2007 are shown in the following table. For purposes of enforcing pay-as-you-go procedures, however, only the effects in the budget year and the succeeding four years are counted.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–07
Changes in Outlays	−87	16	48	12	3	0	0	0	0	0	−8
Changes in Receipts	0	0	0	0	0	0	0	0	0	0	0

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The bill contains no new private-sector or intergovernmental mandates as defined in UMRA and would not impose any costs on state, tribal, or local governments.

VII. Regulatory Impact

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

VIII. Additional Views of Senator Frank H. Murkowski

I am compelled to file this partial dissent to the portion of the legislation we have reported which deals with extending Trade Adjustment Assistance (TAA) programs. While I am a very strong supporter of the TAA program, I believe that the way the Committee funded this program is inappropriate. Under section 8 of this bill, passengers arriving from Mexico, Canada, Caribbean nations and U.S. territories aboard commercial vessels or aircraft are once again being forced to pick up the tab for this program unrelated to customs or any other service associated with their travel. Furthermore, these Americans (of the four million cruise passengers last year, over 90 percent were Americans) are being asked to pay again for customs services for which they already pay, both directly and indirectly, through income taxes, and other customs fees.

I believe that the Committee should have turned to spending cuts, not new user fees or taxes to pay for extension of a program related to expansion of trade agreements.

In 1985, Congress specifically did not impose a fee on passengers arriving from Mexico, Canada, Caribbean nations and U.S. territories aboard commercial vessels or aircraft as part of Section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). To offset the costs of the North American Free Trade Agreement (NAFTA), however, Section 521 of the NAFTA Implementation Act imposed a fee on these previously exempt passengers. This fee was intended to be temporary, and, in fact, did terminate on September 30, 1997. But the very next day, October 1, 1997, the Committee reimposed the fee to pay for TAA.

I find it especially ironic that to pay for a program (TAA) that is designed to help workers who lose their jobs as a result of trade-related changes, the Committee would impose a burden on an industry that supports five hundred thousand U.S. jobs, and already pays over $8 billion in the form of 64 different taxes and fees to 12 different government agencies.

I do note my satisfaction that the Committee makes clear that the amendment I offered to COBRA section 13031 by section 38 of the Miscellaneous Trade and Technical Corrections Act of 1996 continues to apply. This section directs that the Customs Service may collect passenger processing fees only one time for each passenger aboard a commercial vessel in the course of a single voyage involving two or more United States ports. This will prevent the unfortunate interpretation by the Customs Service that a fee could be extracted, for example, at every Alaskan port of call when the vessel simply sailed outside the customs territory of the United States on its voyage, without stopping at a foreign port.

IX. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TRADE ACT OF 1974

CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

SEC. 131. ADVICE FROM INTERNATIONAL TRADE COMMISSION.

(a) Lists of Articles Which May Be Considered for Action.—

(1) In connection with any proposed trade agreement under [section 123 of this Act or section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988,] *section 123 of this Act or section 3 (a) or (b) of the Reciprocal Trade Agreements Act of 1997,* the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the "Commission") with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this subchapter under which such consideration may be given.

(2) In connection with any proposed trade agreement under [section 1102 (b) or (c) of the Omnibus Trade and Competitiveness Act of 1988] *section 3(b) of the Reciprocal Trade Agreements Act of 1997*, the President may from time to time publish and furnish the Commission with lists of nontariff matters which may be considered for modification.

(b) Advice to President by Commission.—Within 6 months after receipt of a list under subsection (a) or, in the case of a list submitted in connection with a trade agreement, within 90 days after receipt of such list, the Commission shall advise the President, with respect to each article or nontariff matter, of its judgment as to the probable economic effect of modification of the tariff or nontariff measure on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period of time than the minimum period provided for in section [1102(a)(3)(A)] *section 3(a)(3)(A) of the Reciprocal Trade Agreements Act of 1997*.

(c) Additional Investigations and Reports Requested by the President or the Trade Representative.—In addition, in

order to assist the President in his determination whether to enter into any agreement under section 123 of this Act or [section 1102 of the Omnibus Trade and Competitiveness Act of 1988,] *section 3 of the Reciprocal Trade Agreements Act of 1997,* 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.

* * * * * * *

SEC. 132. ADVICE FROM EXECUTIVE DEPARTMENTS AND OTHER SOURCES.

Before any trade agreement is entered into under section 123 of this Act or [section 1102 of the Omnibus Trade and Competitiveness Act of 1988,] *section 3 of the Reciprocal Trade Agreements Act of 1997,* 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).

(19 U.S.C. 2152)

SEC. 133. PUBLIC HEARINGS.

(a) OPPORTUNITY FOR PRESENTATION OF VIEWS.—In connection with any proposed trade agreement under section 123 of this Act or [section 1102 of the Omnibus Trade and Competitiveness Act of 1988,] *section 3 of the Reciprocal Trade Agreements Act of 1997,* the President shall afford an opportunity for any interested person to present his views concerning any article on a list published under section 131, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings. When appropriate, such procedures shall apply to the development of trade policy and priorities.

