## TITLE 19—CUSTOMS DUTIES

<table>
<thead>
<tr>
<th>Chap.</th>
<th>Sec.</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>Organization of customs service.</td>
</tr>
<tr>
<td>1A</td>
<td>81a</td>
<td>Tariff Commission.</td>
</tr>
<tr>
<td>2</td>
<td>91</td>
<td>Tariff Schedule.</td>
</tr>
<tr>
<td>3</td>
<td>121</td>
<td>Tariff and Related Provisions.</td>
</tr>
<tr>
<td>4</td>
<td>1202</td>
<td>Tariff Act of 1930.</td>
</tr>
<tr>
<td>5</td>
<td>1701</td>
<td>Smuggling.</td>
</tr>
<tr>
<td>6</td>
<td>1751</td>
<td>Trade Fair Program.</td>
</tr>
<tr>
<td>7</td>
<td>1801</td>
<td>Trade Expansion Program.</td>
</tr>
<tr>
<td>8</td>
<td>2001</td>
<td>Automotive Products.</td>
</tr>
<tr>
<td>10</td>
<td>2071</td>
<td>Customs Service.</td>
</tr>
<tr>
<td>11</td>
<td>2501</td>
<td>Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals.</td>
</tr>
<tr>
<td>14</td>
<td>2601</td>
<td>Convention on Cultural Property.</td>
</tr>
<tr>
<td>15</td>
<td>2701</td>
<td>Caribbean Basin Economic Recovery.</td>
</tr>
<tr>
<td>16</td>
<td>2801</td>
<td>Wine Trade.</td>
</tr>
<tr>
<td>17</td>
<td>2901</td>
<td>Negotiation and Implementation of Trade Agreements.</td>
</tr>
<tr>
<td>18</td>
<td>3001</td>
<td>Implementation of Harmonized Tariff Schedule.</td>
</tr>
<tr>
<td>19</td>
<td>3101</td>
<td>Telecommunications Trade.</td>
</tr>
<tr>
<td>20</td>
<td>3201</td>
<td>Andean Trade Preference.</td>
</tr>
<tr>
<td>21</td>
<td>3301</td>
<td>North American Free Trade.</td>
</tr>
<tr>
<td>22</td>
<td>3501</td>
<td>Uruguay Round Trade Agreements.</td>
</tr>
<tr>
<td>23</td>
<td>3701</td>
<td>Extension of Certain Trade Benefits to Sub-Saharan Africa.</td>
</tr>
<tr>
<td>24</td>
<td>3801</td>
<td>Bipartisan Trade Promotion Authority.</td>
</tr>
<tr>
<td>25</td>
<td>3901</td>
<td>Clean Diamond Trade.</td>
</tr>
<tr>
<td>26</td>
<td>4001</td>
<td>Dominican Republic-Central America Free Trade.</td>
</tr>
</tbody>
</table>

### CHAPTER 1—COLLECTION DISTRICTS, PORTS, AND OFFICERS

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Organization of customs service.</td>
</tr>
<tr>
<td>2</td>
<td>Rearrangement and limitation of districts; changing locations.</td>
</tr>
<tr>
<td>3</td>
<td>Superintendence of collection of import duties.</td>
</tr>
<tr>
<td>4 to 5a</td>
<td>Omitted or Repealed.</td>
</tr>
<tr>
<td>6</td>
<td>Designation of customs officers for foreign service; status; rejection of designated customs officer; applicability of civil service laws.</td>
</tr>
<tr>
<td>6a to 6d</td>
<td>Repealed.</td>
</tr>
<tr>
<td>6e</td>
<td>Overtime compensation based on standard or daylight saving time.</td>
</tr>
<tr>
<td>7 to 51</td>
<td>Repealed.</td>
</tr>
<tr>
<td>52</td>
<td>Payment of compensation and expenses.</td>
</tr>
</tbody>
</table>

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§ 1. Organization of customs service

Except as hereinafter provided the reorganization of the customs service made by the President and communicated to Congress under date of March 3, 1913, shall, until otherwise provided by Congress, constitute the permanent organization of the customs service.

(Aug. 24, 1912, ch. 355, 37 Stat. 434.)

**Codification**

Section was superseded in part by section 2071 et seq. of this title.

**Prior Provisions**

This was a provision of the sundry civil appropriation act for the fiscal year 1913. Prior to its incorporation into the Code, it read as follows: “The President is authorized to reorganize the customs service and cause estimates to be submitted therefor on account of the fiscal year nineteen hundred and fourteen bringing the total cost of said service for said fiscal year within a sum not exceeding $10,150,000 instead of $10,500,000, the amount authorized to be expended therefor on account of the current fiscal year nineteen hundred and twelve; in making such reorganization and reduction in expenses he is authorized to abolish or consolidate collection districts, ports, and subports of entry and delivery, to discontinue needless offices and employments, to reduce excessive rates of compensation below amounts fixed by law or Executive order, and to do all such other and further things that in his judgment may be necessary to make such organization effective and within the limit of cost herein fixed; such reorganization shall be communicated to Congress at its next regular session and shall constitute for the fiscal year nineteen hundred and fourteen and until otherwise provided by Congress the permanent organization of the customs service.” Such of the foregoing provisions as
were not carried into the Code were omitted as temporary and executed.

The plan of reorganization, with an estimate of the expenses of the same, was communicated by the President to Congress by Message dated March 3, 1913, as follows:

''Message from the President of the United States, Transmitting Plan of Reorganization of the Customs Service and Detailed Estimate of Expenses of the Same."

To the Senate and House of Representatives:

''Whereas, by virtue of the provision of chapter 355 of the acts of 1912, approved August 24, 1912, being 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes,' I was authorized to reorganize the customs service and cause estimates to be submitted therefor on account of the fiscal year 1914, reducing the total cost of said service for said fiscal year by an amount not less than $350,000, and I was further authorized in making such reorganization and reduction in expenses to abolish or consolidate collection districts, ports and subports of entry and delivery, todiscontinue needless offices and employments, to reduce excessive rates of compensation below amounts fixed by law or Executive order, and to do all such other and further things that in my judgment may be necessary to make such reorganization effective and within the said limit of cost; and

''Whereas, it was further provided that such reorganization should be communicated to Congress at the next regular session and should constitute for the fiscal year 1914, and until otherwise provided by Congress, the permanent organization of the customs service: Now, therefore,

''It is hereby ordered and communicated that the following plan shall be the organization of the customs service for the said fiscal year 1914, and unless otherwise provided by Congress the permanent organization of the customs service:

''I. Customs Districts

''In lieu of all customs-collection districts, ports, and subports of entry and ports of delivery now or hereafter existing there shall be 49 customs-collection districts with district headquarters and port of entry as follows: [List of districts]

''II. The use of the terms 'port of delivery' and 'ports of entry, officers or employees of the customs with authority to enter and clear vessels, to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws.

''X. All persons now in the classified civil service whose employment may be discontinued by reason of this reorganization shall be retained upon the list of eligibles for appointment to fill any vacancies hereafter occurring in the customs service.

''XI. The notice of dissatisfaction and protest provided for by subsections 13 and 14 of section 28 of the act approved August 5, 1909, shall be deemed to be finally abandoned and waived unless within 30 days from the date of filing thereof the person who filed such notice or protest shall deposit with the collector of customs a fee of $1 with respect to each appraisement, entry, or payment objected to. Such fee shall be deposited and accounted for as 'Miscellaneous receipts,' and in case the notice of dissatisfaction or protest in connection with which such fee was deposited shall be finally sustained in whole or in part, such fee shall be refunded to the importer, with the duties found to be collected in excess, from the appropriation for the refund to importers of excess of deposits.

''Attached hereto is a detailed estimate of the expenses of the customs service under the reorganization above provided. [Omitted as not permanent, and in any event superseded by section 6 of this title.]

''Done at Washington, D.C., this 31st day of March, 1913.

''WM. H. TAFT.''

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–227, § 1(a), Aug. 11, 2010, 124 Stat. 2409, provided that: "This Act [amending section 58c of this title and enacting provisions set out as notes under sec-
tion 58c of this title and section 6655 of Title 26, Internal Revenue Code] may be cited as the ‘United States Manufacturing Enhancement Act of 2010’.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REORGANIZATION PLAN NO. 1 OF 1965


Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 25, 1965, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

BUREAU OF CUSTOMS

SECTION 1. ABOLITION OF OFFICES

All offices in the Bureau of Customs of the Department of the Treasury of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise to which appointments are required to be made by the President, by and with the advice and consent of the Senate, are abolished. The foregoing provisions shall become effective with respect to each office abolished thereby at such time, not later than December 31, 1966, as the Secretary of the Treasury shall specify, but nothing herein shall empower the Secretary to increase the term of any office beyond that provided by law for such office or affect his authority under the first paragraph under the heading “TREASURY DEPARTMENT” appearing in the Act of March 2, 1865 (ch. 187, 28 Stat. 844; 5 U.S.C. 252) [31 U.S.C. 309], to retain in office, prior to December 31, 1966, those persons whose offices are to be terminated under this reorganization plan.

SEC. 2. TRANSFER OF FUNCTIONS

There are transferred to the Secretary of the Treasury the functions, if any, that have been vested by statute in officers, agencies, or employees of the Bureau of Customs of the Department of the Treasury since the effective date of Reorganization Plan No. 26 of 1950 (64 Stat. 1280).

SEC. 3. PRESERVATION OF REMEDIES

The abolition of offices herein shall not prejudice any right to protest or to appeal to the United States Customs Court any action taken in the administration of the customs laws.

SEC. 4. INCIDENTAL PROVISIONS

Consonant with section 4 of the Reorganization Act of 1949, as amended [see 5 U.S.C. 904] and this reorganization plan, the Secretary of the Treasury shall make such provisions as he shall deem necessary respecting (1) the transfer or other disposition of the records, property, personnel, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, which are affected by a reorganization contained in this reorganization plan; and (2) the winding up of the affairs of any officer whose office is abolished by the provisions of this reorganization plan.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

All that we do to serve the people of this land must be done, as has been my insistent pledge, with the least cost and the most effectiveness.

In my state of the Union message, I announced it was this administration’s intention to “reshape and reorganize” the executive branch. This goal had one objective: “to meet more effectively the tasks of today.”

I report today now one step taken forward toward that goal as part of our progress “on new economies we were planning to make.”

I submit today a plan for reorganization in the Bureau of Customs of the Department of the Treasury. At present the Bureau maintains 113 independent field offices, each reporting directly to Customs headquarters in Washington, D.C. Under a modernization program of which this reorganization plan is an integral part, the Secretary of the Treasury proposes to establish six regional offices to supervise all Customs field activities. The tightened management controls achieved from these improvements will make possible a net annual saving of $9 million within a few years.

An essential feature will be the abolition of the offices of all Presidential appointees in the Customs Service. The program cannot be effectively carried out without this step.

The following offices, therefore, will be eliminated: Collectors of customs, comptrollers of customs, surveyors of customs, and appraisers of merchandise, to which appointments are now required to be made by the President and with the advice and consent of the Senate.

Incumbents of abolished offices will be given consideration for suitable employment under the civil service laws in any positions in customs for which they may be qualified.

When this reorganization is completed, all officials and employees of the Bureau of Customs will be appointed under the civil service laws.

All of the functions of the offices which will be abolished are presently vested in the Secretary of the Treasury by Reorganization Plan No. 26 of 1950 which gives the Secretary power to redelegate these functions. He will exercise this power as the existing offices are abolished.

The estimate of savings that will be achieved by the program of customs modernization and improvement, of which this reorganization plan is a part, is based on present enforcement levels, business volume, and salary scales. Of the amounts saved, approximately $1 million a year will be from salaries no longer paid because of the abolition of offices.

The proposed new organizational framework looks to the establishment of new offices at both headquarters and field levels and abolition of present offices.

This results in a net reduction of more than 50 separate principal field offices by concentration of supervisory responsibilities in fewer officials in charge of regional and district activities. In addition to the six offices of regional commissioner, about 25 offices of district director will be established. The regional commissioners and district directors will assume the functions of those principal supervisory responsibilities and functions of collectors of customs, appraisers of merchandise, comptrollers of customs, laboratories, and supervising customs agents.

At the headquarters level, four new offices will be established to replace seven divisions. A new position of special assistant to the Commissioner will be created and charged with responsibility for insuring that all Customs employees conduct themselves in strict compliance with all applicable laws and regulations. Up to now this function has been one of a number lodged with an existing division.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 1 of 1965 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

It should be emphasized that abolition by Reorganization Plan No. 1 of 1965 of the offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise will be no way prejudice any right of any person affected by the laws adminis-
§ 2 TITe 19—CUSTOMS DUTIES Page 4
tered by the Bureau of Customs. The rights of importers and others, for example, before the Customs Court, arising out of the administration of such functions will remain unaffected. In addition it should be emphasized that all essential services to the importing, exporting, and traveling public will continue to be performed.

This reorganization plan will permit a needed modernization of the organization and procedure of the Bureau of Customs. It will permit a more effective administration of the customs laws.

I urge the Congress to permit Reorganization Plan No. 1 of 1965 to become effective.

LYNDON B. JOHNSON.


§ 2. Rearrangement and limitation of districts; changing locations

The President is authorized from time to time, as the exigencies of the service may require, to rearrange, by consolidation or otherwise, the several customs-collection districts and to discontinue ports of entry by abolishing the same or establishing others in their stead. The President is authorized from time to time to change the location of the headquarters in any customs-collection district as the needs of the service may require.


AMENDMENTS

1970—Pub. L. 91–271 struck out provisions limiting the number of customs-collection districts and ports of entry to those established and authorized as of Aug. 1, 1914, except as thereafter provided by law, and provisions requiring the collector of customs of each customs-collection district to be officially designated by the number of the district for which appointed.

1928—Act May 29, 1928, provided for discontinuance of the statement or report as required by a proviso at end of section which read as follows: ‘‘That the President shall, at the beginning of each regular session, submit to Congress a statement of all acts, if any, done under the provisions of this section and the reasons therefor.’’

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–271 effective with respect to articles entered, or withdrawn from warehouse for consumption, or on or after Oct. 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, or with respect to which a protest has not been disallowed in whole or in part before Oct. 1, 1970, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

All officers of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7335, 79 Stat. 3137, set out as a note under section 1 of this title.

Functions of all officers of Department of the Treasury, and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 6069, 64 Stat. 2224, provided that:

‘‘(1) The Comptroller General of the United States shall conduct a comprehensive analysis, including a

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Treasury of authority vested in President by this section, see Ex. Ord. No. 10289, §1(a), Sept. 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

CUSTOMS DISTRICTS AND PORTS OF ENTRY

An alphabetical index of ports of entry is contained in Schedule D of the Harmonized Tariff Schedule. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

For list of international airports of entry, see section 6.13 of Part 6 of Chapter 1, United States Customs Service, of Title 19, Customs Duties, of the Code of Federal Regulations.

VIRGINIA INLAND PORT: WITHDRAWAL OF DESIGNATION AS CUSTOMS SERVICE PORT OF ENTRY PROHIBITED

Pub. L. 104–92, title V, §512, Nov. 19, 1995, 109 Stat. 492, provided that: ‘‘Notwithstanding any provision of this Act or any other Act, during the fiscal year ending September 30, 1996, and thereafter, no funds may be obligated or expended in any way to withdraw the designation of the Virginia Inland Port at Front Royal, Virginia, as a United States Customs Service port of entry.’’ [For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

COLUMBIA-SNAKE CUSTOMS DISTRICT


PENMINA, NORTH DAKOTA, CUSTOMS DISTRICT; CHANGE IN BOUNDARIES PROHIBITED WITHOUT CONGRESSIONAL CONSENT


§ 3. Superintendence of collection of import duties

The Secretary of the Treasury shall direct the superintendence of the collection of the duties on imports as he shall judge best.

(R.S. §249.)

CONFIDENCE

R.S. §249 derived from act May 8, 1792, ch. 37, §1, 1 Stat. 240.

Section, prior to its incorporation into the Code, contained the words ‘‘and tanage,’’ after ‘‘duties on imports’’. These words were omitted as superseeded by section 3 of the former Appendix to Title 46, Shipping, which charged the Chief of the Bureau of Navigation and Steamboat Inspection with the execution of the laws relating to the collection of the tonnage tax. Section 3 of the former Appendix to Title 46 was repealed by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710.

ANALYSIS REGARDING CES PROGRAM: EFFECT ON IMPLEMENTATION OF PROGRAM


‘‘(1) The Comptroller General of the United States shall conduct a comprehensive analysis, including a
cost-benefit study, of the centralized cargo examination station (CES) concept from the perspective of both the United States Customs Service and business community users. The analysis shall be submitted on the same day to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (hereinafter referred to as the ‘Committees’) not later than March 30, 1988, and shall include recommendations as to how best to implement cargo inspection procedures.

(2) The United States Customs Service—

(A) may not, after the date of the enactment of this Act (Dec. 22, 1987), establish any new centralized cargo examination station at any ocean port, airport, or land border location unless the Customs Service provides to the Committees advance notice, in writing, of not less than 90 days regarding the proposed establishment; and

(B) shall, on such date of enactment, suspend operations at each centralized cargo examination station that was operating at an airport on the day before such date until the 90th day after a date—

(i) that is not earlier than the date on which the analysis required under paragraph (1) is submitted to the Committees, and

(ii) on which the Customs Service provides to the Committees notice, in writing, that it intends to resume such operations at the station.

During the period of suspension of operations under subparagraph (B) at any centralized cargo examination station at an airport, the Secretary of the Treasury shall maintain customs operations and staffing at that airport at a level not less than that which was in effect immediately before the suspension took effect.

(3) The Commissioner of Customs is authorized to obtain from the operators of centralized cargo examination stations information regarding the fees paid to them for the provision of services at these stations.

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of references to Secretary of the Treasury, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§ 4. Omitted

CODIFICATION

Section, act Mar. 4, 1923, ch. 251, § 1, 42 Stat. 1453, relating to appointment, compensation, and qualifications of director and assistant directors of customs. See sections 2071 to 2073 of this title.


Section 5, R.S. § 2613, act Sept. 21, 1922, ch. 356, title IV, § 523, 42 Stat. 974, provided that collectors, comptrollers, and surveyors be appointed for four year terms.

Section 5a, act July 5, 1932, ch. 430, title I, 47 Stat. 584, abolished, except at the Port of New York, the office of surveyor and appraiser, and those of their assistants and deputies, and transferred the duties of such officers to such persons as designated by the Secretary of the Treasury.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after Oct. 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, or with respect to which a protest has not been disallowed in whole or in part before Oct. 1, 1970, see section 203 of Pub. L. 91–271, set out as an Effective Date of 1970 Amendment note under section 1500 of this title.

§ 6. Designation of customs officers for foreign service; status; rejection of designated customs officer; applicability of civil service laws

Any officer of the customs service designated by the Secretary of the Treasury for foreign service, shall, through the Department of State, be regularly and officially attached to the diplomatic missions of the United States in the countries in which they are to be stationed, and when such officers are assigned to countries in which there are no diplomatic missions of the United States, appropriate recognition and standing with full facilities for discharging their official duties shall be arranged by the Department of State. The Secretary of State may reject the name of any such officer whose assignment to the foreign post for which he has been designated would, in his judgment, be prejudicial to the public policy of the United States. The appointment of such customs officers shall be made pursuant to the civil service laws and regulations upon the nomination of the principal officer in charge of the office to which such appointments are to be made.


AMENDMENTS

1970—Pub. L. 91–271 struck out provisions authorizing Secretary of the Treasury to appoint, prescribe designations and duties, and fix compensation of deputies and other customs officers, laborers, and other employees.

1948—Act June 25, 1948, struck out fourth sentence relating to appointment and compensation of clerks of Customs Court.

1930—Act June 17, 1930, § 518, authorized Secretary of the Treasury to appoint and fix compensation of clerks of Customs Court.

1926—Act May 28, 1926, substituted “United States Customs Court” for “Board of General Appraisers”.

Act June 17, 1920, § 649, substituted “Treasury attachés” for “Customs attachés”.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–271 effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after Oct. 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, or with respect to which a protest has not been disallowed in whole or in part before Oct. 1, 1970, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out as a note under section 1 of this title.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by 1965 Reorg. Plan No. 26. §§1, 2, eff. July 31, 1965, 15 F.R. 4939, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.


Sections, act May 29, 1928, ch. 865, §§1–4, 45 Stat. 855, related to compensation. See sections 5301 et seq. and 5301 et seq. of Title 5, Government Organization and Employees.

Act Dec. 12, 1930, ch. 10, 46 Stat. 1026, formerly set out as a credit to these sections, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648.

§ 6e. Overtime compensation based on standard or daylight saving time

On and after June 30, 1949, overtime compensation of customs officers and employees, as authorized by law, shall be based either on standard or daylight saving time, whichever is observed where overtime services are performed.

(June 30, 1949, ch. 286, title I, 63 Stat. 360.)


Section 7, act Mar. 4, 1923, ch. 251, §3, 42 Stat. 1453, authorized collectors, comptrollers, surveyors, and appraisers to appoint assistants, and collector at New York to appoint a solicitor to collector, all such appointments subject to approval of Secretary of the Treasury.

Section 8, R.S. §2628; acts Mar. 3, 1905, ch. 1413, §1, 33 Stat. 988; Mar. 4, 1923, ch. 251, §4, 42 Stat. 1453, set forth procedure for filling a vacancy in office of a collector, comptroller, surveyor, or appraiser.

Section 9, R.S. §2625, act Mar. 4, 1923, ch. 251, §3, 42 Stat. 1453, provided for performance of collector’s duties in case of his disability.

Section 10, R.S. §2630; acts Mar. 4, 1923, ch. 251, §§2, 3, 42 Stat. 1453; Jan. 13, 1925, ch. 76, 43 Stat. 748, provided that in cases of occasional and necessary absence, or of sickness, any collector could exercise his powers and perform his duties by deputy.

Section 11, R.S. §2632; act June 17, 1908, ch. 497, title IV, §523, 46 Stat. 740, provided that in cases of occasional and necessary absence, or of sickness, every comptroller and surveyor could, respectively, exercise and perform his functions, powers, and duties by deputy.

Effective Date of Repeal

Repeal effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after Oct. 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, or with respect to which a protest has not been disallowed in whole or in part before Oct. 1, 1970, see section 203 of Pub. L. 91–271, set out as an Effective Date of 1970 Amendment note under section 1500 of this title.


Sections 12 to 15 provided for appointment by Secretary of the Treasury of 30 special agents for purposes of checking the accounts of collectors and other customs officers for prevention of frauds, authorized regulations for the limitations on their number and compensation and authorized appointment of special agents to reside in foreign territory. Customs agents who perform functions formerly exercised by special agents are covered generally by section 2072 of this title.

Section 12 was based on R.S. §2649.

Section 13 was based on acts Mar. 4, 1911, ch. 285, 36 Stat. 1388; Mar. 4, 1923, ch. 251, §§1, 2, 5, 7, 42 Stat. 1453, 1454; Mar. 3, 1927, ch. 348, §3, 43 Stat. 1382.

Section 14 was based on R.S. §2651.

Section 15 was based on R.S. §2699.


Section 17, R.S. §2841, prohibited only employees in office of appraiser at New York from engaging or being employed in any commercial activity.

Section 18, R.S. §2842, related to duties of appraiser and assistant appraiser at New York.


Section 20, act Feb. 21, 1925, ch. 278, §1, 43 Stat. 857, related to office of appraiser of merchandise at Portland, Oregon.


Sections 21 to 23 prescribed oath of office for customs officers and assistant appraisers.

Section 24 related to designation of persons to administer oath of office.

Section 21 was based on R.S. §2616.

Section 22 was based on R.S. §2614; act July 5, 1932, ch. 430, title I, 47 Stat. 584.

Section 23 was based on R.S. §2615; July 5, 1932, ch. 430, title I, 47 Stat. 584.

Section 24 was based on R.S. §2617; act Feb. 8, 1875, ch. 36, §11, 18 Stat. 309.


Section 26, R.S. §2611; act Feb. 8, 1875, ch. 36, §11, 18 Stat. 309, related to oath by special examiners of drugs. Functions formerly exercised by the special examiner of drugs are covered by section 381 of Title 21, Food and Drugs.


Section 28, act Sept. 24, 1914, ch. 309, 38 Stat. 716, provided that headquarters of customs district of Florida should be at Tampa. Section 2 of this title vests authority in the President to change from time to time the location of headquarters of customs collection district and such authority was delegated to the Secretary of the Treasury by section 1 (a) of Executive Order 10289 of September 17, 1951, set out as a note under section 301 of Title 3, The President.


Section, act Sept. 30, 1890, ch. 1126, 26 Stat. 511, related to administration of oaths by clerks and inspectors of customs.


Section, Res. Apr. 2, 1928, ch. 309, 45 Stat. 401, related to administration of oaths by officers and employees of customs service.

§§ 31 to 35. Repealed. Aug. 8, 1953, ch. 397, § 2(a), 67 Stat. 507

Sections, R.S. §§ 2619 to 2623, prescribed various duties of the collectors of customs at each of the ports (1) where collectors, comptrollers, and surveyors were appointed; (2) where only collectors and surveyors were appointed; and (3) where only collectors were appointed. The provisions of such sections, in so far as they related to accounting duties, are covered generally in chapters 33 and 35 of Title 31, Money and Finance. Effective Date of Repeal: Savings Provision

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see sections 1 and 23 of act Aug. 8, 1953.


Sections 36, acts Feb. 6, 1907, ch. 471, 34 Stat. 880; Mar. 4, 1923, ch. 251, § 2, 42 Stat. 1453; Jan. 13, 1925, ch. 76, 43 Stat. 748, enumerated duties of deputy collectors. Section 37, R.S. § 1833, authorized Secretary of the Treasury to clothe any deputy director at a port other than district headquarters with all powers of his principal appertaining to official acts. Effective Date of Repeal

Repeal effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after Oct. 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, or with respect to which a protest has not been disallowed in whole or in part before Oct. 1, 1970, see section 203 of Pub. L. 91–271, set out as an Effective Date of 1970 Amendment note under section 1500 of this title. Effective Date of Repeal: Savings Provision

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see sections 1 and 23 of act Aug. 8, 1953.


Section, act Sept. 21, 1922, ch. 356, title IV, §§ 523, 42 Stat. 974, related to powers and duties of comptrollers of customs. See section 1523 of this title. Effective Date of Repeal: Savings Provision

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see sections 1 and 23 of act Aug. 8, 1953.

§§ 40 to 42. Repealed. Aug. 8, 1953, ch. 397, § 2(a), 67 Stat. 507

Sections, R.S. §§ 2639 to 2641, 2643, related to various accounting duties of collectors, comptrollers, and surveyors of customs. Those provisions are covered generally in chapters 33 and 35 of Title 31, Money and Finance. Section 42 was amended by act July 31, 1894, ch. 174, § 19, 28 Stat. 210. Effective Date of Repeal: Savings Provision

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see sections 1 and 23 of act Aug. 8, 1953.

§§ 46, 47. Repealed. Feb. 28, 1933, ch. 131, § 1, 47 Stat. 1349

Sections, R.S. §§ 2644 and 2645, respectively, related to rendition of monthly and quarterly estimates and accounts of certain collectors. Effective Date of Repeal: Savings Provision

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see sections 1 and 23 of act Aug. 8, 1953.


Sections, R.S. § 1790, related to restriction on payment for services of officers or other persons in customs service. Effective Date of Repeal: Savings Provision

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see sections 1 and 23 of act Aug. 8, 1953.

§ 52. Payment of compensation and expenses

The compensation of all customs officers and employees provided for by sections 6, 7, 8, 13, and
The sections repealed by subsection (a), referred to in text, means the sections repealed by Pub. L. 95–410, §214(a), which provided: "Sections 2654, 4381, 4382, and 4383 of the Revised Statutes of the United States (19 U.S.C. 58 and 46 U.S.C. 329, 330, and 333) are each repealed."
(f) Customs services for foreign trade zones or subzones

For purposes of this section, customs services provided in connection with, or with respect to, any foreign trade zone or subzone that is located at, or in the vicinity of, any airport, seaport, or other facility described in subsection (a) of this section, or designated under subsection (c) of this section shall be considered to be customs services provided at such airport, seaport, or other facility.


AMENDMENTS


Subsec. (c). Pub. L. 101–207, §3(f)(1)(A), (B), inserted “seaports, and other facilities” after “airports” in introductory provisions and “seaport, or other facility” after “airport” wherever appearing.


Subsec. (f). Pub. L. 101–207, §3(c)(2), (f)(1)(A), added subsec. (f) and inserted “seaport, or other facility” after “airports” in two places.

1988—Subsec. (a)(2), (3). Pub. L. 100–418, §1905(1)–(3), struck out reference to “carriers from Canada or Mexico” and redesignated former par. (2) as (3).

Subsec. (c). Pub. L. 100–418, §1905(d), struck out “20” before “airports”.


Subsec. (e). Pub. L. 99–272, §13032(2), substituted last two sentences for former last sentence which read as follows: “The funds in such account shall only be available, as provided by appropriation Acts, for expenditures relating to the provision of customs services at such airport (including expenditures for the salaries and expenses of individuals employed to provide such services).”


EFFECTIVE DATE

Section effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 58c. Fees for certain customs services

(a) Schedule of fees

In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

(1) For the arrival of a commercial vessel of 100 net tons or more, $397.

(2) For the arrival of a commercial truck, $5.

(3) For the arrival of each railroad car carrying passengers or commercial freight, $7.50.

(4) For all arrivals made during a calendar year by a private vessel or private aircraft, $25.

(5)(A) Subject to subparagraph (B), for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)(i) of this section), $5.

(B) For the arrival of each passenger aboard a commercial vessel from a place referred to in subsection (b)(1)(A)(i) of this section, $1.75.

(6) For each item of dutiable mail for which a document is prepared by a customs officer, $5.

(7) For each customs broker permit held by an individual, partnership, association, or corporate customs broker, $125 per year.

(8) For the arrival of a barge or other bulk carrier from Canada or Mexico, $100.

(9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to 0.21 percent ad valorem, unless adjusted under subparagraph (B).

(B)(i) The Secretary of the Treasury may adjust the ad valorem rate specified in subparagraph (A) to an ad valorem rate (but not to a rate of more than 0.21 percent nor less than 0.15 percent) and the amounts specified in subsection (b)(1)(A)(i) (but not to more than $485 nor less than $21) to rates and amounts which would, if charged, offset the salaries and expenses that will likely be incurred by the Cus-
tems Service in the processing of such entries and releases during the fiscal year in which such costs are incurred.

(ii) In determining the amount of any adjustment under clause (i), the Secretary of the Treasury shall take into account whether there is a surplus or deficit in the fund established under subsection (f) of this section with respect to the provision of customs services for the processing of formal entries and releases of merchandise.

(iii) An adjustment may not be made under clause (i) with respect to the fee charged during any fiscal year unless the Secretary of the Treasury—

(I) not later than 45 days after the date of the enactment of the Act providing full-year appropriations for the Customs Service for that fiscal year, publishes in the Federal Register a notice of intent to adjust the fee under this paragraph and the amount of such adjustment;

(II) provides a period of not less than 30 days following publication of the notice described in subclause (I) for public comment and consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the proposed adjustment and the methodology used to determine such adjustment;

(III) upon the expiration of the period provided under subclause (II), notifies such committees in writing regarding the final determination to adjust the fee, the amount of such adjustment, and the methodology used to determine such adjustment; and

(IV) upon the expiration of the 15-day period following the written notification described in subclause (III), submits for publication in the Federal Register notice of the final determination regarding the adjustment of the fee.

(iv) The 15-day period referred to in clause (iii)(IV) shall be computed by excluding—

(I) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(II) any Saturday and Sunday, not excluded under subclause (I), when either House is not in session.

(v) An adjustment made under this subparagraph shall become effective with respect to formal entries and releases made on or after the 15th calendar day after the date of publication of the notice described in clause (iii)(IV) and shall remain in effect until adjusted under this subparagraph.

(C) If for any fiscal year, the Secretary of the Treasury determines not to make an adjustment under subparagraph (B), the Secretary shall, within the time prescribed under subparagraph (B)(iii)(I), submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives detailing the reasons for maintaining the current fee and the methodology used for computing such fee.

(D) Any fee charged under this paragraph, whether or not adjusted under subparagraph (B), is subject to the limitations in subsection (b)(8)(A) of this section.

(10) For the processing of merchandise that is informally entered or released, other than at—

(A) a centralized hub facility,

(B) an express consignment carrier facility, or

(C) a small airport or other facility to which section 58b of this title applies, if more than 25,000 informal entries were cleared through such airport or facility during the fiscal year preceding such entry or release, a fee of—

(i) $2 if the entry or release is automated and not prepared by customs personnel;

(ii) $6 if the entry or release is manual and not prepared by customs personnel; or

(iii) $9 if the entry or release, whether automated or manual, is prepared by customs personnel.

For provisions relating to the informal entry or release of merchandise at facilities referred to in subparagraphs (A), (B), and (C), see subsection (b)(9) of this section.

(b) Limitations on fees

(1)(A) Except as provided in subsection (a)(5)(B) of this section, 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 1101(b)(5) of title 8), 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 a ferry, except for a ferry whose operations begin on or after August 1, 1999, and that operates south of 27 degrees latitude and east of 89 degrees longitude; 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.

(2) No fee may be charged under subsection (a)(9) or (10) of this section for the arrival of a commercial truck during any calendar year after a total of $100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such commercial truck during such calendar year.

(3) No fee may be charged under subsection (a)(3) of this section for the arrival of a railroad car whether passenger or freight during any calendar year after a total of $100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such railroad car whether passenger or freight rail car during such calendar year.

(4)(A) No fee may be charged under subsection (a)(5) of this section with respect to the arrival of any passenger—
(i) who is in transit to a destination outside the customs territory of the United States, and
(ii) for whom customs inspectional services are not provided.

(B) In the case of a commercial vessel making a single voyage involving 2 or more United States ports with respect to which the passengers would otherwise be charged a fee pursuant to subsection (a)(5) of this section, such fee shall be charged only 1 time for each passenger.

(5) No fee may be charged under subsection (a)(1) of this section for the arrival of—
(A) a vessel during a calendar year after a total of $5,955 in fees charged under paragraph (1) or (8) of subsection (a) of this section has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such vessel during such calendar year,
(B) any vessel which, at the time of the arrival, is being used solely as a tugboat, or
(C) any barge or other bulk carrier from Canada or Mexico.

(6) No fee may be charged under subsection (a)(9) of this section for the arrival of a barge or other bulk carrier during a calendar year after a total of $1,500 in fees charged under paragraph (1) or (8) of subsection (a) of this section has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such barge or other bulk carrier during such calendar year.

(7) No fee may be charged under paragraph (2), (3), or (4) of subsection (a) of this section for the arrival of any of—
(A) commercial truck,
(B) railroad car, or
(C) private vessel,
that is being transported, at the time of the arrival, by any vessel that is not a ferry.

(8)(A)(i) Subject to clause (ii), the fee charged under subsection (a)(9) of this section for the formal entry or release of merchandise may not exceed $485 or be less than $25, unless adjusted pursuant to subsection (a)(9)(B) of this section.

(ii) A surcharge of $3 shall be added to the fee determined after application of clause (i) for any manual entry or release of merchandise.

(B) No fee may be charged under subsection (a)(9) or (10) of this section for the processing of any article that is—

(i) provided for under any item in chapter 98 of the Harmonized Tariff Schedule of the United States, except subheading 9802.00.60 or 9802.00.80,
(ii) a product of an insular possession of the United States, or
(iii) a product of any country listed in subdivision (c)(i)(B) or (c)(v) of general note 3 to such Schedule.

(C) For purposes of applying subsection (a)(9) or (10) of this section—
(i) expenses incurred by the Secretary of the Treasury in the processing of merchandise do not include costs incurred in—
(I) air passenger processing,
(II) export control, or
(III) international affairs, and
(ii) any reference to a manual formal or informal entry or release includes any entry or release filed by a broker or importer that requires the inputting of cargo selectivity data into the Automated Commercial System by customs personnel, except when—
(I) the broker or importer is certified as an ABI cargo release filer under the Automated Commercial System at any port within the United States, or
(II) the entry or release is filed at ports prior to the full implementation of the cargo selectivity data system by the Customs Service at such ports.

(D) The fee charged under subsection (a)(9) or (10) of this section with respect to the processing of merchandise shall—
(i) be paid by the importer of record of the merchandise;
(ii) except as otherwise provided in this paragraph, be based on the value of the merchandise as determined under section 1401a of this title;
(iii) in the case of merchandise classified under subheading 9802.00.60 of the Harmonized Tariff Schedule of the United States, be applied to the value of the foreign repairs or alterations to the merchandise;
(iv) in the case of merchandise classified under heading 9802.00.80 of such Schedule, be applied to the full value of the merchandise, less the cost or value of the component United States products;
(v) in the case of agricultural products of the United States that are processed and packed in a foreign trade zone, be applied only to the value of material used to make the container for such merchandise, if such merchandise is subject to entry and the container is of a kind normally used for packing such merchandise; and
(vi) in the case of merchandise entered from a foreign trade zone (other than merchandise to which clause (v) applies), be applied only to the value of the foreign status merchandise under section 3 of the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81c).

With respect to merchandise that is classified under subheading 9802.00.60 or heading 9802.00.80 of such Schedule and is duty-free, the Secretary may collect the fee charged on the processing of
the merchandise under subsection (a)(9) or (10) of this section on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.

(E) For purposes of subsection (a)(9) and (10) of this section, merchandise is entered or released, as the case may be, if the merchandise is—

(i) permitted or released under section 1448(b) of this title,

(ii) entered or released from customs custody under section 1484(a)(1)(A) of this title, or

(iii) withdrawn from warehouse for consumption.

(9)(A) With respect to the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at an amount that is $2,000 or less (or such higher amount as the Secretary of the Treasury may set by regulation pursuant to section 1498 of this title), except such items entered for transportation and exportation or immediate exportation at a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the following reimbursements and payments are required:

(i) In the case of a small airport or other facility—

(I) the reimbursement which such facility is required to make during the fiscal year under section 9701 of title 31 or section 58b of this title; and

(II) an annual payment by the facility to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(9) of this section for such fiscal year, in an amount equal to the reimbursement under subclause (I).

(ii) Notwithstanding subsection (e)(6) of this section and subject to the provisions of subparagraph (B), in the case of an express consignment carrier facility or centralized hub facility—

(I) $.66 per individual airway bill or bill of lading; and

(II) if the merchandise is formally entered, the fee provided for in subsection (a)(9) of this section, if applicable.

(B)(i) Beginning in fiscal year 2004, the Secretary of the Treasury may adjust (not more than once per fiscal year) the amount described in subparagraph (A)(ii) to an amount that is not less than $.35 and not more than $1.00 per individual airway bill or bill of lading. The Secretary shall provide notice in the Federal Register of a proposed adjustment under the preceding sentence and the reasons therefor and shall allow for public comment on the proposed adjustment.

(ii) Notwithstanding section 1451 of this title, the payment required by subparagraph (A)(ii) and clause (ii) of this subparagraph shall be paid on a quarterly basis by the carrier using the facility to the Customs Service in accordance with regulations prescribed by the Secretary of the Treasury.

(II) 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) of this subparagraph shall, in accordance with section 1524 of this title, be deposited in the Customs User Fee Account and shall be used to directly reimburse each appropriation for the amount paid out of that appropriation for the costs incurred in providing services to express consignment carrier facilities or centralized hub facilities. Amounts deposited in accordance with the preceding sentence shall be available until expended for the provision of customs services to express consignment carrier facilities or centralized hub facilities.

(III) Notwithstanding section 1524 of this title, the remaining 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) of this subparagraph shall be paid to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) of this section.

(C) For purposes of this paragraph:

(i) The terms “centralized hub facility” and “express consignment carrier facility” have the respective meanings that are applied to such terms in part 128 of chapter I of title 19, Code of Federal Regulations. Nothing in this paragraph shall be construed as prohibiting the Secretary of the Treasury from processing merchandise that is informally entered or released at any centralized hub facility or express consignment carrier facility during the normal operating hours of the Customs Service, subject to reimbursement and payment under subparagraph (A).

(ii) The term “small airport or other facility” means any airport or facility to which section 58b of this title applies, if more than 25,000 informal entries were cleared through such airport or facility during the preceding fiscal year.

(10)(A) The fee charged under subsection (a)(9) or (10) with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) when the United States-Canada Free-Trade Agreement is in force shall be in accordance with article 403 of that Agreement.

(B) For goods qualifying under the rules of origin set out in section 3332 of this title, the fee under subsection (a)(9) or (10)—

(i) may not be charged with respect to goods that qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement, for such time as Canada is a NAFTA country, as defined in section 3301(4) of this title; and

(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to such
Annex 311, for such time as Mexico is a NAFTA country.

Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(i) No fee may be charged under subsection (a)(9) or (10) of this section with respect to products of Israel if an exemption with respect to the fee is implemented under section 121 of the Customs and Trade Act of 1990.

(ii) No fee may be charged under subsection (a)(9) or (10) of this section with respect to goods that qualify as originating goods under section 202 of the United States-Chile Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(iii) The term “customs broker permit” means a permit issued under section 1641(c) of this title.

(iv) The term “ferry” means any vessel which—
(A) is not self-propelled, or
(B) transports fungible goods that are not packaged in any form.

(d) Collection

(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the customs territory of the United States shall—
(A) collect from that individual the fee charged under subsection (a)(5) of this section at the time the document or ticket is issued; and
(B) separately identify on that document or ticket the fee charged under subsection (a)(5) of this section as a Federal inspection fee.

(2) If—
(A) a document or ticket for transportation of a passenger into the customs territory of the United States is issued in a foreign country; and
(B) the fee charged under subsection (a)(5) of this section is not collected at the time such document or ticket is issued;
the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the customs territory of the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Secretary of the Treasury at any time before the date that is 31 days after the close of the calendar quarter in which the fees are collected.

(4) (A) Notice of the date on which payment of the fee imposed by subsection (a)(7) of this section is due shall be published by the Secretary of the Treasury in the Federal Register by no later than the date that is 60 days before such due date.
(B) A customs broker permit may be revoked or suspended for nonpayment of the fee imposed by subsection (a)(7) of this section only if notice of the date on which payment of such fee is due was published in the Federal Register at least 60 days before such due date.
§ 58c
provided to passengers upon arrival in the
section (a) of this section) to airlines and airline
graph (2)), the customs services required to be
any other provision of law (other than para-
cost (other than the fees imposed under sub-
toms serviced airports when needed and at no
cost (other than the fees imposed under subsection (a) of this section) to airlines and airline
(2)(A) This subsection shall not apply with re-
spect to any airport, seaport, or other facility to
which section 58b of this title applies.
(B) Subparagraph (C) of paragraph (6) shall not
apply with respect to any foreign trade zone or
subzone that is located at, or in the vicinity of,
an airport, seaport, or other facility to which
section 58b of this title applies.
(3) Notwithstanding section 1451 of this title or
any other provision of law—
(A) the customs services required to be pro-
vided to passengers upon arrival in the United
States shall be adequately provided in con-
nection with scheduled airline flights at cus-
toms serviced airports when needed and at no
cost (other than the fees imposed under sub-
section (a) of this section) to airlines and airline
(B) other than the fees imposed under sub-
section (a) of this section, the airlines and air-
line passengers shall not be required to reim-
burse the Secretary of the Treasury for the
costs of providing overtime customs inspec-
tional services at such places.
(4) Notwithstanding any other provision of
law, all customs services (including, but not
limited to, normal and overtime clearance and
preclearance services) shall be adequately pro-
vided, when requested, for—
(A) the clearance of any commercial vessel,
vehicle, or aircraft or its passengers, crew,
stores, material, or cargo arriving, departing,
or transiting the United States;
(B) the preclearance at any customs facility
outside the United States of any commercial
vessel, vehicle or aircraft or its passengers,
crew, stores, material, or cargo; and
(C) the inspection or release of commercial
cargo or other commercial shipments being
entered into, or withdrawn from, the customs
territory of the United States.
(5) For purposes of this subsection, customs
services shall be treated as being "adequately
provided" if such of those services that are nec-
essary to meet the needs of parties subject to
customs inspection are provided in a timely
manner taking into account factors such as—
(A) the unavoidability of weather, mechan-
cal, and other delays;
(B) the necessity for prompt and efficient
passenger and baggage clearance;
(C) the perishability of cargo;
(D) the desirability or unavoidability of late
night and early morning arrivals from various
time zones;
(E) the availability (in accordance with reg-
ulations prescribed under subsection (g)(2) of
this section) of customs personnel and re-
sources; and
(F) the need for specific enforcement checks.
(6) Notwithstanding any other provision of law
except paragraph (2), during any period when
fees are authorized under subsection (a) of this
section, no charges, other than such fees, may
be collected—
(A) for any—
(i) cargo inspection, clearance, or other
customs activity, expense, or service per-
formed (regardless whether performed out-
side of normal business hours on an overtime
basis), or
(ii) customs personnel provided,

in connection with the arrival or departure of
any commercial vessel, vehicle, or aircraft, or
its passengers, crew, stores, material, or
cargo, in the United States;
(B) for any preclearance or other customs
activity, expense, or service performed, and
customs personnel provided, outside the
United States in connection with the depar-
ture of any commercial vessel, vehicle, or air-
craft, or its passengers, crew, stores, material,
or cargo, for the United States; or
(C) in connection with—
(i) the activation or operation (including
Customs Service supervision) of any foreign
trade zone or subzone established under the
Act of June 18, 1934 (commonly known as the
Foreign Trade Zones Act, 19 U.S.C. 81a et
seq.),
(ii) the designation or operation (including
Customs Service supervision) of any bonded
warehouse under section 1555 of this title.
(f) Disposition of fees
(1) There is established in the general fund of
the Treasury a separate account which shall be
known as the "Customs User Fee Account".
Notwithstanding section 1524 of this title, there
shall be deposited as offsetting receipts into the
Customs User Fee Account all fees collected
under subsection (a) of this section except—
(A) the portion of such fees that is required
under paragraph (3) for the direct reimburse-
ment of appropriations, and
(B) amounts deposited into the Customs
Commercial and Homeland Security Automa-
tion Account under paragraph (5).
(2) Except as otherwise provided in this sub-
section, all funds in the Customs User Fee Ac-
count shall be available, to the extent provided
for in appropriations Acts, to pay the costs
(other than costs for which direct reimburse-
ment under paragraph (3) is required) incurred
by the United States Customs Service in con-
ducting customs revenue functions as defined in
section 215 of title 6 (other than functions per-
formed by the Office of International Affairs
referred to in section 215(b) of title 6), and for au-
tomation (including the Automation Commer-
cial Environment computer system), and for no
other purpose. To the extent that funds in the
Customs User Fee Account are insufficient to
pay the costs of such customs revenue functions,
customs duties in an amount equal to the
amount of such insufficiency shall be available, to the extent provided for in appropriations Acts, to pay the costs of such customs revenue functions in the amount of such insufficiency, and shall be available for no other purpose. The provisions of the first and second sentences of this paragraph specifying the purposes for which amounts in the Customs User Fee Account may be made available shall not be superseded except by a provision of law which specifically modifies or supersedes such provisions. So long as there is a surplus of funds in the Customs User Fee Account, the Secretary of the Treasury may not reduce personnel staffing levels for providing commercial clearance and preclearance services.

(3)(A) The Secretary of the Treasury, in accordance with section 1524 of this title and subject to subparagraph (B), shall directly reimburse, from the fees collected under subsection (a) of this section (other than the fees under subsection (a)(9) and (10) of this section and the excess fees determined by the Secretary under paragraph (5)), each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary—

(i) in—

(I) paying overtime compensation under section 267(a) of this title,

(II) paying premium pay under section 267(b) of this title, but the amount for which reimbursement may be made under this subclause may not, for any fiscal year, exceed the difference between the total cost of all the premium pay for such year calculated under section 267(b) of this title and the cost of the night and holiday premium pay that the Customs Service would have incurred for the same inspectional work on the day before August 10, 1993,

(III) paying agency contributions to the Civil Service Retirement and Disability Fund to match deductions from the overtime compensation paid under subclause (I),

(IV) providing all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and

(V) paying foreign language proficiency awards under section 267a of this title,

(ii) to the extent funds remain available after making reimbursements under clause (i), in providing salaries for full-time and part-time inspectional personnel and equipment that enhance customs services for those persons or entities that are required to pay fees under paragraphs (1) through (8) of subsection (a) of this section (distributed on a basis proportionate to the fees collected under paragraphs (1) through (8) of subsection (a) of this section), and

(iii) to the extent funds remain available after making reimbursements under clause (i), in providing salaries for up to 50 full-time equivalent inspectional positions to provide preclearance services.

The transfer of funds required under subparagraph (C)(iii) has priority over reimbursements under this subparagraph to carry out subclauses (II), (III), (IV), and (V) of clause (i). Funds described in clause (ii) shall only be available to reimburse costs in excess of the highest amount appropriated for such costs during the period beginning with fiscal year 1990 and ending with the current fiscal year.

(B) Reimbursement of appropriations under this paragraph—

(i) shall be subject to apportionment or similar administrative practices;

(ii) shall be made at least quarterly; and

(iii) to the extent necessary, may be made on the basis of estimates made by the Secretary of the Treasury and adjustments shall be made in subsequent reimbursements to the extent that the estimates were in excess of, or less than, the amounts required to be reimbursed.

(C)(i) For fiscal year 1991 and subsequent fiscal years, the amount required to reimburse costs described in subparagraph (A)(i) shall be projected from actual requirements, and only the excess of collections over such projected costs for such fiscal year shall be used as provided in subparagraph (A)(ii).

(ii) The excess of collections over inspectional overtime and preclearance costs (under subparagraph (A)(i)) reimbursed for fiscal years 1989 and 1990 shall be available in fiscal year 1991 and subsequent fiscal years for the purposes described in subparagraph (A)(ii), except that $30,000,000 of such excess shall remain without fiscal year limitation in a contingency fund and, in any fiscal year in which receipts are insufficient to cover the costs described in subparagraph (A)(i) and (ii), shall be used for—

(I) the costs of providing the services described in subparagraph (A)(i), and

(II) after the costs described in subclause (I) are paid, the costs of providing the personnel and equipment described in subparagraph (A)(ii) at the preceding fiscal year level.

(iii) For each fiscal year, the Secretary of the Treasury shall calculate the difference between—

(I) the estimated cost for overtime compensation that would have been incurred during that fiscal year for inspectional services if sections 261 and 267 of this title, as in effect before the enactment of section 13811 of the Omnibus Budget Reconciliation Act of 1993, had governed such costs, and

(II) the actual costs for overtime compensation, premium pay, and agency retirement contributions that is incurred during that fiscal year in regard to inspectional services under section 267 of this title, as amended by section 13811 of the Omnibus Budget Reconciliation Act of 1993, had governed such costs, and

(III) the actual cost for overtime compensation, premium pay, and agency retirement contributions that is incurred during that fiscal year for foreign language proficiency awards under section 267a of this title, and shall transfer from the Customs User Fee Account to the General Fund of the Treasury an amount equal to the difference calculated under this clause, or $18,000,000, whichever amount is less. Transfers shall be made under this clause at least quarterly and on the basis of estimates to the same extent as are reimbursements under subparagraph (B)(iii).
(D) At the close of each fiscal year, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives summarizing the expenditures, on a port-by-port basis, for which reimbursement has been provided under subparagraph (A)(ii).

(E) Nothing in this paragraph shall be construed to preclude the use of appropriated funds, from sources other than the fees collected under subsection (a) of this section, to pay the costs set forth in clauses (i), (ii), and (iii) of subparagraph (A).

(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) of this section should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.

(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the “Customs Commercial and Homeland Security Automation Account”. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A) of this section, $350,000,000.

(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

(C) In adjusting the fee imposed by subsection (a)(9)(A) of this section for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.

(6) Of the amounts collected in fiscal year 1999 under paragraphs (9) and (10) of subsection (a) of this section, $50,000,000 shall be available to the Customs Service, subject to appropriations Acts, for automated commercial systems. Amounts made available under this paragraph shall remain available until expended.

(g) Regulations and enforcement

(1) The Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section. Regulations issued by the Secretary of the Treasury under this subsection with respect to the collection of the fees charged under subsection (a)(5) of this section and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of title 26, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(2) Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee prescribed under subsection (a) of this section, and with respect to persons liable therefor, as if such fee is a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the amount of the fee assessed. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any fee prescribed under subsection (a) of this section shall be treated as if such fee is a customs duty.

(h) Omitted

(i) Effect on other authority

Except with respect to customs services for which fees are imposed under subsection (a) of this section, nothing in this section shall be construed as affecting the authority of the Secretary of the Treasury to charge fees under section 58a of this title.

(j) Effective dates

(1) Except as otherwise provided in this subsection, the provisions of this section, and the amendments and repeals made by this section, shall apply with respect to customs services rendered after the date that is 90 days after April 7, 1986.

(2) Fees may be charged under subsection (a)(5) of this section only with respect to customs services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after the date that is 90 days after April 7, 1986.

(3)(A) Fees may not be charged under paragraphs (9) and (10) of subsection (a) of this section after January 7, 2020.

(B)(i) Subject to clause (ii), Fees may not be charged under paragraphs (9) and (10) of subsection (a) of this section after January 14, 2020.

(ii) In fiscal year 2016 and in each succeeding fiscal year for which fees under paragraphs (1) through (8) of subsection (a) of this section are authorized—

(I) the Secretary of the Treasury shall charge fees under each such paragraph in amounts that are reasonably related to the costs of providing customs services in connection with the activity or item for which the fee is charged under such paragraph, except

1So in original. Probably should not be capitalized.
that in no case may the fee charged under any such paragraph exceed by more than 10 percent the amount otherwise prescribed by such paragraph:

(II) the amount of fees collected under such paragraphs may not exceed, in the aggregate, the amounts paid in that fiscal year for the costs described in subsection (f)(3)(A) of this section incurred in providing customs services in connection with the activity or item for which the fees are charged under such paragraphs;

(III) a fee may not be collected under any such paragraph except to the extent such fee will be expended to pay the costs described in subsection (f)(3)(A) of this section incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph; and

(IV) any fee collected under any such paragraph shall be available for expenditure only to pay the costs described in subsection (f)(3)(A) of this section incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph.

(k) Advisory committee

The Commissioner of Customs shall establish an advisory committee whose membership shall consist of representatives from the airline, cruise ship, and other transportation industries and shall advise the Commissioner on issues related to the performance of the inspectional services of the United States Customs Service.

The advisory committee shall meet on a periodic basis and shall advise the Commissioner on issues related to the performance of the inspectional services of the United States Customs Service. Such advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Commissioner shall give considera-

ation to the views of the advisory committee in the exercise of his or her duties.

Title 19: Customs Duties

§ 58c

For termination of amendment by section 107(c) of Pub. L. 109–283, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 109–283, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 106–189, see Effective and Termination Dates of 2004 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 106–189, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(10)(A), is section 202 of Pub. L. 100–449, which is set out as a note under section 2121 of this title.

Section 112 of the Customs and Trade Act of 1990, referred to in subsec. (b)(11), is section 112 of Pub. L. 101–352, which is set out below.

Section 202 of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsection (b)(12), is section 202 of Pub. L. 108–27, which is set out in a note under section 8355 of this title.

Section 202 of the United States-Singapore Free Trade Agreement Implementation Act, referred to in subsection (b)(13), is section 202 of Pub. L. 108–28, which is set out in a note under section 8355 of this title.

Section 202 of the United States-Australia Free Trade Agreement Implementation Act, referred to in subsection (b)(14), is section 202 of Pub. L. 109–3, which is set out in a note under section 8355 of this title.

Section 202 of the United States-Bahrain Free Trade Agreement Implementation Act, referred to in subsection (b)(15), is section 202 of Pub. L. 109–198, which is set out in a note under section 8355 of this title.

Section 202 of the United States-Oman Free Trade Agreement Implementation Act, referred to in subsection (b)(16), is section 202 of Pub. L. 109–263, which is set out in a note under section 8355 of this title.

Section 203 of the United States-Peru Trade Promotion Agreement Implementation Act, referred to in subsection (b)(18), is section 203 of Pub. L. 110–185, which is set out in a note under section 8355 of this title.

Act of June 18, 1994 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.), referred to in subpart (A)(iv) of section 13031, is act June 18, 1994, c. 599, 28 Stat. 939, which is classified generally to chapter 1A (§ 81a et seq.) of this title. For complete classification of this Act to the Code, see Tables.

Sections 261 and 267 of this title, as in effect before the enactment of section 13811 of the Omnibus Budget Reconciliation Act of 1993, referred to in subpart (A)(iv) of section 13031, are sections 261 and 267 of this title, as in effect before the enactment of section 13811 of the Omnibus Budget Reconciliation Act of 1993, referred to in subpart (A)(iv) of section 13031.

The amendments and repeals made by this section, referred to in subsection (b)(1), mean the amendment of section 546(b) of Title 45, Railroads, and the repeal of section 1741(e) of former Title 49, Transportation, by subsection (h) of this section.

14 of the Federal Advisory Committee Act, referred to in subsection (k), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

Codification


Section is comprised of section 13031 of Pub. L. 99–272. Subsection (b) of section 13031 of Pub. L. 99–272 amended section 546(b) of Title 45, Railroads, and repealed section 1741(e) of former Title 49, Transportation.

Amendments


Subsec. (b)(9)(A)(i). Pub. L. 108–429, § 2004(f)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "Subject to the provisions of subparagraph (B), in the case of an express consignment carrier facility or centralized hub facility, $.66 per individual airway bill or bill of lading."
Subsec. (f)(2). Pub. L. 108–357, § 892(a)(2), substituted provisions authorizing availability of amounts for customs revenue functions and for automation and other purpose, for provisions authorizing availability of amounts for commercial operations, including, but not limited to, costs associated with commercial passenger, vessel, vehicle, aircraft, and cargo processing; and inserted provisions relating to insufficiency of funds to pay costs of customs revenue functions and modification or supersession of provisions.
Subsec. (j)(3). Pub. L. 108–357, § 892(c)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Fees may not be charged under subsection (a) of this section after March 1, 2005."
2002—Subsec. (b)(9)(A). Pub. L. 107–210, § 337(f)(1)(A), in introductory provisions, substituted "the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at an amount that is less than $2,000 (or such higher amount as the Secretary may vary pursuant to section 1408 of this title)" for "the processing of merchandise that is informally entered or released".
Subsec. (b)(9)(A)(i). Pub. L. 107–210, § 337(a)(1)(B), added cl. (i) and struck out former cl. (ii) which read as follows: "In the case of an express consignment carrier facility or centralized hub facility—

(i) an amount, for which the Customs Service shall be reimbursed under section 1524 of this title, equal to the cost of the services provided by the Customs Service for the facility during the fiscal year; and

(ii) an annual payment by the facility to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) of this section for such fiscal year, in an amount equal to the reimbursement made under subparagraph (A) for the fiscal year.

Subsec. (b)(9)(B), (C). Pub. L. 107–210, § 337(a)(2), added subpar. (B) and redesignated former subpar. (B) as (C).
Subsec. (f)(1)(B). Pub. L. 107–296, § 419(a)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: "the portion of such fees that is determined by the Secretary to be excess fees under paragraph (5)".
Subsec. (f)(4). Pub. L. 107–296, § 419(a)(2), struck out "(other than the excess fees determined by the Secretary under paragraph (5))" after "subsection (a) of this section".
Subsec. (f)(5). Pub. L. 107–296, § 419(a)(3), added par. (5) and struck out former par. (5) which read as follows: "At the close of each of fiscal years 1994, 1995, 1996, and 1997, the Secretary of the Treasury shall determine the amount of the fees collected under paragraph (5)(A) of subsection (a) of this section for that fiscal year that exceeds the amount of such fees that would have been collected for such fiscal year if the fees that were in effect on the day before the effective date of this paragraph were in effect for such fiscal year. The amount of the excess fees determined under the preceding sentence shall be deposited in the Customs User Fee Account and shall be available for reimbursement of inspectional costs (including passenger processing costs) not otherwise reimbursed under this section, and shall be available only to the extent provided in appropriations Acts."
2000—Subsec. (b)(1)(A)(iii). Pub. L. 106–476 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "the arrival of any ferry; or".

(B) For fiscal year 1998 and each fiscal year thereafter, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)(i) of this section), $5.

Subsec. (b)(1)(A). Pub. L. 106–36, § 2128(b)(2), substituted "Except as provided in subsection (a)(5)(B) of this section, no fee" for "No fee" in introductory provisions.
Subsec. (f)(3)(A)(i). Pub. L. 106–36, § 1001(b)(1)(B), substituted "collected under paragraphs (1) through (8) of subsection (a) for "collected under subsection (a)(1) through (a)(8)"
Subsec. (f)(3)(A)(ii). Pub. L. 106–36, § 2128(a), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "to the extent funds remain available after making reimbursements under clause (ii), in providing salaries for up to 50 full-time equivalent inspectional positions through September 30, 1998, that enhance customs services in connection with the arrival in Florida of passengers aboard commercial vessels, regardless of whether those passengers are required to pay fees under paragraphs (1) through (8) of subsection (a) of this section.

Subsec. (b)(1). Pub. L. 104–295, § 38(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "No fee may be charged under subsection (a) of this section for customs services provided in connection with—


Subsec. (b)(5). Pub. L. 104–295, § 58(b)(5), redesignated former subpars. (C) and (D) as (1) and (2), respectively, of subpar. (C). Pub. L. 104–295, § 58(c), added subpar. (E).

Subsec. (f)(1). Pub. L. 103–66, § 13813(2), inserted ‘‘in the United States or in a foreign country’’ after ‘‘in providing’’.

Subsec. (g). Pub. L. 103–182, § 682, in par. (1), substituted ‘‘the Secretary of the Treasury’’ for ‘‘the Commissioner’’.

Subsec. (h). Subsec. (h) redesignated subsec. (i). Pub. L. 101–250, § 281(a)(8), redesignated subsec. (i) as (h) and inserted ‘‘for’’ before ‘‘the Secretary’’.

Subsection (i) redesignated subsec. (j). Pub. L. 101–250, § 281(a)(9), redesignated subsec. (j) as (i) and inserted ‘‘for’’ before ‘‘the Secretary’’.

sonnel at airports. Such regulations shall provide, among such other factors considered appropriate by the Secretary, that—

(A) the work shifts will be adjusted, as necessary, to meet cyclical and seasonal demands and to minimize the use of overtime;

(B) the work shifts will not be arbitrarily reduced or compressed; and

(C) consultation with the Advisory Committee on Commercial Operations of the United States Customs Service (established under section 9901(c) of the Omnibus Budget Reconciliation Act of 1987) will be carried out before adjustments are made in the work shifts.


1990—Subsec. (a)(8). Pub. L. 101–508, §10001(b), amended subpar. (C) generally. Prior to amendment, par. (9) read as follows: “For the processing of merchandise that is formally entered or released during any fiscal year, a fee, subject to the limitations in subsection (b)(8)(A) of this section, in an amount equal to 0.17 percent ad valorem.”

Pub. L. 101–382, §111(a), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse for consumption—

(i) after November 30, 1986, and

(ii) before October 1, 1987; a fee in an amount equal to 0.22 percent ad valorem.”

Subsec. (a)(10). Pub. L. 101–508, §10001(b), inserted “if more than 25,000 informal entries were cleared through such airport or facility during the fiscal year preceding such entry or release,” after “applies,” in subpar. (C).

Pub. L. 101–382, §111(a), amended par. (10) generally. Prior to amendment, par. (10) read as follows: “For the processing of any merchandise (other than an article described in subheading 9802.00.60 or 9802.00.80, as (D).”

Subsec. (b)(8)(D). Pub. L. 101–382, §1389(c)(3), substituted “subheading 9802.00.60 or heading 9802.00.80 of Schedule” in concluding provisions.


Subsec. (b)(8)(D)(i). Pub. L. 101–382, §111(b)(2)(D)(i), substituted “except as otherwise provided in this paragraph, be based” for “be based”.

Subsec. (b)(8)(D)(ii). Pub. L. 101–382, §1389(c)(1), substituted “subheading 9802.00.60 of the Harmonized Tariff Schedule of the United States” for “subparagraph 9802.00.60 of the Tariff Schedule of the United States”, which directed amendment of cl. (iv) by substituting “heading 9802.00.80 of such Schedule” for “subparagraph 9802.00.80 of Schedules”, could not be executed because “subparagraph 9802.00.80 of Schedules” did not appear in text.


Subsec. (b)(9). Pub. L. 101–508, §10001(e)(2), inserted “...if more than 25,000 informal entries were cleared through such airport or facility during the preceding fiscal year after ‘applies’ in subpar. (B)”.

Pub. L. 101–382, §111(b)(3), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “The Secretary may reduce by an amount he considers equitable the fees charged under subsection (a) of this section for the processing of merchandise entries at facilities at which users reimburse the United States Customs Service, pursuant to section 9701 of title 31 or section 58b of this title, for the services that it provides at the facilities.”


Subsec. (f)(1) to (3). Pub. L. 100–203, §9501(a)(3), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

“(1) Notwithstanding section 1524 of this title, all of the fees collected under subsection (a) of this section shall be deposited in a separate account within the general fund of the Treasury of the United States. Such account shall be known as the ‘Customs User Fee Account’.

“(2)(A) The Secretary of the Treasury shall refund out of the Customs User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Secretary in providing:

“(A) inspectional overtime services; and

“(B) all preclearance services;

for which the recipient of such services is not required to reimburse the Secretary of the Treasury. Reimbursement under this paragraph shall apply with respect to each fiscal year occurring after September 30, 1987, and shall be made at least quarterly.

To the extent necessary, reimbursement of appropriations under this paragraph may be made on the basis of estimates made by the Secretary of the Treasury of the costs for inspectional overtime and preclearance services, and adjustments shall be made in subsequent reimbursements to the extent that the estimates were in excess of, or less than, the amounts required to be reimbursed under this paragraph.

Subsec. (g). Pub. L. 100–203, §9501(a)(4), designated existing provisions as par. (1), substituted “In addition to the regulations required under paragraph (2), the” for “The”, and added par. (2).


1989—Subsec. (e)(4) to (6). Pub. L. 100–203, §9501(a)(2), added subpars. (4) to (6) which directed the amendment of subsec. (e) by adding subpars. (4) to (6) at the end thereof, was executed by adding subpars. (4) to (6) after par. (7) as the probable intent of Congress in view of the intervening addition of pars. (9) and (10) by Pub. L. 99–509.

Subsec. (a)(9), (10). Pub. L. 99–509, §8101(b), added pars. (9) and (10).

Subsec. (b)(1)(A). Pub. L. 100–99, §1883(a)(1)(A), added subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The term ‘vessel’ does not include any ferry.”


Subsec. (e)(1). Pub. L. 99–514, §1893(d)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Notwithstanding section 1461 of this title or any other provision of law (other than paragraph (2)), the customs services required to be provided to passengers upon arrival in the United States on scheduled airline flights at customs serviced airports shall be adequately provided when needed and at no cost (other than the fees imposed under subsection (a) of this section) to airlines and airline passengers.”

Subsec. (e)(2). Pub. L. 99–509, §8101(c)(2), substituted “This subsection” for “Paragraph (1)” for “this subsection”.

Subsec. (e)(3). Pub. L. 99–514, §1893(d)(2)(B), which directed the amendment of subsec. (e) by adding par. (3) at the end thereof, was executed by adding par. (3) after par. (2) as the probable intent of Congress in view of the intervening addition of par. (4) by Pub. L. 99–509.


Subsec. (f)(3). Pub. L. 99–509, §8101(d), added pars. (3) and (4).

Subsec. (g). Pub. L. 99–514, §1893(e), inserted provisions relating to regulations with respect to collection and remittance of fees.


Subsec. (j)(1), (3). Pub. L. 99–509, §8101(e), substituted ‘‘otherwise provided in this subsection’’ for ‘‘provided in paragraph (2)’’ in par. (1) and added par. (3).

EFFECTIVE DATE OF 2010 AMENDMENT


Pub. L. 111–210, §5, July 27, 2010, 124 Stat. 2257, provided that: ‘‘This title [amending this section and enacting and amending provisions set out as notes under section 6655 of Title 26, Internal Revenue Code, and section 1701 of Title 50, War and National Defense] and the amendments made by this joint resolution shall take effect on the date of the enactment of this joint resolution [July 27, 2010] or July 26, 2010, whichever occurs earlier.’’

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–42, title I, §104, July 28, 2009, 123 Stat. 1963, provided that: ‘‘This title [amending this section and enacting and amending provisions set out as notes under section 1701 of Title 50, War and National Defense] and the amendments made by this title shall take effect on the date of the enactment of this joint resolution [July 28, 2009] or July 26, 2009, whichever occurs first.’’

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–287, §4, July 29, 2008, 122 Stat. 2619, provided that: ‘‘This joint resolution [amending this section and enacting and amending provisions set out as notes under section 6655 of Title 26, Internal Revenue Code, and section 1701 of Title 50, War and National Defense] and the amendments made by this joint resolution shall take effect on the date of the enactment of this joint resolution [July 28, 2008] or July 26, 2008, whichever occurs first.’’


EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Amendment by Pub. L. 110–138 effective on the date on which the United States-Peru Trade Promotion Agreement enters into force (Feb. 1, 2009) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 110–138, set out in a note under section 3805 of this title.

Pub. L. 110–32, §5, Aug. 1, 2007, 121 Stat. 263, provided that: ‘‘This joint resolution [amending this section, enacting provisions set out as a note under section 1701 of Title 50, War and National Defense, and amending provisions set out as a note under section 6655 of Title 26, Internal Revenue Code] and the amendments made by this joint resolution shall take effect on the date of the enactment of this joint resolution [Aug. 1, 2007] or July 26, 2007, whichever occurs first.’’

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Amendment by Pub. L. 109–283 effective on the date on which the United States-Oman Free Trade Agreement enters into force (Jan. 1, 2009) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 109–283, set out in a note under section 3805 of this title.

Pub. L. 109–280, title XIV, §1461, Aug. 17, 2006, 120 Stat. 1172, provided that: ‘‘Except as otherwise provided in this title [amending this section and sections 1466, 1484, 1514, 1529, 1597, 1599, 1562, 1567, 1569, 1550, 1150, 1151, 1155, 1156, 1157, 1160, 1162, 1163, 1165, 1166, 1167, 1168, 1169, 1170, 1171, and 1172 of this title], this joint resolution shall take effect on the date of the enactment of this joint resolution [Aug. 17, 2006].’’

Amendment by Pub. L. 109–169 effective on the date on which the United States-Bahrain Free Trade Agreement enters into force (Aug. 1, 2006) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 109–169, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109–53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to have effect on date Agreement ceases to be in force with respect to the United States and, during any period in which a country ceases to be a CAFTA-DR country, to have effect with respect to such country, see section 116 of Pub. L. 109–53, set out as an Effective and Termination Dates note under section 4001 of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by Pub. L. 108–286 effective on the date on which the United States-Australia Free Trade Agreement enters into force (Jan. 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 108–286, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENTS

Amendment by Pub. L. 108–78 effective on the date the United States-Singapore Free Trade Agreement enters into force (Jan. 1, 2004) and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–78, set out in a note under section 3805 of this title.

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–77, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2002 AMENDMENTS

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as
an Effective Date note under section 101 of Title 6, Domestic Security.


Effective Date of 2000 Amendment

Pub. L. 106–476, title I, §1471, Nov. 9, 2000, 114 Stat. 2174, provided that: “Except as otherwise provided in this title [enacting section 1308 of this title, amending this section, sections 1313, 1343, 1494, 1441, 1494, 1505, and 1555 of this title, section 69 of Title 15, Commerce and Trade, and section 91 of Title 46, Appendix, Shipping, and enacting provisions set out as notes under sections 1308, 1313, 1494, and 1604 of this title and section 1113 of Title 19, Customs Duties, and the amendments made by this title shall apply with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after the date of the enactment of this Act [Nov. 9, 2000].”

Effective Date of 1999 Amendment

Pub. L. 106–36, title II, §2412(f), June 25, 1999, 113 Stat. 177, provided that: “The amendments made by this section [amending this section and section 1505 of this title] shall take effect 30 days after the date of the enactment of this Act [June 25, 1999].”

Effective Date of 1996 Amendment

Section 4(b) of Pub. L. 101–295 provided that: “The amendments made by subsection (a) [amending this section] to—

(1) any entry made from a foreign trade zone on or after the 15th day after the date of the enactment of this Act [Oct. 11, 1996]; and

(2) any entry made from a foreign trade zone after November 30, 1986, and before such 15th day if liquidation of the entry was not final before such 15th day.”


(2) MERCHANDISE PROCESSING FEES FOR SMALL AIR CARRIERS.—The amendments made by subsection (e) [amending this section] shall take effect as if included in section 111 of the Customs and Trade Act of 1990 [Pub. L. 101–382, set out below].

(3) MANUAL ENTRIES AND RELEASES.—The amendment made by subsection (f) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].”

Section 115 of Pub. L. 101–382 provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this subtitle [subtitle B (§§ 111–115) of title I of Pub. L. 101–382, enacting section 3082 of this title, amending this section, and enacting provisions set out as notes below], and the amendments made by this subtitle, take effect October 1, 1990, but the amendment made by section 111(b)(1) [amending this section] applies with respect to railroad cars arriving in the United States on or after July 7, 1986.

(b) EXCEPTIONS.—The amendment made by section 111(d) [amending this section], and section 112 [enacting provisions set out below], take effect on the date of the enactment of this Act [Aug. 20, 1990].”

Effective and Termination Dates of 1988 Amendments

Section 9001(b) of Pub. L. 100–647 provided that: “The amendments made by this section [amending this section, sections 1330, 1332, 1337, 1671, 1677, 1677–2, 2131, 2138, 2212, 2253, 2254, 2296, and 2703 of this title, and provisions set out as notes below] shall be applied as if such amendments took effect on August 23, 1988.”

Amendment by Pub. L. 100–449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 561(a), and subsections (b) and (c) of Pub. L. 100–449, set out in a note under section 2112 of this title.

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

Effective Date of 1987 Amendment

Section 9501(d) of Pub. L. 100–203 provided that:

“(1) Except as otherwise provided in this subsection, the provisions of this section [amending this section, enacting provisions set out as a note under section 3 of this title, and amending provisions set out below] take effect on the date of the enactment of this Act [Dec. 22, 1986].

“(2) The amendments made by subsection (a)(1) [amending this section] apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.

“(3) The amendment made by subsection (a)(3) [amending this section] shall take effect on October 1, 1987.”

Effective Date of 1986 Amendment; Refunds

Section 1809(g) of Pub. L. 99–514, as amended by Pub. L. 100–203, title IX, §9501(b), Dec. 22, 1987, 101 Stat. 1330–379, provided that:
(1) The amendments made by this section [amending this section and section 1741 of former Title 49, Transportation, and enacting provisions set out below] shall apply with respect to services rendered after the date that is 15 days after the date of enactment of this Act [Oct. 22, 1986].

(2) Upon written request filed by any person with the Secretary of the Treasury (hereafter in this subsection referred to as the ‘Secretary’) before the date that is 90 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] which is made in connection with such documentation establishing proof of payment as the Secretary may require, the Secretary shall refund (out of funds in the Treasury of the United States not otherwise appropriated) to such person an amount equal to the excess of—

(A) the amount of fees imposed by section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [this section] that were paid by such person to the Secretary with respect to customs services provided—

(1) after July 6, 1986, and

(2) on or before the date that is 15 days after the date of enactment of this Act, over

(B) the amount of fees such person would have been required to pay to the Secretary by reason of subsection (a)(1) and (b) [amending this section] applied with respect to such services.

(3) If the customs broker permit fee paid by any person for calendar year 1986 under section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 exceeds $62.50, the Secretary shall either—

(A) refund (out of funds in the Treasury of the United States not otherwise appropriated) to such person the amount of the excess, or

(B) if requested by such person, credit the amount of the excess to the fee due under such section 13031(a)(7) with respect to such permit for calendar year 1987."

CONSTRUCTION OF 1993 AMENDMENT

Section 212 of title II of Pub. L. 103–182 provided that: 'Any amendment in this title [amending this section and sections 81, 1301, 1304, 1311 to 1315, 1508, 1514, 1520, 1562, 1592, and 1629 of this title] to a law that is also amended under title VI [see Tables for classification] shall be made after the title VI amendment is executed.'

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TIME FOR REMITTING CERTAIN COBRA AND MERCHANDISE PROCESSING FEES


sons having the custody or disposition of any public money.

(Feb. 8, 1875, ch. 36, § 23 (part), 18 Stat. 312.)

CODIFICATION

Section is based on section 23 (as related to persons acting under any customs law) of act Feb. 8, 1875. Provisions of section 23 (as related to persons acting under any internal revenue law or any revenue provisions of any law of the United States) were repealed effective Feb. 11, 1939, by section 4 of act Feb. 10, 1939 (53 Stat. 1) and incorporated as section 4048 of Title 26, Internal Revenue Code of 1939. The Internal Revenue Code of 1939 was repealed by the Internal Revenue Code of 1954. The Internal Revenue Code of 1954 was redesignated the Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. Provisions of former section 4048 are covered by section 7344 of Title 26, Internal Revenue Code.

§ 66. Rules and forms prescribed by Secretary

The Secretary of the Treasury shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations not inconsistent with law, to be used in carrying out the provisions of law relating to raising revenue from imports, or to duties on imports, or to warehousing, and shall give such directions to customs officers as may be necessary for the proper execution of the law.


CODIFICATION

R.S. § 251 derived from acts Feb. 10, 1830, ch. 11, §§ 14, 15, 3 Stat. 543; Aug. 6, 1846, ch. 84, § 9, 5 Stat. 55; May 14, 1866, Res. 9, 11 Stat. 144; June 30, 1864, ch. 172, §§ 8, 13 Stat. 221; July 14, 1870, ch. 255, § 34, 16 Stat. 271. R.S. § 251, which was also classified in part to section 427 of former Title 31, was repealed in part and reenacted as section 321(a)(5) of Title 31, Money and Finance, by Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067.

AMENDMENTS


EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–271 effective with respect to articles entered, or withdrawn from warehouse for consumption on or after Oct. 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, or with respect to which a protest has not been disallowed in whole or in part before Oct. 1, 1970, see section 203 of Pub. L. 91–271, set out as a note under section 1505 of this title.

TRANSFER OF FUNCTIONS

All offices of collector of customs, commissioner of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out as a note under section 1 of this title. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.


Section, R.S. § 2636, derived from act Mar. 2, 1799, ch. 22, § 73, 1 Stat. 680.


Section 62, R.S. § 2380, related to reports by inspectors on routes by which goods withdrawn from bonded warehouse could be exported to Mexico.

Section 62, acts Dec. 18, 1890, ch. 22, 26 Stat. 690; June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740, related to suspension for neglect or delinquency of officers or employees. See chapter 75 of Title 5, Government Organization and Employees, and Office of Personnel Management regulations.


Section, act Aug. 28, 1890, ch. 812, §§ 1, 2, 26 Stat. 362, provided for leaves of absence of officers and employees in customs service who receive per diem compensation. Section was additionally repealed by Pub. L. 91–271, title III, § 321(a), June 2, 1970, 84 Stat. 296.

§ 64. Laws imposing fines applicable to persons acting under customs laws

All Acts and parts of Acts imposing fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury of the United States, or under any bureau thereof, shall apply to all persons whomsoever, employed, appointed, or acting under the authority of any customs law, when such persons are designated or acting as officers or deputies, or per-
ness and is covered by section 331 of Title 31, Money and Finance.

§ 68. Enforcement of customs and immigration laws in Guam and the Virgin Islands and along Canadian and Mexican borders; cooperation by Secretary of the Treasury and Attorney General; erection of buildings

To aid in the enforcement of the customs and immigration laws along the Canadian and Mexican borders and to provide better facilities for such enforcement at points along such borders at which no Federal or other buildings adapted or suitably located for the purpose are available, and for similar purposes in the Virgin Islands of the United States, the Secretary of the Treasury and the Attorney General are hereby authorized to expend, and for similar purposes in Guam the Attorney General is hereby authorized to expend, from the funds appropriated for the general maintenance and operation of the Customs and the Immigration and Naturalization Services, respectively, the necessary amounts for the acquisition of land and the erection of buildings, sheds, and office quarters, including living quarters for officers where none are otherwise available: Provided, That the total amount which may be so expended for any one project, including the site, shall not exceed $300,000 and that where the project is for the joint use of the Customs Service and the Immigration and Naturalization Service, the combined cost of the project, including the site, shall be charged to the two appropriations concerned.


AMENDMENTS

1974—Pub. L. 93-396 substituted "$200,000" for "$100,000".
1965—Pub. L. 89-87 extended to Guam and the Virgin Islands the authority of the Attorney General and the Secretary of the Treasury to construct facilities for the enforcement of the customs and immigration laws.
1962—Pub. L. 87-465 substituted "$100,000" for "$40,000" and "$80,000".
1960—Pub. L. 86-166 substituted "$40,000" and "$30,000" for "$30,000" and "$60,000", respectively.
1956—Act May 18, 1956, substituted "$30,000" and "$60,000" for "$15,000" and "$30,000", respectively.
1951—Act Sept. 26, 1951, substituted "$15,000" and "$30,000" for "$5,000" and "$10,000", respectively.
1940—Act Oct. 10, 1940, substituted "$5000" and "$10,000" for "$3000" and "$6000", respectively.

TRANSFER OF FUNCTIONS

For transfer of functions, persons, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. Customs Service was under Department of the Treasury.

Immigration and Naturalization Service of Department of Labor (including Office of Commissioner of Immigration and Naturalization) and its functions were transferred to Department of Justice, to be administered under direction and supervision of Attorney General; and functions and powers of Secretary of Labor relating to administration of the Service and its functions or to administration of immigration and naturalization laws were transferred to Attorney General, by Reorg. Plan No. V of 1940, eff. June 15, 1940, 5 F.R. 2223, 54 Stat. 1238, set out in the Appendix to Title 5.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 69. Erection of protective gates and fences across and around roads crossing borders

The Secretary of the Treasury is authorized to expend, from the funds appropriated for the general maintenance and operation of the Customs Service, such amounts as may be necessary for the erection of protective gates across international highways and roads crossing the Canadian and Mexican borders and for the erection of such fences in the immediate vicinity of such highways and roads as may be necessary to prevent unlawful entry or smuggling.

(June 26, 1930, ch. 617, §2, as added Oct. 10, 1940, ch. 837, 54 Stat. 1092.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. Customs Service was under Department of the Treasury.

Functions vested by law in Attorney General, Department of Justice, or any other officer or any agency of that Department, with respect to inspection at regular inspection locations at ports of entry of persons, and documents of persons, entering or leaving United States, were to have been transferred to Secretary of the Treasury by 1973 Reorg. Plan No. 2, §2, eff. July 1, 1973, 38 F.R. 15932, 87 Stat. 1091, set out in the Appendix to Title 5. The transfer was negated by section 1(a)(1), (b) of Pub. L. 92-233, Mar. 16, 1971, 85 Stat. 50, which repealed section 2 of 1973 Reorg. Plan No. 2, eff. July 1, 1973.
\section*{CHAPTER 1A—FOREIGN TRADE ZONES}

\textbf{§ 81a. Definitions}

When used in this chapter—
(a) The term “Secretary” means the Secretary of Commerce;
(b) The term “Board” means the Board which is established to carry out the provisions of this chapter. The Board shall consist of the Secretary of Commerce, who shall be chairman and executive officer of the Board, and the Secretary of the Treasury;
(c) The term “State” includes any State, the District of Columbia, and Puerto Rico;
(d) The term “corporation” means a public corporation and a private corporation, as defined in this chapter;
(e) The term “public corporation” means a State, political subdivision thereof, a municipality, a public agency of a State, political subdivision thereof, or municipality, or a corporate municipal instrumentality of one or more States;
(f) The term “private corporation” means any corporation (other than a public corporation) which is organized for the purpose of establishing, operating, and maintaining a foreign-trade zone and which is chartered under special Act enacted after June 18, 1934, of the State or States within which it is to operate such zone;
(g) The term “applicant” means a corporation applying for the right to establish, operate, and maintain a foreign-trade zone;
(h) The term “grantee” means a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted;
(i) The term “zone” means a “foreign-trade zone” as provided in this chapter.

\textbf{§ 81b. Establishment of zones}

The Board is authorized, subject to the conditions and restrictions of this chapter and of the rules and regulations made thereunder, upon application as hereinafter provided, to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States.

\textbf{§ 81c. Exemption from customs laws of merchandise brought into foreign trade zone}

When merchandise is brought into a foreign-trade zone for the purpose of manufacturing, assembling, or processing such merchandise or any part thereof, such merchandise shall not be considered merchandise entered under specific amendments by Pub. L. 101–508 subject to floor stocks tax under certain circumstances, see section 12218 of Pub. L. 101–508, set out as a note under section 5001 of Title 26, Internal Revenue Code.

\textbf{§ 81d. Customs officers and guards}

Customs officers and guards shall be stationed at such places within foreign-trade zones as the Secretary of the Treasury shall, by regulation, prescribe.

\textbf{§ 81e. Vessels entering or leaving zone; coastwise trade}

When any vessel enters or leaves a foreign-trade zone, the master of such vessel shall provide for the convenience of commerce, regulation, and discipline of the officers and crew, and management and control of such vessel and its cargo.

\textbf{§ 81f. Application for establishment and expansion of zone}

When an application for establishment or expansion of a zone is made, the Secretary of the Treasury, in the exercise of his discretion, shall consider the economic and educational advantages to be derived from the establishment of the zone, the need of the zone for additional facilities, and the public interest in the establishment of the zone.

\textbf{§ 81g. Granting of application}

When an application is approved, the Secretary of the Treasury shall issue a certificate, specifying the terms and conditions of the grant.

\textbf{§ 81h. Rules and regulations}

The Secretary of the Treasury may, from time to time, make rules and regulations with respect to the establishment, operation, and maintenance of foreign-trade zones.

\textbf{§ 81i. Cooperation of Board with other agencies}

The Board may cooperate with the Interstate Commerce Commission and any other federal, state, or local agency in promoting and effecting the purposes of this chapter.

\textbf{§ 81j. Cooperation of other agencies with Board}

Other federal, state, or local agencies may cooperate with the Board in promoting and effecting the purposes of this chapter.

\textbf{§ 81k. Agreements as to use of property}

The Board may make agreements with any public corporation or agency of the United States for the use of such property as is necessary for the establishment, operation, and maintenance of foreign-trade zones.

\textbf{§ 81l. Facilities to be provided and maintained}

The Board shall provide and maintain such facilities as are necessary for the establishment, operation, and maintenance of foreign-trade zones.

\textbf{§ 81m. Operation of zone as public utility; cost of customs service}

The cost of the operation of foreign-trade zones as public utilities shall be paid by the Federal Government.

\textbf{§ 81n. Operation of zone as public utility; cost of customs service}

The cost of the operation of foreign-trade zones as public utilities shall be paid by the Federal Government.

\textbf{§ 81o. Residents of zone}

The residents of foreign-trade zones shall have the same rights as the residents of the States in which such zones are located.

\textbf{§ 81p. Accounts and recordkeeping}

The Board shall require such accounts and recordkeeping as it deems necessary to carry out the provisions of this chapter.

\textbf{§ 81q. Transfer of grant}

The Board may transfer to a public corporation a grant of a zone.

\textbf{§ 81r. Revocation of grants}

The Board may revoke a grant of a zone, if the zone is not being operated in conformity with the terms and conditions of the grant.

\textbf{§ 81s. Offenses}

When any person obstructs or hinders, or shall intentionally cause any obstruction or hindrance to any officer in lawfully going on board such vessel, for the purpose of carrying into effect any of the revenue or navigation laws of the United States, he shall for every such offense be liable to a penalty of not more than $2,000 nor less than $500.

\textbf{§ 81t. Separability}

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the validity of the remainder thereof and the application thereof to other persons or circumstances shall not be affected thereby.

\textbf{§ 81u. Right to alter, amend, or repeal chapter}

The chapter may be altered, amended, or repealed by Act of Congress.
application by any public corporation for the establishment of any zone in such State, unless such application has been authorized by an Act of the legislature of such State (enacted after June 18, 1934).

(June 18, 1934, ch. 590, § 2, 48 Stat. 999.)

§ 81c. Exemption from customs laws of merchandise brought into foreign trade zone

(a) Handling of merchandise in zone; shipment of foreign merchandise into customs territory; appraisal; reshipment to zone

Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, re-packed, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported, destroyed, or sent into customs territory of the United States from, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: Provided, That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes, and whether, and irrecoverable waste; and if recoverable such duties and taxes shall be payable on the article. Allowance shall be made for recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: Provided further, That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: Provided further, That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: Provided further, That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

1. the drawback, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

2. the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of section 1201 of this title: Provided further, That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraphs 367 or 368 of section 1001 of this title, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this chapter prior to July 1, 1949: Provided further, That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section may, on such importation, be entered as American goods returned: Provided, fur-
ther. That no merchandise that consists of goods subject to NAFTA drawback, as defined in section 3333(a) of this title, that is manufactured or otherwise changed in condition shall be exported to a NAFTA country, as defined in section 3301(d) of this title, without an assessment of duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of duty before the 61st day after the date of exportation of the article, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid or owed to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B) of the Tariff Act of 1930 [19 U.S.C. 1508(b)(2)(B)] in an amount that does not exceed the lesser of (1) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or (2) the total amount of customs duties paid on the article to the NAFTA country: Provided, further, That, if Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, with the exception of drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, no article manufactured or otherwise changed in condition (except a change by cleaning, testing or repacking) shall be exported to Canada during the period such Agreement is in operation without the payment of a duty that shall be payable on the article in its condition and quantity, and at its weight, at the time of its exportation to Canada unless the privilege in the first proviso to this subsection was requested: Provided further, That no merchandise that consists of goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to Chile without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that the customs duty may be waived or reduced by (1) 100 percent during the 8-year period beginning on January 1, 2004; (2) 75 percent during the 1-year period beginning on January 1, 2012; (3) 50 percent during the 1-year period beginning on January 1, 2013; and (4) 25 percent during the 1-year period beginning on January 1, 2014.

(b) Applicability to bicycle component parts

The exemption from the customs laws of the United States provided under subsection (a) of this section shall not be available on or before December 31, 1992, to bicycle component parts unless such parts are reexported from the United States, whether in the original package, as components of a completely assembled bicycle, or otherwise.

(c) Articles manufactured or produced from denatured distilled spirits withdrawn free of tax from distilled spirits plant; products unfit for beverage purposes

(1) Notwithstanding the provisions of the fifth proviso of subsection (a) of this section, any article (within the meaning of section 5002(a)(14) of title 26) may be manufactured or produced from denatured distilled spirits which have been withdrawn free of tax from a distilled spirits plant (within the meaning of section 5002(a)(1) of title 26), and articles thereof, in a zone.

(2) Notwithstanding the provisions of the fifth proviso of subsection (a) of this section, distilled spirits which have been removed from a distilled spirits plant (as defined in section 5002(a)(1) of title 26) upon payment or determination of tax may be used in the manufacture or production of medicines, medicinal preparation, food products, flavors, or flavoring extracts, which are unfit for beverage purposes, in a zone. Such products will be eligible for drawback under the internal revenue laws under the same conditions applicable to similar manufacturing or production operations occurring in customs territory.

(d) Foreign trade zones

In regard to the calculation of relative values in the operations of petroleum refineries in a foreign trade zone, the time of separation is defined as the entire manufacturing period. The price of products required for computing relative values shall be the average per unit value of each product for the manufacturing period. Definition and attribution of products to feedstocks for petroleum manufacturing may be either in accordance with Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) or such other inventory control method as approved by the Secretary of the Treasury that protects the revenue.

(e) Production equipment

(1) In general

Notwithstanding any other provision of law, if all applicable customs laws are complied with (except as otherwise provided in this subsection), merchandise which is admitted into a foreign trade zone for use within such zone as production equipment or as parts for such equipment, shall not be subject to duty until such merchandise is completely assembled, installed, tested, and used in the production for which it was admitted.

(2) Admission procedures

The person who admits the merchandise described in paragraph (1) into the zone shall, at the time of such admission, certify to the Customs Service that the merchandise is admitted into the zone pursuant to this subsection for use within the zone as production equipment or as parts for such equipment and that the merchandise will be entered and estimated duties deposited when use of the merchandise in production begins.
(3) Entry procedures

At the time of use of the merchandise in production begins, the merchandise shall be entered, as provided for in section 484 of the Tariff Act of 1930 [19 U.S.C. 1484], and estimated duties shall be deposited with the Customs Service. The merchandise shall be subject to tariff classification according to its character, condition, and quantity, and at the rate of duty applicable, at the time of use of the merchandise in production begins.

(4) Foreign trade zone

For purposes of this subsection, the term “foreign trade zone” includes a subzone.

(Amenagement of Section)

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendment note below.

References in Text

The Tariff Act of 1930, referred to in subsec. (a), is act June 17, 1930, ch. 590, § 2, 46 Stat. 590, which is classified generally to subsec. IV of this title. For complete classification of this Act to the Code, see Tables.

Sections 1001 and 1201 of this title, referred to in subsec. (a), which comprised the dutiable and free lists for articles imported into the United States, were repealed by Pub. L. 99–514, title XVIII, § 1894, Oct. 22, 1986, 100 Stat. 2309.

References in subsec. (a) to section and chapters of I.R.C. 1939 are set out in note under section 1202 of this title.
1970—Pub. L. 91–271 substituted references to the appropriate customs officers for references to the collector of customs wherever appearing.

Amendments—Act June 17, 1950, amended section generally to remove the prohibition against, and to authorize specifically, manufacture and exhibition within a zone. Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–77, set out in a note under section 3850 of this title.

Effective Date of 1996 Amendment
Section 31(b) of Pub. L. 104–295 provided that: “The amendment made by this section [amending this section] shall apply with respect to merchandise admitted into a foreign trade zone after the date that is 15 days after the date of the enactment of this Act [Oct. 11, 1996].”

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1996, if Canada is a NAFTA country on that date and after such date for so long as Canada continues to be a NAFTA country and (2) with respect to exports from the United States to Mexico on Jan. 1, 2001, if Mexico is a NAFTA country on that date and after such date for so long as Mexico continues to be a NAFTA country, see section 213(c) of Pub. L. 103–182, set out in a note under section 3331 of this title.

Effective Date of 1990 Amendment
Section 485(a) of title III (§§301–485) of Pub. L. 101–382 provided that: “Except as otherwise provided in this title, the amendments made by this title [amending sections 1308, 1313, 1466, and 1553 of this title and enacting provisions set out as notes under sections 1309, 1466, and 1553 of this title], shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.”

Effective and Termination Dates of 1988 Amendments
Amendment by Pub. L. 100–418 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–418, set out in a note under section 3331 of this title.

Amendment by section 1783(f) of Pub. L. 100–418 applicable with respect to articles entered or withdrawn from warehouse for consumption, after Sept. 30, 1988, pursuant to section 1831(a) of Pub. L. 100–418.

Effective Date of 1984 Amendment
Section 231(a)(3) of Pub. L. 98–573 provided that: “The amendments made by paragraph (2) [amending this section] shall take effect on the fifteenth day after the date of the enactment of this Act [Oct. 30, 1984].”

Effective Date of 1970 Amendment
Amendment by Pub. L. 91–271 effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after Oct. 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, or with respect to which a protest has not been disallowed in whole or in part before Oct. 1, 1970, set out as a note under section 1500 of this title.

Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 251, 353, 357, and 567 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out as a note under section 1 of this title. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

Floor Stocks Tax Treatment of Articles in Foreign Trade Zones
Notwithstanding this chapter, articles located in a foreign trade zone on the effective date of increases in tax under specific amendments by Pub. L. 101–508 subject to floor stocks taxes under certain circumstances, see section 11218 of Pub. L. 101–508, set out as a note under section 5001 of Title 26, Internal Revenue Code.

Plan Amendments Not Required Until January 1, 1989
For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (§§1101–1147 and 1171–1177) or title XVIII (§§1801–1899A) of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§81d. Customs officers and guards
The Secretary of the Treasury shall assign to the zone the necessary customs officers and guards to protect the revenue and to provide for the admission of foreign merchandise into customs territory.

(June 18, 1934, ch. 590, § 4, 48 Stat. 1000.)

Transfer of Functions
Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, § 41, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

§81e. Vessels entering or leaving zone; coastwise trade
Vessels entering or leaving a zone shall be subject to the operation of all the laws of the United States, except as otherwise provided in this chapter, and vessels leaving a zone and arriving in customs territory of the United States shall be subject to such regulations to protect the revenue as may be prescribed by the Secretary of the Treasury. Nothing in this chapter shall be construed in any manner so as to permit vessels under foreign flags to carry goods or
merchandise shipped from one foreign trade zone to another zone or port in the protected coastwise trade of the United States.

(June 18, 1934, ch. 590, § 5, 48 Stat. 1000.)

§ 81f. Application for establishment and expansion of zone

(a) Application for establishment; requirements

Each application shall state in detail—

(1) The location and qualifications of the area in which it is proposed to establish a zone, showing (A) the land and water or land or water area or land area alone if the application is for its establishment in or adjacent to an interior port; (B) the means of segregation from customs territory; (C) the fitness of the area for a zone; and (D) the possibilities of expansion of the zone area;

(2) The facilities and appurtenances which it is proposed to provide and the preliminary plans and estimate of the cost thereof, and the existing facilities and appurtenances which it is proposed to utilize;

(3) The time within which the applicant proposes to commence and complete the construction of the zone and facilities and appurtenances;

(4) The methods proposed to finance the undertaking;

(5) Such other information as the Board may require.

(b) Amendment of application; expansion of zone

The Board may upon its own initiative or upon request permit the amendment of the application. Any expansion of the area of an established zone shall be made and approved in the same manner as an original application.

(June 18, 1934, ch. 590, § 6, 48 Stat. 1000.)

§ 81g. Granting of application

If the Board finds that the proposed plans and location are suitable for the accomplishment of the purpose of a foreign trade zone under this chapter, and that the facilities and appurtenances which it is proposed to provide are sufficient it shall make the grant.

(June 18, 1934, ch. 590, § 7, 48 Stat. 1000.)

§ 81h. Rules and regulations

The Board shall prescribe such rules and regulations not inconsistent with the provisions of this chapter or the rules and regulations of the Secretary of the Treasury made hereunder and as may be necessary to carry out this chapter.

(June 18, 1934, ch. 590, § 8, 48 Stat. 1000.)

§ 81i. Cooperation of Board with other agencies

The Board shall cooperate with the State, subdivision, and municipality in which the zone is located in the exercise of their police, sanitary, and other powers in and in connection with the free zone. It shall also cooperate with the United States Customs Service, the United States Postal Service, the Public Health Service, the Immigration and Naturalization Service, and such other Federal agencies as have jurisdiction in ports of entry described in section 81b of this title.
§ 81k. Agreements as to use of property

If the title to or right of user of any of the property to be included in a zone is in the United States, an agreement with such property for zone purposes may be entered into between the grantee and the department or officer of the United States having control of the same, under such conditions, approved by the Board and such department or officer, as may be agreed upon.

(June 18, 1934, ch. 590, § 10, 48 Stat. 1001.)

§ 81l. Facilities to be provided and maintained

Each grantee shall provide and maintain in connection with the zone—

(a) Adequate slips, docks, wharves, warehouses, loading and unloading and mooring facilities where the zone is adjacent to water; or, in the case of an inland zone, adequate loading, unloading, and warehouse facilities;

(b) Adequate transportation connections with the surrounding territory and with all parts of the United States, so arranged as to permit of proper guarding and inspection for the protection of the revenue;

(c) Adequate facilities for coal or other fuel and for light and power;

(d) Adequate water and sewer mains;

(e) Adequate quarters and facilities for the officers and employees of the United States, State, and municipality whose duties may require their presence within the zone;

(f) Adequate enclosures to segregate the zone from customs territory for protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, vessels, and merchandise;

(g) Such other facilities as may be required by the Board.

(June 18, 1934, ch. 590, § 11, 48 Stat. 1001.)

§ 81m. Permission to others to use zone

The grantee may, with the approval of the Board, and under reasonable and uniform regulations for like conditions and circumstances to be prescribed by it, permit other persons, firms, corporations, or associations to erect such buildings and other structures within the zone as will meet their particular requirements: Provided, That such permission shall not constitute a vested right as against the United States, nor interfere with the regulation of the grantee or the permittee by the United States, nor interfere with or complicate the revocation of the grant by the United States: And provided further, That in the event of the United States or the grantee desiring to acquire the property of the permittee no good will shall be considered as accruing from the privilege granted to the zone:

And provided further, That such permits shall not be granted on terms that conflict with the public use of the zone as set forth in this chapter.

(June 18, 1934, ch. 590, § 12, 48 Stat. 1001.)

§ 81n. Operation of zone as public utility; cost of customs service

Each zone shall be operated as a public utility, and all rates and charges for all services or privileges within the zone shall be fair and reasonable, and the grantee shall afford to all who may apply for the use of the zone and its facilities and appurtenances uniform treatment under like conditions, subject to such treaties or commercial conventions as are now in force or may hereafter be made from time to time by the United States with foreign governments and the cost of maintaining the additional customs service required under this chapter shall be paid by the operator of the zone.

(June 18, 1934, ch. 590, § 14, 48 Stat. 1001.)

§ 81o. Residents of zone

(a) Persons allowed to reside in zone

No person shall be allowed to reside within the zone except Federal, State, or municipal officers or agents whose resident presence is deemed necessary by the Board.

(b) Rules and regulations for employees entering and leaving zone

The Board shall prescribe rules and regulations regarding employees and other persons entering and leaving the zone. All rules and regulations concerning the protection of the revenue shall be approved by the Secretary of the Treasury.

(c) Exclusion from zone of goods or process of treatment

The Board may at any time order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety.

(d) Retail trade within zone

No retail trade shall be conducted within the zone except under permits issued by the grantee and approved by the Board. Such permittees shall sell no goods except such domestic or duty-paid or duty-free goods as are brought into the zone from customs territory.

(e) Exemption from State and local ad valorem taxation of tangible personal property

Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackageing, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, shall be exempt from State and local ad valorem taxation.


AMENDMENTS


EFFECTIVE DATE OF 1984 AMENDMENT

Section 231(b)(2) of Pub. L. 98-573 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1985.”

§ 81p. Accounts and recordkeeping

(a) Manner of keeping accounts

The form and manner of keeping the accounts of each zone shall be prescribed by the Board.
(b) Annual report by grantee

Each grantee shall make to the Board annually, and at such other times as it may prescribe, reports on zone operations.

(c) Report to Congress

The Board shall make a report to Congress annually containing a summary of zone operations.


AMENDMENTS

1986—Subsec. (b). Pub. L. 99–386, §203(b)(1), substituted “reports on zone operations” for “reports containing a full statement of all the operations, receipts, and expenditures, and such other information as the Board may require”.

Subsec. (c). Pub. L. 99–386, §203(b)(2), added subsec. (c) which required the Board to make an annual report to Congress containing a summary of the operation and fiscal condition of each zone, and transmit copies of the annual report of each grantee.

1980—Subsec. (c). Pub. L. 96–609 substituted “by April 1 of each year” for “on the first day of each regular session”.

§81q. Transfer of grant

The grant shall not be sold, conveyed, transferred, set over, or assigned.

(June 18, 1934, ch. 590, §17, 48 Stat. 1002.)

§81r. Revocation of grants

(a) Procedure for revocation

In the event of repeated willful violations of any of the provisions of this chapter by the grantee, the Board may revoke the grant after four months’ notice to the grantee and affording it an opportunity to be heard. The testimony taken before the Board shall be reduced to writing and filed in the records of the Board together with the decision reached thereon.