(b) SUMMARY OF HEARINGS.—The organization holding such hearing shall furnish the President with a summary thereof.

(19 U.S.C. 2153)

SEC. 134. PREREQUISITES FOR OFFERS.

(a) In any negotiation seeking an agreement under section 123 of this Act or [section 1102 of the Omnibus Trade and Competitiveness Act of 1988,] *section 3 of the Reciprocal Trade Agreements Act of 1997,* the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or

barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this title, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

(b) In determining whether to make offers described in subsection (a) in the course of negotiating any trade agreement under [section 1102 of the Omnibus Trade and Competitiveness Act of 1988] *section 3 of the Reciprocal Trade Agreements Act of 1997*, 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.

(19 U.S.C. 2154)

SEC. 135. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.

(a) IN GENERAL.—

(1) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) negotiating objectives and bargaining positions before entering into a trade agreement under this title or [section 1102 of the Omnibus Trade and Competitiveness Act of 1988] *section 3 of the Reciprocal Trade Agreements Act of 1997*;

(B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188, and the priorities for actions thereunder.

To the maximum extent feasible, such information and advice on negotiating objectives shall be sought and considered before the commencement of negotiations.

(2) The President shall consult with representative elements of the private sector and the non-Federal governmental sector on the overall current trade policy of the United States. The consultations shall include, but are not limited to, the following elements of such policy:

(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.

(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.

(D) Important developments in other areas of trade for which there must be developed a proper policy response.

(3) The President shall take the advice received through consultation under paragraph (2) into account in determining the importance which should be placed on each major objective and negotiating position that should be adopted in order to achieve the overall trade policy of the United States.

(b) ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS.—

(1) The President shall establish an Advisory Committee for Trade Policy and Negotiations to provide overall policy advice on matters referred to in subsection (a). The committee shall be composed of not more than 45 individuals and shall include representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade. Members of the committee shall be recommended by the United States Trade Representative and appointed by the President for a term of 2 years. An individual may be reappointed to committee for any number of terms. Appointments to the Committee shall be made without regard to political affiliation.

(2) The committee shall meet as needed at the call of the United States Trade Representative or at the call of two-thirds of the members of the committee. The chairman of the committee shall be elected by the committee from among its members.

(3) The United States Trade Representative shall make available to the committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c) GENERAL POLICY, SECTORAL, OR FUNCTIONAL ADVISORY COMMITTEES.—

(1) The President may establish individual general policy advisory committees for industry, labor, agriculture, services,

investment, defense, and other interests, as appropriate, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, service, investment, defense, and other interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretaries of Commerce, Defense, Labor, Agriculture, the Treasury, or other executive departments, as appropriate. The members of such committees shall be appointed by the United States Trade Representative in consultation with such Secretaries.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) consult with interested private organizations; and

(B) take into account such factors as—

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the nontariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

(3) The President—

(A) may, if necessary, establish policy advisory committees representing non-Federal governmental interests to provide policy advice—

(i) on matters referred to in subsection (a), and

(ii) with respect to implementation of trade agreements, and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

(4) Appointments to each committee established under paragraph (1), (2), or (3) shall be made without regard to political affiliation.

(d) POLICY, TECHNICAL, AND OTHER ADVICE AND INFORMATION.—Committees established under subsection (c) shall meet at the call of the United States Trade Representative and the Secretaries of Agriculture, Commerce, Labor, Defense, or other executive departments, as appropriate, to provide policy advice, technical

advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

(e) MEETING OF ADVISORY COMMITTEES AT CONCLUSION OF NEGOTIATIONS.—

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under [section 1102 of the Omnibus Trade and Competitiveness Act of 1988] *section 3 of the Reciprocal Trade Agreements Act of 1997*, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under [section 1102 of the Omnibus Trade and Competitiveness Act of 1988] *section 3 of the Reciprocal Trade Agreements Act of 1997* shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under [section 1103(a)(1)(A) of such Act of 1988] *section 5(a)(1)(A) of the Reciprocal Trade Agreements Act of 1997* of his intention to enter into that agreement.

(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves [the applicable overall and principal negotiating objectives set forth in section 1101 of the Omnibus Trade and Competitiveness Act of 1988] *the purposes, policies, and objectives set forth in section 2 (a) (b) of the Reciprocal Trade Agreements Act of 1997*, 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.

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

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

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1), implementing 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, submitted to the House of Representatives and the Senate under section 102 of this Act, [section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988, or section 282 of the Uruguay Round Agreements Act] *section 282 of the Uruguay Round Agreements Act, or section 5(a)(1) of the Reciprocal Trade Agreements Act of 1997* and which contains—

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

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

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

For purposes of applying this paragraph to implementing bills submitted with respect to trade agreements entered into under section 3(b) of the Reciprocal Trade Agreements Act of 1997, subparagraphs (A), (B), and (C) of section 3(b)(3) of such act shall be substituted for subparagraphs (A), (B), and (C) of this paragraph.