(b) Attendance of witnesses and production of evidence

In the conduct of any proceeding under this section for the revocation of a grant the Board may compel the attendance of witnesses and the production of documentary evidence, and for such purpose may invoke the aid of the district courts of the United States.

(c) Nature of order of revocation; appeal

An order under the provisions of this section revoking the grant issued by the Board shall be final and conclusive, unless within ninety days after its service the grantee appeals to the court of appeals for the circuit in which the zone is located by filing with the clerk of said court a written petition praying that the order of the Board be set aside. Such order shall be stayed pending the disposition of appellate proceedings by the court. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall thereupon file in the court the record in the proceedings held before it under this section, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Board, duly certified and filed as a part of the record, shall be considered by the court as the evidence in the case.


AMENDMENTS

1958—Subsec. (c). Pub. L. 85–791 substituted “thereupon file in the court” for “forthwith prepare, certify, and file in the court a full and accurate transcript of” and “as provided in section 2112 of title 28” for “the charges, the evidence, and the order revoking the grant” in third sentence.

CHANGE OF NAME


§81s. Offenses

In case of a violation of this chapter, or any regulation under this chapter, by the grantee, any officer, agent or employee thereof responsible for or permitting any such violation shall be subject to a fine of not more than $1,000. Each day during which a violation continues shall constitute a separate offense.

(June 18, 1934, ch. 590, §19, 48 Stat. 1003.)

§81t. Separability

If any provision of this chapter or the application of such provision to certain circumstances be held invalid, the remainder of this chapter and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

(June 18, 1934, ch. 590, §20, 48 Stat. 1003.)

§81u. Right to alter, amend, or repeal chapter

The right to alter, amend, or repeal this chapter is reserved.

(June 18, 1934, ch. 590, §21, 48 Stat. 1003.)

CHAPTER 2—THE TARIFF COMMISSION

CODIFICATION


CHANGE OF NAME


Section, act Sept. 21, 1922, ch. 356, title III, § 318d, 42 Stat. 947, related to establishment of an office at the port of New York. See section 1331 of this title.

§ 94. Omitted

CODIFICATION
Section, act July 19, 1919, ch. 24, 41 Stat. 182, providing that the disbursing clerk of the Treasury Department should act in a similar capacity for the Commission, was a proviso repeated in successive appropriation acts but which has not been repeated in recent years.


Section, act Sept. 21, 1922, ch. 356, title III, § 318(e), 42 Stat. 947, related to adoption of an official seal, and judicial notice thereof. See section 1331 of this title.

§§ 96 to 98. Omitted

CODIFICATION
Section 96, act Sept. 8, 1916, ch. 463, § 702, 39 Stat. 796, related to investigation of administration and fiscal and industrial effects of the customs laws. See section 1332(a) of this title.

Section 97, act Sept. 8, 1916, ch. 463, § 703, 39 Stat. 796, related to conveyance of information to committees of Congress. See section 1332(g) of this title.

Section 98, act Sept. 8, 1916, ch. 463, § 704, 39 Stat. 796, related to investigative powers of the Commission over commercial transactions and relations with foreign countries. See section 1332(b) of this title.


Section, act Sept. 8, 1916, ch. 463, § 705, 39 Stat. 796, related to transfer of certain employees to the Commission.

§ 100. Omitted

CODIFICATION
Section, act Sept. 8, 1916, ch. 463, § 706, 39 Stat. 797, as amended by act Sept. 21, 1922, ch. 356, title III, § 318(f), 42 Stat. 947, related to testimony and production of papers. See section 1333(a) to (e) of this title.


Section, act Sept. 8, 1916, ch. 463, § 707, 39 Stat. 797, related to cooperation by the Commission with other agencies. See section 1331 of this title.


Section 102, act Sept. 21, 1922, ch. 356, title III, § 318(a), 42 Stat. 948, related to conveyance of conversion and production cost information to the President and Congress. See section 1332(d) of this title.

Section 103, act Sept. 21, 1922, ch. 356, title III, § 318(c), 42 Stat. 947, related to powers of the commission under title VII of the Revenue Act of 1916 and its power to require statements by importers and any American grower, producer, manufacturer, or seller as to their selling prices in the United States.

Section 104, act Sept. 21, 1922, ch. 356, title III, § 318(b), 42 Stat. 947, defined the terms “article” and “import costs”. See section 1332(e) of this title.


§ 106. Omitted

CODIFICATION
Section, act Sept. 8, 1916, ch. 463, § 709, 39 Stat. 798, authorized an annual appropriation to defray the expenses of the Commission. Since the passage of the Tariff Act of June 17, 1930, ch. 497, 46 Stat. 590, appropriations for the Commission have been made in annual Executive Office appropriation bills.


Section, act Feb. 20, 1929, ch. 270, 45 Stat. 1243 (repealed as a proviso in subsequent appropriations for the Commission), related to procurement of supplies and services. Act February 20, 1929, and the similar provisos in subsequent appropriation acts were repealed by act Oct. 10, 1940. A similar provision was enacted by act Oct. 10, 1940, as part of the consolidated exceptions to section 5 of former Title 41, Public Contracts. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

CHAPTER 3—THE TARIFF AND RELATED PROVISIONS

SUBTITLE I—DUTIABLE LIST

Sec. 121. Repealed.

SUBTITLE II—FREE LIST

122. Repealed.

SUBTITLE III—SPECIAL PROVISIONS

CUA AND CANAL ZONE

123 to 125. Repealed, Transferred, or Omitted.

126. Imports from Canal Zone.

COUNTERVAILING AND DISCRIMINATING DUTY

127, 128. Repealed.

129. Discriminating duties.

COUNTRY OF ORIGIN

130 to 133. Repealed.

MEDICINAL PREPARATIONS

134. Repealed.

IMPORTATIONS PROHIBITED

135 to 143. Repealed.

SPECIAL PROVISIONS FOR ADMISSION OR WITHDRAWAL FROM BONDED WAREHOUSE WITHOUT PAYMENT OF DUTY

144. Repealed.

144a. Entry under bond of exhibits of arts, sciences, and industries, and products of soil, mine, and sea.

145 to 147. Repealed.

BONDED WAREHOUSES

148 to 150. Repealed.

151. Bonded warehouses for storage and cleansing of imported garbanzo; withdrawals.

DRAWBACKS

152 to 152b. Repealed.

REIMPORTING EXPORTED ARTICLES

153. Repealed.

EQUALIZING PRODUCTION COSTS

154 to 159. Repealed.

ANTIDUMPING

160 to 171. Repealed.
§ 126. Imports from Canal Zone

All laws affecting imports of articles, goods, wares, and merchandise and entry of persons into the United States from foreign countries shall apply to articles, goods, wares, and merchandise and persons coming from the Canal Zone, Isthmus of Panama, and seeking entry into any State or Territory of the United States or the District of Columbia.

(Mar. 2, 1905, ch. 1311, 33 Stat. 843.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3662(b) of Title 22, Foreign Relations and Intercourse.

§ 127. Counter-Valuing and Discriminating Duty


Section, act Sept. 21, 1922, ch. 356, title III, § 303, 42 Stat. 925, related to countervaluing duty upon articles on which export bounty had been paid. Corresponding provisions of Tariff Act of 1930, see section 1393 of this title.


Section, acts Oct. 3, 1913, ch. 16, § IV, J, subsec. 1, 38 Stat. 195; Mar. 4, 1915, ch. 171, § 1, 38 Stat. 1193; June 17, 1930, ch. 497, title IV, § 651(d), 46 Stat. 763; Pub. L. 103–182, title VI, § 689(a)(1), Dec. 8, 1993, 107 Stat. 2222, which related to discriminating duty on goods imported in foreign vessels or from foreign countries and was also classified in part to section 146 of the former Appendix to Title 46, Shipping, was restated in section 6050a(a) of Title 46, Shipping, by Pub. L. 109–304, § 9(b), Oct. 6, 2006, 120 Stat. 1674.

§ 129. Discriminating duties

No part of the additional or discriminating duty imposed by law on merchandise on account of its importation in foreign vessels shall be allowed to be drawback, but the whole shall be retained.

(R.S. § 3027.)

CODIFICATION


Section 130, acts Oct. 3, 1913, ch. 16, § IV, J, subsec. 2, 38 Stat. 196; June 17, 1930, ch. 497, title IV, § 651(d), 46 Stat. 763, related to importation only in vessels of United States or of country of origin.


Sections, act Sept. 21, 1922, ch. 356, title III, § 303(a), (b), 42 Stat. 926, related to marking imported articles and packages to indicate country of origin and penalty for violation of same.

Corresponding provisions of Tariff Act of 1930, see section 1304 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective sixty days after enactment of repealing act.


Section, R.S. § 2934, required that imported medicinal preparations be marked with the name of the true manufacturer and the place where they were prepared, and provided for forfeiture in the absence of such names. Present provisions relating to the regulation and control of drugs are contained in section 351 et seq. of Title 21, Food and Drugs.

EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 258 of this title.

IMPORTATIONS PROHIBITED


Sections, act Sept. 21, 1922, ch. 356, title III, §§ 305(a), (c), 306(a)–(c), 307, title IV, § 528(a)–(c), 42 Stat. 936, 937, 975, related to prohibitions on importation of obscene books, neat cattle, convict goods, merchandise bearing trade marks owned by citizens and enforcement provisions.

Provisions of Tariff Act of 1930 corresponding to section 135, see section 1305 of this title; section 136, see section 1307; section 138, none; section 139, none; section 140, see section 1307; section 141, see section 1526(a); section 142, see section 1526(b); section 143, see section 1526(c).

SPECIAL PROVISIONS FOR ADMISSION OR WITHDRAWAL FROM BONDED WAREHOUSE WITHOUT PAYMENT OF DUTY


Section, act Sept. 21, 1922, ch. 356, title III, § 308, 42 Stat. 936, related to admission without payment of duty under bond for exportation.

§ 144a. Entry under bond of exhibits of arts, sciences, and industries, and products of soil, mine, and sea

All articles which shall be imported from foreign countries for the sole purpose of exhibition or display at a permanent exhibition or exhibitions and/or at a temporary exhibition or exhibi-
tions of the arts, sciences, and industries, and products of the soil, mine, and sea, to be held at any time and from time to time by Rockefeller Center (Incorporated), a corporation organized under the laws of the State of New York, and/or by its tenants or licensees in a building or buildings to be owned by Rockefeller Center (Incorporated), and to be a part of and to be known as Rockefeller Center and to be located between Fifth and Sixth Avenues and Forty-eighth and Fifty-first Streets, in the Borough of Manhattan, city and State of New York, upon which articles there shall be a tariff or customs duty, shall be admitted free of such tariff, customs duty, fees, or charges under such regulations as the Secretary of the Treasury shall prescribe; but it shall be lawful, at any time during or at the close of any exhibition held pursuant to this section, to sell for delivery at the close thereof any goods or property imported for and actually displayed at such exhibition, subject to such regulations for the security of the revenue and for the collection of import duties as the Secretary of the Treasury shall prescribe: Provided, That all such articles, when sold or withdrawn for consumption or use in the United States, shall be subject to the duty, if any, imposed upon such articles by the revenue laws in force at the date of their withdrawal and to the requirements of the tariff laws in effect at such date: And provided further, That Rockefeller Center (Incorporated) shall be deemed, for customs purposes only, to be the sole consignee of all merchandise imported under the provisions of this section, and that all necessary governmental expenses incurred as a result of exhibitions authorized under this section, including salaries of customs officials in charge of imported articles, shall be paid to the Treasury of the United States by Rockefeller Center (Incorporated) under regulations to be prescribed by the Secretary of the Treasury: And provided further, That all such articles shall, at the expiration of two years, be subject to the impost duty then in force, unless the same shall have been sold or exported from this country prior to that period of time: And provided further, That nothing in this section contained shall be construed as an invitation, express or implied, from the Government of the United States to any foreign government, state, municipality, corporation, partnership, or individual to import any articles for the purpose of exhibition at the said exhibitions.


Sections, act Sept. 21, 1922, ch. 356, title III, §§ 311, 312, 42 Stat. 938-940, related to bonded manufacturing and smelting warehouses and enforcement provisions. Provisions of Tariff Act of 1930 corresponding to section 148, see section 1311 of this title; section 149, see section 1312; section 150, see section 1312.

§ 151. Bonded warehouses for storage and cleansing of imported garbanzo; withdrawals

Under such regulations and conditions as may be prescribed by the Secretary of the Treasury, bonded warehouses may be established in which imported Mexican peas, commonly called garbanzo may be stored, cleaned, repacked or otherwise changed in condition, but not manufactured, and withdrawn for exportation without the payment of duty thereon. The whole or any part of such imported garbanzo, and the waste material and by-products incident to cleaning or otherwise treating said imported garbanzo, may be withdrawn for domestic consumption upon the payment on the quantity so withdrawn of the duty imposed by law on such garbanzo in their condition as imported. The compensation of customs officers and storekeepers for all services in the supervision of such warehouses shall be paid from moneys advanced by the warehouse proprietor to the appropriate customs officer and be carried in a special account and disbursed for such purposes, and all expenses incurred shall be paid by the warehouse proprietor.


Amendments


Effective Date of 1970 Amendment

Amendment by Pub. L. 91–271 effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after Oct. 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, or with respect to which a protest has not been disallowed in whole or in part before Oct. 1, 1970, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

Drawbacks


Section, act Sept. 21, 1922, ch. 356, title III, § 313, 42 Stat. 940, related to drawbacks on certain articles made from imported materials. For corresponding provisions of Tariff Act of 1930, see section 1313 of this title.


Sections, act Mar. 8, 1902, ch. 140, §§ 6, 7, 32 Stat. 55, related to drawbacks in connection with articles


Section 170, act May 27, 1921, ch. 14, § 211, 42 Stat. 15, related to treatment of antidumping duties as regular duties for purposes of all laws relating to drawback of duties. See section 1673i of this title.


**Effective Date of Repeal**

Repeal effective Jan. 1, 1980, see section 107 of Pub. L. 96–39, set out as an Effective Date note under section 1671 of this title.

**Savings Provision**

Pub. L. 96–39, title I, § 106(a), July 26, 1979, 93 Stat. 193, provided that the International Antidumping Code would not restrict the United States Tariff Commission in performing its duties and functions under sections 160 to 171 of this title [known as the Antidumping Act, 1921], required the Secretary of the Treasury and the Tariff Commission to take that Code into account only when consistent with the provisions of those sections, and required the President to submit a report to Congress for the period between July 1, 1968, and June 30, 1969, which had to include all determinations made by the Secretary of the Treasury and the Tariff Commission during that period relating to those sections, analyze the consideration given the International Antidumping Code in each such determination, summarize actions taken by other countries during such period against United States exports, and the relation of such actions to that Code, and include such recommendations as the President determined appropriate concerning the administration of sections 160 to 171 of this title.

**Antidumping Act Unaffected by Act August 2, 1956; Review of Operation of Act and Report to Congress**

Section 5 of act Aug. 2, 1956, ch. 837, 70 Stat. 948, provided that nothing in that act would be considered to repeal, modify, or supersede, directly or indirectly, any provisions of former sections 160 to 171 of this title [known as the Antidumping Act, 1921] and required the Secretary of the Treasury, after consulting with the United States Tariff Commission, to review the operation and effectiveness of those sections and report thereon to the Congress within six months after August 2, 1956, and to recommend to the Congress any amendments to those sections considered desirable or necessary to provide for greater certainty, speed, and efficiency in the enforcement thereof.
Antidumping Act Unaffected by Tariff Act of 1930

Sections 160 to 171 of this title, which were repealed by Pub. L. 96–39, had previously been excepted from repeal or amendment by act June 17, 1930, ch. 497, 46 Stat. 762 (Tariff Act of 1930), section 654(d) of which provided that nothing in that act would be construed to amend or repeal the Antidumping Act [sections 160 to 171 of this title].

Additional Definitions

§ 172. Omitted

Section, act May 27, 1921, ch. 14, § 406, 42 Stat. 18; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, which defined the terms "person" and "United States" as those terms were used in sections 160 to 171 of this title was omitted in view of the repeal of sections 160 to 171 of this title by Pub. L. 96–39, title I, § 106(a), July 26, 1979, 93 Stat. 193.

Rules and Regulations

§ 173. Omitted

Section, act May 27, 1921, ch. 14, § 407, 42 Stat. 18, which directed the Secretary to make rules and regulations necessary for the enforcement of sections 160 to 171 of this title was omitted in view of the repeal of sections 160 to 171 of this title by Pub. L. 96–39, title I, § 106(a), July 26, 1979, 93 Stat. 193.

Unfair Methods of Competition and Importation Unlawful


Sections, act Sept. 21, 1922, ch. 356, title III, § 319, 42 Stat. 943, 944, related to unfair acts tending to destroy or injure domestic industries, investigations by Tariff Commission, appeals, and forbidding entry of articles pending completion of investigations.

Provisions of Tariff Act of 1930 corresponding to section 174, see section 1337(a) of this title; section 175, see section 1337(b); section 176, see section 1337(c); section 177, see section 1337(d); section 178, see section 1337(e); section 179, see section 1337(f); section 180, see section 1337(g).

Imports from Countries Making Discriminations

§ 181. Exclusion of imports from countries making discriminations

Whenever the President shall be satisfied that unjust discriminations are made by or under the authority of any foreign state against the importation to or sale in such foreign state of any product of the United States, he may direct that such products of such foreign state so discriminating against any product of the United States as he may deem proper shall be excluded from importation to the United States; and in such case he shall make proclamation of his direction in the premises, and therein name the time when such direction against importation shall take effect, and after such date the importation of the articles named in such proclamation shall be unlawful. The President may at any time revoke, modify, terminate, or renew any such direction as, in his opinion, the public interest may require.

(Aug. 30, 1890, ch. 839, § 5, 26 Stat. 415.)
Prior to its incorporation into the Code, R.S. §3009, as amended by act Feb. 27, 1877, ch. 69, 19 Stat. 247, read: “All duties upon imports shall be collected in ready money and shall be paid in coin or coin certificates or in United States notes, payable on demand, authorized to be issued prior to the twenty-fifth day of February, one thousand eight hundred and sixty-two, and by law receivable in payment of public dues.”

Its provisions were changed to conform to section 198 of this title authorizing the receipt of certified checks in payment of duties; section 405 of Title 31, Money and Finance (act Feb. 28, 1878, ch. 20, § 3, 20 Stat. 26) making certain certificates and treasury notes receivable for customs; section 451 of Title 31, (act Dec. 24, 1919, ch. 15, §1, 41 Stat. 370) making gold certificates a legal tender in payment of all debts and duties, public and private; and a provision of act Mar. 14, 1900, ch. 41, §6, 31 Stat. 47, as amended (omitted from the Code as superseded by section 451 of Title 31) that gold certificates should be receivable for customs.

§ 198. Certified checks; receivable for all public dues; lien for payment of

It shall be lawful for collecting officers to receive certified checks drawn on National and State banks and trust companies, during such time and under such regulations as the Secretary of the Treasury may prescribe, in payment for duties on imports, and all public dues, including special customs deposits. No person, however, who may be indebted to the United States on account of duties on imports who shall have tendered a certified check or checks as provision for such duties or taxes, in accordance with the terms of this section, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid; and if any such check so received is not duly paid by the bank on which it is drawn and so certifying the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

(Mar. 2, 1911, ch. 191, §1, 36 Stat. 965; Mar. 3, 1913, ch. 119, 37 Stat. 733.)

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Collecting officers, referred to in this section, are officials of Department of the Treasury.

§ 199. Judgments, how payable

In all proceedings brought by the United States in any court for due recovery as well of duties upon imports alone as of penalties for the nonpayment thereof, the judgment shall recite that the same is rendered for duties, and such judgment, interest, and costs shall be payable in the coin by law receivable for duties, and the execution issued on such judgment shall set forth that the recovery is for duties, and shall require the marshal to satisfy the same in the coin by law receivable for duties; and in case of levy upon and sale of the property of the judgment debtor, the marshal shall refuse payment from any purchaser at such sale in any other money than that specified in the execution.

(R.S. §3014.)

CODIFICATION


SUBTITLE IV—CUSTOMS ADMINISTRATION

ADMINISTRATIVE PROVISIONS

PART 1—DEFINITIONS


§ 232. “Port” defined

The word “port”, as used in title 34 of the Revised Statutes, may include any place from which merchandise can be shipped for importation, or at which merchandise can be imported.

(R.S. §2767.)

REFERENCES IN TEXT

Title 34 of the Revised Statutes, referred to in text, was in the original “this Title”, meaning title 34 of the Revised Statutes, consisting of R.S. §§2317 to 3129. For complete classification of R.S. §§2517 to 3129 to the Code, see Tables.

§ 233. Departure from prescribed forms

In cases where the forms of official documents, as prescribed by title 34 of the Revised Statutes, shall be substantially complied with and observed, according to the true intent thereof, no penalty or forfeiture shall be incurred by a deviation therefrom.

(R.S. §2769.)

REFERENCES IN TEXT

Title 34 of the Revised Statutes, referred to in text, was in the original “this Title”, meaning title 34 of the Revised Statutes, consisting of R.S. §§2317 to 3129. For complete classification of R.S. §§2517 to 3129 to the Code, see Tables.

CODIFICATION


Sections, act Sept. 21, 1922, ch. 356, title IV, §652(a)–(g), 42 Stat. 949, 950, related to valuation of imported merchandise, ascertainment of foreign, export, United States value, cost of production, American selling price and value at date of shipment.
Provisions of Tariff Act of 1930 corresponding to section 234, see section 1402(a) of this title; section 235, see section 1402(c) of this title; section 236, see section 1402(d) of this title; section 237, see section 1402(e) of this title; section 238, see section 1402(f) of this title; section 239, see section 1402(g) of this title.

§ 240. Value at date of shipment

When the duty upon any imports shall be subject to be levied upon the true market value of such imports in the principal markets of the country from whence the importation has been made, or at the port of exportation, the duty shall be estimated and collected upon the value on the day of actual shipment, whenever a bill of lading shall be presented showing the date of shipment, and which shall be certified by a certificate of the United States consul or legally authorized deputy.

(R.S. § 2904.)

 Codification


PART 2—REPORT, ENTRY, AND UNLOADING OF VESSELS AND VEHICLES


Sections, act Sept. 21, 1922, ch. 356, title IV, §§ 431 to 446, 42 Stat. 950–953, related to form and contents of manifests, clearance documents, bonds, permits and penalties for violation of same.

Provisions of Tariff Act of 1930 corresponding to sections 241 to 256, see sections 1431 to 1446 of this title, respectively.


Section 257, R.S. § 3114; acts Sept. 21, 1922, ch. 356, title IV, § 466, 42 Stat. 957, June 17, 1930, ch. 497, title IV, § 466, 46 Stat. 719, related to duties on equipments or repair parts for vessels. See section 1466(a) of this title.

Section 258, R.S. § 3115; acts Sept. 21, 1922, ch. 356, title IV, § 466, 42 Stat. 957, June 17, 1930, ch. 497, title IV, § 466, 46 Stat. 719; Aug. 8, 1953, ch. 397, § 111(c), 67 Stat. 515, related to the remission of duties for necessary repairs. See section 1466(d) of this title.

Effective Date of Repeal

Section 3 of Pub. L. 91–654 provided that the repeal in Pub. L. 91–654 is effective with respect to entries made in connection with arrivals of vessels on or after Jan. 5, 1971 (or treated under section 2 of Pub. L. 91–654, set out as a note under section 1466 of this title, as made on the day after such date).

Provisions Inapplicable to Entries Made in Connection with Arrivals Before January 5, 1971, of Vessels Operated By or for Agency of United States; Refunds After August 7, 1974, Barred as to Duty Payments Made Before January 5, 1971, Under Section 257

Pub. L. 93–368, §§ 1, 2, Aug. 7, 1974, 88 Stat. 420, provided:—

"This section [sections 3114 and 3115 of the Revised Statutes of the United States (19 U.S.C. 267 and 258) (former sections 257 and 258 of this title)] shall not apply to entries made in connection with arrivals before January 5, 1971, of vessels owned by the United States, or bareboat chartered to the United States, and operated by or for the account of any department or agency of the United States.

 SEC. 2. On or after the date of the enactment of this Act [Aug. 7, 1974], no department or agency of the United States shall be entitled to a refund of any duties paid before January 5, 1971, by any department or agency of the United States under section 3114 of the Revised Statutes of the United States [section 257 of this title]."


Sections, act Sept. 21, 1922, ch. 356, title IV, §§ 447 to 453, 42 Stat. 954, related to place of entry and unlading before entry or report of arrival.

Provisions of Tariff Act of 1930 corresponding to section 259, see section 1447 of this title; section 260, see section 1448 of this title.

§ 261. Omitted

Codification


Sections, act Sept. 21, 1922, ch. 356, title IV, §§ 449 to 453, 42 Stat. 954, 955, related to emergency cases of unlading bonds for special licenses and penalties for violation of same.

Provisions of Tariff Act of 1930 corresponding to section 262, see section 1449 of this title; section 263, see section 1450 of this title; section 264, see section 1451 of this title; section 265, see section 1452 of this title; section 266, see section 1453 of this title.

§ 267. Overtime and premium pay for customs officers

(a) Overtime pay

(1) In general

Subject to paragraph (2) and subsection (c) of this section, a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the officer. For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b) of this section.

(2) Special provisions relating to overtime work on callback basis

(A) Minimum duration

Any work for which compensation is authorized under paragraph (1) and for which the customs officer is required to return to the officer's place of work shall be treated as being not less than 2 hours in duration; but only if such work begins at least 1 hour after the end of any previous regularly scheduled work assignment and ends at least 1 hour before the beginning of the following regularly scheduled work assignment.

 "SEC. 2. On or after the date of the enactment of this Act [Aug. 7, 1974], no department or agency of the United States shall be entitled to a refund of any duties paid before January 5, 1971, by any department or agency of the United States under section 3114 of the Revised Statutes of the United States [section 257 of this title]."
§ 267  TITLE 19—CUSTOMS DUTIES  Page 44

(B) Compensation for commuting time

(i) In general

Except as provided in clause (ii), in addition to the compensation authorized under paragraph (1) for work to which subparagraph (A) applies, the customs officer is entitled to be paid, as compensation for commuting time, an amount equal to 3 times the hourly rate of basic pay of the officer.

(ii) Exception

Compensation for commuting time is not payable under clause (i) if the work for which compensation is authorized under paragraph (1)—

(I) does not commence within 16 hours of the customs officer’s last regularly scheduled work assignment, or

(II) commences within 2 hours of the next regularly scheduled work assignment of the customs officer.

(b) Premium pay for customs officers

(1) Night work differential

(A) 3 p.m. to midnight shiftwork

If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

(B) 11 p.m. to 8 a.m. shiftwork

If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

(C) 7:30 p.m. to 3:30 a.m. shiftwork

If the regularly scheduled work assignment of a customs officer is 7:30 p.m. to 3:30 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate for the period from 7:30 p.m. to 11:30 p.m. and at the officer’s hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate for the period from 11:30 p.m. to 3:30 a.m.

(2) Sunday differential

A customs officer who performs any regularly scheduled work on a Sunday that is not a holiday is entitled to pay for that work at the officer’s hourly rate of basic pay plus premium pay amounting to 50 percent of that basic rate.

(3) Holiday differential

A customs officer who performs any regularly scheduled work on a holiday is entitled to pay for that work at the officer’s hourly rate of basic pay plus premium pay amounting to 100 percent of that basic rate.

(4) Treatment of premium pay

Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose.

(c) Limitations

(1) Fiscal year cap

The aggregate of overtime pay under subsection (a) of this section (including commuting compensation under subsection (a)(2)(B) of this section) and premium pay under subsection (b) of this section that a customs officer may be paid in any fiscal year may not exceed $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.

(2) Exclusivity of pay under this section

A customs officer who receives overtime pay under subsection (a) of this section or premium pay under subsection (b) of this section for time worked may not receive pay or other compensation for that work under any other provision of law.

(d) Regulations

The Secretary of the Treasury shall promulgate regulations to prevent—

(1) abuse of callback work assignments and commuting time compensation authorized under subsection (a)(2) of this section; and

(2) the disproportionately more frequent assignment of overtime work to customs officers who are near to retirement.

(e) Definitions

As used in this section:

(1) The term “customs officer” means an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Such functions shall be consistent with such applicable standards as may be promulgated by the Office of Personnel Management.

(2) The term “holiday” means any day designated as a holiday under a Federal statute or Executive order.


CODIFICATION

Section derived from R.S. § 2872, as amended by act June 26, 1884, ch. 121, § 25, 23 Stat. 59.

Prior to the general revision of section 5 of act Feb. 13, 1911, by section 13811(a) of Pub. L. 103–66, provisions of section 5 of act Feb. 13, 1911, relating to extra compensation for boarding officers performing services at night or on Sundays and holidays, were classified to section 261 of this title.

AMENDMENTS

1993—Pub. L. 103–66 amended section generally, substituting provisions relating to overtime and premium pay for customs officers for provisions relating to fix-
ing of working hours and overtime compensation by Secretary of the Treasury.

1970—Pub. L. 91–271 substituted references to the appropriate customs officer for references to the collector of customs wherever appearing, and struck out reference to inspectors, storekeepers, weighers, and other customs officers and employees.

Effective Date of 1993 Amendment

Section 13811(c) of Pub. L. 103–66 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1450 of this title, repealing section 1451a of this title, and omitting provisions formerly set out as section 261 of this title] apply to customs inspectional services provided on or after January 1, 1994."

Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers, referred to in this section, were under Department of the Treasury.

§ 267a. Foreign language proficiency awards

Cash awards for foreign language proficiency may, under regulations prescribed by the Secretary of the Treasury, be paid to customs officers (as referred to in section 267(c)(1) of this title) to the same extent and in the same manner as would be allowable under subchapter III of chapter 45 of title 5 with respect to law enforcement officers (as defined by section 4521 of such title).


Effective Date

Section 13812(c)(2) of Pub. L. 103–66 provided that: "Subsection (b) [enacting this section] takes effect on January 1, 1994."


Sections, act Sept. 21, 1922, ch. 356, title IV, §§454–458, 42 Stat. 955, 956, related to duties and compensation of boarding and discharging inspectors, custody of cargo not unladen promptly, unloading at risk of consignee and time for unloading bulk cargo.

Provisions of Tariff Act of 1930 corresponding to section 268, see section 1455 of this title; section 269, see section 1456 of this title; section 270, see section 1457 of this title; section 271, none; section 272, see section 1458 of this title.


Sections, R.S. §§2885, 2886, required the containers of imported liquors or distilled spirits to be marked or scored at the port of landing with the capacity, wine gallons, proof, proof gallons, and other detailed information, such marks to be obliterated upon sale.

Effective Date of Repeal

Section 1 of act Aug. 8, 1953, provided that such act is effective, except as otherwise specifically provided for, on and after the thirtieth day following the date of its enactment (Aug. 8, 1953).

The exception "except as otherwise specifically provided for" apparently refers to the amendments made to the provisions preceding subd. (1) of section 1308 of this title and to section 1557(b) of this title, for which separate effective dates were provided as explained in notes under those sections.

Savings Provision

Section 23 of act Aug. 8, 1953, provided: "Except as may be otherwise provided for in this Act, the repeal of existing law or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal or modification, but all liabilities under such laws shall continue, except as otherwise specifically provided in this Act, and may be enforced in the same manner as if such repeal, or modification had not been made."


Provisions of Tariff Act of 1930 corresponding to sections 275 to 281, see sections 1459 to 1465 of this title, respectively.


§ 283. Duty on saloon stores

Articles purchased for the use of or for sale on board any such vessel, as saloon stores or supplies, shall be deemed merchandise, and shall be liable, when purchased at a foreign port, to entry and the payment of the duties found to be due thereon, at the first port of arrival of such vessel in the United States; and for a failure on the part of the saloon keeper or person purchasing or owning such articles to report, make entries, and pay duties, as hereinafter required, such articles, together with the fixtures and other merchandise, found in such saloon or on or about such vessel, belonging to and owned by such saloon keeper or other person interested in such saloon, shall be seized and forfeited, and such saloon keeper or other person so purchasing and owning shall be liable to a penalty of not less than $100 and not more than $500, and shall be punishable by imprisonment for not less than three months and not more than two years.

(R.S. §3113.)
§ 284. 1964—Pub. L. 88–375 substituted comma after “or both”. 1959—Pub. L. 86–136 substituted “any United States documented vessel with a registry or coastwise endorsement, or both” for “any vessel, being duly registered in pursuance of the laws of the United States,” and struck out at end “All such vessels shall be furnished by the appropriate customs officers of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages, by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and he subject to all the penalties prescribed.”


AMENDMENTS
1996—Pub. L. 104–226 inserted comma after “or both”. 1993—Pub. L. 103–182 substituted “‘Any United States documented vessel with a registry or coastwise endorsement, or both’” for “‘Any vessel, being duly registered in pursuance of the laws of the United States,’” and struck out at end “All such vessels shall be furnished by the appropriate customs officers of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages, by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and he subject to all the penalties prescribed.”


AMENDMENTS
1996—Pub. L. 104–226 inserted comma after “or both”. 1993—Pub. L. 103–182 substituted “‘Any United States documented vessel with a registry or coastwise endorsement, or both’” for “‘Any vessel, being duly registered in pursuance of the laws of the United States,’” and struck out at end “All such vessels shall be furnished by the appropriate customs officers of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages, by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and he subject to all the penalties prescribed.”
§ 294. No duty by reason of documented vessel touching at foreign port

Any foreign merchandise taken in at one port of the United States to be conveyed in a United States documented vessel with a registry or coastwise endorsement, or both, to any other port within the same, either under the provisions relating to warehouses, or under the laws regulating the transportation coastwise of merchandise entitled to drawback, as well as any merchandise not entitled to drawback, but on which the import duties chargeable by law shall have been duly paid, shall not become subject to any import duty by reason of the vessel in which they may arrive having touched at a foreign port during the voyage.


Codification

R.S. §3127 derived from act May 27, 1848, ch. 48, §2, 9 Stat. 232.

Amendments

1906—Pub. L. 104–295 substituted “conveyed in a United States documented vessel with a registry or coastwise endorsement, or both,” for “in registered vessels”.

PART 3—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES


Sections, act Sept. 21, 1922, ch. 356, title IV, §§481(a)–(c), 482(a)–(d), 42 Stat. 958, related to contents of invoices, certification in different consular districts and declarations indorsed on invoices.

Provisions of Tariff Act of 1930 corresponding to section 331, see section 1481(a) of this title; section 332, see section 1481(b) of this title; section 333, see section 1481(c) of this title; section 334, see section 1482(a) of this title; section 335, see section 1482(b) of this title; section 336, see section 1482(c) of this title; section 337, see section 1482(d) of this title.

Sections 331 to 333 were repealed effective on day after enactment of repealing act.

Sections 334 to 337 were repealed effective sixty days after enactment of repealing act.

§ 338. Indorsement upon invoice; port of entry

The person producing an invoice for certification shall at the same time declare to the consular or vice consular the port in the United States at which it is intended to make entry of merchandise; whereupon the consul, or vice consul, shall indorse upon each of the triplicates a certificate, under his hand and official seal, stating that the invoice has been produced to him, with the date of such production, and the name of the person by whom the same was produced, and the port in the United States at which it shall be the declared intention to make entry of the merchandise therein mentioned.

(R.S. §2855; Apr. 5, 1906, ch. 1366, §3, 34 Stat. 100.)

Codification


Section is based on the first sentence of R.S. §2855. The second sentence of R.S. §2855, which related to the disposition of certified copies of invoices, was superseded by section 482(e) of the Tariff Act of 1922, and later by section 482(e) of the Tariff Act of 1933 which is classified to section 1482(e) of this title.

§ 339. Restriction on consular certificates

No consular officer of the United States shall grant a certificate for merchandise shipped from countries adjacent to the United States, which have passed a consulate after purchase for shipment.

(R.S. §2861.)

Codification


§ 340. Consuls to exact proof of invoice

All consular officers are authorized to require, before certifying any invoice, satisfactory evidence, either by the oath of the person presenting such invoices or otherwise, that such invoices are correct and true. In the exercise of the discretion hereby given, the consular officers shall be governed by such general or special regulations or instructions as may from time to time be established or given by the Secretary of State.

(R.S. §2862.)

Codification


§ 341. Fraudulent practices; consul’s report

All consuls of the United States having any knowledge or belief of any case or practice of any person who obtains verification of any invoice whereby the revenue of the United States is or may be defrauded, shall report the facts to the appropriate customs officer of the port where the revenue is or may be defrauded, or to the Secretary of the Treasury.


Codification

R.S. §2863 derived from act July 14, 1862, ch. 163, §18, 12 Stat. 559.

Amendments


Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

Transfer of Functions

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to
Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4905, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers, referred to in this section, are under Department of the Treasury.


Sections, act Sept. 21, 1922, ch. 356, title IV, §§482(e), (f), 483, 484(a)–(g), 485(a)–(f), 486–497, 498(a), (b), 499, and 500(a)–(c), 42 Stat. 959–965, related to ascertainment, collection and recovery of goods.

Provisions of Tariff Act of 1930 corresponding to section 342, see section 1482(e) of this title; section 343, see section 1482(f) of this title; section 344, see section 1483 of this title; section 345, see section 1484(a) of this title; section 346, see section 1484(b) of this title; section 347, see section 1484(c) of this title; section 348, see section 1484(d) of this title; section 349, see section 1484(e) of this title; section 350, see section 1484(f) of this title; section 351, see section 1484(g) of this title; section 352, see section 1485(a) of this title; section 353, see section 1485(b) of this title; section 354, see section 1485(c) of this title; section 355, see section 1485(d) of this title; section 356, see section 1485(e) of this title; section 357, see section 1485(f) of this title; section 358, none, but see section 1623 of this title; section 359, see section 1487 of this title; section 360, see section 1488 of this title; section 361, see section 1503(b) of this title; section 362, see section 1490 of this title; section 363, see section 1491 of this title; section 364, see section 1492 of this title; section 365, see section 1493 of this title; section 366, see section 1494 of this title; section 367, see section 1495 of this title; section 368, see section 1496 of this title; section 369, see section 1497 of this title; section 370, see section 1498 of this title; section 371, see section 1499 of this title; section 372, see section 1499 of this title; section 373, see section 1500(a) of this title; section 374, see section 1500(b) of this title; section 375, see section 1500(d) of this title.

Effective Date of Repeal

Sections 342 and 343 repealed effective sixty days after enactment of repealing act.

Sections 341 to 375 repealed effective on day following date of enactment of repealing act.


Section, R.S. §2365, related to report of assistant appraiser at New York.


Section, act Sept. 21, 1922, ch. 356, title IV, § 500(d), 42 Stat. 966, related to duties of examiners. For corresponding provisions of Tariff Act of 1930, see section 1500(e) of this title.

§ 378. Repealed. Feb. 28, 1933, ch. 131, § 1, 47 Stat. 1349

Section, R.S. §2908, related to appraiser as special examiner. Section 2 of the repealing act provided that rights or liabilities existing under this section on Feb. 28, 1933, should not be affected thereby.


Section, R.S. §2621, provided for instructions to prevent importation of adulterated drugs. Special examiners of drugs are no longer appointed. For functions with relation to adulterated drugs, see section 321 et seq. of Title 21, Food and Drugs.


Sections, act Sept. 21, 1922, ch. 356, title IV, §§500(e), 501, 502(a)–(c), 503–507, 42 Stat. 966–968, related to appeals for reappraisal, regulations for appraisal and classification, etc., and reversal or modification of rulings of Secretary of Treasury.

Provisions of Tariff Act of 1930 corresponding to section 380, see section 1500(f) of this title; section 381, see section 1501 of this title; section 382, see section 1502(a) of this title; section 383, see section 1502(b) of this title; section 384, see section 1503(c) of this title; section 385, see sections 1503 and 1504 [repealed] of this title; section 386, see section 1505 of this title; section 387, see section 1506 of this title; section 388, see section 1507 of this title; section 389, see section 1508 [repealed] of this title.


Section, R.S. §2919, provided for adoption of a hydrometer for use in ascertaining proof of liquors. See section 520(b) of Title 26, Internal Revenue Code.

§ 391. Ascertainment of duties on grain

For the purpose of estimating the duties on importations of grain, the number of bushels shall be ascertained by weight, instead of by measuring; and sixty pounds of wheat, fifty-six pounds of corn, fifty-six pounds of rye, forty-eight pounds of barley, thirty-two pounds of oats, sixty pounds of peas, and forty-two pounds of buckwheat, avoidupois weight, shall respectively be estimated as a bushel.

(R.S. §2919.)

CODIFICATION


Sections, act Sept. 21, 1922, ch. 356, title IV, §§508–518, 42 Stat. 968–972, related to examination of importers, consignees, agents, etc.

The following table shows the classification of former sections to the present similar provisions in the Tariff Act of 1930, as incorporated in this title.

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<th>Former section</th>
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Section, acts May 28, 1926, ch. 411, §1, 44 Stat. 669; June 25, 1948, ch. 646, §22, 62 Stat. 900, renamed the Board of General Appraisers as the United States Customs Court and provided that the members be known as judges of the United States Customs Court.
EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of Title 28, Judiciary and Judicial Procedure.

§ 405b. Omitted

Section, act May 28, 1936, ch. 411, § 2, 41 Stat. 699, provided that the jurisdiction, powers, and duties of the Board referred to in section 405a of this title, its subdivisions and its officers, and their appointment, including the designation of its presiding officers, and the functions, powers, duties, rights, and privileges of the members of the Board, shall remain the same as provided by existing law.


Sections, act Sept. 21, 1922, ch. 356, title IV, §§ 519, 520(a), (b), 521, 42 Stat. 973, related to copies of decisions of United States Customs Court for Collectors and Secretary of the Treasury, refund of duties and liquidation of duties.

Provisions of Tariff Act of 1930 corresponding to section 406, see section 1519 of this title [repealed]; section 407, see section 1520(a) of this title; section 408, see section 1520(b) of this title; section 409, see section 1521 of this title.

§§ 413 to 419. Repealed. June 17, 1930, ch. 497, title IV, §§ 641(e), 651(a)(1), 46 Stat 760, 762, eff. June 18, 1930

Sections 413 and 414, act Sept. 21, 1922, ch. 356, title IV §§ 524, 525, 42 Stat. 975, related to disposal of receipts and detail from field service for Washington duty.

Sections 415 to 419, act June 10, 1910, ch. 280 §§ 1–5, 36 Stat. 464, 465, related to issuance and revocation of customhouse broker's licenses. Repeal was subject to an exception as follows: “Except that any license issued * * * shall continue in force and effect, subject to suspension and revocation in the same manner and upon the same conditions as licenses issued pursuant to subdivision (a) of this section.” Subdivision (a) is set forth in section 1641 of this title, and such section now regulates the licensing of customhouse brokers. Subsection (e) of section 641, act of 1930, the repealing act, was repealed by act August 26, 1935, ch. 699, § 5, 49 Stat. 866, but sections 415 to 419 of this title were not thereby revived.

Provisions of Tariff Act of 1930 corresponding to section 413, see section 1525 of this title; section 414, see section 1525 [repealed] of this title; sections 415 to 419, see section 1641 of this title.


Section, R.S. § 2951, defined the word “ton” and was previously omitted.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 501(a) of Pub. L. 87–456, set out as an Effective Date of Tariff Classification Act of 1962 note preceding section 1202 of this title.

PART 4—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE


Sections, act Sept. 21, 1922, ch. 356, title IV §§ 551–559, 42 Stat. 975–977, related to carriers of bonded merchan-
dise, transportation restrictions, bonds, regulations, and abandonment of merchandise in bonded warehouses.

The following table shows the classification of former sections to the present similar provisions in the Tariff Act of 1930, as incorporated in this title.

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§ 460. Retention of distilled spirits, wines, etc., in warehouse during prohibitory period

Under regulations prescribed by the Secretary of the Treasury, any imported distilled spirits, wines, or other liquors which may be in any customs bonded warehouse under the customs laws on the date any prohibition of their sale or removal, by any Act of Congress, or proclamation of the President of the United States takes effect shall be permitted to remain therein without payment of any taxes or duties thereon, beyond the three-year period provided by law, during such period of prohibition; and may be exported at any time during such extended period. Any imported spirits, wines, or other liquors as to which the three-year bonded period may have expired after February 24, 1919, and prior to the date such prohibition takes effect may at the option of the owner remain in bond during such period of prohibition.

(Feb. 24, 1919, ch. 18, title VI, § 600(b), 40 Stat. 1106.)


The following table shows the classification of former sections to the present similar provisions in the Tariff Act of 1930, as incorporated in this title.

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§ 467. Imported distilled spirits, wines, or malt liquors; regulations for marks, brands, and stamps or devices on bulk containers; forfeitures

The Secretary of the Treasury may by regulation require such marks, brands, and stamps or devices to be placed on any bulk container (including a pipeline) used for holding, storing, transferring or conveying imported distilled spirits, wines, or malt liquors as he deems necessary and proper in the administration of the
Federal laws applicable to such imported distilled spirits, wines, or malt liquors and may specify those marks, brands, and stamps or devices which the importer or owner shall place or have placed on such containers. Any such container of imported distilled spirits, wines, or malt liquors withdrawn from customs custody purporting to contain imported distilled spirits, wines, or malt liquors found without having thereon any mark, brand, stamp, or device the Secretary of the Treasury may require shall be with its contents forfeited to the United States of America.


AMENDMENTS

1978—Pub. L. 96–410 substituted provisions authorizing the Secretary of the Treasury to require by regulations the placing of marks, brands, and stamps or devices on bulk containers of imported distilled spirits, wines, or malt liquors used for holding, storing, transferring, or conveying the imported liquors for prior provisions for deposit of imported distilled spirits, wines, and malt liquors in public store or bonded warehouse, inspection of packages, affixing of stamps thereto, and special stamps for cask or package of not less than five wine-gallons filled for shipment, sale, or delivery on premises of any wholesale liquor-dealer under rules and regulations prescribed by Commissioner of Internal Revenue.

§ 468. Stamps and brands effaced on emptying packages of imported liquors

Every person who empties or draws off, or causes to be emptied or drawn off, the contents of any package of imported liquors stamped as above required, shall, at the time of such emptying, efface, obliterate, and destroy the stamp thereon, and also all other marks or brands which shall have been placed thereon in accordance with the law or regulations concerning imported liquors; every cask or other package from which the stamp for imported liquors required by section 467 of this title to be placed thereon shall not be effaced, obliterated, or destroyed, on emptying such package, shall be forfeited, and the same may be seized by any officer of internal revenue wherever found; and all the provisions and penalties of R.S. § 3324, relating to special delivery and appraisement of imported articles of limited value and weight.

Effectiveness Date of Repeal

Section 1 of act Aug. 8, 1953, provided that such act is effective, except as otherwise specifically provided for, on and after thirtieth day following date of its enactment (Aug. 8, 1953).

The exception “except as otherwise specifically provided for” apparently refers to amendments made to provisions preceding subd. (1) of section 1308 of this title and to section 1575(b) of this title, for which separate effective dates were provided as explained in notes under those sections.

Savings Provision

Section 23 of act Aug. 8, 1953, provided: “Except as may be otherwise provided for in this Act, the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal or modification, but all liabilities under such laws shall continue, except as otherwise specifically provided in this Act, and may be enforced in the same manner as if such repeal, or modification had not been made.”

PART 5—ENFORCEMENT PROVISIONS


Section, act Sept. 21, 1922, ch. 356, title IV, §450, 42 Stat. 977, related to prohibition of ownership of bonded warehouses by customs officers.

Corresponding provisions of Tariff Act of 1930, see section 1560 of this title.

§§ 472 to 475. Repealed. Aug. 8, 1953, ch. 397, §16(f), 67 Stat. 517

Sections, act June 8, 1896, ch. 371, §§1–4, 29 Stat. 263, related to special delivery and appraisement of imported articles of limited value and weight.

PART 5—ENFORCEMENT PROVISIONS

§ 482. Search of vehicles and persons

(a) Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on
which or whom he or they shall suspect is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.

(b) Any officer or employee of the United States conducting a search of a person pursuant to subsection (a) of this section shall not be held liable for any civil damages as a result of such search if the officer or employee performed the search in good faith and used reasonable means while effectuating such search.


Codification

R.S. §3061 derived from act July 18, 1866, ch. 201, §3, 14 Stat. 178.

Amendments

2002—Pub. L. 107–210 designated existing provisions as subsec. (a) and added subsec. (b).

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

Requirement To Post Policy and Procedures for Searches of Passengers

Pub. L. 107–210, div. A, title III, §341(b), Aug. 6, 2002, 116 Stat. 980, provided that: ‘‘Not later than 30 days after the date of the enactment of this Act [Aug. 6, 2002], the Commissioner of Customs shall ensure that at each Customs border facility appropriate notice is posted that provides a summary of the policy and procedures of the Customs Service for searching passengers, including a statement of the policy relating to the prohibition on the conduct of profiling of passengers based on gender, race, color, religion, or ethnic background.’’ [For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2231(a), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]


Provisions of Tariff Act of 1930 corresponding to section 484, see section 1582 of this title; section 485, see section 1583 of this title; section 486, see section 1584 of this title; section 487, see section 1585 of this title; section 488, see section 1586 of this title; section 489, see section 1586(d) of this title; section 490, see section 1588 of this title.


Section, act June 22, 1947, ch. 391, §13, 18 Stat. 188, provided for seizure of merchandise as security for fines. See section 542 of Title 18, Crimes and Criminal Procedure.


Sections, act Sept. 21, 1922, ch. 356, title IV, §§592–593(a), (b), 42 Stat. 982 to 984, related to seizure and forfeiture of vessels, vehicles and merchandise.

Provisions of Tariff Act of 1930 corresponding to section 496, see section 1592 of this title; section 497, see section 1593(a) [repealed] of this title; section 498, see section 1594 of this title; section 499, see section 1595 of this title; section 502, see section 1599 of this title.


Section. R.S. §3072, related to duty of customs officers to seize and make secure vessels or merchandise.

$507. Officers to make character known; assistance for officers

(a) Every customs officer shall—

(1) upon being questioned at the time of executing any of the powers conferred upon him, make known his character as an officer of the Federal Government; and

(2) have the authority to demand the assistance of any person in making any arrest, search, or seizure authorized by any law enforced or administered by customs officers, if such assistance may be necessary.

If a person, without reasonable excuse, neglects or refuses to assist a customs officer upon proper demand under paragraph (2), such person is guilty of a misdemeanor and subject to a fine of not more than $1,000.

(b) Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.


Codification

R.S. §3071 derived from act July 18, 1866, ch. 201, §10, 14 Stat. 180.
AMENDMENTS

1986—Pub. L. 99–570 amended section generally. Prior to amendment, section read as follows: ‘Every officer or other person authorized to make searches and seizures by this title, shall, at the time of executing any of the powers conferred upon him, make known, upon being questioned, his character as an officer or agent of the customs or Government, and shall have authority to demand of any person within the distance of three miles to assist him in making any arrests, search, or seizure authorized by this title, where such assistance may be necessary; and if such person shall, without reasonable excuse, neglect or refuse so to assist, upon proper demand, he shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $200, nor less than $5.’

§ 508. Persons making seizures pleading general issue and proving special matter

If any officer, or other person, executing or aiding or assisting in the seizure of goods, under any Act providing for or regulating the collection of duties on imports or tonnage, is sued for anything done in virtue of the powers given thereby, or by virtue of a warrant granted by any judge, or justice, pursuant to law, he may plead the general issue and give such Act and the special matter in evidence.

(R.S. § 3073.)

CODIFICATION


Sections, act Sept. 21, 1922, ch. 356, title IV, §§602–614, 42 Stat. 984–987, related to pleading, procedure and disposition of seized articles or proceeds therefrom.

Provisions of Tariff Act of 1930 corresponding to section 509, see section 1602 of this title; section 510, see section 1603 of this title; section 511, see section 1604 of this title; section 512, see section 1605 of this title; section 513, see section 1606 of this title; section 514, see section 1607 of this title; section 515, see section 1608 of this title; section 516, see section 1609 of this title; section 517, see section 1610 of this title; section 518, see section 1611 of this title; section 519, see section 1612 of this title; section 520, see section 1613 of this title; section 521, see section 1614 of this title.


Section, act Sept. 21, 1922, ch. 356, title IV, §615, 42 Stat. 987, related to burden of proof in proceedings for forfeiture of seized property. Corresponding provisions of Tariff Act of 1930, see section 1615 of this title.


Section, R.S. §3089, related to costs of prosecution. See section 1613(1) of this title.

§ 527. Sums received from fines and other receipts covered into Treasury

Except as otherwise provided by law, all sums received from fines, penalties, and forfeitures, connected with the customs, and from fees paid into the Treasury by customs officers, and from storage, cartage, drayage, labor, and services, shall be covered into the Treasury as are other miscellaneous receipts.

(Mar. 4, 1907, ch. 2918, §1, 34 Stat. 1315.)

§ 528. Appropriate customs officer to receive amount recovered

The appropriate customs officer within whose district any seizure shall be made or forfeiture incurred for any violation of the duty laws is authorized to receive from the court within which trial is had, or from the proper officer thereof, the sum recovered, after deducting all proper charges to be allowed by the court; and on receipt thereof he shall pay and distribute the same without delay, according to law.


CODIFICATION

This section was derived from R.S. §3087, which, however, contained a further provision requiring collectors to cause suits to be commenced without delay and prosecuted to effect. That provision was omitted as inconsistent with section 604 of act Sept. 21, 1922, ch. 356, 42 Stat. 984, constituting former section 511 of this title. Act Sept. 21, 1922, was repealed by act June 17, 1930, but section 604 of the latter Act, constituting section 1604 of this title, reenacted section 604 of the former Act.

AMENDMENTS


EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers, referred to in this section, are under Department of the Treasury.


Section, act Sept. 21, 1922, ch. 356, title IV, §616, 42 Stat. 987, related to compromise of claims. See section 1915 of Title 18, Crimes and Criminal Procedure.

§ 530. Omitted

CODIFICATION

Section, act Jan. 22, 1875, ch. 22, 18 Stat. 303, which provided for dismissal of proceedings, related to act June 22, 1874, ch. 391, §19, 18 Stat. 190, which was repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.


Sections, act Sept. 21, 1922, ch. 356, title IV, §§617–620, 42 Stat. 987, 988, related to remission or mitigation of
fines, penalties, or forfeitures, and compensation of informers and United States officers.

Provisions of Tariff Act of 1930 corresponding to section 531, see section 1617 of this title; section 532, see section 1618 of this title; section 533, see section 1619 of this title; section 534, see section 1620 of this title.

§ 535. Compulsory production of books, invoices, or papers

In all suits and proceedings other than criminal arising under any of the revenue laws of the United States, the attorney representing the Government, whenever, in his belief, any business book, invoice, or paper, belonging to or under the control of the defendant or claimant, will tend to prove any allegation made by the United States, may make a written motion, particularly describing such book, invoice, or paper, and setting forth the allegation which he expects to prove; and thereupon the court in which suit or proceeding is pending may, at its discretion, issue a notice to the defendant or claimant to produce such book, invoice, or paper in court, at a day and hour to be specified in said notice, which, together with a copy of said motion, shall be served formally on the defendant or claimant by the United States marshal by delivering to him a certified copy thereof, or otherwise serving the same as original notices of suit in the same court are served; and if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper in obedience to such notice, the allegations stated in the said motion shall be taken as confessed unless his failure or refusal to produce the same shall be explained to the satisfaction of the court. And if produced, the said attorney shall be permitted, under the direction of the court, to make examination (at which examination the defendant or claimant, or his agent, may be present) of such entries in said book, invoice, or paper as relate to or tend to prove the allegation aforesaid, and may offer the same in evidence on behalf of the United States. But the owner of said books and papers, his agent or attorney, shall have, subject to the order of the court, the possession book, invoice, or paper, and setting forth the allegation which he expects to prove; and thereupon the court in which suit or proceeding is pending may, at its discretion, issue a notice to the defendant or claimant to produce such book, invoice, or paper in court, at a day and hour to be specified in said notice, which, together with a copy of said motion, shall be served formally on the defendant or claimant by the United States marshal by delivering to him a certified copy thereof, or otherwise serving the same as original notices of suit in the same court are served; and if the defendant or claimant shall fail or refuse to produce such book, invoice, or paper in obedience to such notice, the allegations stated in the said motion shall be taken as confessed unless his failure or refusal to produce the same shall be explained to the satisfaction of the court. And if produced, the said attorney shall be permitted, under the direction of the court, to make examination (at which examination the defendant or claimant, or his agent, may be present) of such entries in said book, invoice, or paper as relate to or tend to prove the allegation aforesaid, and may offer the same in evidence on behalf of the United States. But the owner of said books and papers, his agent or attorney, shall have, subject to the order of the court, the custody of them, except pending their examination in court as aforesaid.

(June 22, 1874, ch. 391, § 5, 18 Stat. 187.)

Constitutionality

This section held unconstitutional as applied to a suit to enforce a forfeiture decided to be criminal in its nature in Boyd v. U.S. (1886), 116 U.S. 616, 6 S. Ct. 524, 29 U.S. (L. Ed.) 746.


Section, act Sept. 21, 1922, ch. 356, title IV, §§ 622, 623, 42 Stat. 986, related to limitation of actions for penalties or forfeitures. Corresponding provisions of Tariff Act of 1930, see section 1621 of this title.

§ 537. Officers, informers, and defendants as witnesses

No officer, or other person entitled to or claiming compensation under any provision of Act June 22, 1874 (chapter 391, 18 Statutes 188) shall be thereby disqualified from becoming a witness in any action, suit, or proceeding for the recovery, mitigation, or remission thereof, but shall be subject to examination and cross-examination in like manner with other witnesses, without being thereby deprived of any right, title, share, or interest in any fine, penalty, or forfeiture to which such examination may relate; and in every such case the defendant or defendants may appear and testify and be examined and cross-examined in like manner.

(June 22, 1874, ch. 391, § 8, 18 Stat. 188.)

References in Text

Section 4 of Act June 22, 1874, referred to in text, providing for compensation to officers of the customs or other persons detecting goods being smuggled, was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 986. For corresponding provisions in the Tariff Act of 1930, see section 1619 of this title.


Provisions of Tariff Act of 1930 corresponding to section 538, see section 1318 of this title; section 539, see section 1624 of this title.

§ 540. President may use suitable vessels for enforcing customs laws

In the execution of laws providing for the collection of duties on imports and tonnage, the President, in addition to the Coast Guard vessels in service, may employ in aid thereof such other suitable vessels as may, in his judgment, be required.

(R.S. § 5318; Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800; Aug. 4, 1949, ch. 393, §§ 1, 20, 63 Stat. 496, 561.)

Codification


Transfer of Functions

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(c), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. "Coast Guard vessels" substituted in text for "revenue-cutters". The Revenue Cutter Service and the Life-Saving Service having been combined to form the Coast Guard by section 1 of act Jan. 28, 1915. That act was repealed by section 20 of act Aug. 4, 1949, section 1 of which reestablished the Coast Guard by enacting Title 14, Coast Guard.

Delegation of Functions

For delegation to Secretary of the Treasury of authority vested by this section, see section 1(i) of Ex. Ord. No. 10289, Sept. 17, 1951, 16 F.R. 9499, as amended, set out as a note under section 301 of Title 3, The President.


Section 541, R.S. § 2783, authorized use of small boats for use of customs officials.

Section 542, act Feb. 10, 1913, ch. 35, 37 Stat. 665, authorized Secretary of the Treasury to use the motorboat provided for Corpus Christi, Texas.
§ 574. Exemption from taking other oaths

Nothing contained in title 34 of the Revised Statutes shall be construed to exempt the masters or owners of vessels from making and subscribing any oaths required by any laws of the United States not immediately relating to the collection of the duties on the importation of merchandise into the United States.

(R.S. § 3094.)

REFERENCES IN TEXT

Title 34 of the Revised Statutes, referred to in text, was in the original “this Title”, meaning title 34 of the Revised Statutes, consisting of R.S. §§ 2517 to 3129. For complete classification of R.S. §§ 2517 to 3129 to the Code, see Tables.

CODIFICATION

R.S. § 3094 derived from act Mar. 2, 1799, ch. 22, § 110, 1 Stat. 703.


Provisions of Tariff Act of 1930 corresponding to section 571, see section 1651(c) of this title; section 572, see section 1316 of this title; section 573, none.


Section, act Mar. 8, 1902, ch. 140, § 8, 32 Stat. 55, made, “except as otherwise provided by law”, the provisions of subtitle IV of this chapter applicable to all articles coming into the United States from the “Philippine Archipelago”. Prior to this repeal, it had been omitted in view of the independence of the Philippines.

SAVINGS PROVISION

Subsec. (i) of section 56 of act Oct. 31, 1951, provided that the repeal of this section shall not affect any rights or liabilities existing hereunder on the effective date of such repeal [Oct. 31, 1951.]


Section, R.S. § 1960, provided that in a suit on bond for the recovery of duties the court should grant judgment unless defendant made an oath that an error was committed in the liquidation of the duties demanded. See section 1514 of this title.

§ 580. Interest in suits on bonds for recovery of duties

Upon all bonds, on which suits are brought for the recovery of duties, interest shall be allowed, at the rate of 6 per centum a year, from the time when said bonds became due.

(R.S. § 963.)

CODIFICATION

R.S. § 963 derived from act Mar. 2, 1799, ch. 22, § 65, 1 Stat. 676.

Section was formerly classified to section 287 of Title 8 prior to the general revision and enactment of Title 8, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 466, § 1, 62 Stat. 869.

CHAPTER 4—TARIFF ACT OF 1930

SUBTITLE I—HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Sec. 1202. Harmonized Tariff Schedule.

SUBTITLE II—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

1301 to 1303. Repealed or Omitted.

1304. Marking of imported articles and containers.

1305. Immoral articles; importation prohibited.

1306. Repealed.

1307. Convict-made goods; importation prohibited.

1308. Prohibition on importation of dog and cat fur products.

1309. Supplies for certain vessels and aircraft.

1310. Free importation of merchandise recovered from sunken and abandoned vessels.

1311. Bonded manufacturing warehouses.

1312. Bonded smelting and refining warehouses.

1313. Drawback and refunds.

1313a. Appropriations for refunds, drawings, bounties, etc.

1314. Repealed.

1315. Effective date of rates of duty.

1316. Omitted.

1317. Tobacco products; supplies for certain vessels and aircraft.

1318. Emergencies.

1319. Duty on coffee imported into Puerto Rico.

1319a. Duty on coffee; ratification of duties imposed by Legislature of Puerto Rico.

1320. Repealed.

1321. Administrative exemptions.


1323. Conservation of fishery resources.

PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION

1330. Organization of Commission.

1331. General powers.

1332. Investigations.

1332a. Importation of red cedar shingles.

1333. Testimony and production of papers.

1334. Cooperation with other agencies.

1335. Rules and regulations.

1336. Equalization of costs of production.

1337. Unfair practices in import trade.

1337a. Repealed.

1338. Discrimination by foreign countries.

1339. Trade Remedy Assistance Office.

1340. Omitted.

1341. Interference with functions of Commission.

PART III—PROMOTION OF FOREIGN TRADE

1351. Foreign trade agreements.

1352. Equalization of costs of production.

1352a. Repealed.

1353. Indebtedness of foreign countries, effect on.

1354. Notice of intention to negotiate agreement; opportunity to be heard. President to seek information and advice.

1355 to 1356. Repealed or Omitted.
<table>
<thead>
<tr>
<th>Sec.</th>
<th>1484a.</th>
<th>Articles returned from space not to be construed as importation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1484b.</td>
<td>Deferral of duty on large yachts imported for sale at United States boat shows.</td>
<td></td>
</tr>
<tr>
<td>1485.</td>
<td>Declaration.</td>
<td></td>
</tr>
<tr>
<td>1486.</td>
<td>Administration of oaths.</td>
<td></td>
</tr>
<tr>
<td>1487.</td>
<td>Value in entry; amendment.</td>
<td></td>
</tr>
<tr>
<td>1488.</td>
<td>Proceeds of sale.</td>
<td></td>
</tr>
<tr>
<td>1489.</td>
<td>Expense of weighing and measuring.</td>
<td></td>
</tr>
<tr>
<td>1490.</td>
<td>Partnership bond.</td>
<td></td>
</tr>
<tr>
<td>1491.</td>
<td>Examination of baggage.</td>
<td></td>
</tr>
<tr>
<td>1492.</td>
<td>Clearance restrictions of individuals returning from abroad; special circumstances; “baggage and effects” defined.</td>
<td></td>
</tr>
<tr>
<td>1497.</td>
<td>Penalties for failure to declare.</td>
<td></td>
</tr>
<tr>
<td>1498.</td>
<td>Entry under regulations.</td>
<td></td>
</tr>
<tr>
<td>1499.</td>
<td>Examination of merchandise.</td>
<td></td>
</tr>
<tr>
<td>1500.</td>
<td>Appraisal, classification, and liquidation procedure.</td>
<td></td>
</tr>
<tr>
<td>1501.</td>
<td>Voluntary reliquidations by Customs Service.</td>
<td></td>
</tr>
<tr>
<td>1502.</td>
<td>Regulations for appraisement and classification.</td>
<td></td>
</tr>
<tr>
<td>1503.</td>
<td>Dutiable value.</td>
<td></td>
</tr>
<tr>
<td>1503a.</td>
<td>Repealed.</td>
<td></td>
</tr>
<tr>
<td>1504.</td>
<td>Limitation on liquidation.</td>
<td></td>
</tr>
<tr>
<td>1505.</td>
<td>Payment of duties and fees.</td>
<td></td>
</tr>
<tr>
<td>1506.</td>
<td>Allowance for abandonment and damage.</td>
<td></td>
</tr>
<tr>
<td>1507.</td>
<td>Tare and draft.</td>
<td></td>
</tr>
<tr>
<td>1508.</td>
<td>Recordkeeping.</td>
<td></td>
</tr>
<tr>
<td>1509.</td>
<td>Examination of books and witnesses.</td>
<td></td>
</tr>
<tr>
<td>1510.</td>
<td>Judicial enforcement.</td>
<td></td>
</tr>
<tr>
<td>1511.</td>
<td>Repealed.</td>
<td></td>
</tr>
<tr>
<td>1512.</td>
<td>Deposit of duty receipts.</td>
<td></td>
</tr>
<tr>
<td>1513.</td>
<td>Customs officer’s immunity.</td>
<td></td>
</tr>
<tr>
<td>1514.</td>
<td>Protest against decisions of Customs Service.</td>
<td></td>
</tr>
<tr>
<td>1515.</td>
<td>Review of protests.</td>
<td></td>
</tr>
<tr>
<td>1516.</td>
<td>Petitions by domestic interested parties.</td>
<td></td>
</tr>
<tr>
<td>1516a.</td>
<td>Judicial review in countervailing duty and antidumping duty proceedings.</td>
<td></td>
</tr>
<tr>
<td>1517.</td>
<td>Repealed.</td>
<td></td>
</tr>
<tr>
<td>1520.</td>
<td>Refunds and errors.</td>
<td></td>
</tr>
<tr>
<td>1521.</td>
<td>Examination of accounts.</td>
<td></td>
</tr>
<tr>
<td>1522.</td>
<td>Deposit of reimbursable charges.</td>
<td></td>
</tr>
<tr>
<td>1523.</td>
<td>Repealed.</td>
<td></td>
</tr>
<tr>
<td>1524.</td>
<td>Merchandise bearing American trade-mark.</td>
<td></td>
</tr>
<tr>
<td>1527.</td>
<td>Importation of wild mammals and birds in violation of foreign law.</td>
<td></td>
</tr>
<tr>
<td>1528.</td>
<td>Taxes not to be construed as duties.</td>
<td></td>
</tr>
<tr>
<td>1529.</td>
<td>Collection of fees on behalf of other agencies.</td>
<td></td>
</tr>
</tbody>
</table>

**PART IV—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE**

<table>
<thead>
<tr>
<th>Sec.</th>
<th>1551.</th>
<th>Designation as carrier of bonded merchandise.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1551a.</td>
<td>Bonded cartmen or lightermen.</td>
<td></td>
</tr>
<tr>
<td>1552.</td>
<td>Entry for immediate transportation.</td>
<td></td>
</tr>
<tr>
<td>1553.</td>
<td>Entry for transportation and exportation; lottery material from Canada.</td>
<td></td>
</tr>
<tr>
<td>1553a.</td>
<td>Recordkeeping for merchandise transported by pipeline.</td>
<td></td>
</tr>
<tr>
<td>1554.</td>
<td>Transportation through contiguous countries.</td>
<td></td>
</tr>
<tr>
<td>1555.</td>
<td>Bonded warehouses.</td>
<td></td>
</tr>
<tr>
<td>1556.</td>
<td>Bonded warehouses; regulations for establishing.</td>
<td></td>
</tr>
<tr>
<td>1557.</td>
<td>Entry for warehouse.</td>
<td></td>
</tr>
<tr>
<td>1558.</td>
<td>No remission or refund after release of merchandise.</td>
<td></td>
</tr>
<tr>
<td>1559.</td>
<td>Warehouse goods deemed abandoned after 5 years.</td>
<td></td>
</tr>
<tr>
<td>1560.</td>
<td>Leasing of warehouses.</td>
<td></td>
</tr>
</tbody>
</table>
1561. Boarding vessels.
1562. Search of persons and baggage; regulations.
1563. Cartage.
1564. Lien.
1565. Public stores.
1566. Cartage.

PART V—ENFORCEMENT PROVISIONS

1581. Falsity or lack of manifest; penalties.
1582. Unlawful unlading or transshipment.
1583. Transportation between American ports via foreign ports.
1584. Repealed.
1585. Repealed.
1586. Unlawful unlading or transshipment.
1587. Examination of hovering vessels.
1588. Repealed.

SUBTITLE IV—COUNTERVAILING AND ANTIDUMPING DUTIES

PART I—IMPOSITION OF COUNTERVAILING DUTIES

1671. Countervailing duties imposed.
1671a. Procedures for initiating a countervailing duty investigation.
1671b. Preliminary determinations.
1671c. Termination or suspension of investigation.
1671d. Final determinations.
1671e. Assessment of duty.
1671f. Treatment of difference between deposit of estimated countervailing duty and final assessed duty under countervailing duty orders.
1671g. Effect of derogation of Export-Import Bank financing.
1671h. Conditional payment of countervailing duties.

PART II—IMPOSITION OF ANTIDUMPING DUTIES

1673. Imposition of antidumping duties.
1673a. Procedures for initiating an antidumping duty investigation.
1673b. Preliminary determinations.
1673c. Termination or suspension of investigation.
1673d. Final determinations.
1673e. Assessment of duty.
1673f. Treatment of difference between deposit of estimated antidumping duty and final assessed duty under antidumping duty orders.
1673g. Conditional payment of antidumping duty.
1673h. Establishment of product categories for short life cycle merchandise.
1673i. Repealed.

PART III—REVIEWS; OTHER ACTIONS REGARDING AGREEMENTS

SUBPART A—REVIEWS OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

1675. Administrative review of determinations.
1675a. Special rules for section 1675(b) and 1675(c) reviews.
1675b. Special rules for injury investigations for certain section 1303 or section 1671(c) countervailing duty orders and investigations.
1675c. Repealed.

SUBPART B—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

1676. Required consultations.
new title I entitled ‘Title I—Harmonized Tariff Schedule of the United States’ (hereinafter in this subtitle [subtitle B, §§1201 to 1217, of title I, see Tables for classification] referred to as the ‘Harmonized Tariff Schedule’) which—

”(1) consists of—

“(A) the General Notes;

“(B) the General Rules of Interpretation;

“(C) the Additional U.S. Rules of Interpretation;

“(D) sections I to XXII, inclusive (encompassing chapters 1 to 99, and including all section and chapter notes, article provisions, and tariff and other treatment accorded thereto); and

“(E) the Chemical Appendix to the Harmonized Tariff Schedule;

all conforming to the nomenclature of the Convention and as set forth in Publication No. 2030 of the Commission entitled ‘Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes’ and Supplement No. 1 thereto; but

“(2) does not include the statistical annotations, notes, annexes, suffixes, check digits, units of quantity, and other matters formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), nor the table of contents, footnotes, index, and other matters inserted for ease of reference, that are included in such Publication No. 2030 or Supplement No. 1 thereto.”

[For effective date of Harmonized Tariff Schedule as Jan. 1, 1989, see section 1217(b) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.]

TARIFF CLASSIFICATION ACT OF 1962; ADOPTION OF REVISED TARIFF SCHEDULES; ADMINISTRATIVE AND SAVING PROVISIONS

§ 1202. Harmonized Tariff Schedule

Publication of Harmonized Tariff Schedule


Reference to Tariff Schedules To Be Treated as Reference to Harmonized Tariff Schedule

Reference in any law to “Tariff Schedules of the United States”, “the Tariff Schedules”, “such Schedules”, and any other general reference to the old Schedules to be treated as reference to Harmonized Tariff Schedule, see section 3012 of this title.

SUBTITLE II—SPECIAL PROVISIONS

PART I—MISCELLANEOUS


Section, act June 17, 1930, ch. 497, title III, §301, 46 Stat. 685, related to duties and taxes on Philippine articles coming to the United States and United States articles imported into the Philippine Islands. Subject matter is covered by Philippine Trade Act of 1946 (see Short Title note set out under section 1304 of Title 22, Foreign Relations and Intercourse).

Effective Date of Repeal

Repeal effective May 1, 1946, see section 512 of act Apr. 30, 1946, set out as an Effective Date note under


§ 1302. Omitted

Codicification

Section, acts June 17, 1930, ch. 497, title III, § 302, 46 Stat. 686; May 17, 1932, ch. 190, 47 Stat. 158, was incorporated as section 3361(b) of the Internal Revenue Code of 1939. See section 7653 of Title 26, Internal Revenue Code.


Effective Date of Repeal

Section 261(a) of title II of Pub. L. 103–465 provided that this section is repealed "effective on the effective date of this title [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title]."

Savings Provision

Section 261(b), (c) of title II of Pub. L. 103–465 provided that:

"(b) Savings Provisions.—

'(1) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, and other administrative actions—

'"(A) which have been issued pursuant to an investigation conducted under section 303 of the Tariff Act of 1930 [19 U.S.C. 1303], and

'"(B) which are in effect on the effective date of this title [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title], or were final before such date and are to become effective on or after such date,

'shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the administering authority, the International Trade Commission, or a court of competent jurisdiction, or by operation of law. Except as provided in paragraph (3), such orders or determinations shall be subject to review under section 751 of the Tariff Act of 1930 [19 U.S.C. 1675], if such review is pending or the time for filing such review has not expired on the effective date of this title.

'(c) definition of administering authority—For purposes of this section, the term ‘administering authority’ has the meaning given such term by section 771(1) of the Tariff Act of 1930 [19 U.S.C. 1677(1)]."

References to Former Section 1303

Section 261(d)(1)(C) of Pub. L. 103–365 provided that: 

"Any reference to section 303 [19 U.S.C. 1303] in any other Federal law, Executive order, rule, or regulation shall be treated as a reference to section 303 of the Tariff Act of 1930 as in effect on the day before the effective date of title II of this Act [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title]."

References to section 1303 in chapter 4 of this title defined to mean section 1303 as in effect on the day before Jan. 1, 1995, see section 1677(26) of this title.

§ 1304. Marking of imported articles and containers

(a) Marking of articles

Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear.

(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

(3) Authorize the exception of any article from the requirements of marking if—

(A) Such article is incapable of being marked.

(B) Such article cannot be marked prior to shipment to the United States without injury;

(C) Such article cannot be marked prior to shipment to the United States, except at an
expense economically prohibitive of its importation;

(D) The marking of a container of such article will reasonably indicate the origin of such article;

(E) Such article is a crude substance;

(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

(I) Such article was produced more than twenty years prior to its importation into the United States;

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: Provided, That this subdivision shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of sections 1351, 1352, 1353, 1354 of this title, as extended; or

(K) Such article cannot be marked after importation except at any expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) Marking of containers

Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a) of this section. If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

(c) Marking of certain pipe and fittings

(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) of this section with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or continuous paint stenciling.

(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the five methods specified in paragraph (1), the article may be marked by an equally permanent method of marking or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.

(d) Marking of compressed gas cylinders

No exception may be made under subsection (a)(3) of this section with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases whether or not certified prior to exportation to have been made in accordance with the safety requirements of sections 178.36 through 178.68 of title 49, Code of Federal Regulations, each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, raised lettering, or an equally permanent method of marking.

(e) Marking of certain manhole rings or frames, covers, and assemblies thereof

No exception may be made under subsection (a)(3) of this section with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country of origin by means of die stamping, cast-in-mold lettering, engraving, or an equally permanent method of marking.

(f) Marking of certain coffee and tea products

The marking requirements of subsections (a) and (b) of this section shall not apply to articles described in subheadings 0901.21, 0901.22, 0902.10, 0902.20, 0902.30, 0902.40, 2101.10, and 2101.20 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(g) Marking of spices

The marking requirements of subsections (a) and (b) of this section shall not apply to articles provided for under subheadings 0904.11, 0904.12, 0904.20, 0905.00, 0906.10, 0906.20, 0906.30, 0907.00, 0908.10, 0908.20, 0908.30, 0909.00, 0909.10, 0909.20, 0909.30, 0909.40, 0909.50, 0910.10, 0910.20, 0910.30, 0910.40, 0910.50, 0910.91, 0910.99, 1106.20, 1107.00, 1107.50, 1107.91, 1404.90, and 3302.10, and items classifiable in categories 0712.90.60, 0712.90.8080, 1209.91.00, 1211.90.0000, 1211.90.8040, 1211.90.8050, 1211.90.8090, 1200.90.3000, 2918.13.2000, 3203.00.0000, 3301.90.1010, 3301.90.1020, and 3301.90.1050 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(h) Marking of certain silk products

The marking requirements of subsections (a) and (b) of this section shall not apply either to—
§ 1304

(1) articles provided for in subheading 6214.10.10 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1997; or

(2) articles provided for in heading 5007 of the Harmonized Tariff Schedule of the United States as in effect on January 1, 1997.

(i) Additional duties for failure to mark

If at the time of importation any article (or its container, as provided in subsection (b) of this section) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) of this section) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(j) Delivery withheld until marked

No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (i) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(k) Treatment of goods of NAFTA country

(1) Application of section

In applying this section to an article that qualifies as a good of a NAFTA country (as defined in section 3301(4) of this title) under the regulations issued by the Secretary to implement Annex 311 of the North American Free Trade Agreement—

(A) the exemption under subsection (a)(3)(H) of this section shall be applied by substituting “reasonably know” for “necessarily know”;

(B) the Secretary shall exempt the good from the requirements for marking under subsection (a) of this section if the good—

(i) is an original work of art, or

(ii) is provided for under subheading 6904.10, heading 8541, or heading 8542 of the Harmonized Tariff Schedule of the United States; and

(C) subsection (b) of this section does not apply to the usual container of any good described in subsection (a)(3)(E) or (I) of this section or subparagraph (B)(i) or (ii) of this paragraph.

(2) Petition rights of NAFTA exporters and producers regarding marking determinations

(A) Definitions

For purposes of this paragraph:

(i) The term “adverse marking decision” means a determination by the Customs Service which an exporter or producer of merchandise believes to be contrary to Annex 311 of the North American Free Trade Agreement.

(ii) A person may not be treated as the exporter or producer of merchandise regarding which an adverse marking decision was made unless such person—

(I) if claiming to be the exporter, is located in a NAFTA country and is required to maintain records in that country regarding exportations to NAFTA countries; or

(II) if claiming to be the producer, grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles such merchandise in a NAFTA country.

(B) Intervention or petition regarding adverse marking decisions

If the Customs Service makes an adverse marking decision regarding any merchandise, the Customs Service shall, upon written request by the exporter or producer of the merchandise, provide to the exporter or producer a statement of the basis for the decision. If the exporter or producer believes that the decision is not correct, it may intervene in any protest proceeding initiated by the importer of the merchandise. If the importer does not file a protest with regard to the decision, the exporter or producer may file a petition with the Customs Service setting forth—

(i) a description of the merchandise; and

(ii) the basis for its claim that the merchandise should be marked as a good of a NAFTA country.

(C) Effect of determination regarding decision

If, after receipt and consideration of a petition filed by an exporter or producer under subparagraph (B), the Customs Service determines that the adverse marking decision—

(i) is not correct, the Customs Service shall notify the petitioner of the determination and all merchandise entered, or withdrawn from warehouse for consumption, more than 30 days after the date that notice of the determination under this clause is published in the weekly Custom Bulletin shall be marked in conformity with the determination; or
(ii) is correct, the Customs Service shall notify the petitioner that the petition is denied.

(D) Judicial review

For purposes of judicial review, the denial of a petition under subparagraph (C)(ii) shall be treated as if it were a denial of a petition of an interested party under section 1516 of this title regarding an issue arising under any of the preceding provisions of this section.

(i) Penalties

Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterate any mark required under the provisions of this chapter shall:

(1) upon conviction for the first violation of this subsection, be fined not more than $100,000, or imprisoned for not more than 1 year, or both; and

(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than $250,000, or imprisoned for not more than 1 year, or both.


Effective Date of 1999 Amendment

Pub. L. 106–36, title II, §2423(c), June 25, 1999, 113 Stat. 180, provided that: “The amendments made by this section [amending this section] apply to goods entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act [June 25, 1999].”

Effective Date of 1996 Amendment

Section 14(c) of Pub. L. 104–295 provided that: “The amendments made by this section [amending this section] apply to goods entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act [Oct. 11, 1996].”

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

Effective Date of 1988 Amendment

Section 1907(a)(2) of Pub. L. 100–418 provided that:

“(A) The amendment made by paragraph (1) [amending this section] applies with respect to acts committed on or after the date of the enactment of this Act [Aug. 23, 1988].

“(B) The conviction of a person under section 304(h) of the Tariff Act of 1930 [19 U.S.C. 1304(h)] for an act committed before the date of the enactment of this Act shall be disregarded for purposes of applying paragraph (2) of such subsection (as added by the amendment made by paragraph (1) of this subsection)].”

Effective Date of 1984 Amendment

Section 214 of title II of Pub. L. 98–573 provided that:

“(a) For purposes of this section, the term ‘15th day’ means the 15th day after the date of the enactment of this Act [Oct. 30, 1984].

“(b) Except as provided in subsections (c), (d), and (e), the amendments made by this title [enacting sections 58b, 1339, and 1627a of this title, amending sections 81c, 81o, 1312, 1330, 1431, 1456, 1555, 2192, 2251, 2253, and 2763 of this title, section 925 of Title 18, Crimes and Criminal Procedure, and section 162 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under

Subsecs. (j), (k). Pub. L. 104–295, §14(a)(1), redesignated subsecs. (h) and (i) as (j) and (k), respectively.

1993—Subsec. (c)(1). Pub. L. 103–182, §207(a)(1), substituted “engraving, or continuous paint stenciling” for “or engraving”.

Subsec. (c)(2). Pub. L. 103–182, §207(a)(2), substituted “five methods” for “four methods” and struck out “such as paint stenciling” after “method of marking”.

Subsec. (e). Pub. L. 103–182, §207(a)(3), substituted “engraving, or an equally permanent method of marking” for “or engraving”.

Subsecs. (h), (i). Pub. L. 103–182, §207(a)(4), (5), added subsec. (h) and redesignated former subsec. (h) as (i).

1988—Subsec. (h). Pub. L. 100–418 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “If any person shall, with intent to conceal the information given therein or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this chapter, he shall, upon conviction, be fined not more than $5,000 or imprisoned not more than one year, or both.”

1986—Subsec. (c). Pub. L. 99–514 substituted “(1) Except as provided in paragraph (2), no” for “No” and added par. (2).

1984—Subsecs. (c) to (h). Pub. L. 98–573 added subsecs. (c) to (e), redesignated former subsecs. (c) to (e) as (f) to (h), respectively, and in subsec. (g), as redesignated, substituted “subsection (f) of this section” for “subsection (c) of this section”.


sections 2, 81c, 81o, and 1339 of this title, and section 162 of Title 26) shall take effect on the 15th day.

(c)(1) The amendment made by section 204 [amending section 1411 of this title] shall apply with respect to vessels returning from the British Virgin Islands on or after the 15th day.

(2) The amendments made by section 207 [amending section 1416 of this title] shall apply with respect to entries made in connection with the arrival of a vessel used primarily for transporting passengers or property—

(i) made before the 15th day but not liquidated as of January 1, 1983, or

(ii) made before the 15th day but which is the subject of an action in a court of competent jurisdiction on or before the 15th day, and

(iii) with respect to which there would have been no duty if the amendment made by section 208 applied to such entry, shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, be liquidated or reliquidated as though such entry had been made on the 15th day.

(d) The amendments made by section 209 [enacting section 1494a of this title and amending section 1202 of this title] shall apply with respect to articles launched into space from the customs territory of the United States on or after the 15th day.

(3)(A) The amendment made by section 210(a) [amending section 1598 of this title] shall take effect on the 30th day after the date of the enactment of this Act (Oct. 30, 1984).

(B) The amendment made by section 210(b) [amending section 1520 of this title] shall apply with respect to receipts made on or before the 15th day, and any entry in connection with the adoption of a vessel used primarily for transporting passengers or property—

(i) made before the 15th day but not liquidated as of September 19, 1983, and

(ii) with respect to which there would have been no duty if the amendment made by section 208 applied to such entry, shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, be liquidated or reliquidated as though such entry had been made on the 15th day.

(4) The amendments made by section 212 [amending section 1484a of this title and amending section 1202 of this title] shall take effect upon the close of the comptroller's fiscal year.

(5)(A) The amendment made by section 210(a) [amending section 1598 of this title] shall take effect on the 15th day.

(B) The amendment made by section 210(b) [amending section 1520 of this title] shall apply with respect to entries made in connection with arrivals of vessels on or after the 15th day.

(6) A license in effect on the date of enactment of this Act (Oct. 30, 1984) shall continue in force as a license to transact customs business as a customs broker, subject to all the provisions of 28 U.S.C. 410, 2631, 2636, 2640, and 2643 of Title 28, Judiciary and Judicial Procedure.


**Effective Date of 1983 Amendments, Enactments, and Repeals**

Section 1 of act Aug. 8, 1983, provided that such act [see Short Title of 1983 Amendment note set out under section 1654 of this title] is effective, except as otherwise specifically provided for, on and after the thirtieth day following the date of its enactment [Aug. 8, 1983].

The exception “except as otherwise specifically provided for” apparently refers to the amendments made to the provisions preceding subd. (1) of section 1308 of this title, and to section 1557(b) of this title, for which separate effective dates were provided as explained in notes under such sections.

**Effective Date of 1938 Amendment**

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 57 of act June 25, 1938, set out as a note under section 1401 of this title.

**Savings Provision**

Section 23 of act Aug. 8, 1938, provided: “Except as may be otherwise provided for in this Act [see Short Title of 1938 Amendment note set out under section 1654 of this title], the repeal of existing law or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal or modification, but all liabilities under such laws shall continue, except as otherwise specifically provided in this Act, and may be enforced in the same manner as if such repeal or modification had not been made.”

**Transfer of Functions**

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers and employees, referred to in text, were under Department of the Treasury.

**Marking Requirements for Articles Qualifying as Goods of NAFTA Country**

Section 207(b) of Pub. L. 103–182 provided that: “Articles that qualify as goods of a NAFTA country under regulations issued by the Secretary in accordance with Annex 311 of the Agreement [North American Free Trade Agreement] are exempt from the marking requirements promulgated by the Secretary of the Treasury under section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418 [102 Stat. 1315]), but are subject to the requirements of section 304 of the Tariff Act of 1930 (19 U.S.C. 1344).”

**Plan Amendments Not Required Until January 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147] of the act are made by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 57 of act June 25, 1938, set out as a note under section 1401 of this title.
and 1171–1177) or title XVIII (§§1801–1899A) of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first full plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1305. Immoral articles; importation prohibited

(a) Prohibition of importation

All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any letter, image, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery, or any article containing any inscription or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided; Provided, That the drugs hereinafter mentioned, when imported in bulk and not put up for any of the purposes hereinafter specified, are excepted from the operation of this subdivision: Provided further, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes: Provided further, That effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States. (b) Enforcement procedures

Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the appropriate customs officer to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Court of International Trade from the decision of such customs officer. Upon the seizure of such book or matter, such customs officer shall transmit information thereof to the United States attorney of the district in which it is situated either—

(1) the office at which such seizure took place; or
(2) the place to which such book or matter is addressed;

and the United States attorney shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

(c) Institution of forfeiture proceedings

Notwithstanding the provisions of subsections (a) and (b) of this section, whenever a customs officer discovers any obscene material after such material has been imported or brought into the United States, or attempted to be imported or brought into the United States, he may refer the matter to the United States attorney for the institution of forfeiture proceedings under this section. Such proceedings shall begin no more than 30 days after the time the material is seized; except that no seizure or forfeiture shall be invalid for delay if the claimant is responsible for extending the action beyond the allowable time limits or if proceedings are postponed pending the consideration of constitutional issues.

(d) Stay of forfeiture proceedings

Upon motion of the United States, a court may stay such civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter.

(b) Coordination of forfeiture proceedings with criminal proceedings

(1) Notwithstanding subsection (a) of this section, whenever the Customs Service is of the opinion that criminal prosecution would be appropriate or that further criminal investigation is warranted in connection with allegedly obscene material seized at the time of entry, the appropriate customs officer shall immediately transmit information concerning such seizure to the United States Attorney of the district of the addressee’s residence. No notice to the addressee or consignee concerning the seizure is required at the time of such transmittal.

(2) Upon receipt of such information, such United States attorney shall promptly determine whether in such attorney’s opinion the referral of the matter for forfeiture under this section would materially affect the Government’s ability to conduct a criminal investigation with respect to such seizure.

(3) If the United States attorney is of the opinion that no prejudice to such investigation will

1 So in original. Two subsecs. (b) and (c) have been enacted. Second subsecs. (b) and (c) probably should be designated (e) and (f), respectively.

2 So in original. Probably should not be capitalized.
result from such referral, such attorney shall immediately so notify the Customs Service in writing. The appropriate customs officer shall immediately notify in writing the addressee or consignee of the seizure and shall transmit information concerning such seizure to the United States Attorney of the district in which it is situated, or to the appropriate customs officer for referral wherever appearing.

(4) If the United States attorney for the district of the addressee’s residence concludes that material prejudice to such investigation will result from such referral, such United States attorney shall place on file, within 14 days of the date of seizure, a dated certification stating that it is the United States attorney’s judgment that referral of the matter for forfeiture under this section would materially affect the Government’s ability to conduct a criminal investigation with respect to the seizure. The certification shall set forth specific, articulable facts demonstrating that withholding referral for forfeiture is necessary.

(5)(A) As soon as the circumstances change so that withholding of referral for forfeiture is no longer necessary for purposes of the criminal investigation, the United States attorney shall immediately so notify the Customs Service in writing and shall furnish a copy of the certification described in paragraph (4) above to the Customs Service.

(B) In any matter referred to a United States attorney for possible criminal prosecution where the subsection (5)(A) does not apply, the United States attorney shall immediately notify the Customs Service in writing concerning the disposition of the matter, whether by institution of a prosecution or a letter of declination, and shall also furnish a copy of the certification described in paragraph (4) of this subsection to the Customs Service.

(C) Upon receipt of the notification described in subparagraph (A) or (B) of this paragraph, the appropriate customs officer shall immediately notify the addressee or consignee of the seizure and shall transmit information concerning the seizure, including a copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph, to the United States attorney of the district in which is situated the office at which such seizure has taken place, who shall institute forfeiture proceedings in accordance with subsection (a) hereof within 14 days of the date of the notification described in subparagraph (A) or (B) above. A copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph shall be affixed to the complaint for forfeiture.

(c) Stay on motion

Upon motion of the United States, a court, for good cause shown, shall stay civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter whether in the same or in a different district.


Prior Provisions

Provisions in substantially the same language as those in this section were made by act Oct. 3, 1913, ch. 16, §IV, subsections 1, 2, and 3, 38 Stat. 194, superseding similar provisions of previous tariff acts. Those subsections were superseded by act Sept. 21, 1922, ch. 356, title III, §§365, 42 Stat. 937, and repealed by section 321 of that act. Section 305 of act Sept. 21, 1922, was superseded by section 306 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Amendments

1988—Subsec. (a). Pub. L. 100–449 inserted proviso at end of first par. directing that, “effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.”

Pub. L. 100–418, §1901(a)(1), designated second par. of subsec. (a) as subsec. (b) “Enforcement procedures”.

Subsec. (b). Pub. L. 100–690, §7522(e), added subsec. (b) relating to coordination of forfeiture proceedings with criminal proceedings.

Pub. L. 100–418, §1901(a)(2), designated second par. of subsec. (a) as subsec. (b) “Enforcement procedures” and amended second sentence generally. Prior to amendment, second sentence read as follows: “Upon the seizure of such book or matter such customs officer shall transmit information thereof to the United States attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized.”

Subsec. (c). Pub. L. 100–690, §7522(e), added subsec. (c) relating to stay on motion.

Pub. L. 100–418, §1901(a)(3), added subsec. (c) relating to institution of forfeiture proceedings.

Subsec. (d). Pub. L. 100–418 added subsec. (d) relating to stay of forfeiture proceedings.


1948—Subsec. (b). Act June 25, 1948, eff. Sept. 1, 1948, repealed subsec. (b) which related to penalties against...
government officers. See section 552 of Title 18, Crimes and Criminal Procedure.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted “United States attorney” for “district attorney”. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

EFFECTIVE AND TERMINATION DATES OF 1968 AMENDMENTS

Amendment by Pub. L. 100–449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of this title.

Section 1901(b) of Pub. L. 100–418 provided that: “The amendments made by subsection (a) [amending this section] apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act [Aug. 23, 1988].’’

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1971 AMENDMENT


EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. Sept. 29, 1950, 15 F.R. 4935, 64 Stat. 1290, 1291, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers, referred to in text, were under Department of the Treasury.

IMPORTATION OF RU–486

Memorandum of President of the United States, Jan. 22, 1993, 58 F.R. 7459, provided:

Memorandum for the Secretary of Health and Human Services

In Import Alert 66–47, the Food and Drug Administration (“FDA”) excluded the drug Mifepristone—commonly known as RU–486—from the list of drugs that individuals can import into the United States for their “personal use,” although the drugs have not yet been approved for distribution by the FDA. (See FDA Regulatory Procedures Manual, Chapter 9–7.) Import Alert 66–47 effectively bans the importation into this Nation of a drug that is used in other nations as a nonsurgical means of abortion.

I am informed that in excluding RU–486 from the personal use importation exemption, the FDA appears to have based its decision on factors other than an assessment of the possible health and safety risks of the drug. Accordingly, I hereby direct that you promptly instruct the FDA to determine whether there is sufficient evidence to warrant exclusion of RU–486 from the list of drugs that qualify for the personal use importation exemption. Furthermore, if the FDA concludes that RU–486 meets the criteria for the personal use importation exemption, I direct that you immediately take steps to rescind Import Alert 66–47.

In addition, I direct that you promptly assess initiatives by which the Department of Health and Human Services can promote the testing, licensing, and manufacturing in the United States of RU–486 or other antiprogestins.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.


§ 1307. Convict-made goods; importation prohibited

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

“Convict labor”, as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its non-performance and for which the worker does not offer himself voluntarily. For purposes of this section, the term “forced labor or/and indentured labor” includes forced or indentured child labor.


PRIOR PROVISIONS

Provisions in the same language as the provisions in this section were made by act Oct. 3, 1913, ch. 16, §IV, 1, 38 Stat. 185, superseding similar provisions of previous tariff acts. That subdivision was superseded by act Sept. 21, 1922, ch. 356, title III, §307, 42 Stat. 937, and repealed by section 321 of that act. Section 307 of act
September 21, 1922, was superseded by section 307 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

2000—Pub. L. 106–200 inserted at end ‘‘For purposes of this section, the term ‘forced labor or/and indentured labor’ includes forced or indentured child labor.’’

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–200, title IV, § 411(b), May 18, 2000, 114 Stat. 298, provided that: ‘‘The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [May 18, 2000].’’

PROHIBITION ON USE OF FUNDS TO PREVENT ENFORCEMENT OF BAN ON IMPORTATION OF CONVICT-MADE GOODS

Pub. L. 108–90, title V, § 515, Oct. 1, 2003, 117 Stat. 1154, provided that: ‘‘For fiscal year 2004 and thereafter, none of the funds appropriated or otherwise made available to the Department of Homeland Security shall be available for any activity or for paying the salary of any Government employee where funding an activity or paying a salary to a Government employee would result in a determination, regulation, or policy that would prohibit the enforcement of section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).’’

PROHIBITION ON USE OF FUNDS TO ALLOW IMPORTATION OF FORCED OR INDENTURED CHILD LABOR

Pub. L. 108–90, title V, § 514, Oct. 1, 2003, 117 Stat. 1154, provided that: ‘‘For fiscal year 2004 and thereafter, none of the funds appropriated or otherwise made available to the Department of Homeland Security may be used to allow—

‘‘(1) the importation into the United States of any good, ware, article, or merchandise mined, produced, or manufactured by forced or indentured child labor, as determined under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307); or

‘‘(2) the release into the United States of any good, ware, article, or merchandise on which there is in effect a detention order under such section 307 on the basis that the good, ware, article, or merchandise may have been mined, produced, or manufactured by forced or indentured child labor.’’

REPORTING REQUIREMENT ON FORCED LABOR PRODUCTS DESTINED FOR UNITED STATES MARKET

Pub. L. 108–90, tit. V, § 517, Oct. 1, 2003, 117 Stat. 1154, provided that: ‘‘Not later than 1 year after the date of the enactment of this Act [Oct. 1, 2003], the Commissioner of Customs shall prepare and transmit to the Congress a report on products made with forced labor that are destined for the United States market.

‘‘(b) CONTENTS OF REPORT.—The report under subsection (a) shall include information concerning the following:

‘‘(1) The extent of the use of forced labor in manufacturing products destined for the United States market.

‘‘(2) The volume of products made with forced labor, destined for the United States market, that is in violation of section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) or section 1761 of title 18, United States Code, and is seized by the United States Customs Service.

‘‘(3) The progress of the United States Customs Service in identifying and interdicting products made with forced labor that are destined for the United States market.’’

SENSE OF CONGRESS REQUESTING PRESIDENT TO INSTRUCT SECRETARY OF THE TREASURY TO ENFORCE SECTION 1307 WITHOUT DELAY


§ 1308. Prohibition on importation of dog and cat fur products

(a) Definitions

In this section:

(1) Cat fur

The term ‘‘cat fur’’ means the pelt or skin of any animal of the species Felis catus.

(2) Interstate commerce

The term ‘‘interstate commerce’’ means the transportation for sale, trade, or use between any State, territory, or possession of the United States, or the District of Columbia, and any place outside thereof.

(3) Customs laws

The term ‘‘customs laws of the United States’’ means any other law or regulation enforced or administered by the United States Customs Service.

(4) Designated authority

The term ‘‘designated authority’’ means the Secretary of the Treasury, with respect to the prohibitions under subsection (b)(1)(A) of this section, and the President (or the President’s designee), with respect to the prohibitions under subsection (b)(1)(B) of this section.

(5) Dog fur

The term ‘‘dog fur’’ means the pelt or skin of any animal of the species Canis familiaris.

(6) Dog or cat fur product

The term ‘‘dog or cat fur product’’ means any item of merchandise which consists, or is composed in whole or in part, of any dog fur, cat fur, or both.

(7) Person

The term ‘‘person’’ includes any individual, partnership, corporation, association, organization, business trust, government entity, or other entity subject to the jurisdiction of the United States.

(8) United States

The term ‘‘United States’’ means the customs territory of the United States, as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(b) Prohibitions

(1) In general

It shall be unlawful for any person to—

(A) import into, or export from, the United States any dog or cat fur product; or

(B) introduce into interstate commerce, manufacture for introduction into interstate commerce, sell, trade, or advertise in interstate commerce, offer to sell, or transport or distribute in interstate commerce in the United States, any dog or cat fur product.

(2) Exception

This subsection shall not apply to the importation, exportation, or transportation, for
noncommercial purposes, of a personal pet that is deceased, including a pet preserved through taxidermy.

(c) Penalties and enforcement

(1) Civil penalties

(A) In general

Any person who violates any provision of this section or any regulation issued under this section may, in addition to any other civil or criminal penalty that may be imposed under title 18 or any other provision of law, be assessed a civil penalty by the designated authority of not more than—

(i) $10,000 for each separate knowing and intentional violation;

(ii) $5,000 for each separate grossly negligent violation; or

(iii) $3,000 for each separate negligent violation.

(B) Debarment

The designated authority may prohibit a person from importing, exporting, transporting, distributing, manufacturing, or selling any fur product in the United States, if the designated authority finds that the person has engaged in a pattern or practice of actions that has resulted in a final administrative determination with respect to the assessment of civil penalties for knowing and intentional or grossly negligent violations of any provision of this section or any regulation issued under this section.

(C) Factors in assessing penalties

In determining the amount of civil penalties under this paragraph, the designated authority shall take into account the degree of culpability, any history of prior violations under this section, ability to pay, the seriousness of the violation, and such other matters as fairness may require.

(D) Notice

No penalty may be assessed under this paragraph against a person unless the person is given notice and opportunity for a hearing with respect to such violation in accordance with section 554 of title 5.

(2) Forfeiture

Any dog or cat fur product manufactured, taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, imported, or exported contrary to the provisions of this section or any regulation issued under this section shall be subject to forfeiture to the United States.

(3) Enforcement

The Secretary of the Treasury shall enforce the provisions of this section with respect to the prohibitions under subsection (b)(1)(A) of this section, and the President shall enforce the provisions of this section with respect to the prohibitions under subsection (b)(1)(B) of this section.

(4) Regulations

Not later than 270 days after November 9, 2000, the designated authorities shall, after notice and opportunity for comment, issue regulations to carry out the provisions of this section. The regulations of the Secretary of the Treasury shall provide for a process by which testing laboratories, whether domestic or foreign, can qualify for certification by the United States Customs Service by demonstrating the reliability of the procedures used for determining the type of fur contained in articles intended for sale or consumption in interstate commerce. Use of a laboratory certified by the United States Customs Service to determine the nature of fur contained in an item to which subsection (b) of this section applies is not required to avoid liability under this section but may, in a case in which a person can establish that the goods imported were tested by such a laboratory and that the item was not found to be a dog or cat fur product, prove dispositive in determining whether that person exercised reasonable care for purposes of paragraph (6).

(5) Reward

The designated authority shall pay a reward of not less than $500 to any person who furnishes information that establishes or leads to a civil penalty assessment, debarment, debarment, or forfeiture of property for any violation of this section or any regulation issued under this section.

(6) Affirmative defense

Any person accused of a violation under this section has a defense to any proceeding brought under this section on account of such violation if that person establishes by a preponderance of the evidence that the person exercised reasonable care—

(A) in determining the nature of the products alleged to have resulted in such violation; and

(B) in ensuring that the products were accompanied by documentation, packaging, and labeling that were accurate as to the nature of the products.

(7) Coordination with other laws

Nothing in this section shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the customs laws of the United States.

(d) Publication of names of certain violators

The designated authorities shall, at least once each year, publish in the Federal Register a list of the names of any producer, manufacturer, supplier, seller, importer, or exporter, whether or not located within the customs territory of the United States or subject to the jurisdiction of the United States, against whom a final administrative determination with respect to the assessment of a civil penalty for a knowing and intentional or a grossly negligent violation has been made under this section.

(e) Reports

In order to enable Congress to engage in active, continuing oversight of this section, the designated authorities shall provide the following:

(1) Plan for enforcement

Within 3 months after November 9, 2000, the designated authorities shall submit to Con-
gress a plan for the enforcement of the provisions of this section, including training and procedures to ensure that United States Government personnel are equipped with state-of-the-art technologies to identify potential dog or cat fur products and to determine the true content of such products.