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

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

(c) INTRODUCTION AND REFERRAL.—

(1) On the day on which a trade agreement or extension is submitted to the House of Representatives and the Senate under section 102 [or section 282 of the Uruguay Round Agreements Act] *, section 282 of the Uruguay Round Agreements Act, or section 5(a)(1) of the Reciprocal Trade Agreements Act of 1997*, the implementing bill submitted by the President with respect to such trade agreement or extension shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the

day on which such a trade agreement or extension is submitted, the implementing bill shall be introduced in that House as provided in the preceding sentence, on the first day thereafter on which the House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

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CHAPTER 6—CONGRESSIONAL LIAISON AND REPORTS

SEC. 162. TRANSMISSION OF AGREEMENTS TO CONGRESS.

(a) As soon as practicable after a trade agreement entered into under section 123 or 124 [or under section 1102 of the Omnibus Trade and Competitiveness Act of 1988] *or under section 3 of the Reciprocal Trade Agreements Act of 1997* has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the International Trade Commission under section 131(b), if any, and of other relevant considerations, of his reasons for entering into the agreement.

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Subchapter C—General Provisions

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SEC. 245. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Labor, for each of the fiscal years [1993, 1994, 1995, 1996, 1997, and] 1998, *1999, and 2000,* such sums as may be necessary to carry out the purposes of this chapter, other than subchapter D.

(b) SUBCHAPTER D.—There are authorized to be appropriated to the Department of Labor, for each of fiscal years [1994, 1995, 1996, 1997, and] 1998, *1999, and 2000,* such sums as may be necessary to carry out the purposes of subchapter D of this chapter.

(19 U.S.C. 2317)

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CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

SEC. 256. DELEGATION OF FUNCTIONS TO SMALL BUSINESS ADMINISTRATION; AUTHORIZATION OF APPROPRIATIONS.

(a) In the case of any firm which is small (within the meaning of the Small Business Act and regulations promulgated thereunder), the Secretary may delegate all of his functions under this chapter (other than the functions under sections 251 and 252(d) with respect to the certification of eligibility and section 264) to the Administrator of the Small Business Administration.

(b) There are hereby authorized to be appropriated to the Secretary for fiscal years [1993, 1994, 1995, 1996, 1997, and] 1998, *1999, and 2000,* such sums as may be necessary to carry out his functions under this chapter in connection with furnishing adjustment assistance to firms (including, but not limited to, the payment of principal, interest, and reasonable costs incident to default on loans guaranteed by the Secretary under the authority of this chapter), which sums are authorized to be appropriated to remain available until expended.

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CHAPTER 5—MISCELLANEOUS PROVISIONS

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SEC. 285. TERMINATION.

(a) Chapter 4 shall terminate on September 30, 1982.

(b) No duty shall be imposed under section 287, after September 30, 1993.

(c)(1)Except as provided in paragraph (2), no assistance, vouchers, allowances, or other payments may be provided under chapter 2, and no technical assistance may be provided under chapter 3, after September 30, [1998] *2000*.

(2)(A) Except as provided in subparagraph (B), no assistance, vouchers, allowances, or other payments may be provided under subchapter D of chapter 2 after [the day that is the earlier of—

[(i) September 30, 1998, or

[(ii) the date on which legislation, establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by such subchapter D, becomes effective] *September 30, 2000*.

(B) Notwithstanding subparagraph (A), if, on or before the day described in subparagraph (A), a worker—

(i) is certified as eligible to apply for assistance, under subchapter D of chapter 2; and

(ii) is otherwise eligible to receive assistance in accordance with section 250,

such worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements of such section.

(19 U.S.C. 2271 note)

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CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985–

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SEC.13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the

following fees for the provision of customs services in connection with the following:

* * * * * * *

(b) Limitations on Fees.—(1)(A) No fee may be charged under subsection (a) of this section for customs services provided in connection with—

(i) the arrival of any passenger whose journey—

(I) originated in—

(aa) Canada,

(bb) Mexico,

(cc) a territory or possession of the United States, or

(dd) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5))), or

(II) originated in the United States and was limited to—

(aa) Canada,

(bb) Mexico,

(cc) territories and possessions of the United States, and

(dd) such adjacent islands;

(ii) the arrival of any railroad car the journey of which originates and terminates in the same country, but only if no passengers board or disembark from the train and no cargo is loaded or unloaded from such car while the car is within any country other than the country in which such car originates and terminates;

(iii) the arrival of any ferry; or

(iv) the arrival of any passenger on board a commercial vessel traveling only between ports which are within the customs territory of the United States.

(B) The exemption provided for in subparagraph (A) shall not apply in the case of the arrival of any passenger on board a commercial vessel whose journey originates and terminates at the same place in the United States if there are no intervening stops.

(C) The exemption provided for in subparagraph (A)(i) shall not apply [to fiscal years 1994, 1995, 1996, and 1997] *before September 1, 1998*.

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