(2) Report on enforcement efforts

Not later than 1 year after November 9, 2000, and on an annual basis thereafter, the designated authorities shall submit a report to Congress on the efforts of the United States Government to enforce the provisions of this section and the adequacy of the resources to do so. The report shall include an analysis of the training of United States Government personnel to identify dog and cat fur products effectively and to take appropriate action to enforce this section. The report shall include the findings of the designated authorities as to whether any government has engaged in a pattern or practice of support for trade in products the importation of which are prohibited under this section.

(June 17, 1930, ch. 497, title III, §308, as added Pub. L. 106-476, title I, §1143(a), Nov. 9, 2000, 114 Stat. 2164.)

REFERENCES IN TEXT


PRIOR PROVISIONS


EFFECTIVE DATE

Pub. L. 106-476, title I, §1143(c), Nov. 9, 2000, 114 Stat. 2167, provided that: ‘‘The amendments made by this section [enacting this section and amending section 69 of Title 15, Commerce and Trade] shall take effect on the date of the enactment of this Act [Nov. 9, 2000].’’

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FINDINGS AND PURPOSES

Pub. L. 106-476, title I, §1142, Nov. 9, 2000, 114 Stat. 2163, provided that:

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

‘‘(1) An estimated 2,000,000 dogs and cats are slaughtered and sold annually as part of the international fur trade. Internationally, dog and cat fur is used in a wide variety of products, including fur coats and jackets, fur trimmed garments, hats, gloves, decorative accessories, stuffed animals, and other toys.

‘‘(2) The United States represents one of the largest markets for the sale of fur and fur products in the world. Market demand for fur products in the United States has led to the introduction of dog and cat fur products into United States commerce, frequently based on deceptive or fraudulent labeling of the products to disguise the true nature of the fur and mislead United States wholesalers, retailers, and consumers.

‘‘(3) Dog and cat fur, when dyed, is not easily distinguishable to persons who are not experts from other furs such as fox, rabbit, coyote, wolf, and mink, and synthetic materials made to resemble real fur. Dog and cat fur is generally less expensive than other types of fur and may be used as a substitute for more expensive types of furs, which provides an incentive to engage in unfair or fraudulent trade practices in the importation, exportation, distribution, or sale of fur products, including deceptive labeling and other practices designed to disguise the true contents or origin of the product.

‘‘(4) Forensic texts have documented that dog and cat fur products are being imported into the United States subject to deceptive labels or other practices designed to conceal the use of dog or cat fur in the production of wearing apparel, toys, and other products.

‘‘(5) Publicly available evidence reflects ongoing significant use of dogs and cats bred expressly for their fur by foreign fur producers for manufacture into wearing apparel, toys, and other products that have been introduced into United States commerce. The evidence indicates that foreign fur producers also rely on the use of stray dogs and cats and stolen pets for the manufacture of fur products destined for the world and United States markets.

‘‘(6) The methods of housing, transporting, and slaughtering dogs and cats for fur production are generally unregulated and inhumane.

‘‘(7) The trade of dog and cat fur products is ethically and aesthetically abhorrent to United States citizens. Consumers in the United States have a right to know if products offered for sale contain dog or cat fur and to ensure that they are not unwitting participants in this gruesome trade.

‘‘(8) Persons who engage in the sale of dog or cat fur products, including the fraudulent trade practices identified above, gain an unfair competitive advantage over persons who engage in legitimate trade in apparel, toys, and other products, and derive an unfair benefit from consumers who buy their products.

‘‘(9) The imposition of a ban on the sale, manufacture, offer for sale, transportation, and distribution of dog and cat fur products, regardless of their source, is consistent with the international obligations of the United States because it applies equally to domestic and foreign producers and avoids any discrimination among foreign sources of competing products. Such a ban is also consistent with provisions of international agreements to which the United States is a party that expressly allow for measures designed to protect the health and welfare of animals and to enjoin the use of deceptive trade practices in international or domestic commerce.

(b) PURPOSES.—The purposes of this chapter [chap - ter 3 (§§1441-1443) of subtitle B of title I of Pub. L. 106-476, see Short Title of 2000 Amendment note set out under section 1654 of this title] are to—

‘‘(1) prohibit imports, exports, sale, manufacture, offer for sale, transportation, and distribution in the United States of dog and cat fur products, in order to ensure that United States market demand does not provide an incentive to slaughter dogs or cats for their fur;

‘‘(2) require accurate labeling of fur species so that consumers in the United States can make informed
choices and ensure that they are not unwitting contributors to this gruesome trade; and
"(5) ensure that the customs laws of the United States are not undermined by illicit international traffic in dog and cat fur products."

§ 1309. Supplies for certain vessels and aircraft

(a) Exemption from customs duties and internal-revenue tax

Articles of foreign or domestic origin may be withdrawn, under such regulations as the Secretary of the Treasury may prescribe, from any customs bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal-revenue tax, or from any internal-revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax—

(1) for supplies (not including equipment) of (A) vessels or aircraft operated by the United States, (B) vessels of the United States employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or between Hawaii and any other part of the United States, or between Alaska and any other part of the United States, or (C) aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States; or

(2) for supplies (including equipment) or repair of (A) vessels of war of any foreign nation, or (B) foreign vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where such trade by foreign vessels is permitted; or

(3) for supplies (including equipment), ground equipment, maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States, or between Alaska and any other part of the United States, where trade by foreign aircraft is permitted. With respect to articles for ground equipment, the exemption hereunder shall apply only to duties and to taxes imposed upon or by reason of importation.

The provisions for free withdrawals made by this subsection shall not apply to petroleum products for vessels or aircraft in voyages or flights exclusively between Hawaii or Alaska and any airport or Pacific coast seaport of the United States.

(b) Drawback

Articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, imported articles, and articles of domestic manufacture or production, laden as supplies upon any such vessel or aircraft of the United States or laden as supplies (including equipment) upon, or used in the maintenance or repair of, any such foreign vessel or aircraft, shall be considered to be exported within the meaning of the drawback provisions of this chapter.

(c) Articles removed in, or returned to, the United States

Any article exempted from duty or tax, or in respect of which drawback has been allowed, under this section or section 1317 of this title and thereafter removed in the United States from any vessel or aircraft, or otherwise returned to the United States, shall be treated as an importation from a foreign country.

(d) Reciprocal privileges

The privileges granted by this section and section 1317 of this title in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 1317 shall not apply thereafter in respect of aircraft registered in that foreign country.


Prior Provisions

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, §IV, K, 38 Stat. 197, which superseded a like provision made by an amendment of R.S. §2982, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §21, 36 Stat. 88. Section IV, K, of the act of 1913, and R.S. §2982 were superseded by act Sept. 21, 1922, ch. 356, title III, §309, 42 Stat. 938, and respectively repealed by sections 321 and 642 thereof. Section 309 of the act of 1922 was superseded by section 309 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1990 act.

Amendments


1960—Subsec. (a). Pub. L. 86–606 inserted “, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States” after “possessions” wherever appearing, and made the provisions for free withdrawals inapplicable to petroleum products for vessels or aircraft in voyages or flights between Hawaii or Alaska and any airport or Pacific coast seaport of the United States.

1953—Subsec. (a). Act Aug. 8, 1953, extended the exemption from payment of duty and internal revenue tax theretofore available to supplies for certain vessels and aircraft withdrawn from bonded warehouses, bonded manufacturing warehouses, or continuous customs custody elsewhere to supplies withdrawn from foreign
§ 1310. **Free importation of merchandise recovered from sunken and abandoned vessels**

Whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe.

(June 17, 1930, ch. 497, title III, § 310, 46 Stat. 691.)

**PRIORITY PROVISIONS**

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, §IV, L. 38 Stat. 197, superseding similar provisions of previous tariff acts. That section was superseded by act Sept. 21, 1922, ch. 356, title III, §310, 42 Stat. 938, and repealed by section 321 of that act. Section 310 of act Sept. 21, 1922, was superseded by section 310 of act June 17, 1930, and repealed by section 651(a)(1) of the 1930 act.

§ 1311. **Bonded manufacturing warehouses**

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: Provided, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: Provided further, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therewith or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

No flour, manufactured in a bonded manufacturing warehouse from wheat imported after ninety days after June 17, 1930, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same, may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the execution of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the appropriate customs officer of the port, who shall certify to such shipment and exportation, or indorsing for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: Provided, That the by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouses under the Act of March 24, 1874, ch. 65, 18 Stat. 24, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the
for exportation to a NAFTA country, as defined in section 3301(4) of this title, without assessment of a duty on the materials in their condition and quantity, and at their weight, at the time of importation into the United States. The duty shall be paid before the 61st day after the date of exportation, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 1508(b))(2)(B) of this title) in an amount that does not exceed the lesser of—

(1) the total amount of customs duties paid or owed on the materials on importation into the United States, or

(2) the total amount of customs duties paid on the article to the NAFTA country.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no article manufactured in a bonded warehouse, except to the extent that such article is made from a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada during the period such Agreement is in operation without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.

No article manufactured in a bonded warehouse from materials that are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, may be withdrawn from warehouse for exportation to Chile without assessment of a duty on the materials in their condition and quantity, and at their weight, at the time of importation into the United States. The duty shall be paid before the 61st day after the date of exportation, except that the duty may be waived or reduced by—

(1) 100 percent during the 8-year period beginning on January 1, 2004;

(2) 75 percent during the 1-year period beginning on January 1, 2012;

(3) 50 percent during the 1-year period beginning on January 1, 2013; and

(4) 25 percent during the 1-year period beginning on January 1, 2014.


AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 106–77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

Act March 24, 1874, referred to in text, which provided that "importers' bonded warehouses, to be used for the
storage and cleansing of imported rice intended for exportation to foreign countries, may be established at any port of entry in the United States, under such rules and regulations as the Secretary of the Treasury may prescribe'', was repealed by act Sept. 21, 1922, ch. 336, title IV, §63, 42 Stat. 989.

R.S. §3433, referred to in text, was amended by act Feb. 27, 1877, ch. 69, 19 Stat. 247. The provisions of R.S. §3433 as they existed prior to the amendment by act Feb. 27, 1877, were reenacted as section 10 of act Oct. 1, 1890, ch. 1244, 26 Stat. 614. Section 55 of said act Oct. 1, 1890, repealed all laws and parts of laws inconsistent therewith. The provisions of said section 10 of act Oct. 1, 1890, were incorporated into the Internal Revenue Code of 1939, as subsections (a), (b), (c), and (d)(1) of section 3177. See section 3521 of Title 26, Internal Revenue Code.

Section 294 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in text, is section 294 of Pub. L. 100–449, which is set out in a note under section 2112 of this title.

Section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, referred to in text, is section 203(a) of Pub. L. 108–77, which is set out in a note under section 3805 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, §IV, M, 38 Stat. 197, which was superseded by act Sept. 21, 1922, ch. 336, title III, §431, 42 Stat. 938, and repealed by section 321 thereof. Section 311 of the 1922 act was superseded by section 311 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.


AMENDMENTS

2003—Pub. L. 108–77, §§107(c), 203(b)(1), temporarily added par. at end relating to goods subject to Chile FTA drawback see Effective and Termination Dates of 2003 Amendment note below.

1993—Pub. L. 103–182 amended last par. generally. Prior to amendment, last par. read as follows: "No article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 294(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from said warehouse for exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 294(b)(2)(B) of such Act of 1988, without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect at the time of importation.''


1965—Pub. L. 94–146 struck out "at an exterior port'' after "bonded warehouse'' and "immediate'' after "sole purpose of'' in eighth paragraph.

1979—Pub. L. 96–38, in par. relating to distilled spirits and wine, struck out provision that no internal revenue tax be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses be subject by reason of such rectification to the payment of specific excise tax as rectifier.

1970—Pub. L. 91–271 substituted references to the appropriate customs officer for references to the collector wherever appearing.

1936—Act June 26, 1936, inserted par. at end relating to distilled spirits and wine.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to have effect on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–77, set out in a note under section 3805 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 100–449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 856(b) of Pub. L. 96–39 provided that: "Effective January 1, 1980, the second proviso to the last paragraph of section 311 of the Tariff Act of 1930 [this section] is hereby repealed.''

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers, referred to in text, are under Department of the Treasury.

WITHDRAWAL OF DISTILLED SPIRITS TO MANUFACTURING BONDED WAREHOUSES; TRANSFERS TO WAREHOUSES PENDING EXPORTATION


§1312. Bonded smelting and refining warehouses

(a) Bond; charges against bond

Any plant engaged in smelting or refining, or both, of metal-bearing materials as defined in this section may, upon the giving of satisfactory
bond, be designated a bonded smelting or refining warehouse. Metal-bearing materials may be entered into a bonded smelting or refining warehouse without the payment of duties thereon and there smelted or refined, or both, together with metal-bearing materials of domestic or foreign origin. Upon arrival of imported metal-bearing materials at the warehouse they shall be sampled according to commercial methods and assayed, both under customs supervision. The bond shall be charged with a sum equal in amount to the duties which would be payable on such metal-bearing materials in their condition as imported if entered for consumption, and the bond charge shall be adjusted to reflect changes in the applicable rate of duty occurring while the imported materials are still covered by the bond.

(b) Cancellation of charges against bond

The several charges against such bond may be canceled in whole or in part—

(1) upon the exportation from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c) of this section; except that—

(A) in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 3301(i) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

(i) the total amount of customs duties owed on the materials on importation into the United States, or

(ii) the total amount of customs duties paid to the NAFTA country on the product, and

(B) in the case of a withdrawal for exportation of such a product to Chile, if any of the imported metal-bearing materials are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation, except that the duties may be waived or reduced by—

(i) 100 percent during the 8-year period beginning on January 1, 2004,

(ii) 75 percent during the 1-year period beginning on January 1, 2012,

(iii) 50 percent during the 1-year period beginning on January 1, 2013, and

(iv) 25 percent during the 1-year period beginning on January 1, 2014, or

(2) upon payment of duties on the dutiable quantity of metal contained in the imported metal-bearing materials, or

(3) upon the transfer of the bond charges to another bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c) of this section, or

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c) of this section; except that—

(A) in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 3301(i) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

(i) the total amount of customs duties owed on the materials on importation into the United States, or

(ii) the total amount of customs duties paid to the NAFTA country on the product, and

(B) in the case of a withdrawal for exportation of such a product to Chile, if any of the imported metal-bearing materials are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation, except that the duties may be waived or reduced by—

(i) 100 percent during the 8-year period beginning on January 1, 2004,

(ii) 75 percent during the 1-year period beginning on January 1, 2012,

(iii) 50 percent during the 1-year period beginning on January 1, 2013, and

(iv) 25 percent during the 1-year period beginning on January 1, 2014, or

(5) upon the transfer to another bonded smelting or refining warehouse without phys-
ical shipment of metal of bond charges representing a quantity of dutiable metal contained in imported metal-bearing materials less wastage provided for in subsection (c) of this section of the plant of initial treatment of such materials provided there is on hand at the warehouse to which the transfer is made sufficient like metal in any form to satisfy the transferred bond charges.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no charges against such bond may be canceled in whole or part upon an expiration to Canada under paragraph (1) or (4) during the period such Agreement is in operation except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

(c) Allowance on bond for wastage of metals

For purposes of paragraphs (1), (3), (4), and (5) of subsection (b) of this section, due allowances shall be made for wastage of metals other than copper, lead, and zinc, as ascertained from time to time by the Secretary of the Treasury.

(d) Credit for exportation of product other than refined metal

Upon the exportation of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury; except that—

(1) in the case of a withdrawal for exportation to a NAFTA country, as defined in section 3301(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 1508(b)(2)(B) of this title) in an amount not to exceed the lesser of—

(A) 100 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 8-year period beginning on January 1, 2004,

(B) 75 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2012,

(C) 50 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2013, and

(D) 25 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2014.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no bond shall be credited under this subsection with respect to an exportation of a product to Canada during the period such Agreement is in operation except to the extent that the product is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

(e) General bond for two or more warehouses

Two or more smelting or refining warehouses may be included under one general bond and the quantities of each kind of metal subject to duty on hand at all of such warehouses may be aggregated to satisfy the bond obligation.

(f) Definitions

For purposes of this section—

(1) the term "metal-bearing materials" means metal-bearing ores and other metal-bearing materials provided for in chapter 26 of the Harmonized Tariff Schedule of the United States, and

(A) for the treatment of metal-bearing materials to reduce the metal content thereof to a metallic state in the course of recovering it in forms which if imported would be classifiable in chapters 71 through 83 of the Harmonized Tariff Schedule of the United States as unwrought metal, or in the form of oxides or other compounds which are obtained directly from the treatment of materials provided for in chapter 26 of the Harmonized Tariff Schedule of the United States, and

(B) for the treatment of unwrought metal or metal waste and scrap to remove impurities or undesired components; and

(2) the term "smelting or refining" embraces only pyrometallurgical, hydrometallurgical, electrometallurgical, chemical, or other processes—

(A) the total amount of customs duties paid or owed on the materials on importation into the United States, or

(B) the total amount of customs duties paid to the NAFTA country on the product; and

(2) in the case of a withdrawal for exportation to Chile, if any of the imported metal-bearing materials are goods subject to Chile FTA drawback, as defined in section 208(a) of the United States-Chile Free Trade Agreement Implementation Act, charges against the bond shall be paid before the 61st day after the date of exportation, and the bond shall be credited in an amount equal to—

(A) 100 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 8-year period beginning on January 1, 2004,

(B) 75 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2012,

(C) 50 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2013, and

(D) 25 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2014.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no bond shall be credited under this subsection with respect to an exportation of a product to Canada during the period such Agreement is in operation except to the extent that the product is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988.
resulting directly from smelting or refining processes, but does not include metal-bearing ores of chapter 26 of the Harmonized Tariff Schedule of the United States.

(g) Supervision and cost of labor under this section

Labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer. The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

(June 17, 1930, ch. 497, title III, § 312, 46 Stat. 692; Pub. L. 87–456, title III, § 301(b), May 24, 1962, 76 Stat. 76; Pub. L. 88–204 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in subsecs. (b) and (d), are sections 202 and 204 of Pub. L. 101–150, which are set out in a note under section 2112 of this title.


AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

Sections 202 and 204 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in subsecs. (b) and (d), are sections 202 and 204 of Pub. L. 101–150, which are set out in a note under section 2112 of this title.

Section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsec. (b)(1), (d)(B) and (d)(2), is section 203(a) of Pub. L. 103–182, which is set out in a note under section 3805 of this title.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, §IV, N. subsection 1, 38 Stat. 196, which was superseded by act Sept. 21, 1922, ch. 356, title III, § 322, 42 Stat. 949, and repealed by section 321 thereof. Section 312 of the act of 1922 was superseded by section 312 of act June 17, 1930, and repealed by section 631(a)(1) of the 1930 act.


Previous provisions for sampling lead ores were contained in act Mar. 2, 1895, ch. 189, §1, 28 Stat. 933, prior to repeal by act Sept. 21, 1922, ch. 356, title III, §321, 42 Stat. 947.

AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108–77, §§ 107(c), 203(b)(2)(A), temporarily substituted “except that—” and subpars. (A) and (B) for “except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 3314(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3314(a) of this title, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of export; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

“(A) the total amount of customs duties owed on the materials on importation into the United States, or

“(B) the total amount of customs duties paid to the NAFTA country on the product, or”.

See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (b)(4). Pub. L. 108–77, §§ 107(c), 203(b)(2)(B), temporarily substituted “except that—” and subpars. (A) and (B) for “except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 3314(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3314(a) of this title, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of export; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

“(A) the total amount of customs duties owed on the materials on importation into the United States, or

“(B) the total amount of customs duties paid to the NAFTA country on the product, or”.

See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (d). Pub. L. 108–77, §§ 107(c), 203(b)(2)(C), temporarily substituted “except that—” and pars. (1) and (2) for “except that in the case of a withdrawal for exportation to a NAFTA country, as defined in section 3314(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3314(a) of this title, charges against the bond shall be paid before the 61st day after the date of export; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 1508(b)(2)(B) of this title) in an amount not to exceed the lesser of—

“(A) the total amount of customs duties paid or owed on the materials on importation into the United States, or

“(B) the total amount of customs duties paid to the NAFTA country on the product, or”.

See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (e). Pub. L. 108–77, § 1508(b)(2)(B), struck out “(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)'' after “upon the exportation” and inserted provisions excepting goods withdrawn for exportation to a NAFTA country.

Subsec. (b)(4). Pub. L. 103–182, §203(b)(2)(A), struck out “(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)'' after “upon the exportation” and inserted provisions excepting goods withdrawn for exportation to a NAFTA country.
§ 1313. Drawback and refunds

(a) Articles made from imported merchandise

Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that such articles have not been used prior to such exportation or destruction, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) Substitution for drawback purposes

If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported, but only if those articles have not been used prior to such exportation or destruction; but the total amount of drawback allowed upon the exportation or destruction under customs supervision of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

(c) Merchandise not conforming to sample or specifications

(1) Conditions for drawback

Upon the exportation or destruction under the supervision of the Customs Service of articles or merchandise—
(A) upon which the duties have been paid,
(B) which has been entered or withdrawn for consumption,
(C) which is—
   (i) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation, or
   (ii) ultimately sold at retail by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and
   (D) which, within 3 years after the date of importation or withdrawal, as applicable, has been exported or destroyed under the supervision of the Customs Service,
the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

(2) Designation of import entries
For purposes of paragraph (1)(C)(ii), drawback may be claimed by designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (1)(A) and (B) under the supervision of the Customs Service. The merchandise designated for drawback must be identified in the import documentation with the same eight-digit classification number and specific product identifier (such as part number, SKU, or product code) as the returned merchandise.

(3) When drawback certificates not required
For purposes of this subsection, drawback certificates are not required if the drawback claimant and the importer are the same party, or if the drawback claimant is a drawback successor to the importer as defined in subsection (a)(3) of this section.

(d) Flavoring extracts; medicinal or toilet preparations; bottled distilled spirits and wines
Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid or determined, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid or determined on such bottled distilled spirits and wines. In the case of distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits and unless such spirits have been stamped or restamped, and marked, especially for export, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(e) Imported salt for curing fish
Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted.

(f) Exportation of meats cured with imported salt
Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meats, in amounts not less than $100.

(g) Materials for construction and equipment of vessels built for foreigners
The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

(h) Jet aircraft engines
Upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, there shall be refunded, upon satisfactory proof that such imported merchandise has been so used, the duties which have been paid thereon, in amounts not less than $100.

(i) Time limitation on exportation
Unless otherwise provided for in this section, no drawback shall be allowed under the provisions of this section unless the completed article is exported, or destroyed under the supervision of the Customs Service, within five years after importation of the imported merchandise.

(j) Unused merchandise drawback
(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law upon entry or importation—
   (A) is, before the close of the 3-year period beginning on the date of importation—
      (i) exported, or
      (ii) destroyed under customs supervision;
   and
   (B) is not used within the United States before such exportation or destruction;
then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback. The exporter (or destroyer) has the right to claim drawback under this paragraph, but may endorse such right to the importer or any intermediate party.

(2) Subject to paragraph (4), if there is, with respect to imported merchandise on which was
paid any duty, tax, or fee imposed under Federal law upon entry or importation, any other merchandise (whether imported or domestic), that—

(A) is commercially interchangeable with such imported merchandise;

(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and

(C) before such exportation or destruction—

(i) is not used within the United States, and

(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph, if that party—

(I) is the importer of the imported merchandise, or

(II) received from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the party the imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise (and any such transferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise);

then, notwithstanding any other provision of law, upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback under this subsection, but in no case may the merchandise be refunded as drawback under this paragraph, if that party—

(1) is the importer of the imported merchandise, or

(2) received from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the party the imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise (and any such transferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise);

for purposes of subparagraph (A) of this paragraph, wine of the same color having a price variation not to exceed 50 percent between the imported wine and the exported wine shall be deemed to be commercially interchangeable.

(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on—

(A) the imported merchandise itself in cases to which paragraph (1) applies, or

(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies,

shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

(4)(A) Effective upon the entry into force of the North American Free Trade Agreement, the exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act [19 U.S.C. 3301(4)], of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (5) of section 203(a) of that Act [19 U.S.C. 3333(a)], shall not constitute an exportation for purposes of paragraph (2).

(B) Beginning on January 1, 2015, the exportation to Chile of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (5) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, shall not constitute an exportation for purposes of paragraph (2).

(5) In this section—

(A) the terms ‘‘drawback product’’ and ‘‘subject to NAFTA drawback’’ have the same meaning as defined in section 235(b) of the American Free Trade Agreement Implementation Act [19 U.S.C. 3301 et seq.];

(B) the terms ‘‘NAFTA country’’ and ‘‘good faith’’ are defined in section 235(f) of the American Free Trade Agreement Implementation Act [19 U.S.C. 3301 et seq.];

(C) the term ‘‘drawback product’’ means any domestically produced product, manufactured with imported merchandise or any other merchandise (whether imported or domestic) of the same kind and quality, that is subject to drawback.

(f) Regulations

Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, the authority for the electronic submission of drawback entries and the designation of the person to whom any refund or payment of drawback shall be made.

(m) Source of payment

Any drawback of duties that may be authorized under the provisions of this chapter shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico.

(n) Refunds, waivers, or reductions under certain free trade agreements

(1) For purposes of this subsection and subsection (o) of this section—

(A) the term ‘‘NAFTA Act’’ means the North American Free Trade Agreement Implementation Act [19 U.S.C. 3301 et seq.];

(B) the terms ‘‘NAFTA country’’ and ‘‘good subject to NAFTA drawback’’ have the same
respective meanings that are given such terms in sections 2(4) and 203(a) of the NAFTA Act [19 U.S.C. 3301(4), 3333(a)];

(C) a refund, waiver, or reduction of duty under paragraph (2) of this subsection or paragraph (1) of subsection (o) of this section is subject to section 1508(b)(2)(B) of this title; and

(D) the term “good subject to Chile FTA drawback” has the meaning given that term in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.

(2) For purposes of subsections (a), (b), (f), (h), (p), and (q) of this section, if an article that is exported to a NAFTA country is a good subject to NAFTA drawback, no customs duties on the good may be refunded, waived, or reduced in an amount that exceeds the lesser of—

(A) the total amount of customs duties paid or owed on the good on importation into the United States, or

(B) the total amount of customs duties paid on the good to the NAFTA country.

(3) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsections (a), (b), (f), (h), (j)(2), and (q) of this section, the shipment to Canada during the period such Agreement is in operation of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of the United States-Canada Free Trade Agreement Implementation Act of 1988 does not constitute an exportation.

(4) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement there after terminates, then for purposes of subsection (g) of this section, vessels built for Canada on the good to the NAFTA country.

(2) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free Trade Agreement thereafter terminates, then for purposes of subsection (g) of this section, vessels built for Canada, may not be considered to be built for any foreign account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the Government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free Trade Agreement Implementation Act of 1988.

(3) For purposes of subsection (g) of this section, if—

(A) a vessel is built for the account and ownership of a resident of Chile or the Government of Chile, and

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.

no customs duties on such materials may be refunded, waived, or reduced, except as provided in paragraph (4).

(4) The customs duties referred to in paragraph (3) may be refunded, waived, or reduced by—

(A) 100 percent during the 8-year period beginning on January 1, 2004;

(B) 75 percent during the 1-year period beginning on January 1, 2012;

(C) 50 percent during the 1-year period beginning on January 1, 2013; and

(D) 25 percent during the 1-year period beginning on January 1, 2014.

(p) Substitution of finished petroleum derivatives

(1) In general

Notwithstanding any other provision of this section, if—

(A) an article (hereafter referred to in this subsection as the “exported article”) of the same kind and quality as a qualified article is exported;

(B) the requirements set forth in paragraph (2) are met; and

(C) a drawback claim is filed regarding the exported article;

drawback shall be allowed as described in paragraph (4).

(2) Requirements

The requirements referred to in paragraph (1) are as follows:

(A) The exporter of the exported article—

(i) manufactured or produced a qualified article in a quantity equal to or greater than the quantity of the exported article,

(ii) purchased or exchanged, directly or indirectly, a qualified article from a manufacturer or producer described in subsection (a) or (b) of this section in a quantity equal to or greater than the quantity of the exported article,

(iii) imported a qualified article in a quantity equal to or greater than the quantity of the exported article, or
(iv) purchased or exchanged, directly or indirectly, a qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

(B) In the case of the requirement described in subparagraph (A)(ii), the manufacturer or producer produced the qualified article in a quantity equal to or greater than the quantity of the exported article.

(C) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the exported article is exported during the period that the qualified article described in subparagraph (A)(i) or (A)(ii) (whichever is applicable) is manufactured or produced, or within 180 days after the close of such period.

(D) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the specific petroleum refinery or production facility which made the qualified article concerned is identified.

(E) In the case of the requirement of subparagraph (A)(iii) or (A)(iv), the exported article is exported within 180 days after the date of entry of an imported qualified article described in subparagraph (A)(iii) or (A)(iv) (whichever is applicable).

(F) Except as otherwise specifically provided in this subsection, the drawback claimant complies with all requirements of this section, including providing certificates which establish the drawback eligibility of articles for which drawback is claimed.

(G) The manufacturer, producer, importer, transferor, exporter, and drawback claimant of the qualified article and the exported article maintain all records required by regulation.

(3) “Qualified article” defined, etc.

For purposes of this subsection—

(A) The term “qualified article” means an article—

(i) described in—

(I) headings 2707, 2708, 2709.00, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902, and subheadings 2903.21.00, 2909.19.14, 2917.36, 2917.39.04, 2917.39.15, 2926.10.00, 3811.21.00, and 3811.90.00 of the Harmonized Tariff Schedule of the United States, or

(II) headings 3901 through 3914 of such Schedule (as such headings apply to the primary forms provided under Note 6 to chapter 39 of the Harmonized Tariff Schedule of the United States), and

(ii) which is—

(I) manufactured or produced as described in subsection (a) or (b) of this section from crude petroleum or a petroleum derivative,

(II) imported duty-paid, or

(III) an article of the same kind and quality as described in subparagraph (B), or any combination thereof, that is transferred, as so certified in a certificate of delivery or certificate of manufacture and delivery in a quantity not greater than the quantity of articles purchased or exchanged.

The transferred merchandise described in subclause (III), regardless of its origin, so designated on the certificate of delivery or certificate of manufacture and delivery shall be the qualified article for purposes of this section. A party who issues a certificate of delivery, or certificate of manufacture and delivery, shall also certify to the Commissioner of Customs that it has not, and will not, issue such certificates for a quantity greater than the amount eligible for drawback and that appropriate records will be maintained to demonstrate that fact.

(B) An article, including an imported, manufactured, substituted, or exported article, is of the same kind and quality as the qualified article for which it is substituted under this subsection if it is a product that is commercially interchangeable with or referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article. If an article is referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article on January 1, 2000, then whether or not the article has been reclassified under another eight-digit classification after January 1, 2000, the article shall be deemed to be an article that is referred to under the same eight-digit classification of such Schedule as the qualified article for purposes of the preceding sentence.

(C) The term “drawback claimant” means the exporter of the exported article or the refiner, producer, or importer of either the qualified article or the exported article. Any person eligible to file a drawback claim under this subparagraph may designate another person to file such claim.

(4) Limitation on drawback

The amount of drawback payable under this subsection shall not exceed the amount of drawback that would be attributable to the article—

(A) manufactured or produced under subsection (a) or (b) of this section by the manufacturer or producer described in clause (i) or (ii) of paragraph (2)(A), or

(B) imported under clause (iii) or (iv) of paragraph (2)(A) had the claim qualified for drawback under subsection (j) of this section.

(5) Special rules for ethyl alcohol

For purposes of this subsection, any duty paid under subheading 9901.00.50 of the Harmonized Tariff Schedule of the United States on imports of ethyl alcohol or a mixture of ethyl alcohol may not be refunded if the exported article upon which a drawback claim is based does not contain ethyl alcohol or a mixture of ethyl alcohol.

(q) Packaging material

(1) Packaging material under subsections (c) and (j)

Packaging material, whether imported and duty paid, and claimed for drawback under either subsection (c) or (j)(1) of this section, or imported and duty paid, or substituted, and
claimed for drawback under subsection (j)(2) of this section, shall be eligible for drawback, upon exportation, of 99 percent of any duty, tax, or fee imposed under Federal law on such imported material.

(2) Packaging material under subsections (a) and (b)
Packaging material that is manufactured or produced under subsection (a) or (b) of this section shall be eligible for drawback, upon exportation, of 99 percent of any duty, tax, or fee imposed under Federal law on the imported or substituted merchandise used to manufacture or produce such material.

(3) Contents
Packaging material described in paragraphs (1) and (2) shall be eligible for drawback whether or not they contain articles or merchandise, and whether or not any articles or merchandise they contain are eligible for drawback.

(4) Employing packaging material for its intended purpose prior to exportation
The use of any packaging material for its intended purpose prior to exportation shall not be treated as a use of such material prior to exportation for purposes of applying subsection (a), (b), or (c) of this section, or paragraph (1)(B) or (2)(C)(i) of subsection (j) of this section.

(r) Filing drawback claims
(1) A drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that the Customs Service was responsible for the untimely filing.

(2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.

(3)(A) The Customs Service may, notwithstanding the limitation set forth in paragraph (1), extend the time for filing a drawback claim for a period not to exceed 18 months, if—
(a) the claimant establishes to the satisfaction of the Customs Service that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster on or after January 1, 1994; and
(b) the claimant files a request for such extension with the Customs Service—
(I) within 1 year from the last day of the 3-year period referred to in paragraph (1), or
(II) within 1 year after October 11, 1996, whichever is later.

(B) If an extension is granted with respect to a request filed under this paragraph, the periods of time for retaining records set forth in subsection (t) of this section and section 1508(c)(3) of this title shall be extended for an additional 18 months or, in a case to which subparagraph (A)(ii) applies, for a period not to exceed 1 year from the date the claim is filed.

(C) For purposes of this paragraph, the term “major disaster” has the meaning given that term in section 5122(2) of title 42.

(s) Designation of merchandise by successor
(1) For purposes of subsection (b) of this section, a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.

(2) For purposes of subsection (j)(2) of this section, a drawback successor may designate—
(A) imported merchandise which the predecessor, before the date of succession, imported; or
(B) imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise for which the predecessor received, before the date of succession, from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the predecessor such merchandise;

as the basis for drawback on merchandise possessed by the drawback successor after the date of succession.

(3) For purposes of this subsection, the term “drawback successor” means an entity to which another entity (in this subsection referred to as the “predecessor”) has transferred by written agreement, merger, or corporate resolution—
(A) all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or
(B) the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personality, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor’s records) certifies that—
(A) the transferred merchandise was not and will not be claimed by the predecessor, and
(B) the predecessor did not and will not issue any certificate to any person that would enable that person to claim drawback.

(t) Drawback certificates
Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued.

(u) Eligibility of entered or withdrawn merchandise
Imported merchandise that has not been regularly entered or withdrawn for consumption
shall not satisfy any requirement for use, exportation, or destruction under this section.

(v) Multiple drawback claims

Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.

(w) Limited applicability for certain agricultural products

(1) In general

No drawback shall be available with respect to an agricultural product subject to the over-quotas rate of duty established under a tariff-rate quota, except pursuant to subsection (j)(1) of this section.

(2) Application to tobacco

Notwithstanding paragraph (1), drawback shall also be available pursuant to subsection (a) of this section with respect to any tobacco subject to the over-quotas rate of duty established under a tariff-rate quota.

(x) Drawbacks for recovered materials

For purposes of subsections (a), (b), and (c) of this section, the term “destruction” includes a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise. In determining the amount of duties to be refunded as drawback to a claimant under this subsection, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant shall be deducted from the value of the imported merchandise that is destroyed, or from the value of the merchandise used, or designated as used, in the manufacture of the article.

(y) Articles shipped to the United States insular possessions


AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 108-77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

Section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsecs. (j)(4)(B), (n)(1)(D), and (o)(3)(B), is section 203(a) of Pub. L. 106-77, which is set out in a note under section 3905 of this title.

The North American Free Trade Agreement Implementation Act, referred to in subsec. (n)(3) and (o)(2), is section 204 of Pub. L. 106-77, which is set out in a note under section 2112 of this title.


CONCIPATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § 4, O, 38 Stat. 200, which was superseded by act Sept. 21, 1922, ch. 356, title III, § 313, 42 Stat. 940, and repealed by section 321 thereof. Section 313 of the 1922 act was superseded by section 313 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Earlier provisions relating to this subject were made by the Tariff Acts of Oct. 1, 1890, ch. 1244, § 25, 26 Stat. 617; Aug. 7, 1894, ch. 349, § 22, 28 Stat. 551; July 24, 1897, ch. 11, § 30, 30 Stat. 211; and Aug. 5, 1909, ch. 6, § 25, 36 Stat. 90, which superseded provisions of a similar nature contained in R.S. §§ 3019, 3020, 3026, as amended by act Mar. 10, 1890, ch. 37, 21 Stat. 67, and said sections 3019, 3020, and 3026, were also repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

The provisions of section IV, O, of the act of 1913, similar to subdivision (g) of this section concerning materials used in the construction and equipment of vessels built for foreign account, superseded a similar provision of act June 26, 1884, ch. 121, § 17, 23 Stat. 57.

The provisions of subsec. (e) of this section concerning imported salt used in curing fish superseded similar provisions in R.S. § 3022, which was repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Section 642 of the act of Sept. 21, 1922, also repealed sections 3015 to 3026, inclusive, 3028 to 3047, inclusive,
and 3049 to 3057, inclusive of the Revised Statutes, which were concerned with the subject of drawback.

R.S. §3046, which was not repealed, read as follows: “...so much money as may be necessary for the payment of debentures or drawbacks and allowances which may be authorized and payable, is hereby appropriated for that purpose out of any money in the Treasury, to be expended under the direction of the Secretary of that Department, according to the laws authorizing debentures or drawbacks and allowances. The collectors of the customs shall be the disbursing agents to pay such debentures, drawbacks, and allowances. All debenture certificates issued according to law shall be received in payment of duties at the customhouse where the same have been issued, the laws regulating drawbacks having been complied with."

Permanent appropriations to pay debentures and other charges arising from duties, drawbacks, bounties, and allowances were also contained in R.S. §3089, incorporated in section 711 of former Title 31, Money and Finance, prior to repeal effective July 1, 1935, by act June 26, 1934, ch. 756, §§ 1, 2, 48 Stat. 1225.

AMENDMENTS

2008—Subsec. (j)(2). Pub. L. 110–246, §1542(a), inserted at end of concluding provisions “For purposes of sub-paragraph (A) of this paragraph, wine of the same color, if not to exceed 50 percent between the imported wine and the exported wine shall be deemed to be commercially interchangeable.”

Subsec. (p)(3)(B). Pub. L. 110–246, §1563(b), substituted “the primary forms provided under Note 6” for “either the qualified article or the exported article.”


Subsec. (p)(3)(B). Pub. L. 106–476, §1222(b), inserted at end “If an article is referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article on January 1, 2000, then whether or not the article has been classified under another eight-digit classification on January 1, 2000, the article shall be deemed to be an article that is referred to under the same eight-digit classification of such Schedule as the qualified article for purposes of the preceding sentence.”


1999—Subsec. (p)(1). Pub. L. 106–36, §2420(a), substituted concluding provisions for former concluding provisions which read as follows: “the amount of the duties paid on, or attributable to, such qualified article shall be refunded as drawback to the drawback claimant.”

Subsec. (p)(2)(A)(i) to (iii). Pub. L. 106–36, §2420(b)(1)(A), substituted “a qualified article” for “the qualified article”.


Subsec. (p)(3)(B). Pub. L. 106–36, §2420(c)(2), substituted “article, including an imported, manufactured, substituted, or exported article,” for “exported article”.

Subsec. (p)(3)(C). Pub. L. 106–36, §2420(c)(3), substituted “either the qualified article or the exported article” for “such article.”

Subsec. (p)(4)(B). Pub. L. 106–36, §2420(d), inserted “had the claim qualified for drawback under subsection (j) of this section” before period at end.

Subsec. (q). Pub. L. 106–36, §2420(a), designated existing provisions as par. (1) and added par. (2).


Subsec. (t). Pub. L. 104–295, §12(e)(4)(B), made technical amendment to reference in original act which appears as reference to this chapter.


1993—Subsec. (a). Pub. L. 103–182, § 632(a)(1), inserted "or destruction under customs supervision" after "Upon the exportation", "provided that those articles have not been used prior to such exportation or destruction," after "use of imported merchandise," and "or destruction" after "refunded upon the exportation", and substituted "by-products produced from imported wheat" for "by-products produced from wheat imported after ninety days after June 17, 1930".

Subsec. (b). Pub. L. 103–182, § 632(a)(2), substituted "any other merchandise (whether imported or domestic) for "any other merchandise"; inserted "imported wheat" for "by-products produced from imported wheat"; inserted "production of the exported articles", "or destruction under customs supervision," after "shall be allowed upon the exportation", substituted "production of the exported or destroyed articles" for "production of the exported articles", inserted "paid upon such merchandise shall be refunded as drawback allowed upon the exportation".

Subsec. (c). Pub. L. 103–182, § 632(a)(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties."

Subsec. (j). Pub. L. 103–182, § 203(c)(1), (2), substituted "Subject to paragraph (4), if for "If" in par. (2) and added par. (4). See Construction of 1993 Amendment note below.

Pub. L. 103–182, § 632(a)(4), amended subsec. (j) generally, substituting present provisions for provisions which authorized drawbacks for imported merchandise which, upon either exportation or destruction, was in the same condition as when imported.

Subsec. (i). Pub. L. 103–182, § 632(a)(5), substituted "the authority for the electronic submission of drawback entries" for "the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 1309(b) of this title shall be filed and completed."


Subsec. (p). Pub. L. 103–182, § 632(a)(6), amended subsec. (p) generally, substituting present provisions for provisions relating to substitution of crude petroleum or petroleum derivatives.

Subsecs. (q) to (v). Pub. L. 103–182, § 632(a)(7), added subsecs. (q) to (v).

1990—Subsec. (n). Pub. L. 101–382, § 139(a)(1), inserted "except an article" before "made from" and substituted comma for "of 1988" before "does not".

Subsec. (o). Pub. L. 101–382, § 139(a)(2), inserted at end "This subsection shall apply to vessels delivered to Canadian account or owner, or to the Government of Canada, on and after January 1, 1990" and "or, if later, the date proclaimed by the President under section 204(b)(2) of the United States-Canada Free-Trade Agreement Implementation Act of 1988.".


1988—Subsecs. (n), (o). Pub. L. 100–449 added subsecs. (n) and (o).

1986—Subsec. (j)(2), (3). Pub. L. 99–514, § 1888(2)(A), redesignated par. (3) as (2) and redesignated par. (4) relating to imported packaging material as (3) and amended par. (4) relating to the performing of incidental operations generally. Prior to amendment, such par. (4) read as follows: "The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on the imported merchandise itself, not amounting to manufacture or production for drawback purposes under the preceding provisions of this section shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B)."

1984—Subsec. (j)(2) to (4). Pub. L. 98–573, § 202(i), redesignated par. (2), relating to the performing of incidental operations, as (4), and inserted after par. (1) new pars. (3) and (4).

Subsec. (k) to (m). Pub. L. 98–573, § 202(l), (3), added subsec. (k) and redesignated former subsecs. (k) and (l) as (l) and (m), respectively.

1980—Subsec. (j) to (l). Pub. L. 96–609, § 201(a), added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (l), respectively.

1971—Subsecs. (h) to (k). Pub. L. 91–692 added subsec. (h) redesignated former subsec. (h) to (j) as (j) to (k), respectively.

1968—Subsec. (d). Pub. L. 90–630 permitted, under Treasury regulations, the drawback of tax with regard to distilled spirits exported as ships' stores where the stamping, restamping, or renewal of the duties or the spirits have been removed from the original bottling plant.

1968—Subsec. (b). Pub. L. 85–673 substituted "merchandise" for "sugar, or metal, or ore containing metal, or flaxseed or linseed, or flaxseed or linseed oil, or printing papers coated or uncoated," after "duty-paid" and "allowable had the".


1963—Subsec. (a). Act Aug. 8, 1963, § 12(a), extended from one year to three years the period during which substitution for drawback purposes may be made.

Subsec. (c). Act Aug. 8, 1963, § 12(b), extended the period during which the merchandise can be returned to customs custody for exportation from thirty days to ninety days or such longer period as the Secretary of the Treasury may allow; and provided for the refunding of duties in cases where the merchandise upon which the duties have been paid was sent to the consignee without his consent.

Subsec. (d). Act Aug. 8, 1963, § 12(c), substituted reference to "this section" for "this section or of section 152a of this title (relating to drawback on shipments to the Philippine Islands),"; struck out another reference to the Philippine Islands; and substituted "five years" for "three years".

Subsec. (e). Act Aug. 8, 1963, § 12(d), broadened the authority of the Secretary of the Treasury to make such regulations for the administration of the drawback provisions as may be necessary.

1951—Subsec. (b). Act Aug. 8, 1951, extended the provisions of such subsection to flaxseed and linseed, and flaxseed and linseed oil, and omitted "(or shipment to the Philippine Islands)" before "of any such articles".


CHANGE OF NAME
"Puerto Rico" substituted in subsec. (j) for "Porto Rico" pursuant to act May 17, 1932, which is classified to section 731a of Title 48, Territories and Insular Possessions.

EFFECTIVE DATE OF 2008 AMENDMENT

June 18, 2008, 122 Stat. 1664, 2279, provided that: “The amendment made by this section [amending this section] applies with respect to—

(1) imports of ethyl alcohol or a mixture of ethyl alcohol entered for consumption, or withdrawn from warehouse for consumption, on or after October 1, 2008; and

(2) imports of ethyl alcohol or a mixture of ethyl alcohol entered for consumption, or withdrawn from warehouse for consumption, before October 1, 2008, if a duty drawback claim is filed with respect to such imports on or after October 1, 2010.”


**Effective Date of 2004 Amendment**

Pub. L. 108–420, title I, §1557(b), Dec. 3, 2004, 118 Stat. 2587, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 3, 2004], and shall apply to any drawback claim filed on or after that date and to any drawback entry filed before that date if the liquidation of the entry is not final on that date.”

Pub. L. 108–420, title I, §1563(o)(1), Dec. 3, 2004, 118 Stat. 2587, provided that: “The amendments made by subsections (a), (b), (c), (d), and (f) [amending this section and section 1593a of this title] shall take effect on the date of the enactment of this Act [Dec. 3, 2004], and shall apply to—

“(A) any drawback entry filed on and after such date of enactment; and

“(B) any drawback entry filed before such date of enactment if the liquidation of the entry is not final on such date of enactment.”

Pub. L. 108–420, title I, §1571, Dec. 3, 2004, 118 Stat. 2587, provided that: “Except as otherwise provided in this section, the amendments made by this section and sections 1481, 1482, 1483, 1509a, 1529, 2463, and 2703 of this title, enacting provisions set out as notes under this section and sections 1481, 1482, 1483, 1509a, 1529, 2463, and 2703 of this title, and repealing provisions set out as a note under section 1529 of this title, the amendments made by this title shall apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act [Dec. 3, 2004].”

**Effective and Termination Dates of 2003 Amendment**

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–77, set out in a note under section 3805 of this title.

**Effective Date of 2000 Amendment**

Pub. L. 100–476, title I, §1422(a)(2), Nov. 9, 2000, 114 Stat. 2156, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 9, 2000], and shall apply to—

“(A) any drawback claim filed on or after such date of enactment; and

“(B) any drawback entry filed before such date of enactment if the liquidation of the entry is not final on such date of enactment.”

Pub. L. 100–476, title I, §1462(b), Nov. 9, 2000, 114 Stat. 2173, provided that: “The amendment made by this section [amending this section] shall apply to drawback claims filed on or after the date of the enactment of this Act [Nov. 9, 2000].”

Amendment by title I of Pub. L. 100–476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 100–476, set out as a note under section 58c of this title.

**Effective Date of 1999 Amendment**

Pub. L. 106–36, title II, §2404(b), June 25, 1999, 113 Stat. 169, provided that: “The amendment made by this section [amending this section] applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act [June 25, 1999].”

Pub. L. 106–36, title II, §2411(b), June 25, 1999, 113 Stat. 178, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [June 25, 1999], and shall apply to drawback claims filed on and after such date.”

Pub. L. 106–36, title II, §2420(e), June 25, 1999, 113 Stat. 179, provided that: “The amendments made by this section [amending this section] shall take effect as if included in the amendment made by section 622(a)(6) of the North American Free Trade Agreement Implementation Act [Pub. L. 103–182, amending this section]. For purposes of section 622(b) of that Act [set out as a note below], the 3-year requirement set forth in section 313(r) of the Tariff Act of 1930 [19 U.S.C. 1313(r)] shall not apply to any drawback claim filed within 6 months after the date of the enactment of this Act [June 25, 1999] for which that 3-year period would have expired.”

**Effective Date of 1994 Amendment**


**Effective Date of 1993 Amendment**

Amendment by section 203(b)(3) of Pub. L. 103–182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1996, if Canada is a NAFTA country, see section 213(c) of Pub. L. 103–182, effective Jan. 1, 1996, see section 213(c) of Pub. L. 103–182, effective Jan. 1, 1996, and applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 100–476, set out as a note under section 58c of this title.

Amendment by section 203(c) of Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182.
§ 1313a  TITLE 19—CUSTOMS DUTIES  Page 86

103-182, set out as an Effective Date note under section 3331 of this title.

Section 62(b) of Pub. L. 103-182 provided that: "Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the amendment made by paragraph (6) of subsection (a) [amending this section] shall apply to—

'(1) claims filed or liquidated on or after January 1, 1988, and

'(2) claims that are unliquidated, under protest, or in litigation on the date of the enactment of this Act [Dec. 26, 1988]."

Effective Date of 1990 Amendment

Amendment by section 484A(a) of Pub. L. 101–382 applicable to claims filed or liquidated on or after Jan. 1, 1988, and claims that are unliquidated, under protest, or in litigation on Aug. 20, 1990, see section 484A(c) of Pub. L. 101–382, set out as a note under section 1309 of this title.

Effective and Termination Dates of 1988 Amendment

Amendment by Pub. L. 100–449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

Effective Date of 1980 Amendment

Section 201(b) of Pub. L. 96–699 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the enactment of this Act [Dec. 30, 1980]."

Effective Date of 1971 Amendment

Section 3(b) of Pub. L. 91–692 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to articles entered on or after the date of the enactment of this Act [Jan. 12, 1971]."

Effective Date of 1968 Amendment

For effective date of amendment by Pub. L. 90–630, see section 4 of Pub. L. 90–630, set out as a note under section 5008 of Title 26, Internal Revenue Code.

Effective Date of 1958 Amendment

Section 2 of Pub. L. 85–673 provided that: "The amendment made by the first section of this Act [amending this section] shall be effective with respect to articles entered on or after the 30th day after the date of the enactment of this Act [Aug. 18, 1958]."

Effective Date of 1953 Amendment; Savings Provision

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

Construction of 1993 Amendment

Amendment by section 203(c) of Pub. L. 103–182 to be made after amendment by section 632(a) of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 58c of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 261(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 522 of Title 6.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Internal Revenue, referred to in this section, is an officer of Department of the Treasury.

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII (§§1801–1899A) of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1313a. Appropriations for refunds, drawbacks, bounties, etc.

There are appropriated such amounts as hereafter may be necessary for refund or payment of custom collections or receipts, and payment of debentures or drawbacks, bounties, and allowances, as authorized by law.

(June 30, 1949, ch. 286, title I, 63 Stat. 360.)

Codification

Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.


§ 1315. Effective date of rates of duty

(a) Articles entered or withdrawn from warehouse for consumption

Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this chapter or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe, except that—

'(1) any article released under an informal mail entry shall be subject to duty at the rate or rates in effect when the preparation of the entry is completed;

'(2) any article which is not subject to a quantitative or tariff-rate quota and which is
covered by an entry for immediate transportation made at the port of original importation under section 1552 of this title, if entered for consumption at the port designated by the consignee, or his agent, in such transportation entry without having been taken into the custody of the appropriate customs officer under section 1490 of this title, shall be subject to the rate or rates in effect when the transportation entry was accepted at the port of original importation; and

(3) any article for which duties may, under section 1505 of this title, be paid at a time later than the time of making entry shall be subject to the rate or rates in effect at the time of entry.

(b) Articles removed from intended place of release

Any article which has been entered for consumption but which, before release from custody of the Customs Service, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury.

(c) Quantity of merchandise at time of importation

Insofar as duties are based upon the quantity of any merchandise, such duties shall, except as provided in chapter 98 of the Harmonized Tariff Schedule of the United States and section 1562 of this title (relating respectively to certain beverages and to manipulating warehouses), be levied and collected upon the quantity of such merchandise at the time of its importation.

(d) Effective date of administrative rulings resulting in higher rates

No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the Federal Register of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties, or the imposition of countervailing duties under section 1303 of this title (as in effect on the day before the effective date of title II of the Uruguay Round Agreements Act) or section 1671 of this title. This subsection shall not apply with respect to increases in rates of duty resulting from the enactment of the Harmonized Tariff Schedule of the United States to replace the Tariff Schedules of the United States.


References in Text

The Harmonized Tariff Schedule of the United States and the Tariff Schedules of the United States, referred to in subsecs. (c) and (d), are not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.


Amendments

1994—Subsec. (d). Pub. L. 103–465 inserted “(as in effect on the day before the effective date of title II of the Uruguay Round Agreements Act) or section 1671 of this title” after “section 1303 of this title”.

1993—Subsec. (a). Pub. L. 103–182, §633(1), substituted “‘Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe,’” for “‘appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury,’” in introductory provisions.

Subsec. (b). Pub. L. 103–182, §633(2), substituted “‘custody of the Customs Service’” for “‘customs custody’.”


1969—Subsec. (d). Pub. L. 100–418 inserted at end “‘This subsection shall not apply with respect to increases in rates of duty resulting from the enactment of the Harmonized Tariff Schedule of the United States to replace the Tariff Schedules of the United States.’”


Subsec. (d). Pub. L. 95–410, §204, substituted “publication in the Federal Register” for “publication in the weekly Treasury Decisions”.

1975—Subsec. (d). Pub. L. 93–618, as amended by Pub. L. 96–39, inserted “or the imposition of countervailing duties under section 1303 of this title” after “‘antidumping duties’.”


1953—Act Aug. 8, 1953, amended section generally by dividing section into subsections, and by changing the provisions set out as subsections. (a) and (b) to clarify such provisions with respect to effective dates of rates of duty.

1938—Act June 25, 1938, amended section generally, among which changes it inserted provisions set out as subsections. (c) and (d).

Effective Date of 1994 Amendment

Section 261(d)(2) of title II of Pub. L. 103–465 provided that: “The amendments made by this subsection (amending this section and sections 1337, 1671, 1677i, 2192, and 2194 of this title and provisions set out as a note under section 1303 of this title) shall take effect on the effective date of this title [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title].

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or
§ 1316. Omitted

Codification
Section, act June 17, 1930, ch. 497, title III, §316, 46 Stat. 695, prohibiting the construction of this chapter so as to abrogate or affect the treaty between the United States and Cuba concluded on Dec. 11, 1902, was omitted in view of the termination of such treaty on Aug. 21, 1963 (see note below), and section 401 of Pub. L. 87–456, title IV, May 24, 1962, 76 Stat. 78, set out as a note under section 1351 of this title, Section 401(d) of Pub. L. 87–456 declares sections 124 and 125 of this title as inapplicable so long as section 401(a) of Pub. L. 87–456, declaring Cuba as a nation dominated or controlled by the foreign government or foreign organization controlling the world communist movement, applies.

§ 1317. Tobacco products; supplies for certain vessels and aircraft

(a) Exportation of tobacco products
The shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes, for consumption beyond the jurisdiction of the internal-revenue laws of the United States, as defined by section 2197(a) of title 26, shall be deemed exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such articles with payment of duty or internal-revenue tax.

(b) Exportation of supplies for certain vessels and aircraft
The shipment or delivery of any merchandise for use as supplies (including equipment) upon, or in the maintenance or repair of any vessel or aircraft declared to be an exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such merchandise without the payment of duty or internal-revenue tax. With respect to merchandise for use as ground equipment, such shipment or delivery shall not be deemed an exportation within the meaning of the internal-revenue laws relating to taxes other than those imposed upon or by reason of importation.


References in Text
Section 2197(a) of title 26, referred to in subsec. (a), is a reference to section 2197(a) of the Internal Revenue Code of 1939, which was repealed by section 7851 of Title 26, Internal Revenue Code.

AMENDMENTS
1953—Subsec. (b). Act Aug. 8, 1953, extended to foreign vessels the exemption from payment of duty and internal revenue tax theretofore available for supplies used in the maintenance or repair of aircraft; and provided an exemption for ground equipment for foreign-flag aircraft from duties and taxes imposed on, by reason of, importation.

1938—Act June 25, 1938, amended section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

Effective Date of 1953 Amendment; Savings Provision
Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

Effective Date of 1938 Amendment
Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.
§ 1318. Emergencies

(a) Whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time herein prescribed for the performance of any act, and may authorize the Secretary of the Treasury to permit, under such regulations as the Secretary of the Treasury may prescribe, the importation free of duty of food, clothing, and medical, surgical, and other supplies for use in emergency relief work. The Secretary of the Treasury shall report to the Congress any action taken under the provisions of this section.

(b)(1) Notwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 et seq.) or to a specific threat to human life or national interests, is authorized to take the following actions on a temporary basis:

(A) Eliminate, consolidate, or relocate any office or port of entry of the Customs Service.

(B) Modify hours of service, alter services rendered at any location, or reduce the number of employees at any location.

(C) Take any other action that may be necessary to respond directly to the national emergency or specific threat.

(2) Notwithstanding any other provision of law, the Commissioner of Customs, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.

(3) The Secretary of the Treasury or the Commissioner of Customs, as the case may be, shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 72 hours after taking any action under paragraph (1) or (2).


References in Text


Prior Provisions

Provisions similar to those in subsec. (a) of this section were contained in act Sept. 21, 1922, ch. 336, title IV, §622, 42 Stat. 988, which was superseded by section 318 of the Tariff Act of 1930, comprising this section, and repealed by section 651(a)(1) of said 1930 Act.

Amendments

2002—Pub. L. 107–210 designated existing provisions as subsec. (a) and added subsec. (b).

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 525(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Section 2197(b) of I. R. C. 1939. See section 4(a) of enacting sections of Internal Revenue Code of 1939. See section 2197(b) of I. R. C. 1939 was replaced by section 5704(b) of Title 26, Internal Revenue Code.

Repeals

Insofar as subsec. (a) of this section related exclusively to Internal Revenue it was repealed and incorporated as section 2197(b) of the Internal Revenue Code of 1939. See section 4(a) of enacting sections of Internal Revenue Code of 1939. Section 2197(b) of I. R. C. 1939 was repealed and incorporated as section 2197(b) of the Internal Revenue Code.

References in Section

The Continuation of such one-year period in any case in which such extension shall expire during the continuance of the said national emergency: and

Provided, however, that in each and every case under numbered paragraphs (1), (2), and (3) above in which the merchandise is charged against an entry bond the Secretary of the Treasury shall require that the principal
§ 1319. Duty on coffee imported into Puerto Rico

The Legislature of Puerto Rico is empowered to impose tariff duties upon coffee imported into Puerto Rico, including coffee grown in a foreign country coming into Puerto Rico from the United States. Such duties shall be collected and accounted for as now provided by law in the case of duties collected in Puerto Rico.

(Harry S. Truman)

§ 1319a. Duty on coffee; ratification of duties imposed by Legislature of Puerto Rico

The taxes and duties imposed by the Legislature of Puerto Rico by Joint Resolution Numbered 59 approved by the Governor of Puerto Rico May 5, 1930, and by Act Numbered 77 approved by the Governor of Puerto Rico May 5, 1931, as amended by Act Numbered 7 approved by the Governor April 9, 1934, including therein such taxes and duties on coffee brought into Puerto Rico from any State or Territory or district or possession of the United States, or other place subject to the jurisdiction of the United States, are legalized and ratified, and the collection of all such taxes and duties made under or by authority of either of said acts of the Puerto Rican Legislature, including such taxes and duties on coffee brought into Puerto Rico from any State, Territory, district, or possession of the United States, or other place subject to the jurisdiction of the United States, is legalized, ratified, and confirmed as fully to all intents and purposes as if the same had, by prior Act of Congress, been specifically authorized and directed.

(June 18, 1934, ch. 604, 48 Stat. 1017; Aug. 20, 1935, ch. 578, 49 Stat. 665.)

CODIFICATION

Section was not enacted as part of Tariff Act of 1930 which constitutes this chapter.

AMENDMENTS


§ 1320. Repealed. Aug. 8, 1953, ch. 397, § 6(b), 67 Stat. 510


EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Repeal effective on and after thirtieth day following Aug. 8, 1933, and savings provision, see notes set out under section 1994 of this title.

§ 1321. Administrative exemptions

(a) Disregard of minor discrepancies in collection of taxes and duties; admission of articles free of duty or tax; limit on amount of exemption

The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is authorized, under such regulations as he shall prescribe, to—

(1) disregard a difference of an amount specified by the Secretary by regulation, but not less than $20, between the total estimated duties, fees, and taxes deposited, or the total duties, fees, and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties, fees, taxes, and interest actually accruing thereon;

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty shall not exceed an amount specified by
the Secretary by regulation, but not less than—
(A) $100 in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States ($200 in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and American Samoa), or
(B) $200 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under subheading 9804.00.30, 9804.00.65, or 9804.00.70 of title I of this Act, or $200 in any other case.

The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2); and
(3) waive the collection of duties, fees, taxes, and interest due on entered merchandise when such duties, fees, taxes, or interest are less than $20 or such greater amount as may be specified by the Secretary by regulation.

(b) Reduction or modification of exemption

The Secretary of the Treasury is authorized by regulations to prescribe exceptions to any exemption provided for in subsection (a) of this section whenever he finds that such action is consistent with the purpose of subsection (a) of this section or is necessary for any reason to protect the revenue or to prevent unlawful importations.


REFERENCES IN TEXT

Title I of this Act, referred to in subsec. (a)(2)(B), means title I of act June 17, 1930, as amended, which contained the Tariff Schedules of the United States and which formerly were set out under section 1302 of this title. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedules of the United States. See Publication of Harmonized Tariff Schedule note set out under section 1302 of this title.

AMENDMENTS

Subsec. (a)(3). Pub. L. 104–295, § 3(a)(12)(B), substituted “taxes, and interest” for “and taxes” and “taxes, or interest” for “or taxes”.
Subsec. (a)(1). Pub. L. 103–182, § 651(1), substituted “of an amount specified by the Secretary by regulation, but not less than $20,” for “of less than $10”, inserted “, fees,” after “duities” wherever appearing, and struck out “and” at end.
Subsec. (a)(2). Pub. L. 103–182, § 651(2), substituted “shall not exceed an amount specified by the Secretary by regulation, but not less than—” for “shall not exceed—” in introductory provisions, substituted “$100” and “$200” for “$50” and “$100”, respectively, in subpar. (A), substituted “$200” for “$25” in subpar. (B), substituted “$200” for “$5” in subpar. (C), and substituted “; and” for period at end.
Subsec. (b). Pub. L. 103–182, § 651(4), struck out “to diminish any dollar amount specified in subsection (a) of this section and” after “authorized by regulations” and substituted “subsection (a) of this section” for “such subsection” in two places.
Subsec. (c). Pub. L. 103–182, § 651(5), struck out “to diminish any dollar amount specified in subsection (a) of this section and” after “authorized by regulations” and substituted “subsection (a) of this section” for “such subsection” in two places.

1988—Subsec. (a)(2)(B). Pub. L. 100–418 substituted “subheading 9804.00.30 or 9804.00.70” for “item 812.25 or 813.31”.


1965—Subsec. (a)(2). Pub. L. 89–62 substituted “fair retail value in the country of shipment” for “value” in the material preceding subpar. (A) and “item 812.25 or 813.31 of section 1302 of this title” for “paragraph 1798(b)(2) or (c)(2) of section 1202 of this title” in subpar. (B).

1961—Subsec. (a). Pub. L. 87–261 inserted “(b)(2) or” after “paragraph 1798”.

1933—Act Aug. 8, 1933, (1) divided section into subsections; (2) increased from $1 to $3 the difference between deposited or assessed duties and actual duties which may be disregarded by the collector; (3) permitted free entry of bona fide gifts from persons outside the United States up to $10; (4) allowed persons to bring with them articles up to $10 in value for their personal use; (5) continued to allow free entry up to $1 in other cases; and (6) enabled the Secretary of the Treasury to reduce these amounts if he found such action necessary to protect the revenue.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 3(b) of Pub. L. 104–295 provided that: “The amendments made by this section (amending this section and sections 1401, 1431, 1504, 1508, 1509, 1515, 1592, and 1631 of this title and repealing section 1707 of this title) shall apply as of December 8, 1993.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 115(c) of Pub. L. 97–446 provided that: “The amendments made by this section [amending the Tariff Schedules and this section] shall apply with respect to returning residents of the United States who arrive in the United States on or after the 15th day after the date of the enactment of this Act [Jan. 12, 1983]”.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 610(b) of Pub. L. 93–618 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date of enactment of this Act [Jan. 3, 1975].”
§ 1322. International traffic and rescue work; United States-Mexico Boundary Treaty of 1970

(a) Vehicles and other instruments of international traffic except communications satellites

Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury. The authority delegated to the Secretary by this subsection shall not extend to communications satellites and components and parts thereof.

(b) Rescue and relief equipment; personal property related to use of land under United States-Mexico Boundary Treaty of 1970; forfeiture of articles to United States

The Secretary of the Treasury may provide by regulation or instruction for the admission, without entry and without the payment of any duty or tax imposed upon or by reason of importation, of—

(1) aircraft, equipment, supplies, and spare parts for use in searches, rescues, investigations, repairs, and salvage in connection with accidental damage to aircraft;

(2) fire-fighting and rescue and relief equipment and supplies for emergent temporary use in connection with conflagrations;

(3) rescue and relief equipment and supplies for emergent temporary use in connection with floods and other disasters; and

(4) personal property related to the use and enjoyment of a separated tract of land as described in article III of the Treaty To Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado Rivers as the International Boundary between the United States of America and the United Mexican States signed on November 23, 1970.

Any articles admitted under the authority of this subsection and used otherwise than for a purpose herein expressed, or not exported in such time and manner as may be prescribed in the regulations or instructions herein authorized, shall be forfeited to the United States.


AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573, § 127(b), substituted “excepted” for “granted the customary exceptions”.


§ 1322. Conservation of fishery resources

Upon the convocation of a conference on the use or conservation of international fishery resources, the President shall, by all appropriate means at his disposal, seek to persuade countries whose domestic fishing practices or policies affect such resources, to engage in negotiations in good faith relating to the use or conservation of such resources. If, after such efforts by the President and by other countries which have agreed to engage in such negotiations, any other country whose conservation practices or policies affect the interests of the United States and such other countries, has, in the judgment of the President, failed or refused to engage in such negotiations in good faith, the President may, if he is satisfied that such action is likely to be effective in inducing such country to engage in such negotiations in good faith, increase the rate of duty on any fish (in any form) which is the product of such country, for such time as he deems necessary, to a rate not more than 50 percent above the rate existing on July 1, 1934.

PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION

§ 1330. Organization of Commission

(a) Membership

The United States International Trade Commission (referred to in this subtitle as the "Commission") shall be composed of six commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of international trade problems and efficiency in administering the duties and functions of the Commission. A person who has served as a commissioner for more than 5 years (excluding service as a commissioner before January 3, 1975) shall not be eligible for reappointment as a commissioner. Not more than three of the commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.

(b) Terms of office

The terms of office of the commissioners holding office on January 3, 1975, which (but for this sentence) would expire on June 16, 1975, June 16, 1976, June 16, 1977, June 16, 1978, June 16, 1979, and June 16, 1980, shall expire on December 16, 1976, June 16, 1978, December 16, 1979, June 16, 1981, December 16, 1982, and June 16, 1984, respectively. The term of office of each commissioner appointed after such date shall expire 9 years from the date of the expiration of the term for which his predecessor was appointed, except that—

(1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and

(2) any commissioner may continue to serve as a commissioner after an expiration of his term of office until his successor is appointed and qualified.

(c) Chairman and vice chairman; quorum

(1) The chairman and the vice chairman of the Commission shall be designated by the President from among the members of the Commission not ineligible, under paragraph (3), for designation. The President shall notify the Congress of his designations under this paragraph. If, as of the date on which a term begins under paragraph (2), the President has not designated the chairman of the Commission for such term, the Commissioner who, as of such date—

(A) is a member of a different political party than the chairman of the Commission for the immediately preceding term, and

(B) has the longest period of continuous service as a commissioner,

shall serve as chairman of the Commission for the portion of such term preceding the date on which an individual designated by the President takes office as chairman.

(2) After June 16, 1978, the terms of office for the chairman and vice chairman of the Commission shall be as follows:

(A) The first term of office occurring after such date shall begin on June 17, 1978, and end at the close of June 16, 1980.

(B) Each term of office thereafter shall begin on the day after the closing date of the immediately preceding term of office and end at the close of the 2-year period beginning on such day.

(3)(A) The President may not designate as the chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member, or who has less than 1 year of continuous service as a commissioner as of the date such designation is being made.

(B) The President may not designate as the vice chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman for that term is a member.

(C) If any commissioner does not complete a term as chairman or vice chairman by reason of death, resignation, removal from office as a commissioner, or expiration of his term of office as a commissioner, the President shall designate the chairman or vice chairman, as the case may be, for the remainder of such term a commissioner who is a member of the same political party. Designation of a chairman under this subparagraph may be made without regard to the 1-year continuous service requirement under subparagraph (A).

(4) The vice chairman shall act as chairman in case of the absence or disability of the chairman. During any period in which there is no chairman or vice chairman, the commissioner having the longest period of continuous service shall act as chairman.

(5) No commissioner shall actively engage in any business, vocation, or employment other than that of serving as a commissioner.

(6) A majority of the commissioners in office shall constitute a quorum, but the Commission may function notwithstanding vacancies.

(d) Effect of divided vote in certain cases

(1) In a proceeding in which the Commission is required to determine—

(A) under section 2252 of this title, whether increased imports of an article are a substantial cause of serious injury, or the threat thereof, as described in subsection (b)(1) of that section (hereafter in this subsection referred to as "serious injury"), or

(B) under section 2436 of this title, whether market disruption exists,

and the commissioners voting are equally divided with respect to such determination, then the determination, agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.

(2) If under section 2252(b) or 2436 of this title there is an affirmative determination of the
Commission, or a determination of the Commission which the President may consider an affirmative determination under paragraph (1), that serious injury or market disruption exists, respectively, and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section 2252(e)(1) of this title or the finding described in section 2436(a)(3) of this title, as the case may be (hereafter in this subsection referred to as a "remedy finding"), then—

(A) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of section 2253 of this title, be treated as the remedy finding of the Commission, or

(B) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the President reports under section 2254(a) of this title that—

(i) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of section 2253 of this title, be treated as the remedy finding of the Commission, or

(ii) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of section 2253 of this title, be treated as the remedy finding of the Commission.

(3) In any proceeding to which paragraph (1) applies in which the commissioners voting are equally divided on a determination that serious injury exists, or that market disruption exists, the Commission shall report to the President the determination of each group of commissioners. In any proceeding to which paragraph (2) applies, the Commission shall report to the President the remedy finding of each group of commissioners voting.

(4) In a case to which paragraph (2)(B)(ii) applies, for purposes of section 2253(a) of this title, notwithstanding section 2192(a)(1)(A) of this title, the second blank space in the joint resolution described in section 2192(a)(1)(A) of this title shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(a) of the Trade Act of 1974 is the finding or recommendation agreed upon by the Commissioners, and..." The three blank spaces shall be filled with the names of the appropriate Commissioners.

(5) Whenever, in any case in which the Commission is authorized to make an investigation upon its own motion, upon complaint, or upon application of any interested party, one-half of the number of commissioners voting agree that the investigation should be made, such investigation shall thereupon be carried out in accordance with the statutory authority covering the matter in question. Whenever the Commission is authorized to hold hearings in the course of any investigation and one-half of the number of commissioners voting agree that hearings should be held, such hearings shall thereupon be held in accordance with the statutory authority covering the matter in question.

(e) Authorization of appropriations

(1) For the fiscal year beginning October 1, 1976, and each fiscal year thereafter, there are authorized to be appropriated to the Commission only such sums as may hereafter be provided by law.

(2)(A) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) not to exceed the following:

(i) $54,000,000 for fiscal year 2003.

(ii) $57,240,000 for fiscal year 2004.

(B) Not to exceed $2,500 of the amount authorized to be appropriated for any fiscal year under subparagraph (A) may be used, subject to the approval of the Chairman of the Commission, for reception and entertainment expenses.

(C) No part of any sum that is appropriated under the authority of subparagraph (A) may be used by the Commission in the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.

(3) There are authorized to be appropriated to the Commission for each fiscal year after September 30, 1977, in addition to any other amount authorized to be appropriated for such fiscal year, such sums as may be necessary for increases authorized by law in salary, pay, retirement, and other employee benefits.

(4) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the Commission shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Commission to carry out its functions.

(f) Treatment of Commission under Paperwork Reduction Act

The Commission shall be considered to be an independent regulatory agency for purposes of chapter 35 of title 44.

REFERENCES IN TEXT
Section 203(a) of the Trade Act of 1974, referred to in subsec. (d)(4), is classified to section 2253(a) of this title.

CODIFICATION
Provisions of subsec. (c) which prescribed the annual basic compensation of the commissioners were omitted to conform to the provisions of the Executive Schedule. See sections 5314 and 5315 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS
Provisions similar to those in this section were contained in act Sept. 8, 1916, ch. 463, §700, 39 Stat. 795. That section was superseded by section 330 of act June 17, 1930, comprising this section.

AMENDMENTS


1991—Subsec. (c)(1). Pub. L. 102–185, §1(c)(1), inserted at end “If, as of the date on which a term begins under paragraph (2), the President has not designated the chairman of the Commission for such term, the Commissioner who, as of such date—

(A) is a member of a different political party than the chairman of the Commission for the immediately preceding term, and

(B) has the longest period of continuous service as a commissioner, shall serve as chairman of the Commission for the portion of such term preceding the date on which an individual designated by the President takes office as chairman.”

Subsec. (c)(3)(A). Pub. L. 102–185, §1(a)(2)(A), inserted “, or who has less than 1 year of continuous service as a commissioner as of the date such designation is being made” before the period.

Pub. L. 102–185, §1(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The President may not designate as the chairman of the Commission for any term—

the chairman of the Commission for the immediately preceding term, and

the commissioner with the shortest period of service on the Commission as of the beginning date of the term of office for which the designation of chairman is to be made; or

any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member.”

Subsec. (c)(3)(C). Pub. L. 102–185, §1(a)(2)(B), inserted at end “Designation of a chairman under this subparagraph may be made without regard to the 1-year continuous service requirement under subparagraph (A).”

Pub. L. 102–185, §1(a)(1)(B), struck out cl. (B) which read as follows: “The Chairman of the Commission, for reception and entertainment expenses. No part of any sum that is appropriated under the authority of this paragraph may be used by the Commission for the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.”


1988—Subsec. (c)(3)(A)(i). Pub. L. 100–417 substituted “with the shortest period of service on” for “most recently appointed to.”

Pub. L. 100–418, §1611, which directed that subsec. (c)(3)(A)(i) of this section be amended by substituting “with the shortest period of service on” for “most recently appointed to”, was probably intended to be an amendment to subsec. (c)(3)(A)(ii). See amendment by Pub. L. 100–417 above.


Subsec. (d)(2). Pub. L. 100–418, §1401(b)(4)(B)(i), (ii), in introductory provisions substituted “2252(b)” and “2252(e)(1)” for “2251” and “2251(d)(1)”, respectively.


Subsec. (d)(2)(B). Pub. L. 100–418, §1401(b)(4)(B)(v), in introductory provisions substituted “section 2254(a) of this title” for “section 2253(b) of this title” and, in cls. (i) and (ii), substituted “section 2254(a) of this title” for “sections 2252 and 2253 of this title”.

Subsec. (d)(4). Pub. L. 100–418, §1401(b)(4)(C), substituted “section 2253(a) of this title” for “section 2253(c)(1) of this title” and “subsection (a)(1) of title 22” for “subsection (a)(1) of title 22”.


1984—Subsec. (d)(4). Pub. L. 98–573, §248(c), substituted “the joint resolution described in such section 2192(a)(1)(A)” for “the concurrent resolution described in such section 2192”.

1983—Subsec. (e)(2). Pub. L. 98–573, §701, substituted authorization of appropriation of not more than $28,410,000 for fiscal year 1986 for necessary expenses, including the rental of conference rooms in the District of Columbia and elsewhere for provision authorizing appropriation of not more than $19,737,000 for necessary expenses for fiscal year 1983, and inserted provision that not more than $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses.


Subsec. (e)(2). Pub. L. 97–456 substituted for “fiscal year 1982 not to exceed $19,377,000” for “fiscal year 1981 not to exceed $22,500”.


1979—Subsec. (e)(2). Pub. L. 95–426 substituted for “fiscal year 1979 not to exceed $22,500” for “fiscal year 1978 not to exceed $22,500”.


1977—Subsec. (e)(2). Pub. L. 95–106, §2(a), inserted provisions in par. (1) for the Congressional notification of Presidential designations, substituted, in par. (2), provisions covering the expiration of terms of office after June 16, 1976, for provisions covering the expiration of terms of office on and after June 17, 1975, added par. (3), and redesignated as pars. (4) to (6) provisions formerly contained in par. (1).

Subsec. (e). Pub. L. 95–106, §1, designated existing provisions as par. (1) and added pars. (2) and (3).

1976—Subsec. (b). Pub. L. 94–435, §1801(a), substituted provisions that any commissioner may continue to serve as a commissioner after an expiration of his term of office until his successor is appointed and qualified.
Section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

of chapter 12 of this title on or after the date that is 90 days after a petition for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title.

June 16, 1978.''

national Trade Commission for terms beginning after the date of the enactment of this Act [Dec. 4, 1991].''

Effective Date of 1976 Amendment

Section 1801(c) of Pub. L. 94–455 provided that: “The amendments made by subsection (b) [amending this section] shall apply to determinations, findings, and recommendations made under sections 201 and 406 of the Trade Act of 1974 [sections 2251 and 2436 of this title] after the date of the enactment of this Act [Oct. 4, 1978].”

Appointment of Chairman in 1992

Section 1(b) of Pub. L. 102–185 provided that: “In the case of the term of the chairman of the United States International Trade Commission beginning June 17, 1992—

(1) section 330(c)(3)(A) of the Tariff Act of 1930 [19 U.S.C. 1330(c)(3)(A)] shall not apply, and

(2) the President shall designate as chairman a Commissioner who is a member of the same political party as the chairman of the Commission serving on June 16, 1986.”

§ 1331. General powers

(a) Administration

(1)(A) Except as provided in paragraph (2), the chairman of the Commission shall—

(i) appoint and fix the compensation of such employees of the Commission as he deems necessary (other than the personal staff of each commissioner), including the secretary,

(ii) procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, and

(iii) exercise and be responsible for all other administrative functions of the Commission.

(B) The chairman of the Commission may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Commission.

(C) Any decision by the chairman under subparagraph (A) or (B) shall be subject to disapproval by a majority vote of all the commissioners in office.

(2) Subject to approval by a majority vote of all the commissioners in office, the chairman may—

(A) terminate the employment of any supervisory employee of the Commission whose duties involve substantial personal responsibility for Commission matters and who is compensated at a rate equal to, or in excess of, the rate for grade GS–15 of the General Schedule in section 5332 of title 5, and

(B) formulate the annual budget of the Commission.

(3) No member of the Commission, in making public statements with respect to any policy matter for which the Commission has responsibility, shall represent himself as speaking for the Commission, or his views as being the views of the Commission, with respect to such matter except to the extent that the Commission has adopted the policy being expressed.

(b) Application of civil service law

Except for employees excepted under civil service rules, all employees of the commission shall be appointed from lists of eligibles to be supplied by the Director of the Office of Personnel Management and in accordance with the civil service law.
(c) Expenses

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman (except that in the case of a commissioner, or the personal staff of any commissioner, such vouchers may be approved by that commissioner).

(d) Principal office at Washington

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

(e) Office at New York

The commission is authorized to establish and maintain an office at the port of New York for the purpose of directing or carrying on any investigation, receiving and compiling statistics, selecting, describing, and filing samples of articles, and performing any of the duties or exercising any of the powers imposed upon it by law.

(f) Official seal

The commission is authorized to adopt an official seal, which shall be judicially noticed.

Provisions similar to those in subsecs. (f) and (g) of this section were contained in act Sept. 21, 1922, ch. 356, § 701, 39 Stat. 975. That section was superseded by section 331 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 97–158 designated existing provisions relating to the chairman’s exercise of and responsibility for all administrative functions as subpars. (A), redesignated former subpars. (A) through (C) as cls. (i) through (iii), added subpar. (H), designated provisions relating to disapproval by a majority of the commissioners of any decision by the chairman as subpar. (C), and in (C) as so designated, substituted “subparagraph (A) or (B)” for “this paragraph” after “chairman under”.

1977—Subsec. (a), Pub. L. 95–106, § 3(a), designated existing provisions as par. (1), substituted provisions authorizing the chairman to perform certain required functions subject to approval by the Commission for provisions authorizing the Commission to perform certain required functions and inserted provisions requiring the chairman to exercise and be responsible for all other administrative functions of the Commission, and added pars. (2) and (3).

Subsec. (c), Pub. L. 95–106, § 3(b)(1), substituted “approved by the chairman (except that in the case of a commissioner, or the personal staff of any commissioner, such vouchers may be approved by that commissioner)” for “approved by the Commission”.

Subsec. (d), Pub. L. 95–106, § 3(b)(2), redesignated subsecs. (e) to (g) as (d) to (f), respectively. Former subsec. (d), relating to offices and supplies, was struck out.

Effective Date of 1977 Amendment

Section 3(c) of Pub. L. 95–106 provided that: ‘‘The amendments made by this section [amending this section] take effect on the date of enactment of this Act [Aug. 17, 1977].’’

TRANSFER OF FUNCTIONS


§ 1332. Investigations

(a) Investigations and reports

It shall be the duty of the commission to investigate the administration and fiscal and industrial effects of the customs laws of this country, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenue, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereafter provided.

(b) Investigations of tariff relations

The commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial trea-
ties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

(c) Investigation of Paris Economy Pact

The commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe.

(d) Information for President and Congress

In order that the President and the Congress may secure information and assistance, it shall be the duty of the commission to—

(1) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of the United States of articles of the United States, whenever in the opinion of the commission it is practicable;

(2) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of foreign countries of articles imported into the United States, whenever in the opinion of the commission such conversion costs or costs of production are necessary for comparison with conversion costs or costs of production in the United States and can be reasonably ascertained;

(3) Select and describe articles which are representative of the classes or kinds of articles imported into the United States and which are similar to or comparable with articles of the United States; select and describe articles of the United States similar to or comparable with such imported articles; and obtain and file samples of articles so selected, whenever the commission deems it advisable;

(4) Ascertain import costs of such representative articles so selected;

(5) Ascertain the grower's, producer's, or manufacturer's selling prices in the principal growing, producing, or manufacturing centers of the United States of the articles of the United States so selected; and

(6) Ascertain all other facts which will show the differences in or which affect competition between articles of the United States and imported articles in the principal markets of the United States.

(e) Definitions

When used in this subdivision and in subdivision (d) of this section—

(1) The term “article” includes any commodity, whether grown, produced, fabricated, manipulated, or manufactured;

(2) The term “import cost” means the transaction value of the imported merchandise determined in accordance with section 1401(a)(b) of this title plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States.

(f) Omitted

(g) Reports to President and Congress

The commission shall put at the disposal of the President of the United States, the Commit-
§ 1332a. Importation of red cedar shingles

(a) Investigation by Commission

The United States International Trade Commission is directed to conduct an investigation as soon as practicable after the close of the calendar year 1939 and each calendar year thereafter, for the purpose of ascertaining the quantities of red cedar shingles shipped by producers in the United States and the quantities of imported red cedar shingles entered for consumption, or withdrawn from warehouse for consumption, during each of the three calendar years immediately preceding any such investigation.

(b) Duty on imported shingles: amount

If the Commission finds, on the basis of an investigation under subdivision (a) of this section, that in any calendar year after 1938 the quantity of imported red cedar shingles entered for consumption, or withdrawn from warehouse for consumption, was in excess of 30 per centum of the combined total for such year of the respective quantities ascertained in such investigation, it shall so report to the President. If the President approves the report of the Commission, he shall so proclaim, and on and after the day following the filing of such proclamation with the Division of the Federal Register and so long as any trade agreement entered into under the authority of section 1331 of this title, shall be in effect with respect to the importation into the United States of red cedar shingles, there shall be a duty upon imported red cedar shingles entered for consumption, or withdrawn from warehouse for consumption, in any calendar year in excess of 30 per centum of the annual average for the preceding three calendar years of the combined total of the quantity of such shingles shipped by producers in the United States and of the quantity of such imported shingles entered for consumption, or withdrawn from warehouse for consumption. The rate of such duty shall be 25 cents per square. Any duty imposed under this section shall be treated for the purposes of all provisions of law relating to customs revenue as a duty imposed by section 1001 of this title, and shall not apply to shingles entered for consumption before the duty becomes applicable.

(c) Exemptions from duty

The quantity of red cedar shingles entitled to exemption from any duty imposed pursuant to this section shall be ascertained for each quota period by the Commission and reported to the Secretary of the Treasury.


References in Text

Section 1001 of this title, referred to in subsec. (b), was struck out by Pub. L. 87–456, title I, §101(a), May 24, 1962, 76 Stat. 72.

Amendments


1 See References in Text note below.
§ 1333. Testimony and production of papers

(a) Authority to obtain information

For the purposes of carrying out its functions and duties in connection with any investigation authorized by law, the commission or its duly authorized agent or agents (1) shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, (2) may summon witnesses, take testimony, and administer oaths, (3) may require any person, firm, copartnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation, and (4) may require any person, firm, copartnership, corporation, or association, to furnish in writing, in such detail and in such form as the commission may prescribe, information in their possession pertaining to such investigation. Any member of the commission may sign subpenas, and members and agents of the commission, when authorized by the commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) Witnesses and evidence

Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing, and in case of disobedience to a subpena the commission may invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Mandamus

At the request of the commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this part or any order of the commission made in pursuance thereof.

(d) Depositions

The commission may order testimony to be taken by deposition in any proceeding or investigation pending before the commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission, as hereinbefore provided.

(e) Fees and mileage of witnesses

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, except employees of the commission, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States.

(f) Statements under oath

The commission is authorized, in order to ascertain any facts required by subdivision (d) of section 1332 of this title to require any importer and any American grower, producer, manufacturer, or seller to file with the commission a statement, under oath, giving his selling prices in the United States of any article imported, grown, produced, fabricated, manipulated, or manufactured by him.

(g) Representation in court proceedings

The Commission shall be represented in all judicial proceedings by attorneys who are employees of the Commission or, at the request of the Commission, by the Attorney General of the United States.

(h) Administrative protective orders

Any correspondence, private letters of reprimand, and other documents and files relating to violations or possible violations of administrative protective orders issued by the Commission in connection with investigations or other proceedings under this subtitle shall be treated as information described in section 552(b)(3) of title 5.


CODIFICATION

As originally enacted subsec. (b) contained a reference to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted “the district court of the United States for the District of Columbia” for “the Supreme Court of the District of Columbia”, and act June 25, 1948, as amended by act May 24, 1949, substituted “United States District Court for the District of Columbia” for “district court of the United States for the District of Columbia”. However, the words “United States District Court for the District of Columbia” have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that “There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district”, and section 88 of Title 28 which states that “the District of Columbia constitutes one judicial district”.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 8, 1916, ch. 463, §706, 39 Stat. 797, as amended by act Sept. 21, 1922, ch. 356, title III, §318(f).
42 Stat. 947. These acts were superseded by section 333 of act June 17, 1930, comprising this section, and section 318(f) of the 1922 act was repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS
1975—Subsec. (c). Pub. L. 93–618, § 114(1), substituted “At the request of” for “Upon application of the Attorney General of the United States, at the request of”.
1970—Subsec. (e). Pub. L. 91–452 struck out provisions relating to the immunity from prosecution of any natural person compelled to testify or produce evidence in obedience to the subpoena of the commission.
1958—Subsec. (a). Pub. L. 85–686, § 9(a), substituted “For the purposes of carrying out its functions and duties in connection with any investigation authorized by law” for “For the purposes of carrying Part II of this subtitle into effect”, inserted provisions empowering the commission to require any person, firm, copartnership, corporation, or association to furnish in writing, in such detail and in such form as the commission may prescribe, information in their possession pertaining to an investigation.
Subsec. (d). Pub. L. 85–686, § 9(b), substituted “pending before the commission” for “pending under Part II of this subtitle”.

EFFECTIVE DATE OF 1970 AMENDMENT
Amendment by Pub. L. 91–452 effective on sixty-sixth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixty-sixth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6601 of Title 18, Crimes and Criminal Procedure.

§ 1334. Cooperation with other agencies
The commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishments of the Government, and such departments and independent establishments of the Government shall cooperate fully with the commission for the purposes of aiding and assisting in its work, and, when directed by the President, shall furnish to the commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by the commission and shall detail, from time to time, such officials and employees to said commission as he may direct.

(June 17, 1930, ch. 497, title III, § 334, 46 Stat. 700.)

PRIOR PROVISIONS
Provisions similar to those in this section were contained in act Sept. 8, 1916, ch. 463, § 707, 39 Stat. 797. That section was superseded by section 334 of act June 17, 1930, comprising this section.

TRANSFER OF FUNCTIONS
Executive and administrative functions of Federal Trade Commission transferred, with certain reservations, to Chairman of such Commission by Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1335. Rules and regulations
The commission is authorized to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.


PRIOR PROVISIONS

§ 1336. Equalization of costs of production
(a) Change of classification or duties
In order to put into force and effect the policy of Congress by this chapter intended, the commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings. The commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country, the commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute.


(c) Proclamation by the President
The President shall by proclamation approve the rates of duty and changes in classification specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such differences in costs of production.

(d) Effective date of rates and changes
Commencing thirty days after the date of any presidential proclamation of approval the increased or decreased rates of duty and changes in classification specified in the report of the commission shall take effect.

(e) Ascertainment of differences in costs of production
In ascertaining under this section the differences in costs of production, the commission...
§ 1336

TITe 19—CUSToMs Duties

shall take into consideration, in so far as it finds it practicable:

(1) In the case of a domestic article

(A) The cost of production as hereinafter in this section defined; (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; and (C) other relevant factors that constitute an advantage or disadvantage in competition.

(2) In the case of a foreign article

(A) The cost of production as hereinafter in this section defined, or, if the commission finds that such cost is not readily ascertainable, the commission may accept as evidence thereof, or as supplemental thereto, the weighted average of the invoice prices or values for a representative period and/or the average wholesale selling price for a representative period (which price shall be that at which the article is freely offered for sale to all purchasers in the principal market or markets of the principal competing country or countries in the ordinary course of trade and in the usual wholesale quantities in such market or markets); (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; (C) other relevant factors that constitute an advantage or disadvantage in competition, including advantages granted to the foreign producers by a government, person, partnership, corporation, or association in a foreign country.

(f) Modification of changes in duty

Any increased or decreased rate of duty or change in classification which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of taking effect) as is provided in this section in the case of original increases, decreases, or changes.

(g) Prohibition against transfers from the free list to the dutiable list or from the dutiable list to the free list

Nothing in this section shall be construed to authorize a transfer of an article from the dutiable list to the free list or from the free list to the dutiable list, nor a change in form of duty.

(h) Definitions

For the purpose of this section—

(1) The term “domestic article” means an article wholly or in part the growth or product of the United States; and the term “foreign article” means an article wholly or in part the growth or product of a foreign country.

(2) The term “United States” includes the several States and Territories and the District of Columbia.

(3) The term “foreign country” means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions).

(4) The term “cost of production”, when applied with respect to either a domestic article or a foreign article, includes, for a period which is representative of conditions in production of the article: (A) The price or cost of materials, labor costs, and other direct charges incurred in the production of the article and in the processes or methods employed in its production; (B) the usual general expenses, including charges for depreciation or depletion which are representative of the equipment and property employed in the production of the article and charges for rent or interest which are representative of the cost of obtaining capital or instruments of production; and (C) the cost of containers and coverings of whatever nature, and other costs, charges, and expenses incident to placing the article in condition packed ready for delivery.

(i) Rules and regulations of President

The President is authorized to make all needful rules and regulations for carrying out his functions under the provisions of this section.


(k) Investigations prior to June 17, 1930

All uncompleted investigations instituted prior to June 17, 1930, under the provisions of sections 154 to 159 of this title, including investigations in which the President has not proclaimed changes in classification or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section.


REFERENCES IN TEXT

Sections 154 to 159 of this title, referred to in subsec. (k), were repealed by section 651(a)(1) of act June 17, 1930.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title III, § 315, 42 Stat. 941. That section was superseded by section 336 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–39, § 202(a)(2)(A), struck out subsec. (b) which related to the setting of ad valorem rates based upon the American selling price of domestic articles as would be necessary to equalize differences in the costs of production.

§ 1337. Unfair practices in import trade

(a) Unlawful activities; covered industries; definitions

(1) Subject to paragraph (2), the following are unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section:

(A) Unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), (D), and (E) of this section) into the United States, or in the sale of such articles by the owner, importer, or consignee, of articles which authorize the Secretary of the Treasury to make necessary procedure and rules and regulations as it deemed necessary to execute its functions under this section. See section 1335 of this title.

(2) During the course of each investigation, including engineering, research and development, or licensing.

(4) For the purposes of section 1335, a matter, in whole or in part, may come within the definition of unfair practices in the importation of articles by the owner, importer, or consignee, of articles which authorize the Secretary of the Treasury to make necessary procedure and rules and regulations as it deemed necessary to execute its functions under this section. See section 1335 of this title.

(b) Investigation of violations by Commission

(1) The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative. Upon commencing any such investigation, the Commission shall publish notice thereof in the Federal Register. The Commission shall conclude any such investigation and make its determination under this section at the earliest practicable time after the date of publication of notice of such investigation. To promote expeditious adjudication, the Commission shall, within 45 days after an investigation is initiated, establish a target date for its final determination.

(2) During the course of each investigation under this section, the Commission shall consult with, and seek advice and information from, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate.

(3) Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that a matter, in whole or in part, may come within the purview of part II of subtitle IV of this chapter, it shall promptly notify the Secretary of.
Commerce so that such action may be taken as is otherwise authorized by such part II. If the Commission has reason to believe that the matter before it (A) is based solely on alleged acts and effects which are within the purview of section 1671 or 1673 of this title, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17, the Commission shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 1671 or 1673 of this title, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 1677(1) of this title) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for a final decision. Any final decision by the administering authority under section 1671 or 1673 of this title with respect to the matter within such section 1671 or 1673 of this title of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(c) Determinations; review

The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section, except that the Commission may, by issuing a consent order or on the basis of an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration, terminate any such investigation, in whole or in part, without making such a determination. Each determination under subsection (d) or (e) of this section shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5. All legal and equitable defenses may be presented in all cases. A respondent may raise any defenses that may be raised under this subsection, including the legal and equitable defenses which are within the purview of section 1671 or 1673 of this title, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17, the Commission shall terminate, or not institute, any investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 1677(1) of this title) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for a final decision. Any final decision by the administering authority under section 1671 or 1673 of this title with respect to the matter within such section 1671 or 1673 of this title of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(d) Exclusion of articles from entry

(1) If the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5. Determinations by the Commission under subsections (e), (f), and (j) of this section with respect to forfeiture of bonds and under subsection (h) of this section with respect to the imposition of sanctions for abuse of discovery or abuse of process shall also be reviewable in accordance with section 706 of title 5.

(2) The authority of the Commission to order an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that—

(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

(e) Exclusion of articles from entry during investigation except under bond; procedures applicable; preliminary relief

(1) If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under
this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the Commission later determines that the respondent has violated the provisions of this section, the bond may be forfeited to the complainant.

(2) A complainant may petition the Commission for the issuance of an order under this subsection. The Commission shall make a determination with regard to such petition by no later than the 90th day after the date on which the Commission’s notice of investigation is published in the Federal Register. The Commission may extend the 90-day period for an additional 60 days in a case it designates as a more complicated case. The Commission shall publish in the Federal Register its reasons why it designated the case as being more complicated. The Commission may require the complainant to post a bond as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent.

(3) The Commission may grant preliminary relief under this subsection if—

(a) the Commission finds that such exclusion or order should not be issued; and
(b) the complaint and a notice of investigation are served on the person; or
(c) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice; or
(d) the person fails to show good cause why the person should not be found in default; and
(e) the complainant seeks relief limited solely to that person;

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such exclusion or order should not be issued.

(2) In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be recovered for the articles entered or sold on such day in violation of the order of not more than the greater of $100,000 or twice the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g) Exclusion from entry or cease and desist order; conditions and procedures applicable

(1) If—
(A) a complaint is filed against a person under this section;
(B) the complaint and a notice of investigation are served on the person;
(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice; or
(D) the person fails to show good cause why the person should not be found in default; and
(E) the complainant seeks relief limited solely to that person;

the Commission shall publish in the Federal Register the notice of investigation is published in the Federal Register. The Commission shall prescribe the terms and conditions under which bonds may be forfeited under paragraphs (1) and (2).

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of $100,000 or twice the domestic value of the articles entered or sold on such day in violation of the order.

(h) Sanctions for abuse of discovery and abuse of process


(i) Forfeiture

(1) In addition to taking action under subsection (d) of this section, the Commission may prescribe the terms and conditions under which the bonds may be forfeited under this paragraph.

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of $100,000 or twice the domestic value of the articles entered or sold on such day in violation of the order.
issue an order providing that any article imported in violation of the provisions of this section be seized and forfeited to the United States if—

(A) the owner, importer, or consignee of the article previously attempted to import the article into the United States;

(B) the article was previously denied entry into the United States by reason of an order issued under subsection (d) of this section; and

(C) upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article written notice of—

(i) such order, and

(ii) the seizure and forfeiture that would result from any further attempt to import the article into the United States.

(2) The Commission shall notify the Secretary of the Treasury of any order issued under this subsection and, upon receipt of such notice, the Secretary of the Treasury shall enforce such order in accordance with the provisions of this section.

(3) Upon the attempted entry of articles subject to an order issued under this subsection, the Secretary of the Treasury shall enforce such order in accordance with the provisions of this section.

(4) The Secretary of the Treasury shall provide—

(A) the written notice described in paragraph (1)(C) to the owner, importer, or consignee of any article that is denied entry into the United States by reason of an order issued under subsection (d) of this section; and

(B) a copy of such written notice to the Commission.

(j) Referral to President

(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (e) of this section, there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), (f), (g), or (i) of this section, with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination shall become final on the day after the close of such period that he approves such determination, and, for purposes of paragraph (3) and subsection (c) of this section such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

(k) Period of effectiveness; termination of violation or modification or rescission of exclusion or order

(1) Except as provided in subsections (f) and (j) of this section, any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(2) If any person who has previously been found by the Commission to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), (f), (g), or (i) of this section—

(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

(B) relief may be granted by the Commission with respect to such petition—

(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding, or

(ii) on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

(l) Importation by or for United States

Any exclusion from entry or order under subsection (d), (e), (f), (g), or (i) of this section, in cases based on a proceeding involving a patent, copyright, mask work, or design under subsection (a)(1) of this section, shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, an owner of the patent, copyright, mask work, or design adversely affected shall be entitled to reasonable and entire compensation in an action before the United
States Court of Federal Claims pursuant to the procedures of section 1498 of title 28.

(m) "United States" defined

For purposes of this section and sections 1338 and 1340 of this title, the term "United States" means the customs territory of the United States as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(n) Disclosure of confidential information

(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is properly designated as confidential pursuant to Commission rules may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any person (other than a person described in paragraph (2)) without the consent of the person submitting it.

(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to—

(A) an officer or employee of the Commission who is directly concerned with—

(i) carrying out the investigation or related proceeding in connection with which the information is submitted,

(ii) the administration of a bond posted pursuant to subsection (e), (f), or (j) of this section,

(iii) the administration or enforcement of an exclusion order issued pursuant to subsection (d), (e), or (g) of this section, a cease and desist order issued pursuant to subsection (f) of this section, or a consent order issued pursuant to subsection (c) of this section,

(iv) proceedings for the modification or rescission of a temporary or permanent order issued under subsection (d), (e), or (g) of this section, a cease and desist order issued under this section, or a consent order issued under this section, or

(v) maintaining the administrative record of the investigation or related proceeding,

(B) an officer or employee of the United States Government who is directly involved in the review under subsection (j) of this section, or

(C) an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under subsection (d), (e), or (g) of this section resulting from the investigation or related proceeding in connection with which the information is submitted.


References in Text

The Trademark Act of 1946, referred to in subsec. (a)(1)(C), is act July 5, 1946, ch. 540, 60 Stat. 427, as amended, also popularly known as the Lanham Act, which is classified generally to chapter 22 (§ 1051 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1053 of Title 15 and Tables.

The Federal Rules of Civil Procedure, referred to in subsecs. (e)(3), (h), and (k)(2)(B)(ii), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 1340 of this title, referred to in subsec. (m), was omitted from the Code. The Harmonized Tariff Schedule of the United States, referred to in subsec. (m), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

Codification

The reference to the Philippine Islands, formerly contained in subsec. (k), was omitted because of independence of the Philippines proclaimed by the President of the United States in Proc. No. 2695, issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and set out as a note thereunder.

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title III, § 316, 42 Stat. 943. That section was superseded by section 337 of the act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Amendments


Subsec. (a)(2). Pub. L. 108–429, § 2004(d)(5)(B), substituted ``(D), and (E)'' for ``(D), and (E)''

1999—Subsec. (a)(1)(A). Pub. L. 106–113, § 1000(a)(9) [title V, § 5005(b)(1)(A)(i)], substituted ``(D), and (E)'' for ``(D)''


Subsec. (a)(2). Pub. L. 106–113, § 1000(a)(9) [title V, § 5005(b)(1)(B)], substituted ``mask work, or design'' for ``mask work or design''

Subsec. (l). Pub. L. 106–113, § 1000(a)(9) [title V, § 5005(b)(2)], substituted ``mask work, or design'' for ``or mask work'' in two places.


Pub. L. 104–295, § 20(b)(12), struck out ``such section and the second part of section 1394'' in first sentence.


Subsec. (b)(1). Pub. L. 103–465, § 321(a)(1)(B), substituted third and fourth sentences for ``The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than one year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the Federal Register its reasons for designating any investigation as a more com-
§ 1337  TITLE 19—CUSTOMS DUTIES

For purposes of the one-year and 18-month periods prescribed by this subsection, there shall be excluded any period of time during which such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

Subsec. (b)(3). Pub. L. 103–465, §321(a)(1)(C)(ii), struck out after fourth sentence “For purposes of computing the 1-year or 18-month periods prescribed by this subsection, there shall be excluded such period of suspension.”


Pub. L. 103–465, §261(d)(1)(B)(ii)(II)–(V), in second sentence, struck out “1303,,” after “1303,” and made technical amendment to references to sections 1671 and 1673 of this title to correct to references to corresponding sections of original act, in third sentence, substituted “1671” for “1303, 1671,” and in last sentence, struck out “of the Secretary under section 1303 of this title or” after “Any final decision” and substituted “1671 or” for “1303, 1671, or.”


Subsec. (c). Pub. L. 103–465, §321(a)(2), in first sentence, substituted “an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration” for “a settlement agreement” inserted after third sentence “A respondent may raise any counterclaim in a manner prescribed by the Commission. Immediately after a counterclaim is received by the Commission, the respondent raising such counterclaim shall file a notice of removal with a United States district court in which venue for any of the counterclaims raised by the party would exist under section 1391 of title 28. Any counterclaim raised pursuant to this section shall be addressed to the date of the original complaint in the proceeding before the Commission. Action on such counterclaim shall not delay or affect the proceeding under this section, including the legal and equitable defenses that may be raised under this subsection.”, and inserted at end “Determinations by the Commission under subsections (e), (f), and (j) of this section with respect to forfeiture of bonds and submodule (h) of this section with respect to the imposition of sanctions for abuse of discovery or abuse of process shall also be reviewable in accordance with section 706 of title 28.”

Subsec. (d). Pub. L. 103–465, §321(a)(5)(A), designated existing provisions as par. (1), substituted “there is a violation” for “there is violation” in first sentence, and added par. (2).

Subsec. (e)(1). Pub. L. 103–465, §321(a)(3)(A), in last sentence, substituted “prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent. The Commission shall prescribe the terms and conditions under which the bond may be forfeited under this paragraph.” for “shall, until such determination becomes final, be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the determination becomes final, the bond may be forfeited to the complainant. The Commission shall prescribe the terms and conditions under which bonds may be forfeited under this paragraph.” for “shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.”


Subsec. (g)(2)(A). Pub. L. 103–465, §321(a)(7)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “an officer or employee of the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and that any act, combination, or conspiracy which is to destroy or substantially injure an industry,”

Subsec. (g)(2)(C). Pub. L. 103–465, §321(a)(7)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under this section resulting from the investigation in connection with which the information is submitted.”

Subsec. (h)(3). Pub. L. 103–563 amended second sentence generally. Prior to amendment, second sentence read as follows: “If the Commission has reason to believe the matter before it is based solely on alleged acts and effects which are within the purview of sections 1303, 1671, or 1673 of this title, shall, until such determination becomes final, be entitled to entry under bond determined by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the determination becomes final, the bond may be forfeited to the complainant. The Commission shall prescribe the terms and conditions under which bonds may be forfeited under this paragraph.” for “shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.”

Subsec. (i). Pub. L. 103–465, §321(a)(6), substituted “of section 303 or of subtitle B of title VII of this Act” for “purview of section 1303,” after “purview of section” and made technical amendment to references to sections 1671 and 1673 of this title to correspond to references to corresponding sections of original act, in third sentence, substituted “1671” for “1303, 1671,” and in last sentence, struck out “of the Secretary under section 1303 of this title or” after “Any final decision” and substituted “1671 or” for “1303, 1671, or.”
Subsec. (j), Pub. L. 100–418, §1342(a)(5)(A), redesignated former subsec. (g) as (j). Former subsec. (j) redesignated former subsec. (m).

Subsec. (k), Pub. L. 100–418, §1342(b)(4), which directed the substitution of "(j)" for "(g)" was executed by making the substitution in par. (1) and added par. (2).

Pub. L. 100–418, §1342(a)(5)(A), redesignated former subsec. (h) as (k).

Subsec. (l), Pub. L. 100–418, §1342(b)(5), inserted reference to subsecs. (g) and (l).

Pub. L. 100–418, §1342(a)(7), substituted "a proceeding involving a patent, copyright, or mask work under subsection (a)(1)" for "claims of United States letters patent and an owner of the patent, copyright, or mask work for "a patent owner".

Pub. L. 100–418, §1342a(b)(5)(A), redesignated former subsec. (i) as (l).

Pub. L. 100–418, §1342(a)(7), substituted "to assist the President in making any decisions under this section the commission is authorized to investigate any alleged violation hereof" in first sentence of par. (1) as so designated, and added remainder of par. (1) and paras. (2) and (3).

Amendment by Pub. L. 93–618 substituted provisions covering determinations by the Commission and appeals to the United States Court of Customs and Patent Appeals for provisions covering all aspects of hearings and review as part of investigations of unfair practices in import trade.

Subsec. (d), Pub. L. 93–618 substituted provisions covering the exclusion of articles from entry, formerly covered in subsec. (e), for provisions directing that final findings of the Commission be transmitted with the record to the President, covered by subsec. (g).

Subsec. (e), Pub. L. 93–618 substituted provisions covering the entry of articles under bond during investigation, formerly covered in subsec. (f), for provisions covering the exclusion of articles from entry, covered by subsec. (d).


Subsec. (g), Pub. L. 93–618 substituted provisions covering referral to the President, formerly covered by subsec. (d), for provisions covering the continuance of exclusion, covered by subsec. (h).

Subsec. (h), Pub. L. 93–618 substituted provisions covering the period of effectiveness, formerly covered by subsec. (g), for provisions defining "United States", covered by subsec. (j).

Subsec. (i), Pub. L. 93–618 added subsec. (i).


Subsec. (l), Pub. L. 93–618 struck out "under and in accordance with such rules as it may promulgate after "commission shall make such investigation". See section 1335 of this title.

Effective Date of 1994 Amendment


Section 322 of title III of Pub. L. 103–465 provided that: "The amendments made by this subtitle [subtitle C (§§321, 322) of title III of Pub. L. 103–465, enacting secs. 1368 and 1659 of Title 28, Judiciary and Judicial Procedure, and amending this section and section 1146 of Title 26] apply—"

"(1) with respect to complaints filed under section 337 of the Tariff Act of 1980 [19 U.S.C. 1337] on or after the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), or"

"(2) in cases under such section 337 in which no complaint is filed, with respect to investigations initiated under such section on or after such date."

Effective Date of 1988 Amendments

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 56c of this title.

Amendment by section 1214(h)(3) of Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

Section 1342(d) of Pub. L. 100–418 provided that:"

"(1) Subject to subparagraph (B), the amendments made by this section [amending this section and repealing section 1367a of this title] shall take effect on the date of the enactment of this Act [Aug. 23, 1988]."

"(B) The United States International Trade Commission is not required to apply the provision in section 1367c(e)(2) of the Tariff Act of 1930 [19 U.S.C. 1337(c)(e)(2)] (as amended by subsection (a)(3) of this section) relating to the posting of bonds until the earlier of—"
“(i) the 90th day after such date of enactment; or
“(ii) the day on which the Commission issues interim regulations setting forth the procedures relating to such posting.

“(2) Notwithstanding any provision of section 337 of the Tariff Act of 1930, the United States International Trade Commission may extend, by not more than 90 days, the period within which the Commission is required to make a determination in an investigation conducted under such section 337 if—

“(A) the Commission would, but for this paragraph, be required to make such determination before the 180th day after the date of enactment of this Act; and

“(B) the Commission finds that the investigation is complicated.”

**Effective Date of 1982 Amendment**


**Effective Date of 1980 Amendment**

Amendment by Pub. L. 96–39, effective July 26, 1979, set out as an Effective Date of 1980 Amendment as to section 273 of Title 28.

**Effective Date of 1979 Amendment**


**Effective Date of 1975 Amendment**

Amendment by section 314(c) of Pub. L. 93–618 provided that: “The amendments made by this section [amending this section and section 1337 of this title] shall take effect on the 90th day after the date of the enactment of this Act [Jan. 3, 1975], except that, for purposes of issuing regulations under section 337 of the Tariff Act of 1930 [this section], such amendments shall take effect on the date of the enactment of this Act (Jan. 3, 1975). For purposes of applying section 337(b) of the Tariff Act of 1930 [subsec. (b) of this section] (as amended by subsection (a) [as amended by section 314(a) of Pub. L. 93–618]) with respect to investigations being conducted by the International Trade Commission under section 337 of the Tariff Act [this section] on the day prior to the 90th day after the date of the enactment of this Act (Jan. 3, 1975), such investigations shall be considered as having been commenced on such 90th day.”

**Transfer of Functions**

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service to the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(b)(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**Congressional Findings and Purposes Respecting Part 3 of Pub. L. 100–418**

Section 1341 of Pub. L. 100–418 provided that:

“(a) Findings.—The Congress finds that—

“(1) United States persons that rely on protection of intellectual property rights are among the most advanced and competitive in the world; and

“(2) the existing protection under section 337 of the Tariff Act of 1930 [this section] against unfair trade practices is cumbersome and costly and has not provided United States owners of intellectual property rights with adequate protection against foreign companies violating such rights.

“(b) Purpose.—The purpose of this part [part 3 (§§3341. 3342) of subtitle C of title I of Pub. L. 100–418, amending this section, repealing section 1337a of this title and enacting provisions set out as a note above] is to amend section 337 of the Tariff Act of 1930 to make it a more effective remedy for the protection of United States intellectual property rights.”

**Assignment of Certain Functions**

Memorandum of President of the United States, July 21, 2005, 70 F.R. 43251, provided:

Memorandum for the United States Trade Representative By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby assign to you the functions of the President under section 337(j)(1)(B), section 337(j)(2), and section 337(j)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1337(j)(1), (j)(2), and (j)(4)).

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.
(a) of this section, maintained or increased its said discriminations against the commerce of the United States, the President is authorized, if he deems it consistent with the interests of the United States, to issue a further proclamation directing that such products of said country or such articles imported in its vessels as he shall deem consistent with the public interests shall be excluded from importation into the United States.

(c) Application of proclamation

Any proclamation issued by the President under the authority of this section shall, if he deems it consistent with the interests of the United States, extend to the whole of any foreign country or may be confined to any subdivision or subdivisions thereof; and the President shall, whenever he deems the public interests require, suspend, revoke, supplement, or amend any such proclamation.

(d) Duties to offset commercial disadvantages

Whenever the President shall find as a fact that any foreign country places any burden or disadvantage upon the commerce of the United States by any of the unequal impositions or discriminations aforesaid, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty as he shall determine will offset such burden or disadvantage, not to exceed 50 per centum ad valorem or its equivalent, on any products of, or on articles imported in a vessel of, such foreign country; and thirty days after the date of such proclamation there shall be levied, collected, and paid upon the articles enumerated in such proclamation when imported into the United States from such foreign country new such or additional rate or rates of duty; or, in case of articles declared subject to exclusion from importation into the United States under the provisions of subdivision (b) of this section, such articles shall be excluded from importation.

(e) Duties to offset benefits to third country

Whenever the President shall find as a fact that any foreign country imposes any unequal imposition or discrimination as aforesaid upon the commerce of the United States, or that any benefits accrue or are likely to accrue to any industry in any foreign country by reason of any such imposition or discrimination imposed by any foreign country other than the foreign country in which such industry is located, and whenever the President shall determine that any new or additional rate or rates of duty or any prohibition hereinafter provided for do not effectively remove such imposition or discrimination and that any benefits from any such imposition or discrimination accrue or are likely to accrue to any industry in any foreign country, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty upon the articles wholly or in part the growth or product of any such industry as he shall determine will offset such benefits, not to exceed 50 per centum ad valorem or its equivalent, upon importation from any foreign country into the United States of such articles; and on

and after thirty days after the date of any such proclamation such new or additional rate or rates of duty so specified and declared in such proclamation shall be levied, collected, and paid upon such articles.

(f) Forfeiture of articles

All articles imported contrary to the provisions of this section shall be forfeited to the United States and shall be liable to be seized, prosecuted, and condemned in like manner and under the same regulations, restrictions, and provisions as may from time to time be established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws. Whenever the provisions of this chapter shall be applicable to importations into the United States of articles wholly or in part the growth or product of any foreign country, they shall be applicable thereto whether such articles are imported directly or indirectly.

(g) Ascertaining by Commission of discriminations

It shall be the duty of the commission to ascertain and at all times to be informed whether any of the discriminations against the commerce of the United States enumerated in subdivisions (a), (b), and (e) of this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the commission to bring the matter to the attention of the President, together with recommendations.

(h) Rules and regulations of Secretary of the Treasury

The Secretary of the Treasury with the approval of the President shall make such rules and regulations as are necessary for the execution of such proclamations as the President may issue in accordance with the provisions of this section.

(i) “Foreign country” defined

When used in this section the term “foreign country” means any empire, country, dominion, colony or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions), within which separate tariff rates or separate regulations of commerce are enforced.

(June 17, 1930, ch. 497, title III, §338, 46 Stat. 704.)

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title III, §317, 42 Stat. 944. That section was superseded by section 338 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 Act.

§ 1339. Trade Remedy Assistance Office

(a) Establishment; public information

There is established in the Commission a separate office to be known as the Trade Remedy Assistance Office which shall provide full information to the public upon request and shall, to the extent feasible, provide assistance and advice to interested parties concerning—

(1) remedies and benefits available under the trade laws, and
(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b) Procedural assistance by Office and other agencies

The Trade Remedy Assistance Office, in coordination with each agency responsible for administering a trade law, shall provide technical and legal assistance and advice to eligible small businesses to enable them—

(1) to prepare and file petitions and applications (other than those which, in the opinion of the Office, are frivolous); and

(2) to seek to obtain the remedies and benefits available under the trade laws, including any administrative review or administrative appeal thereunder.

(c) Definitions

For purposes of this section—

(1) The term "eligible small business" means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an "eligible small business", the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) of this section to that business concern. An agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.

(2) The term "trade laws" means—

(A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to injury caused by import competition);

(B) chapters 2 and 3 of such title II [19 U.S.C. 2271 et seq., 2341 et seq.] (relating to adjustment assistance for workers and firms);

(C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(D) subtitle IV of this chapter (relating to the imposition of countervailing duties and antidumping duties);

(E) section 1862 of this title (relating to the safeguarding of national security); and

(F) section 1337 of this title (relating to unfair practices in import trade).


References in Text

The Trade Act of 1974, referred to in subsec. (c)(2)(A) to (C), is Pub. L. 93–638, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapters 1, 2, and 3 of title II of the Trade Act of 1974 are classified generally to parts 1 (§2251 et seq.), 2 (§2271 et seq.), and 3 (§2341 et seq.) of subchapter H of chapter 12 of this title, respectively. Chapter 1 of title III of the Trade Act of 1974 is classified generally to subchapter III (§2411 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

Prior Provisions


Amendments

1988—Subsec. (a). Pub. L. 100–418, §1614(1), substituted "a separate office to be known as the Trade" for "a Trade", and "and upon request and shall, to the extent feasible, provide assistance and advice to interested parties" for ", upon request", in introductory provisions. Subsec. (b), Pub. L. 100–418, §1614(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Each agency responsible for administering a trade law shall provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications (other than those which, in the opinion of the agency, are frivolous) to obtain the remedies and benefits that may be available under that law."


Effective Date

Section 221(b) of Pub. L. 98–573 provided that: "Section 339 of the Tariff Act of 1930 [this section] (as added by subsection (a)) shall take effect on the 90th day after the date of the enactment of this Act [Oct. 30, 1984]."

Plan Amendments Not Required Until January 1, 1989


Title 19—Customs Duties

§1340. Omitted

Codification


§1341. Interference with functions of Commission

(a) Interfering with or influencing the Commission or its employees

It shall be unlawful for any person (1) to prevent or attempt to prevent, by force, intimidation, threat, or in any other manner, any member or employee of the commission from exercising the functions imposed upon the commission by this subtitle, or (2) to induce, or attempt to induce, by like means any such member or employee to make any decision or order, or to take any action, with respect to any matter within the authority of the commission.

(b) Penalty

Any person who violates any of the provisions of this section shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) "Person" defined

As used in this section the term "person" includes an individual, corporation, association,
partnership, or any other organization or group of individuals.

(June 17, 1930, ch. 497, title III, §341, 46 Stat. 707.)

PART III—PROMOTION OF FOREIGN TRADE

§ 1351. Foreign trade agreements

(a) Authority of President; modification and decrease of duties; altering import restrictions

(1) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(A) To enter into foreign trade agreements with foreign governments or instrumentalities thereof: Provided, That the enactment of the Trade Agreements Extension Act of 1955 shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.

(B) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder.

(2) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made—

(A) Increasing by more than 50 per centum any rate of duty existing on July 1, 1934; except that a specific rate of duty existing on July 1, 1934, may be converted to its ad valorem equivalent based on the value of imports of the article concerned during the calendar year 1934 (determined in the same manner as provided in subparagraph (D)(i) and the proclamation may provide an ad valorem rate of duty not in excess of 50 per centum above such ad valorem equivalent.

(B) Transferring any article between the dutiable and free lists.

(C) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, or with respect to which notice of intention to negotiate was published in the Federal Register on November 16, 1954, decreasing by more than 50 per centum any rate of duty existing on January 1, 1945.

(D) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1958, decreasing (except as provided in subparagraph (C) of this paragraph) any rate of duty below the lowest of the following rates:

(i) The rate 15 per centum below the rate existing on January 1, 1955.

(ii) In the case of any article subject to an ad valorem rate of duty above 50 per centum (or a combination of ad valorem rates aggregating more than 50 per centum), the rate 50 per centum above the rate (or a combination of ad valorem rates aggregating 50 per centum). In the case of any article subject to a specific rate of duty (or a combination of rates including a specific rate) the ad valorem equivalent of which has been determined by the President to have been above 50 per centum during a period determined by the President to be a representative period, the rate 50 per centum ad valorem or the rate (or a combination of rates), however stated, the ad valorem equivalent of which the President determines would have been 50 per centum during such period. The standards of valuation contained in section 1401a of this title (as in effect, with respect to the article concerned, during the representative period) shall be utilized by the President, to the maximum extent he finds such utilization practicable, in making the determinations under the preceding sentence.

(E) In order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the lowest of the rates provided for in paragraph (4)(A) of this subsection.

(3)(A) Subject to the provisions of subparagraphs (B) and (C) of this paragraph and of subparagraph (B) of paragraph (4) of this subsection, the provisions of any proclamation made under paragraph (1)(B) of this subsection, and the provisions of any proclamation of suspension under paragraph (5) of this subsection, shall be in effect from and after such time as is specified in the proclamation.

(B) In the case of any decrease in duty to which paragraph (2)(D) of this subsection applies—

(i) if the total amount of the decrease under the foreign trade agreement does not exceed 15 per centum of the rate existing on January 1, 1955, the amount of decrease becoming initially effective at one time shall not exceed 5 per centum of the rate existing on January 1, 1955;

(ii) except as provided in clause (i), not more than one-third of the total amount of the decrease under the foreign trade agreement shall become initially effective at one time; and

(iii) no part of the decrease after the first part shall become initially effective until the immediately previous part shall have been in effect for a period or periods aggregating not less than one year.

(C) No part of any decrease in duty to which the alternative specified in paragraph (2)(D)(i) of this subsection applies shall become initially effective after the expiration of the three-year pe-
period which begins on July 1, 1955. If any part of such decrease has become effective, then for purposes of this subparagraph any time thereafter during which such part of the decrease is not in effect by reason of legislation of the United States or action thereunder shall be determined when the three-year period expires.

(D) If (in order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the rate existing on July 1, 1958, by more than 20 per centum of the rate of duty existing on July 1, 1958), the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed any limitation specified in paragraph (2)(C) or (D) or paragraph (4)(A) or (B) of this subsection or subparagraph (B) of this paragraph by not more than whichever of the following is lesser:

(i) The difference between the limitation and the next lower whole number; or

(ii) One-half of 1 per centum ad valorem.

In the case of a specific rate (or of a combination of rates which includes a specific rate), the one-half of 1 per centum specified in clause (ii) of the preceding sentence shall be determined in the same manner as the ad valorem equivalent of rates not stated wholly in ad valorem terms is determined for the purposes of paragraph (2)(D) of this subsection.

(4)(A) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made, in order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the lowest of the following rates:

(i) The rate which would result from decreasing the rate existing on July 1, 1958, by 20 per centum of such rate.

(ii) Subject to paragraph (2)(B) of this subsection, the rate 2 per centum ad valorem below the rate existing on July 1, 1958.

(iii) The rate 50 per centum ad valorem or, in the case of any article subject to a specific rate of duty or to a combination of rates including a specific rate, any rate (or combination of rates), however stated, the ad valorem equivalent of which has been determined as 50 per centum ad valorem.

The provisions of clauses (ii) and (iii) of this subparagraph and of subparagraph (B)(ii) of this paragraph shall, in the case of any article, subject to a specific rate of duty or to a combination of rates including a specific rate, such provisions shall apply on the basis of the ad valorem equivalent of such rate or rates, during a representative period (whether or not such period includes July 1, 1958), determined in the same manner as the ad valorem equivalent of rates not stated wholly in ad valorem terms is determined for the purpose of paragraph (2)(D)(ii) of this subsection.

(B)(i) In the case of any decrease in duty to which clause (i) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed 10 per centum of the rate of duty existing on July 1, 1958, or, in any case in which the rate has been increased since that date, exceed such 10 per centum or one-third of the total amount of the decrease under the foreign trade agreement, whichever is the greater.

(ii) In the case of any decrease in duty to which clause (ii) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed 1 per centum ad valorem or, in any case in which the rate has been increased since July 1, 1958, exceed such 1 per centum or one-third of the total amount of the decrease under the foreign trade agreement, whichever is the greater.

(iii) In the case of any decrease in duty to which clause (iii) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed one-third of the total amount of the decrease under the foreign trade agreement.

(C) In the case of any decrease in duty to which subparagraph (A) of this paragraph applies (i) no part of a decrease after the first part shall become initially effective until the immediately previous part shall have been in effect for a period or periods aggregating not less than one year, nor after the first part shall have been in effect for a period or periods aggregating more than three years, and (ii) no part of a decrease shall become initially effective after the expiration of the four-year period which begins on July 1, 1962. If any part of a decrease has become effective, then for the purposes of clauses (i) and (ii) of the preceding sentence any time thereafter during which such part of the decrease is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining when the three-year period or the four-year period, as the case may be, expires.


(6) The President may at any time terminate, in whole or in part, any proclamation made pursuant to this section.

(b) Cuba; preferential customs treatment; decrease of rates

Nothing in this section or the Trade Expansion Act of 1962 [19 U.S.C. 1801 et seq.] shall be construed to prevent the application, with respect to rates of duty established under this section or the Trade Expansion Act of 1962 pursuant to agreements with countries other than Cuba, of the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, or to preclude giving effect with Cuba concluded under this section or the Trade Expansion Act of 1962, modifying the existing preferential customs treatment of any article the growth, produce, or manufacture of Cuba. Nothing in this chapter or the Trade Expansion Act of 1962 shall be construed to preclude the application to any product of Cuba (including products preferentially free of duty) of a rate of duty not higher than the rate applicable to the like products of other foreign countries.
(except the Philippines), whether or not the application of such rate involves any preferential customs treatment. No rate of duty on products of Cuba shall be decreased—

(1) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, by more than 50 per centum of the rate of duty existing on January 1, 1945, with respect to products of Cuba.

(2) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1962, below the applicable alternative specified in subsection (a)(2)(C) or (D) or (4)(A) of this section (subject to the applicable provisions of subsection (a)(3)(B), (C), and (D) and (4)(B) and (C) of this section), each such alternative to be read for the purposes of this paragraph as relating to the rate of duty applicable to products of Cuba. With respect to products of Cuba, the limitation of subsection (a)(2)(D)(ii) or (4)(A)(iii) of this section may be exceeded to such extent as may be required to maintain an absolute margin of preference to which such products are entitled.

(3) In order to carry out a foreign trade agreement entered into after June 30, 1962, and before July 1, 1967, below the lowest rate permissible by applying title II of the Trade Expansion Act of 1962 [19 U.S.C. 1021 et seq.] to the rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on July 1, 1962, with respect to such product.

d) Rate basis for additional increases or decreases; restoration of terminated treaties forbidden

(1) When any rate of duty has been increased or decreased for the duration of war or an emergency, by agreement or otherwise, any further increase or decrease shall be computed upon the basis of the post-war or post-emergency rate carried in such agreement or otherwise.

(2) Where under a foreign trade agreement the United States has reserved the unqualified right to withdraw or modify, after the termination of war or an emergency, a rate on a specific commodity, the rate on such commodity to be considered as "existing on January 1, 1945" for the purpose of this section shall be the rate which would have existed if the agreement had not been entered into.

(3) No proclamation shall be made pursuant to this section for the purpose of carrying out any foreign trade agreement the proclamation with respect to which has been terminated in whole by the President prior to July 5, 1945.


(f) Information and advice from industry, agriculture, and labor

It is declared to be the sense of the Congress that the President, during the course of negotiating any foreign trade agreement under this section, should seek information and advice with respect to such agreement from representatives of industry, agriculture, and labor.


REFERENCES IN TEXT

The Trade Agreements Extension Act of 1965, referred to in subsec. (a)(1)(A), is act June 21, 1955, ch. 169, 69 Stat. 162, which is classified to sections 1351(a), (b), (c), (e), 1352(c), 1352a, 1363(b), and 1364(a), (b), (e) of this title. For complete classification of this Act to the Code, see Short Title of 1965 Amendment note set out under section 1654 of this title and Tables.


AMENDMENTS


1962—Subsec. (a)(5). Pub. L. 87–794, § 257(b), repealed par. (5) which provided that, subject to the provisions of section 1382 of this title, duties and other import restrictions proclaimed pursuant to this section shall apply to all articles the growth, produce, or manufacture of all foreign countries, whether imported directly or indirectly, and required the President to suspend the application to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts (including the operations of international cartels)
or policies which in his opinion tend to defeat the purposes of this section.


Subsec. (e), Pub. L. 87–794, § 257(b), repealed subsec. (e) which related to reports to Congress by the President and the Tariff Commission.

1958—Subsec. (a)(2)(A). Pub. L. 85–686, § 3(a)(1), inserted “and before July 1, 1945,” after “June 12, 1955,” in opening par., and substituted “section 1401a or 1402 of this title (as in effect, with respect to the article concerned,” for “section 1402 of this title (as in effect)”.


Subsec. (a)(3)(A). Pub. L. 85–686, § 3(a)(5), inserted “and of paragraph (3) of this subsection after ‘subparagraphs (B) and (C) of this paragraph’”, and substituted “suspension under paragraph (5)” for “suspension under paragraph (4)”.

Subsec. (a)(4)(D). Pub. L. 85–686, § 3(a)(6), inserted “or paragraph (4)(A) or (B)” after “paragraph (2)(C) or (D)”, “(a)(4)(B)” after “subsection (a)(2)(C) or (D),” “(4)(A)” after “subsection (a)(2)(C) or (D)”.

Subsec. (a)(5) to (6). Pub. L. 85–686, § 3(a)(7), (8), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (b). Pub. L. 85–686, § 3(b)(1), substituted “an agreement with Cuba” for “an exclusive agreement with Cuba” in opening par.


Subsec. (e)(1). Pub. L. 85–686, § 3(d), provided for the inclusion in the report of the results of action taken to obtain removal of foreign trade restrictions (including discriminatory restrictions) against United States exports, remaining restrictions, and the measures available to seek their removal in accordance with the objectives of this section.


1955—Subsec. (a). Act June 21, 1955, § 3(a), among other changes, authorized the President to reduce tariff rates existing on January 1, 1955 by a total of 15 percent in stages of not more than 5 percent of such rates, or to reduce those rates which are higher than 50 percent of the value of an import to a rate not less than 50 percent, in stages of not more than one-third of the reduction in any one year.

Subsec. (b). Act June 21, 1955, § 3(b), made applicable to Cuban products the new limits of authority to reduce tariffs.

Subsec. (c). Act June 21, 1955, § 3(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Act June 21, 1955, § 3(d), added subsec. (e). 1949—Subsec. (a), Act Sept. 26, 1949, struck out obsolete language referring to the depression which existed at the time of the original enactment of section.

Subsec. (b), Act Sept. 26, 1949, substituted period for colon following Cuba, struck out provision which followed, and inserted in lieu thereof the last two sentences.

1945—Subsec. (a)(2). Act July 5, 1945, struck out “existing” after “per centum any”, and inserted “however established, existing on January 1, 1945 (even though temporarily suspended by Act of Congress)” for “now payable thereon” in proviso.


Effective Date of 1979 Amendment

Amendment by Pub. L. 96–39 effective July 1, 1980, see section 294(a) of Pub. L. 96–39, set out as a note under section 1401a of this title.

Treaty Between United States and Cuba

The treaty concluded between the United States and the Republic of Cuba, on Dec. 11, 1902, referred to in subsec. (b) of the text, was terminated Aug. 21, 1963, pursuant to notice given by the United States on Aug. 21, 1962. See Bevans, Treaties and Other International Agreements of the United States of America, 1776–1949, vol. VI, page 1106.

Tariff Treatment of Cuban Products

Section 401 of Pub. L. 87–456, title IV, May 24, 1962, 76 Stat. 78, provided that:

“(a) Cuba is hereby declared to be a nation described in section 5 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C. 1352), to which all import duties temporarily suspended by Act of Congress).” for “now United States International Trade Commission.”

“(b) Nothing in subsection (a) shall affect the rates of duty or the customs or excise treatment of articles the growth, produce, or manufacture of Cuba, and

“(2) imported on or after the date of enactment of this Act [May 24, 1962], shall be denied the benefits of concessions contained in any trade agreement entered into under the authority of section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351).

“(d) The Act of December 17, 1903 (19 U.S.C. 124, 125), and section 316 of the Tariff Act of 1930, as amended (19 U.S.C. 1316), both relating to the implementation of the treaty with Cuba concluded on December 11, 1902, shall not apply during the period during which subsection (a) applies.”

Administration of Trade Agreements Program

For provisions relating to the administration of the trade agreements program, see Ex. Ord. No. 11846, Mar. 27, 1975, 40 F.R. 14291, set out as a note under section 2111 of this title.

Congressional Approval or Disapproval of General Agreement on Tariffs and Trade

Section 10 of Pub. L. 85–686 provided that: “The enactment of this Act (enacting section 1353 of this title, amending sections 1333, 1336, 1337, 1351, 1352a, 1360 and 1364 of this title, and enacting notes set out under sections 1335 and 1352 of this title) shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.”

Reduction of Protection Resulting From 1956 Amendments

Section 2(e) of act Aug. 2, 1956, ch. 887, 70 Stat. 946, provided that: “In any action relating to tariff adjustments by executive action, including action taken pursuant to section 350 of the Tariff Act of 1930, as amended [this section] the United States Tariff Commission [now United States International Trade Commission]
and each officer of the executive branch of the Government concerned shall give full consideration to any reduction in the level of tariff protection which has resulted or is likely to result from the amendment of section 402 of the Tariff Act of 1930 made by this Act [sections 1401a and 1402 of this title]."

Section 2(e) of act Aug. 2, 1956, effective only as to articles entered, or withdrawn from warehouse, for consumption on or after thirtieth day following publication of the final list provided for in section 8(a) of said act Aug. 2, 1956, set out in note under section 1402 of this title, see note set out under section 1401a of this title.

COMMISSION ON FOREIGN ECONOMIC POLICY

Act Aug. 7, 1953, ch. 348, title III, §§301–310, 67 Stat. 473–475, as amended by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 657, provided for the establishment of a Commission on Foreign Economic Policy to examine and report on the subjects of international trade and its enlargement consistent with a sound domestic economy, our foreign economic policy, and the trade aspects of our national security and total foreign policy, and to recommend appropriate policies and measures. The Commission was to submit a report on its findings within 90 days after the second session of the 83rd Congress was convened, and was to expire 90 days after the submission of its report to Congress.

EXTENSION OF PRESIDENTIAL AUTHORITY

Authority of President to enter into trade agreements under this section extended until close of Dec. 31, 1962, see note under section 1352 of this title.

EXECUTIVE ORDER NO. 9832


EXECUTIVE ORDER NO. 10004


EXECUTIVE ORDER NO. 10082


EXECUTIVE ORDER NO. 10741


§ 1352. Equalization of costs of production

(a) Application to importation of articles under foreign-trade agreement

The provisions of section 1336 of this title shall not apply to any article with respect to the importation of which into the United States a foreign-trade agreement has been concluded pursuant to this part or the Trade Expansion Act of 1962 [19 U.S.C. 2101 et seq.] or the Trade Act of 1974 [19 U.S.C. 2101 et seq.] or to any provision of any such agreement. The third paragraph of section 1311 of this title shall apply to any agreement concluded pursuant to this part or the Trade Expansion Act of 1962 or the Trade Act of 1974 to the extent only that such agreement assures to the United States a rate of duty on wheat flour produced in the United States which is preferential in respect to the lowest rate of duty imposed by the country with which such agreement has been concluded on like flour produced in any other country; and upon the withdrawal of wheat flour from bonded manufacturing warehouses for exportation to the country with which such agreement has been concluded, there shall be levied, collected, and paid on the imported wheat used, a duty equal to the amount of such assured preference.

(b) Termination of foreign trade agreement

Every foreign trade agreement concluded pursuant to this part shall be subject to termination, upon due notice to the foreign government concerned, at the end of not more than three years from the date on which the agreement comes into force, and, if not then terminated, shall be subject to termination thereafter upon not more than six months’ notice.

(c) Termination of authority of President

The authority of the President to enter into foreign trade agreements under section 1351 of this title shall terminate on June 30, 1958.


REFERENCES IN TEXT


AMENDMENTS


1951—Subsec. (a). Act June 16, 1951, substituted “section 1336 of this title” for “sections 1336 and 1516(b) of this title”.

Subsec. (c). Act June 16, 1951, substituted “1953” for “1951.”


1945—Subsec. (c). Act July 5, 1945, substituted “1948” for “1945.”

Sections, act Apr. 11, 1941, ch. 59, §§ 1, 2, 55 Stat. 133, 134, related to the importation of coffee under International Coffee Agreement. See sections 1356a to 1356e of this title.

§ 1356a to 1356j. Omitted

CODIFICATION
Sections were omitted. See sections 1356k and 1356l of this title.

§ 1356k. Authorization for restrictions on imports
1943—Subsec. (c). Joint Res. June 7, 1943, substituted “1945” for “1943”.
1949—Subsec. (c). Joint Res. Apr. 12, 1949, substituted “1945” for “1949”.

REPEALS

EXTENSION OF PRESIDENTIAL AUTHORITY
Section 257(c) of Pub. L. 87–794 extended authority of President to enter into foreign trade agreements under section 350 of the Tariff Act of 1930 (section 1351 of this title) from close of June 30, 1962, until close of Dec. 31, 1962.

Section 2 of Pub. L. 85–686, Aug. 20, 1958, 72 Stat. 673, extended authority of President to enter into foreign trade agreements under section 350 of the Tariff Act of 1930, any of the indebtedness of any foreign country, effect on Nothing in this part shall be construed to give any authority to cancel or reduce, in any manner, any of the indebtedness of any foreign country to the United States.

(June 12, 1934, ch. 474, § 3, 48 Stat. 944.)

§ 1354. Notice of intention to negotiate agreement; opportunity to be heard; President to seek information and advice
Before any foreign trade agreement is concluded with any foreign government or instrumentality thereof under the provisions of this part, reasonable public notice of the intention to negotiate an agreement with such government or instrumentality shall be given in order that any interested person may have an opportunity to present his views to the President, or to such agency as the President may designate, under such rules and regulations as the President may prescribe; and before concluding such agreement the President shall request the International Trade Commission to make the investigation and report provided for by section 1360 of this title, and shall seek information and advice with respect to such agreement from the Departments of State, Agriculture, Commerce, and Defense, and from such other sources as he may deem appropriate.

§ 1356k. Importation of coffee under International Coffee Agreement, 1983; Presidential powers and duties

On and after the entry into force of the International Coffee Agreement, 1983, and before October 1, 1989, the President is authorized, in order to carry out and enforce the provisions of that agreement—

(1) to regulate the entry of coffee for consumption, or withdrawal of coffee from warehouse for consumption, or any other form of entry or withdrawal of coffee such as for transportation or exportation, including whenever quotas are in effect pursuant to the agreement, (A) the limitation of entry, or withdrawal from warehouse, of coffee imported from countries which are not members of the International Coffee Organization, and (B) the prohibition of entry of any shipment from any member of the International Coffee Organization of coffee which is not accompanied either by a valid certificate of origin, a valid certificate of reexport, a valid certificate of reshipment, or a valid certificate of transit, issued by a qualified agency in such form as required under the agreement;

(2) to require that every export or reexport of coffee from the United States shall be accompanied by a valid certificate of origin or a valid certificate of reexport, issued by a qualified agency of the United States designated by him, in such form as required under the agreement;

(3) to require the keeping of such records, statistics, and other information, and the rendering of such reports, relating to the importation, distribution, prices, and consumption of coffee as he may from time to time prescribe; and

(4) to take such other actions, and issue and enforce such rules and regulations, as he may consider necessary or appropriate in order to implement the obligations of the United States under the agreement.


1983—Pub. L. 98–120 substituted “1983” for “1976” and “before October 1, 1986” for “for such period prior to October 1, 1983 as the agreement remains in effect”.

Pub. L. 97–446 substituted “October 1, 1983” for “the expiration of this joint resolution”.

1982—Pub. L. 97–276 substituted “the expiration of this joint resolution” for “October 1, 1982”.

References in Text


Codification

Section was enacted as part of the International Coffee Agreement Act of 1980, and not as part of the Tariff Act of 1930 which comprises this chapter.

Amendments


Sections, act June 26, 1948, ch. 678, §§3(a), (b), 4, 5, 62 Stat. 1033, 1054, related to the investigatory functions of the Tariff Commission and the report by the President to Congress.

§ 1360. Investigation before trade negotiations

(a) Report by International Trade Commission

Before entering into negotiations concerning any proposed foreign trade agreement under section 1351 of this title, the President shall furnish the United States International Trade Commission (hereinafter in sections 1352(a), (c), 1354, and 1360 to 1367 of this title, and section 624(b) of title 7, referred to as the “Commission”) with a list of all articles imported into the United States to be considered for possible modification of duties and other import restrictions, imposition of additional import restrictions, or continuation of existing customs or excise treatment. Upon receipt of such list the Commission shall make an investigation and report to the President the findings of the Commission with
respect to each such article as to (1) the limit to which such modification, imposition, or continuance may be extended in order to carry out the purpose of said section without causing or threatening serious injury to the domestic industry producing like or directly competitive articles; and (2) if increases in duties or additional import restrictions are required to avoid serious injury to the domestic industry producing like or directly competitive articles the minimum increases in duties or additional import restrictions required. Such report shall be made by the Commission to the President not later than six months after the receipt of such list by the Commission. No such foreign trade agreement shall be entered into until the Commission has made its report to the President or until the expiration of the six-month period.

(b) Procedures and determinations

(1) In the course of any investigation pursuant to this section the Commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings. If in the course of any such investigation the Commission shall find with respect to any article on the list upon which a tariff concession has been granted that an increase in duty or additional import restriction is required to avoid serious injury to the domestic industry producing like or directly competitive articles, the Commission shall promptly institute an investigation with respect to that article pursuant to section 1364 of this title.

(2) In each such investigation the Commission shall, to the extent practicable and without excluding other factors, ascertain for the last calendar year preceding the investigation the average invoice price on a country-of-origin basis (converted into currency of the United States in accordance with the provisions of section 5151 of title 31) at which the foreign article was sold for export to the United States, and the average prices at which the like or directly competitive domestic articles were sold at wholesale in the principal markets of the United States. The Commission shall also, to the extent practicable, estimate for each article on the list the maximum increase in annual imports which may occur without causing serious injury to the domestic industry producing like or directly competitive articles. The Commission shall request the executive departments and agencies for information in their possession concerning prices and other economic data from the principal supplier foreign country of each such article.


References in Text

Sections 1362 to 1365 of this title, included in the reference in subsec. (a) to sections 1369 to 1367 of this title, were repealed by Pub. L. 87–749, title II, §257(e)(1), Oct. 11, 1962, 76 Stat. 882; section 1367 of this title was repealed by Pub. L. 87–456, title III, §303(c), May 24, 1962, 76 Stat. 78.
to which such limits or minimum requirements are not complied with.


Codification
Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

Amendments


Section 1362, act June 16, 1951, ch. 141, §§5, 65 Stat. 73, related to suspension or withdrawal of concessions from Communist areas. See section 1801 et seq. of this title.


Section 1365, act June 16, 1951, ch. 141, §8(a), 65 Stat. 75, provided for emergency action for perishable agricultural products.

Presidential Action in Effect on October 11, 1962
Section 257(e)(2) of Pub. L. 87–794 provided that: “Action taken by the President under section 5 of such Act [former section 1362 of this title] and in effect on the date of the enactment of this Act [Oct. 11, 1962] shall be considered as having been taken by the President under section 231 [section 1861 of this title].”

Continuation of Investigations
Section 257(e)(3) of Pub. L. 87–794 provided that: “Any investigation by the Tariff Commission [now the United States International Trade Commission] under section 7 of such Act [former section 1364 of this title] which is in progress on the date of the enactment of this Act [Oct. 11, 1962] shall be continued under section 301 [section 1901 of this title] as if the application by the interested party were a petition under such section for tariff adjustment under section 351 [section 1981 of this title]. For purposes of section 301 [section 1901 of this title], such petition shall be treated as having been filed on the date of the enactment of this Act [Oct. 11, 1962].”

§ 1366. General Agreement on Tariff and Trade unaffected
The enactment of sections 1352(a), (c), 1354, and 1360 to 1367 of this title, and section 624(f) of title 7, shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.

(June 16, 1951, ch. 141, §10, 65 Stat. 75.)

References in Text
Sections 1362 to 1365 of this title, included in the reference to sections 1360 to 1367 of this title, were repealed by Pub. L. 87–794, title II, §257(e)(1), Oct. 11, 1962, 76 Stat. 882; section 1367 of this title was repealed by Pub. L. 87–456, title III, §303(c), May 24, 1962, 76 Stat. 78.

Codification
Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

Prior Provisions
Similar provisions were contained in act July 1, 1954, ch. 445, §3, 68 Stat. 369, other sections of which amended section 1332(c) of this title and enacted section 1332a of this title; and in act Aug. 7, 1953, ch. 348, title I, §103, 67 Stat. 472, which act amended section 624(b) of title 7, and sections 1339(d), 1352(c) and former section 1364(a) of this title, and enacted provisions set out as notes under sections 1351 and 1364 of this title.

Congressional Approval or Disapproval of General Agreement on Tariffs and Trade
Section 10 of Pub. L. 85–686 provided that: “The enactment of this Act [enacting section 1335 of this title, amending sections 1333, 1336, 1337, 1351, 1352a, 1360, and former section 1364 of this title, and enacting notes set out under sections 1332 and 1366 of this title] shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.”

Section, act June 16, 1951, ch. 141, §11, 65 Stat. 75, required the President to take such measures as may be necessary to prevent the importation of ermine, fox, kolinsky, marten, mink, muskrat, and weasel furs and skins which are the product of the Union of Soviet Socialist Republics or of Communist China.

Effective Date of Repeal
Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of this title.

Subtitle III—Administrative Provisions
Part I—Definitions and National Customs Automation Program

Subpart A—Definitions

§ 1401. Miscellaneous
When used in this subtitle or in part I of subtitle II of this chapter—

(a) Vessel

The word “vessel” includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft.

(b) Vehicle

The word “vehicle” includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft.

(c) Merchandise

The word “merchandise” means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of title 31.

(d) Person

The word “person” includes partnerships, associations, and corporations.

(e) Master

The word “master” means the person having the command of the vessel.
(f) Day
The word “day” means the time from eight o’clock antemeridian to five o’clock postmeridian.

(g) Night
The word “night” means the time from five o’clock postmeridian to eight o’clock antemeridian.

(h) United States
The term “United States” includes all Territories and possessions of the United States except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(i) Officer of the customs; customs officer
The terms “officer of the customs” and “customs officer” mean any officer of the United States Customs Service of the Treasury Department (also hereinafter referred to as the “Customs Service”) or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person, including foreign law enforcement officers, authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

(j) Customs waters
The term “customs waters” means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

(k) Hovering vessel
The term “hovering vessel” means—
(1) any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws of the United States; and
(2) any vessel which has visited a vessel described in paragraph (1).

(l) Secretary
The term “Secretary” means the Secretary of the Treasury or his delegate.

(m) Controlled substance
The term “controlled substance” has the meaning given that term in section 802(6) of title 21. For purposes of this chapter, a controlled substance shall be treated as merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—
(1) an appropriate license or permit; or
(2) the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

(n) Electronic transmission
The term “electronic transmission” means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.

(o) Electronic entry
The term “electronic entry” means the electronic transmission to the Customs Service of—
(1) entry information required for the entry of merchandise, and
(2) entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(p) Electronic data interchange system
The term “electronic data interchange system” means any established mechanism approved by the Commissioner of Customs through which information can be transferred electronically.

(q) National Customs Automation Program
The term “National Customs Automation Program” means the program established under section 1411 of this title.

(r) Import activity summary statement
The term “import activity summary statement” refers to data or information transmitted electronically to the Customs Service, in accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(s) Reconciliation
The term “reconciliation” means an electronic process, initiated at the request of an importer, under which the elements of an entry (other than those elements related to the admissibility of the merchandise) that are undetermined at the time the importer files or transmits the documentation or information required by section 1484(a)(1)(B) of this title, or the import activity summary statement, are provided to the Customs Service at a later time. A reconciliation is treated as an entry for purposes of liquidation, reliquidation, recordkeeping, and protest.

(t) Reconfigured entry
The term “reconfigured entry” means an entry filed on an import activity summary statement which substitutes for all or part of 1 or more entries filed under section 1484(a)(1)(A) of this title or filed on a reconciliation entry that aggregates the entry elements to be reconciled under section 1484(b) of this title for purposes of liquidation, reliquidation, or protest.

charge of matters of reappraisement, etc., of imported goods and litigation incident thereto. Section 30 was incorporated into the Code as section 296 of former Title 5, Executive Departments and Government Officers and Employees, and subsequently repealed by Pub. L. 89–554, Sept. 6, 1966, §8(a), 80 Stat. 632.

AMENDMENTS


2003—Subsec. (i). Pub. L. 108–7, §127(b), which directed amendment of section 1401(i) of title 19 by inserting “including foreign law enforcement officers,” after “or other person” was repealed by Pub. L. 108–429, §1561(c).

1996—Subsec. (a). Pub. L. 104–295, §18(a), amended first sentence generally. Prior to amendment, first sentence read as follows: “The term ‘reconciliation’ means an electronic process, initiated at the request of an importer, under which the elements of an entry, other than those elements related to the admissibility of the merchandise, that are undetermined at the time of entry summary are provided to the Customs Service at a later time.”


1993—Subsec. (k). Pub. L. 103–182, §634(1), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: “(1) The term ‘hovering vessel’ means any vessel which is found or kept off the coast of the United States, or in any of its territorial waters, within twenty-five miles of the coast of the United States, or in any of its territorial waters, and which is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.

(2) For the purposes of sections 1432, 1433, 1434, 1435, 1436, and 1438, and 1585, and 1586 of this title, any vessel which—

(A) has visited any hovering vessel;

(B) has received merchandise while in the customs waters of the United States, or in any of its territorial waters, or in any of its waters beyond the territorial sea; or

(C) has received merchandise while on the high seas;

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place of construction;

Subsecs. (n) to (s). Pub. L. 103–182, §634(2), added subsecs. (n) to (s).

1986—Subsec. (c). Pub. L. 99–570, §311(1), inserted “and monetary instruments as defined in section 5312 of title 31.”

Subsec. (k). Pub. L. 99–570, §311(2), (3), designated existing provisions as par. (1) and added par. (2)


Subsec. (1). Pub. L. 91–271, §301(c)(1), (2), struck out subsec. (i) which defined “comptroller of customs”, redesignated subsec. (i) as (1), and, as so redesignated, defined “customs officer”.

Subsec. (j). Pub. L. 91–271, §301(c)(1), (2), struck out subsec. (j) which defined “appraiser”, and redesignated subsec. (m) as (j).

Subsec. (k). Pub. L. 91–271, §301(c)(1), (2), redesignated subsec. (n) as (k), Former subsec. (k) redesignated (h).


Subsec. (m). Pub. L. 91–271, §301(c)(2), redesignated subsec. (n) as (k) and (k), respectively.


1938—Subsec. (k). Act June 25, 1938, inserted “Wake Island, Midway Islands, Kingman Reef” before “and the island of Guam.”

CHANGE OF NAME

EFFECTIVE DATE OF 2004 AMENDMENT
Pub. L. 108–429, title I, §1561(d), Dec. 3, 2004, 118 Stat. 2582, provided that: "This section [amending this section and section 1629 of this title and repealing provisions set out as a note under section 1629 of this title], and the amendments made by this section, take effect on the date of the enactment of this Act [Dec. 3, 2004]."


EFFECTIVE DATE OF 1996 AMENDMENT
Amendment by section 3(a)(6)(A) of Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT
Section 2(d) of act June 30, 1955, provided that: "The amendments made by this section [amending this section, sections 1537, 1562, and 1709 of this title, and sections 542, 544, and 545 of Title 18, Crimes and Criminal Procedure] shall take effect on the day following the day on which this Act is enacted [July 1, 1955]."

EFFECTIVE DATE OF 1938 AMENDMENT
Section 37 of act June 25, 1938, provided that: "Sections 31 and 34 of this Act [amending section 100 of this title] shall take effect on the date of enactment of this Act [June 25, 1938]." Except as otherwise specially provided in this Act, the remainder of this Act [amending this section and sections 1001, 1201, 1304, 1309, 1311, 1315, 1317, 1402, 1451, 1459, 1460, 1464, 1465, 1491, 1499, 1501, 1516, 1520, 1521, 1553, 1557, 1558, 1559, 1562, 1563, 1603, 1607, 1609, 1613, 1623, and 1709 of this title, enacting sections 1321, 1467, and 1529 of this title, and amending section 331 of former Title 46, Shipping] shall take effect on the thirtieth day following the date of its enactment."

TRANSFER OF FUNCTIONS
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

§1401a. Value
(a) Generally

(1) Except as otherwise specifically provided for in this chapter, imported merchandise shall be appraised, for the purposes of this chapter, on the basis of the following:

(A) The transaction value provided for under subsection (b) of this section.

(B) The transaction value of identical merchandise provided for under subsection (c) of this section, if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2) of this section.

(C) The transaction value of similar merchandise provided for under subsection (c) of this section, if the value referred to in subparagraph (B) cannot be determined.

(D) The deductive value provided for under subsection (d) of this section, if the value referred to in subparagraph (C) cannot be determined.

(E) The computed value provided for under subsection (e) of this section, if the value referred to in subparagraph (D) cannot be determined.

(F) The value provided for under subsection (f) of this section, if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

(b) Transaction value of imported merchandise

(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(A) the packing costs incurred by the buyer with respect to the imported merchandise;
(B) any selling commission incurred by the buyer with respect to the imported merchandise;

(C) the value, apportioned as appropriate, of any assist;

(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this chapter only if—

(i) there are no restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

(I) are imposed or required by law,

(II) limit the geographical area in which the merchandise may be resold, or

(III) do not substantially affect the value of the merchandise;

(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise;

(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise from the country of exportation to the place of importation in the United States are ordinarily liable.

(2)(B) Any rebate of, or other decrease in, the transaction value of imported merchandise that is—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportation of the merchandise after such importation.

(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

(A) Any reasonable cost or charge that is incurred for—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportation of the merchandise after such importation.

(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors or dealers in the United States are ordinarily liable.

(4) For purposes of this subsection—

(A) The term "price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incidental to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

(c) Transaction value of identical merchandise and similar merchandise

(1) The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this chapter under subsection (b) of this section but adjusted under paragraph (2) of this subsection) of imported merchandise that is—

(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and
(B) exported to the United States at or about the
time that the merchandise being appraised is exported to the United States.

(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this subsection shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

(d) Deductive value

(1) For purposes of this subsection, the term "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.

(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

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

(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity at or about the date at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A)(i) or (ii) applies) or after further processing (in cases to which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

(3)(A) The price determined under paragraph (2) shall be reduced by an amount equal to—

(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable; and

(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

(B) For purposes of applying paragraph (A)—

(i) the deduction made for profits and general expenses shall be based upon the importer's profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States or in the country of exportation of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.

(D) For purposes of determining the deductive value of imported merchandise, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned shall be disregarded.

(e) Computed value

(1) The computed value of imported merchandise is the sum of—

(A) the cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;
(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B); and

(D) the packing costs.

(2) For purposes of paragraph (1)—

(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

(f) Value if other values cannot be determined or used

(1) If the value of imported merchandise cannot be determined, or otherwise used for the purposes of this chapter, under subsections (b) through (e) of this section, the merchandise shall be appraised for the purposes of this chapter, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisal of imported merchandise at the higher of two alternative values;

(C) the price of merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) of this section for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;

(E) the price of merchandise for export to a country other than the United States;

(F) minimum values for appraisal; or

(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under subtitle IV of this chapter.

(g) Special rules

(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

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

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

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

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

(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term “generally accepted accounting principles” refers to any generally recognized consensus or substantial authoritative support regarding—

(A) which economic resources and obligations should be recorded as assets and liabilities;

(B) which changes in assets and liabilities should be recorded;

(C) how the assets and liabilities and changes in them should be measured;

(D) what information should be disclosed and how it should be disclosed; and

(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

(h) Definitions

As used in this section—

(i) The term “assist” means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(1) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.
(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

(i) is performed by an individual who is domiciled within the United States;

(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(2) The term “identical merchandise” means—

(A) merchandise that is identical in all respects to, and was produced in the same country and by the same person as, the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i) of this section, regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirement set forth in subparagraph (A)(ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(3) The term “packing costs” means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(4) The term “similar merchandise” means—

(A) merchandise that—

(i) was produced in the same country and by the same person as the merchandise being appraised,

(ii) is like the merchandise being appraised in characteristics and component material, and

(iii) is commercially interchangeable with the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i) of this section, regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirement set forth in subparagraph (A)(ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(5) The term “sufficient information”, when required under this section for determining—

(A) any amount—

(i) added under subsection (b)(1) of this section to the price actually paid or payable,

(ii) deducted under subsection (d)(3) of this section as profit or general expense or value from further processing, or

(iii) added under subsection (c)(2) of this section as profit or general expense;

(B) any difference taken into account for purposes of subsection (b)(2)(C) of this section;

or

(C) any adjustment made under subsection (c)(2) of this section;

means information that establishes the accuracy of such amount, difference, or adjustment.

(6) Engineering, development, artwork, design work, or plans or sketches that—

(i) were produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) are necessary for the production of the imported merchandise undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(7) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

(i) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(ii) is not an assist because undertaken within the United States.

Amendments

1989—Subsec. (b)(2)(B). Pub. L. 96–490 amended par. (B) generally, omitting cl. (iii) which provided that “the transaction value determined under this subsection in sales to unrelated buyers of merchandise, for exportation to the United States, that is identical in all respects to the imported merchandise but was not produced in the country in which the imported merchandise was produced”, and omitting the provision relating to cl. (iii) which provided that “No two sales to unrelated buyers may be used for comparison for purposes of clause (iii) unless the sellers are unrelated.”

1979—Pub. L. 96–39 completely revised statutory standards for appraising the value of imported merchandise to conform to Customs Valuation Agreement, incorporating, as part of that revision, a new format of five methods of determining customs value in subsecs. (b) through (f), a group of special rules in subsec. (g), and definition of terms in subsec. (h).

Effective Date of 1980 Amendment

Section 2 of Pub. L. 96–490 provided in part that the amendment made by that section is “effective on the latest of—
“(1) the date on which the amendments made by title II of the Trade Agreements Act of 1979 (except the amendments made by section 223(b)) take effect [July 1, 1980];

“(2) the date on which the President accepts the Protocol [to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade for the United States] [Dec. 30, 1980], or

“(3) the date on which the President determines that the European Economic Community has implemented the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade for the United States (Jan. 1, 1981), and effective with respect to merchandise exported to the United States on or after that date”.

[For delegation of authority by the President to make the determinations required by pars. (1) to (3), above, to the United States Trade Representative, see Memorandum of President of the United States, Dec. 17, 1980, 45 F.R. 33467.]

[For determination of the United States Trade Representative that the conditions of pars. (1) to (3), above, were satisfied effective on Jan. 1, 1981, see Determination of United States Trade Representative, 46 F.R. 1073.]

**Effective Date of 1979 Amendment; Transition to New Valuation Standards**

Section 204 of title II of Pub. L. 96–39 provided that: “(a) **Effective Date of Amendments.**—The amendments made by this title (except as provided in paragraph (2), the amendments made by this title [amending the Tariff Schedules of the United States (see Publication of Tariff Schedules note under section 1322 of this title), sections 1332, 1336, 1351, 1401a, 1500, and 2481 of this title, and section 993 of Title 26, Internal Revenue Code, repealing section 1402 of this title, and enacting provisions set out as notes under sections 1320, 1401a, and 2111 of this title) (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States]) shall take effect on—

“(A) January 1, 1981, if the Agreement enters into force with respect to the United States by that date; or

“(B) if subparagraph (A) does not apply, that date after January 1, 1981, on which the Agreement enters into such force; and shall apply with respect to merchandise that is exported to the United States on or after whichever of such dates applies.

“(2) **Earlier Effective Date under Certain Circumstances.**—If the President determines before January 1, 1981, that—

“(A) the European Economic Community has accepted the obligations of the Agreement with respect to the United States; and

“(B) each of the member states of the European Economic Community has implemented the Agreement under its laws,

the President shall by proclamation announce such determination and the amendments made by this title (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States]) shall take effect on the date specified in the proclamation (July 1, 1980) (but not before July 1, 1980) and shall apply with respect to merchandise that is exported to the United States by January 1, 1981, and provisions of law that were amended by such amendments are revived (as in effect on the day before such amendments took effect) on January 1, 1981, and such provisions—

“(1) shall remain in effect until the date on which the Agreement enters into force with respect to the United States by January 1, 1981, all provisions of law that were amended by such amendments are revived (as in effect on the day before such amendments took effect) on January 1, 1981, and such provisions—

“(ii) shall apply with respect to merchandise exported to the United States on or after January 1, 1981, and before the date on which the Agreement enters into such force.

“(b) **Application of Old Law Valuation Standards.**—For purposes of the administration of the customs laws, all merchandise (other than merchandise to which subsections (a) and (c) apply) shall be appraised in effect on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

“(c) **Special Treatment for Certain Rubber Footwear.**—The amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] shall take effect July 1, 1981, or, if later, the date on which the Agreement enters into force with respect to the United States, and shall apply, together with the other amendments made by this title, to rubber footwear exported to the United States on or after such date. For purposes of the administration of the customs laws, all rubber footwear (other than rubber footwear to which the preceding sentence applies) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

“(d) **Definition.**—For purposes of this section, the term ‘rubber footwear’ means articles described in subheads 4201.10.00 to 4201.40.00 of the Customs Tariff of the United States, and includes the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] take effect.”

[For Presidential proclamation specifying in accordance with subsec. (a)(2), above, that the amendments by section II of Pub. L. 96–39 are effective July 1, 1981, see Proclamation of President of the United States, Dec. 30, 1980, 46 F.R. 45136, 45137, set out as a note under section 2111 of this title.]

**Effective Date**

Section 8 of act Aug. 2, 1956, provided that: “This Act [enacting this section and provisions set out in notes under this section and sections 2, 160, 1351, and 1402 of this title, amending sections 1001, 1402, 1500, and 1583 of this title, and sections 372 and 711 of former Title 31, Money and Finance, and repealing sections 12 to 18, 21 to 24, 26 to 28, 30, 40, 53 to 57, 59, 61, 62, 67, 376, 379, 390, 494, 526, 541, 542, 549, and 579 of this title] shall be effective on and after the following date of its enactment [Aug. 2, 1956], except that section 2 [enacting this section and provisions set out in note under section 1351 of this title, and amending sections 1001, 1336, and 1402 of this title] shall be effective only as to articles entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the publication of the final list provided for in section 6(a) of this Act [set out in notes under section 1402 of this title], and section 3 [amending section 372 of former Title 31] shall be effective as to entries filed on or after the thirtieth day following the date of enactment of this Act [Aug. 2, 1956].”

**Presidential Report to Congress on Operation of Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade Over 2-Year Period**

Section 203 of Pub. L. 96–39 provided that: “As soon as practicable after the close of the 2-year period beginning on the date on which the amendments made by this title (other than section 223(b), relating to certain rubber footwear) take effect [see Effective Date of 1979 Amendment note set out above], the President shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade approved under section 2(a) [section 2503(a) of this title] (hereinafter in this subtitle re-

Section, acts June 17, 1930, ch. 497, title I, § 402a, formerly § 402, 46 Stat. 768; June 23, 1938, ch. 679, § 8, 52 Stat. 161, renumbered and amended Aug. 2, 1938, ch. 497, § 402a, 52 Stat. 943, 946; June 2, 1970, Pub. L. 91–271, title III, § 301(d), 84 Stat. 258, provided an alternative basis for valuation of articles designated by the Secretary of the Treasury as provided for by act Aug. 2, 1938, ch. 497, § 402a, 52 Stat. 943, 946, as either the foreign value or the export value, whichever is higher, or if the appropriate customs officer determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value, or if the appropriate customs officer determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production, or in the case of an article with respect to which there is in effect under section 1336 of this title a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article, defined foreign value, export value, United States value, cost of production, and American selling price, and provided for review of the decision of the appropriate customs officer.


R.S. § 2906, requiring the collector to cause the actual market value, or wholesale price at the period of exportation, to be appraised, and providing that such appraisal value should be considered the value upon which duty should be assessed, and R.S. § 2913, relative to the appraisement of gloves protected by trademark, were repealed by section 402 of the act of Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Effective Date of Repeal

Repeal effective July 1, 1980, see section 204(a)(2) of Pub. L. 96–39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

SUBPART B—NATIONAL CUSTOMS AUTOMATION PROGRAM

§ 1411. National Customs Automation Program

(a) Establishment

The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the “Program”) which shall be an automated and electronic system for processing commercial imports and shall include the following existing and planned components:

(1) Existing components:
(A) The electronic entry of merchandise.
(B) The electronic entry of Manifest Information.
(C) The electronic transmission of invoice information.
(D) The electronic transmission of movement information.
(E) The electronic transmission of manifest information.
(F) The electronic filing of duties.
(G) The electronic filing of invoices.

(2) Planned components:
(A) The electronic filing and status of protests.
(B) The electronic filing (including remote filing under section 1414 of this title) of entry information with the Customs Service at any location.
(C) The electronic filing of import activity summary statements and reconciliation.
(D) The electronic filing of bonds.
(E) The electronic filing of bonds.
(F) The electronic filing of import activity summary statements and reconciliation.
(G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

(b) Participation in Program

The Secretary shall by regulation prescribe the eligibility criteria for participation in the

List of Articles To Be Valued; Preliminary List; Additions; Final List; Transmittal to Congressional Committees

Section 6 of act Aug. 2, 1956, provided that: “(a) The Secretary of the Treasury shall determine and make public a list of the articles which shall be valued in accordance with section 402a, Tariff Act of 1930, as amended by this Act [former section 1402 of this title], as follows: ‘As soon as practicable after the enactment of this Act [Aug. 2, 1956] the Secretary shall make public a preliminary list of the imported articles which he shall have determined, after such investigation as he deems necessary, would have been appraised in accordance with section 402 of the Tariff Act of 1930, as amended by this Act [this section], at average values for each article which are 95 (or less) per centum of the average values at which such article was actually appraised during the fiscal year 1954. If within sixty days after the publication of such preliminary list any manufacturer, producer, or wholesaler in the United States presents to the Secretary his reason for belief that any imported articles not specified in such list and like or similar to articles manufactured, produced, or sold at wholesale by him would have been appraised in accordance with such section 402 [section 1401a of this title] at average values which are 95 (or less) per centum of the average values at which they were or would have been appraised under section 402a, Tariff Act of 1930, as amended by this Act, the Secretary shall cause such investigation of the matter to be made as he deems necessary. If in the opinion of the Secretary the reason for belief is substantiated by the investigation, the articles involved shall be added to the preliminary list and such list, including any additions so made thereto, shall be published as a final list. Every article so specified in the final list which is entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the date of publication of the final list shall be appraised in accordance with the provisions of section 402a, Tariff Act of 1930, as amended by this Act.

(b) The final list published in accordance with the provisions of subsection (a), together with explanatory data, shall be transmitted promptly to the chairman of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.'"
Program. The Secretary may, by regulation, require the electronic submission of information described in subsection (a) of this section or any other information required to be submitted to the Customs Service separately pursuant to this subpart.

(c) Foreign-trade zones

Not later than January 1, 2000, the Secretary shall provide for the inclusion of commercial importation data from foreign-trade zones under the Program.

(d) International Trade Data System

(1) Establishment

(A) In general

The Secretary of the Treasury (in this subsection, referred to as the “Secretary”) shall oversee the establishment of an electronic trade data interchange system to be known as the “International Trade Data System” (ITDS). The ITDS shall be implemented not later than the date that the Automated Commercial Environment (commonly referred to as “ACE”) is fully implemented.

(B) Purpose

The purpose of the ITDS is to eliminate redundant information requirements, to efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by the United States Customs and Border Protection, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.

(C) Participation

(i) In general

All Federal agencies that require documentation for clearing or licensing the importation and exportation of cargo shall participate in the ITDS.

(ii) Waiver

The Director of the Office of Management and Budget may waive, in whole or in part, the requirement for participation for any Federal agency based on the vital national interest of the United States.

(D) Consultation

The Secretary shall consult with and assist the United States Customs and Border Protection and other agencies in the transition from paper to electronic format for the submission, issuance, and storage of documents relating to data required to enter cargo into the United States. In so doing, the Secretary shall also consult with private sector stakeholders, including the Commercial Operations Advisory Committee, in developing uniform data submission requirements, procedures, and schedules, for the ITDS.

(E) Coordination

The Secretary shall be responsible for coordinating the operation of the ITDS among the participating agencies and the office within the United States Customs and Border Protection that is responsible for maintaining the ITDS.

(2) Data elements

(A) In general

The Interagency Steering Committee (established under paragraph (3)) shall, in consultation with the agencies participating in the ITDS, define the standard set of data elements to be collected, stored, and shared in the ITDS, consistent with laws applicable to the collection and protection of import and export information. The Interagency Steering Committee shall periodically review the data elements in order to update the standard set of data elements, as necessary.

(B) Commitments and obligations

The Interagency Steering Committee shall ensure that the ITDS data requirements are compatible with the commitments and obligations of the United States as a member of the World Customs Organization (WCO) and the World Trade Organization (WTO) for the entry and movement of cargo.

(3) Interagency Steering Committee

There is established an Interagency Steering Committee (in this section, referred to as the “Committee”). The members of the Committee shall include the Secretary (who shall serve as the chairperson of the Committee), the Director of the Office of Management and Budget, and the head of each agency participating in the ITDS. The Committee shall assist the Secretary in overseeing the implementation of, and participation in, the ITDS.

(4) Report

The President shall submit a report before the end of each fiscal year to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. Each report shall include information on—

(A) the status of the ITDS implementation;

(B) the extent of participation in the ITDS by Federal agencies;

(C) the remaining barriers to any agency’s participation;

(D) the consistency of the ITDS with applicable standards established by the World Customs Organization and the World Trade Organization;

(E) recommendations for technological and other improvements to the ITDS; and

(F) the status of the development, implementation, and management of the Automated Commercial Environment within the United States Customs and Border Protection.

(5) Sense of Congress

It is the sense of Congress that agency participation in the ITDS is an important priority of the Federal Government and that the Secretary shall coordinate the operation of the ITDS closely among the participating agencies and the office within the United
States Customs and Border Protection that is responsible for maintaining the ITDS.

(6) Construction

Nothing in this section shall be construed as amending or modifying subsection (g) of section 301 of title 13.

(7) Definition

The term ‘Commercial Operations Advisory Committee’ means the Advisory Committee established pursuant to section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 2071 note) or any successor committee.


References in Text

Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (d)(7), is section 9503(c) of Pub. L. 100–203, which is set out as a note under section 2071 of this title.

Amendments


2002—Subsec. (b), Pub. L. 107–210 inserted second sentence and struck out former second sentence which read as follows: “Participation in the Program is voluntary.”


Effective Date of 2002 Amendment

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§1413. Implementation and evaluation of Program

(a) Overall Program plan

(1) In general

Before the 180th day after December 8, 1993, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

(A) a general description of the ultimate configuration of the Program;

(B) a description of each of the existing components of the Program listed in section 1411(a)(1) of this title; and

(C) estimates regarding the stages on which planned components of the Program listed in section 1411(a)(2) of this title will be brought on-line.

(2) Additional information

In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

(A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 1412 of this title; and

(B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on—

(i) importers, brokers, and other users of the Program; and

(ii) Customs Service occupations, operations, processes, and systems.

(b) Implementation plan, testing, and evaluation

(1) Implementation plan

For each of the planned components of the Program listed in section 1411(a)(2) of this title, the Secretary shall—

(A) develop an implementation plan;

(B) test the component in order to assess its viability;

(C) evaluate the component in order to assess its contribution toward achieving the program goals; and

(D) transmit to the Committees the implementation plan, the testing results, and an evaluation report.

In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(2) Implementation

(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date
which is 30 days after paragraph (1)(D) is complied with.

(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding—

(i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

(3) Evaluation and report

The Secretary shall—

(A) develop a user satisfaction survey of parties participating in the Program;

(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2d fiscal year;

(C) with respect to the existing Program component listed in section 1411(a)(1)(G) of this title transmit to the Committees—

(i) a written evaluation of such component before the 180th day after December 8, 1993, and before the implementation of the planned Program components listed in section 1411(a)(2)(B) and (C) of this title, and

(ii) a report on such component for each of the 3 full fiscal years occurring after December 8, 1993, which report shall be transmitted not later than the 90th day after the close of each such year; and

(D) not later than the 90th day after the close of fiscal year 1994, and annually thereafter through fiscal year 2000, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 1411(a)(2) of this title.

In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(c) Committees

For purposes of this section, the term "Committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(A) In general

In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

(i) The electronic entry of merchandise.

(ii) The electronic entry summary of required information.

(iii) The electronic transmission of invoice information (when required by the Customs Service).

(iv) The electronic payment of duties, fees, and taxes.

(v) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.

(B) Restriction on exemption from requirements

The Customs Service may not permit any exemption or waiver from the requirements established by this section for participation in remote entry filing.

(3) Conditions on filing under this section

The Secretary may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participation in remote location filing, if the participant—

(i) fails to meet all the compliance requirements and operational standards of remote location filing; or

(ii) fails to adhere to all applicable laws and regulations.

(4) Alternative filing

Any Program participant that is eligible to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d) of this section.

(b) Additional entry information

(1) In general

A Program participant that is eligible under subsection (a) of this section to file entry in-
§ 1431

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PART II—REPORT, ENTRY, AND UNLOADING OF VESSELS AND VEHICLES

§ 1431. Manifests

(a) In general

Every vessel required to make entry under section 1434 of this title or obtain clearance under section 60105 of title 46 shall have a manifest that complies with the requirements prescribed under subsection (d) of this section.

(b) Production of manifest

Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d) of this section. A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way with respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

(c) Public disclosure of certain manifest information

(1) Except as provided in subparagraph (2), the following information, when contained in a vessel vessel1 or aircraft manifest, shall be available for public disclosure:

(A) The name and address of each importer or consignee and the name and address of the shipper to such importer or consignee, unless the importer or consignee has made a biennial certification, in accordance with procedures adopted by the Secretary of the Treasury, claiming confidential treatment of such information.

(B) The general character of the cargo.

(C) The number of packages and gross weight.

(D) The name of the vessel, aircraft, or carrier.

(E) The seaport or airport of loading.

(F) The seaport or airport of discharge.

(G) The country of origin of the shipment.

(H) The trademarks appearing on the goods or packages.

1So in original.
(2) The information listed in paragraph (1) shall not be available for public disclosure if—
   (A) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or
   (B) the information is exempt under the provisions of section 552(b)(1) of title 5.

(3) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in paragraph (1), shall establish procedures to provide access to manifests. Such procedures shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests.

(d) Regulations

(1) In general

The Secretary shall by regulation—
   (A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a) of this section;
   (B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;
   (C) prescribe the manner of production for, and the delivery for electronic transmittal of, the manifest required by subsection (a) of this section; and
   (D) prescribe the manner for supplementing manifests with bill of lading data under subsection (b) of this section.

(2) Letters and documents shipments

For purposes of paragraph (1)(B)—
   (A) the Customs Service may require with respect to letters and documents shipments—
      (i) that they be segregated by country of origin, and
      (ii) additional examination procedures that are not necessary for individually manifested shipments;
   (B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and
   (C) the term "letters and documents" means—
      (i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,
      (ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, and
      (iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.


REVISIONS IN TEXT


Amendment by Pub. L. 103–182
Subsections (a) and (b) of section 60105 of title 46, substituted "‘vessel’ for ‘vessel or carrier’ in subpar. (D) and added subpars. (D) to (F) generally, substituting ‘vessel, aircraft, or carrier’ for ‘vessel or carrier’ in subpar. (D) and ‘seaport or airport’ for ‘port’ in subpars. (E) and (F), and added subpar. (H). 1993—Subsecs. (a) and (b) of section 60105, substituted "‘country or origin’ for ‘country of origin’" for "country of origin" in par. Third. Subsec. (d) of section 60105, substituted "‘the names of the shippers of such merchandise’ in par. Third. for ‘section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)’ on authority of Pub. L. 101–239, substituted ‘section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)’ for ‘section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)’ on authority of Pub. L. 101–239. 1992—Pub. L. 102–388, substituted "section 60105 of title 46, Shipping," for "section 60105 of title 46, Shipping, (with more than 6 months after the date of the enactment of this Act)."

AMENDMENTS


1992—Subsec. (d). Pub. L. 102–388 substituted “vessel or aircraft” for “vessel or carrier” before “manifest” in introductory provisions, amended subpars. (D) to (F) generally, substituting “vessel, aircraft, or carrier” for “vessel or carrier” in subpar. (D) and “seaport or airport” for “port” in subpars. (E) and (F), and added subpar. (H).

1984—Act Aug. 8, 1984, set out as a note under section 1381 of this title.

1983—Act Aug. 8, 1983, designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1384 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; SAVINGS PROVISION

Amendment to this section effective on and after thirtieth day following Aug. 8, 1983, and savings provision, see notes set out under section 1384 of this title.

REGULATIONS

Section 14 of Pub. L. 104–153 provided that: “Not later than 6 months after the date of the enactment of this...
Act [July 2, 1996], the Secretary of the Treasury shall prescribe such regulations or amendments to existing regulations that may be necessary to carry out the amendments made by sections 9, 10, 11, 12, and 13 of this Act [amending this section, sections 1484 and 1526 of this title, and section 80302 of Title 49, Transportation].

§ 1431a. Documentation of waterborne cargo

(a) Applicability

This section shall apply to all cargo to be exported that is moved by a vessel carrier from a port in the United States.

(b) Documentation required

(1) No shipper of cargo subject to this section (including an ocean transportation intermediary that is a non-vessel-operating common carrier (as defined in section 40102(16) of title 46) may tender or cause to be tendered to a vessel carrier cargo subject to this section for loading on a vessel in a United States port, unless such cargo is properly documented pursuant to this subsection.

(2) For the purposes of this subsection, cargo shall be considered properly documented if the shipper submits to the vessel carrier or its agent a complete set of shipping documents no later than 24 hours after the cargo is delivered to the marine terminal operator, but under no circumstances later than 24 hours prior to departure of the vessel.

(3) A complete set of shipping documents shall include—

(A) for shipments for which a shipper’s export declaration is required, a copy of the export declaration or, if the shipper files such declarations electronically in the Automated Export System, the complete bill of lading, and the master or equivalent shipping instructions, including the Internal Transaction Number (ITN); or

(B) for shipments for which a shipper’s export declaration is not required, a shipper’s export declaration exemption statement and such other documents or information as the Secretary may by regulation prescribe.

(4) The Secretary shall by regulation prescribe the time, manner, and form by which shippers shall transmit documents or information required under this subsection to the Customs Service.

(c) Loading undocumented cargo prohibited

(1) No marine terminal operator (as defined in section 40102(14) of title 46) may load, or cause to be loaded, any cargo subject to this section on a vessel unless instructed by the vessel carrier operating the vessel that such cargo has been properly documented in accordance with this section.

(2) When cargo is booked by 1 vessel carrier to be transported on the vessel of another vessel carrier, the booking carrier shall notify the operator of the vessel that the cargo has been properly documented in accordance with this section. The operator of the vessel may rely on such notification in releasing the cargo for loading aboard the vessel.

(d) Reporting of undocumented cargo

(1) In general

A vessel carrier shall notify the Customs Service of any cargo tendered to such carrier that is not properly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal, and the location of the cargo in the marine terminal.

(2) Sharing arrangements

For vessel carriers that are members of vessel sharing agreements (or any other arrangement whereby a carrier moves cargo on another carrier’s vessel), the vessel carrier accepting the booking shall be responsible for reporting undocumented cargo, without regard to whether it operates the vessel on which the transportation is to be made.

(3) Reassignment to another vessel

For purposes of this subsection and subsection (f) of this section, if merchandise has been tendered to a marine terminal operator and subsequently reassigned for carriage on another vessel, the merchandise shall be considered properly documented if the information provided reflects carriage on the previously assigned vessel and otherwise meets the requirements of subsection (b) of this section. Notwithstanding the preceding sentence, it shall be the responsibility of the vessel carrier to notify the Customs Service promptly of any reassignment of merchandise for carriage on a vessel other than the vessel on which the merchandise was originally assigned.

(4) Multiple containers

If a single shipment is comprised of multiple containers, the 48-hour period described in paragraph (1) shall begin to run from the time the last container of the shipment is delivered to the marine terminal operator. It shall be the responsibility of the person tendering the cargo to inform the carrier that the shipment consists of multiple containers that will be delivered to the marine terminal operator at different times as part of a single shipment.

(e) Assessment of penalties

Whoever is found to have violated subsection (b) of this section shall be liable to the United States for civil penalties in a monetary amount up to the value of the cargo, or the actual cost of the transportation, whichever is greater.

(f) Seizure of undocumented cargo

(1) Any cargo that is not properly documented pursuant to this section and has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal operator shall be subject to search, seizure, and forfeiture.
(2) The shipper of any such cargo is liable to the marine terminal operator and to the ocean carrier for demurrage and other applicable charges for any undocumented cargo which has been notified to or searched or seized by the Customs Service for the entire period the cargo remains under the order and direction of the Customs Service. Unless the cargo is seized by the Customs Service and forfeited, the marine terminal operator and the ocean carrier shall have a lien on the cargo for the amount of the demurrage and other charges.

(g) Effect on other provisions

Nothing in this section shall be construed, interpreted, or applied to relieve or excuse any party from compliance with any obligation or requirement arising under any other law, regulation, or order with regard to the documentation or carriage of cargo.


AMENDMENTS

2002—Subsec. (d). Pub. L. 107–295 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “A vessel carrier shall notify the Customs Service of any cargo tendered to such carrier that is not properly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal, and the location of the cargo in the marine terminal. For vessel carriers that are members of vessel sharing agreements (or any other arrangement whereby a carrier moves cargo on another carrier’s vessel), the vessel carrier accepting the booking shall be responsible for reporting undocumented cargo, without regard to whether it operates the vessel on which the transportation is to be made.’’

§ 1433. Report of arrival of vessels, vehicles, and aircraft

(a) Vessel arrival

(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

(A) any vessel from a foreign port or place;

(B) any foreign vessel from a domestic port;

(C) any vessel of the United States carrying foreign merchandise for which entry has not been made; or

(D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

(2) The Secretary may by regulation—

(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

(B) extend the time in which reports of arrival must be made, but not later than 24 hours after arrival.

(b) Vehicle arrival

(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

(A) report the arrival; and

(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

(c) Aircraft arrival

The pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

(d) Presentation of documentation

The master, person in charge of a vehicle, or aircraft pilot shall present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data,
(e) Prohibition on departures and discharge

Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary—

(1) depart from the port, place, or airport of arrival; or

(2) discharge any passenger or merchandise (including baggage).

(Prior to amendment, section read as follows: ''Within twenty-four hours after the arrival of any vessel from a foreign port, or has delivered or received merchandise for which entry has not been made; or

(2) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea;

the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

(b) Preliminary entry

The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.

(c) Regulations

The Secretary may by regulation—

(1) prescribe the manner and format in which entry under subsection (a) of this section or subsection (b) of this section, or both, must be made, and such regulations may provide that any such entry may be made electronically pursuant to an electronic data interchange system;

(2) provide that—

(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and

(B) formal entry may be made before arrival; and

(3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.

(Amendment by Pub. L. 106–476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106–476, set out as a note under section 58c of this title.)

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1434. Entry; vessels

(a) Formal entry

Within 24 hours (or such other period of time as may be provided under subsection (c)(2) of this section) after the arrival at any port or place in the United States of—

(1) any vessel from a foreign port or place;

(2) any foreign vessel from a domestic port;

(3) any vessel of the United States having on board foreign merchandise for which entry has not been made; or

(4) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea;

the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

(b) Preliminary entry

The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.

(c) Regulations

The Secretary may by regulation—

(1) prescribe the manner and format in which entry under subsection (a) of this section or subsection (b) of this section, or both, must be made, and such regulations may provide that any such entry may be made electronically pursuant to an electronic data interchange system;

(2) provide that—

(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and

(B) formal entry may be made before arrival; and

(3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.

(Amendment by Pub. L. 106–476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106–476, set out as a note under section 58c of this title.)
PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 434, 42 Stat. 951. That section was superseded by section 434 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for deposit of the register and other papers previous to entry, and for their return to the master or owner of the vessel on clearance of the vessel, were contained in R.S. § 2790, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 434, 42 Stat. 951, and repealed by section 642 of that act.

R.S. § 2366, relating to the entry of vessels arriving within the districts of Petersburg or Richmond (abolished by the Plan of Reorganization of the Customs Service set forth in a note to section 1 of this title) was also repealed by section 642 of act Sept. 21, 1922, ch. 356.

Special provisions for Astoria and Portland were contained in R.S. §§ 2388-2390, which were also repealed by section 642 of the act of Sept. 21, 1922, ch. 356.

R.S. § 2365, prescribing the duties of masters of vessels bound up James River, Virginia, in regard to deposit of manifests, etc., was repealed by act Mar. 3, 1897, ch. 389, § 16, 29 Stat. 691.

Special provisions to facilitate the entry of steamships running in an established line in foreign trade, made by act June 5, 1894, ch. 92, § 1, 28 Stat. 85, and extended to steamships trading between Porto Rico and Hawaii and the United States by act May 31, 1900, ch. 600, 31 Stat. 249, were repealed by section 6 of act Feb. 14, 1911, ch. 46, the preceding sections of which act made more comprehensive provisions for preliminary entry of any vessel from a foreign port, and for the landing or unloading of such vessels at night. Sections 1 to 4 of said act of 1911, were repealed by section 643 of the act of Sept. 21, 1922, ch. 356.

AMENDMENTS


1970—Pub. L. 103–182 amended section generally. Prior to amendment, section read as follows: “Except as otherwise provided by law, and under such regulations as the Commissioner of Customs may prescribe, the master of a vessel of the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the appropriate customs officer the vessel’s crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with section 1431 of this title.”


1935—Act Aug. 5, 1935, inserted “or document in lieu thereof” after “indicated in the register”.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106–476, set out as a note under section 58c of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.


Section, act June 17, 1930, ch. 497, title IV, § 435, 46 Stat. 711, set forth entry requirements for foreign vessels arriving within limits of any customs collection district.

§ 1435a. Transferred

CODIFICATION

Section, act May 4, 1934, ch. 212, 48 Stat. 663, was transferred to section 91a of former Title 46, Shipping, and subsequently repealed by Pub. L. 103–182, title VI, § 690(c)(7), Dec. 8, 1993, 107 Stat. 2223.


§ 1436. Penalties for violations of arrival, reporting, entry, and clearance requirements

(a) Unlawful acts

It is unlawful—

(1) to fail to comply with section 1431, 1433, or 1434 of this title or section 60105 of title 46; (2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to the Customs Service under section 1431, 1433(d), or 1434 of this title or section 60105 of title 46 without revealing the facts; (3) to fail to make entry or to obtain clearance as required by section 1434 or 1444 of this title, section 60105 of title 46, or section 164a(b)(1) or (o)(1) of this title or (4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of paragraphs (1) through (3).

(b) Civil penalty

Any master, person in charge of a vehicle, or aircraft pilot who commits any violation listed in subsection (a) of this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

(c) Criminal penalty

In addition to being liable for a civil penalty under subsection (b) of this section, any master, person in charge of a vehicle, or aircraft pilot who intentionally commits any violation listed in subsection (a) of this section is liable for a criminal penalty of $5,000, for the first conviction, and $10,000 for each subsequent conviction, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.
United States is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(d) Additional civil penalty

If any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is imported or brought into the United States by or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for a civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of any controlled substance listed in section 1584 of this title, the master, individual in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.


CODIFICATION


PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 2834, as amended by act Mar. 3, 1897, ch. 389, § 15, 29 Stat. 691, which was superseded by act Sept. 21, 1922, ch. 556, title IV, § 436, 42 Stat. 851, and was repealed by section 642 thereof. Section 436 of the 1922 act was superseded by section 436 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS


1993—Pub. L. 103–182, § 611(2), substituted “entry, and clearance” for “and entry” in section catchline.

Subsec. (a)(1), Pub. L. 103–182, § 611(1)(A), substituted “section 1431, 1433, or 1434 of this title or section 91 of title 46, Appendix” for “section 1433 of this title”.

Subsec. (a)(2), (3), Pub. L. 103–182, § 611(1)(B), (C), amended pars. (2) and (3) generally. Prior to amendment (3) read as follows:

“(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 1431(e) or (f) of this title, or section 91 of title 46, Appendix” for “section 1433 of this title”.

1992—Pub. L. 102–557 amended section generally. Prior to amendment, section read as follows: “Every master who fails to make the report or entry provided for in sections 1433, 1434, or 1435 of this title shall, for each offense, be liable to a fine of not more than $1,000 and, if the vessel have, or be designed to have had, on board any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or any spirits, wines, or other alcoholic liquors, such master shall be subject to an additional fine of not more than $2,000 or to imprisonment for not more than one year, or to both such fine and imprisonment.

“Every master who presents a forged, altered, or false document or paper on making entry of a vessel as required by section 1434 or 1435 of this title, knowing the same to be forged, altered, or false and without revealing the fact, shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than $5,000 or less than $50 or to imprisonment for not more than two years, or to both such fine and imprisonment.”

1935—Act Aug. 5, 1935, inserted provisions relating to additional penalty for vessel carrying nonimportable merchandise or liquor and added second par.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.


Sections, act June 17, 1930, ch. 497, title IV, § 437, 46 Stat. 711, provided for return of register or document to master or owner of vessel upon clearance.

§ 1438. Unlawful return of foreign vessel’s papers

It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section 1434 of this title, or regulations issued thereunder, until such master shall produce to him a clearance in due form from the Customs Service in the port in which such vessel has entered. Any consul offending against the provisions of this section shall be liable to a fine of not more than $5,000.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 956, title IV, § 438, 42 Stat. 892. That section was superseded by section 438 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1993—Pub. L. 103–182 substituted “section 1434” for “section 1435”, inserted “”, or regulations issued thereunder,” before “until such master”, and substituted “the Customs Service in the port in which such vessel has entered” for “the appropriate customs officer of the port where such vessel has been entered”.


EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the
Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.


Section 1439, acts June 17, 1930, ch. 497, title IV, § 439, 46 Stat. 712; Aug. 8, 1933, ch. 397, §2(c), 47 Stat. 508, required master of a vessel from a foreign port or place, immediately upon arrival, to mail or deliver to designated employee a copy of manifest and any corrections thereto.

Section 1440, acts June 17, 1930, ch. 497, title IV, § 440, 46 Stat. 712; Aug. 8, 1933, ch. 397, §2(c), 47 Stat. 508, required master of a vessel to make post entry of any baggage or merchandise not included on manifest and to mail or deliver such entry to designated employee.

§ 1441. Exceptions to vessel entry and clearance requirements

The following vessels shall not be required to make entry under section 1434 of this title or to obtain clearance under section 60105 of title 46:

(1) Vessels of war and public vessels employed for the conveyance of letters and dispatches and not permitted by the laws of the nation to which they belong to be employed in the transportation of passengers or merchandise in trade.

(2) Passenger vessels making three trips or oftener a week between a port of the United States and a foreign port, or vessels used exclusively as ferryboats, carrying passengers, baggage, or merchandise: Provided, That the master of any such vessel shall be required to report such baggage and merchandise to the appropriate customs officer within twenty-four hours after arrival.

(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if—

(A) the vessel does not in any way violate the customs or navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of the vessel, if there is on board any article required by law to be entered, reports the article to the Customs Service immediately upon arrival.

(4) Any United States documented vessel with recreational endorsement or any undокументed United States pleasure vessel not engaged in trade, if—

(A) the vessel complies with the reporting requirements of section 1433 of this title, and with the customs and navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival.

(5) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: Provided, That the master, owner, or agent of such vessel shall report under oath to the appropriate customs officer the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board.

(6) Any vessel required to anchor at the Belle Isle Anchorage in the waters of the Detroit River in the State of Michigan, for the purposes of awaiting the availability of cargo or berthing space or for the purpose of taking on a pilot or awaiting pilot services, or at the direction of the Coast Guard, prior to proceeding to the Port of Toledo, Ohio, where the vessel makes entry under section 1434 of this title or obtains clearance under section 60105 of title 46.

(6) Any vessel required to anchor at the Belle Isle Anchorage in the waters of the Detroit River in the State of Michigan, for the purposes of awaiting the availability of cargo or berthing space or for the purpose of taking on a pilot or awaiting pilot services, or at the direction of the Coast Guard, prior to proceeding to the Port of Toledo, Ohio, where the vessel makes entry under section 1434 of this title or obtains clearance under section 60105 of title 46.

§ 1441. Exceptions to vessel entry and clearance requirements

The following vessels shall not be required to make entry under section 1434 of this title or to obtain clearance under section 60105 of title 46:

(1) Vessels of war and public vessels employed for the conveyance of letters and dispatches and not permitted by the laws of the nation to which they belong to be employed in the transportation of passengers or merchandise in trade.

(2) Passenger vessels making three trips or oftener a week between a port of the United States and a foreign port, or vessels used exclusively as ferryboats, carrying passengers, baggage, or merchandise: Provided, That the master of any such vessel shall be required to report such baggage and merchandise to the appropriate customs officer within twenty-four hours after arrival.

(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if—

(A) the vessel does not in any way violate the customs or navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of the vessel, if there is on board any article required by law to be entered, reports the article to the Customs Service immediately upon arrival.

(4) Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade, if—

(A) the vessel complies with the reporting requirements of section 1433 of this title, and with the customs and navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival.

(5) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: Provided, That the master, owner, or agent of such vessel shall report under oath to the appropriate customs officer the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board.

(6) Any vessel required to anchor at the Belle Isle Anchorage in the waters of the Detroit River in the State of Michigan, for the purposes of awaiting the availability of cargo or berthing space or for the purpose of taking on a pilot or awaiting pilot services, or at the direction of the Coast Guard, prior to proceeding to the Port of Toledo, Ohio, where the vessel makes entry under section 1434 of this title or obtains clearance under section 60105 of title 46.

(6) Any vessel required to anchor at the Belle Isle Anchorage in the waters of the Detroit River in the State of Michigan, for the purposes of awaiting the availability of cargo or berthing space or for the purpose of taking on a pilot or awaiting pilot services, or at the direction of the Coast Guard, prior to proceeding to the Port of Toledo, Ohio, where the vessel makes entry under section 1434 of this title or obtains clearance under section 60105 of title 46.

CODIFICATION


PRIOR PROVISIONS

Provisions somewhat similar to those in par. (1) of this section were contained in R.S. §2791. R.S. §3123 provided that steam-tugs duly enrolled and licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, when exclusively employed in towing vessels, should not be required to report and clear at the custom-house but that when employed in towing rafts or other vessels without sale or steam motive-power, not required to be enrolled or licensed they should report and clear in the same manner as other vessels. Both sections were superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, §§411, 42 Stat. 952, and repealed by section 622 thereof. Section 441 of the 1922 act was superseded by section 441 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS


1999—Par. (6). Pub. L. 106–36 struck out par. (6) which read as follows: “Tugs documented under chapter 121 of title 46 with a Great Lakes endorsement when towing vessels which are required by law to enter and clear.”

1996—Par. (1), (2), (4), (5). Pub. L. 104–295 substituted period for semicolon at end of pars. (1), (2), and (4) and substituted period for semicolon at end of par. (5).

1993—Pub. L. 103–182, §655(1), (5), substituted catch-line for one which read “Vessels not required to enter”
and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "The following vessels shall not be required to make entries at the customhouses:"

Par. (3). Pub. L. 103–182, §655(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, and licensed yachts or undocumented American pleasure vessels not engaged in trade: Provided, That such vessels do not in any way violate the customs or navigation laws of the United States and have not visited any hovering vessel: Provided further, That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the appropriate customs officer within twenty-four hours after arrival."


Par. (6). Pub. L. 103–182, §655(4), (5), added par. (6) and substituted "documented under chapter 121 of title 46 with a Great Lakes endorsement" for "enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers".

1984—Par. (3). Pub. L. 98–573 amended par. (3) generally, inserting provision referring to vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning.

1970—Pars. (2) to (4). Pub. L. 91–271 substituted references to appropriate customs officer for references to collector wherever appearing.

1954—Par. (3). Act Sept. 1, 1954, exempted undocumented American pleasure vessels from entry requirements, and provided that both yachts and undocumented pleasure vessels report to the collector of customs, within 24 hours after arrival, all articles, whether dutiable or not, for which a customs entry is required.


1935—Par. (3). Act Aug. 5, 1935, inserted "And not visiting any hovering vessel, nor having at any time or, if forfeited to the United States or to a foreign government, at any time after forfeiture, become liable to seizure and forfeiture for any violation of the laws of the United States".

Effective Date of 2000 Amendment
Amendment by Pub. L. 106–476, except as otherwise provided, applicable with respect to vessels returning from the British Virgin Islands on or after 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106–476, set out as a note under section 1404 of this title.

Effective Date of 1984 Amendment
Amendment by Pub. L. 98–573 applicable with respect to vessels returning from the British Virgin Islands on or after 15th day after Oct. 30, 1984, see section 214(a), (c)(1) of Pub. L. 98–573, set out as a note under section 1404 of this title.

Effective Date of 1970 Amendment
For effective date of amendment by Pub. L. 91–271, see section 205 of Pub. L. 91–271, set out as a note under section 1300 of this title.

Effective Date of 1937 Amendment
Section 2 of act Aug. 14, 1937, provided as follows: "The amendment made by this Act [amending this section] shall take effect on the day following the date of its enactment [Aug. 14, 1937]."

Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2331, 557(d), 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 522 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security and for treatment of related references, see sections 408(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1442. Residue cargo
Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after the report and entry of such vessel under the provisions of this chapter, proceed to such foreign port of destination with the cargo so destined therefor, without unlading the same and without the payment of duty thereon. Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to port or from district to district for the unlading thereof.

June 17, 1930, ch. 497, title IV, §442, 46 Stat. 713.

Prior Provisions
Provisions similar to those in this section were contained in R.S. §§2776 to 2778, 2779, 2782, and 2783, all of which were superseded by act Sept. 21, 1922, ch. 356, title IV, §442, 42 Stat. 952, and were repealed by section 642 thereof. Section 442 of the 1922 act was superseded by section 442 of act June 17, 1930, comprising this section, and repealed by section 851(a)(1) of the 1930 act.

Provisions authorizing the Secretary of the Treasury to require bonds in cases of vessels carrying goods destined for ports other than port of entry were contained in the 1922 act and prior acts. These provisions were omitted from this section. General provisions authorizing the Secretary to require bonds where not specifically required are contained in section 1623 of this title. Special provisions concerning Astoria and Portland were contained in R.S. §§2588 and 2590, prior to repeal by section 442 of the act of Sept. 21, 1922, ch. 356.


Section 1444, acts June 17, 1930, ch. 497, title IV, §444, 46 Stat. 713; June 2, 1970, Pub. L. 91–271, title III, §301(b), 84 Stat. 287, required master to report his arrival at another port to a customs officer within twenty-four hours and to produce copies of permit and manifest.


§§ 1446. Supplies and stores retained on board
Vessels arriving in the United States from foreign ports may retain on board, without the
payment of duty, all coal and other fuel supplies, ships' stores, sea stores, and the legitimate equipment of such vessels. Any such supplies, ships' stores, sea stores, or equipment landed and delivered from such vessel shall be considered and treated as imported merchandise: Provided, That bunker coal, bunker oil, ships' stores, sea stores, or the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the United States, which are delayed in port for any cause, may be transferred under a permit by the appropriate customs officer and under customs supervision from the vessel so delayed to another vessel of the same line and owner, and engaged in the foreign trade, without the payment of duty thereon.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §446, 42 Stat. 953. That section was superseded by section 446 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions similar to those in the last sentence of this section concerning sea stores and equipment, were contained in R.S. §2796. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

1993—Pub. L. 103–182 substituted “the Customs Service considers” for “the appropriate customs officer shall consider”.


AMENDMENTS

1933—Pub. L. 73–383–182 substituted “the Customs Service considers” for “the appropriate customs officer shall consider”.

Effectiveness Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 13, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees, Customs personnel, referred to in text, were under Department of the Treasury.

“Commissioner of Customs” substituted in text for “Secretary of Commerce” on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

§1447. Place of entry and unloading

It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: Provided, That upon good cause therefor being shown, the Commissioner of Customs may permit entry of any vessel to be made at a place other than a port of entry designated by him, under such conditions as he shall prescribe: And provided further, That any vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unloading such cargo, under the supervision of customs officers if the Customs Service considers the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest.


§1448. Unloading

(a) Permits and preliminary entries

Except as provided in section 1441 of this title (relating to vessels not required to enter or clear), no merchandise, passengers, or baggage shall be unladen from any vessel required to make entry under section 1434 of this title, or vehicle required to report arrival under section 1433 of this title, until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unloading of the same issued or transmitted pursuant to an electronic data interchange system by the Customs Service. After the entry of any vessel or report of the arrival of any vehicle, the Customs Service may
issue a permit, electronically pursuant to an authorized electronic data interchange system or otherwise, to the master of the vessel, or to the person in charge of the vehicle, to unladen merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unloading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unloading without a permit therefor having been issued. The owner or master of any vessel or vehicle, or agent thereof, shall notify the Customs Service of any merchandise or baggage so unladen for which entry is not made within the time prescribed by law or regulation. The Secretary shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given. Any such administrative penalty shall be subject to mitigation and remittance under section 1618 of this title. Such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier’s control in accordance with section 1490 of this title.

(b) Special delivery permit
The Secretary of the Treasury is authorized to provide by regulations for the issuing of special permits for delivery, prior to formal entry therefor, of perishable articles and other articles, the immediate delivery of which is necessary.


Prior Provisions
Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 448, 42 Stat. 953. That section was superseded by section 449 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions similar to those in this section concerning preliminary entries, and a further provision that on making such entry lading might proceed by both day and night, were contained in act Feb. 13, 1911, ch. 46, § 2, 36 Stat. 900, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 463, 42 Stat. 989.

Provisions for the estimation of duties, and the issuance of permits for delivery of merchandise, and provisions prescribing the contents of such permits, were contained in R.S. § 2889, (as amended by acs June 5, 1894, ch. 92, § 2, 28 Stat. 86) and § 2870, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 462, 42 Stat. 989.

Provisions as to the removal of merchandise brought in any vessel from a foreign port or place, from the wharf or place where it might be landed or put, before it had been weighed, gauged, measured, etc., were contained in L.S. § 2865, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 462, 42 Stat. 989.

Amendments
1993—Pub. L. 103–182 in first sentence, substituted “enter or clear” for “enter” and “required to make entry under section 1434 of this title, or vehicle required to report arrival under section 1433 of this title,” for “or vehicle arriving from a foreign port or place”; inserted “or transmitted pursuant to an electronic data interchange system” after “issued”, and “substituted “the Customs Service” for “the appropriate customs officer: Provided, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel’s manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse, as provided by this chapter,” in second sentence, struck out “, preliminary or otherwise,” after “After the entry”, substituted “the Customs Service” for “such customs officer”, and inserted “, electronically pursuant to an authorized electronic data interchange system or otherwise,” after “may issue a permit,” and substituted last four sentences for former last sentence which read as follows: “Any merchandise or baggage so unladen for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by such customs officer, as provided in section 1481 of this title, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage, until entry thereof is made.”

1970—Subsec. (a). Pub. L. 91–271 substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

Effective Date of 1970 Amendment
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service to the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

$1449. Unlading at port of entry
Except as provided in sections 1442 and 1447 of this title (relating to residue cargo and to bulk cargo respectively), merchandise and baggage imported in any vessel by sea shall be unladen at the port of entry to which such vessel is destined, unless (1) such vessel is compelled by any cause to put into another port of entry, and the Customs Service issues a permit for the unloading of such merchandise or baggage at such port, or (2) the Secretary of the Treasury, because of an emergency existing at the port of destination, authorizes such vessel to proceed to another port of entry. Merchandise and baggage so unladen may be entered in the same manner as other imported merchandise or baggage and may be treated as unclaimed merchandise or baggage and stored at the expense and risk of the owner thereof, or may be reladen without entry upon the vessel from which it was unladen for transportation to its destination.

§ 1450. Unlading on Sundays, holidays, or during overtime hours

No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladed from the carrying aircraft, vessel, or vehicle on Sunday, a holiday, or during overtime hours, except under special license granted by the appropriate customs officer under such regulations as the Secretary of the Treasury may prescribe.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 3272, as amended by the act of June 26, 1884, ch. 121, § 25, 23 Stat. 59, which was superseded by section 651(a)(1) of the 1930 act.

Provisions concerning protests and reports by vessels compelled by distress of weather or other necessity to put into a port of the United States; permits for the unlading thereof; the storage of the goods; the disposal of perishable goods; variances between the report, and the delivery of the cargo, and the reloading of such vessels, and a special provision for Spanish vessels arriving in distress, were contained in R.S. §§ 2891–2895. Provisions and a special provision for Spanish vessels arriving in distress, were contained in R.S. § 3120, as amended by act Feb. 13, 1911, ch. 46, and provision for the grant of a special license to land or unlade at night, and the grant of permits for immediate lading and unlading of vessels admitted to preliminary entry, etc., was made, in sections 1 and 4 of that act, which were repealed by section 643 of the act of Sept. 21, 1922, ch. 356.

A special provision on the subject matter of this section for the northern, northeastern and northwestern frontiers was contained in R.S. § 3130, as amended by act Feb. 27, 1877, ch. 69, § 11, 19 Stat. 248, prior to repeal by section 642 of the act of Sept. 21, 1922, ch. 356.

AMENDMENTS

1993—Pub. L. 103–66 in section catchline substituted “during overtime hours” for “at night”, and in text substituted “during overtime hours” for “at night” and inserted “aircraft,” before “vessel”.


EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to customs inspectional services provided on or after Jan. 1, 1994, see section 13811(c) of Pub. L. 103–66, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1451. Extra compensation

Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 267 of this title. In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary to cover and include the issuance of special licenses for the unlading of such vessels or vehicles for a period not to exceed one year. Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the appropriate customs officer shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services deposits sufficient money to pay, or gives a bond in an amount to be fixed by the1 such customs officer, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees.

1 So in original. The word “the” probably should not appear.
assigned to duty in connection with lading or unlading at night or on Sunday or a holiday. Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employeесes to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest: Provided, That the provisions of this section, sections 1450 and 1452 of this title, and the provisions of section 267 of this title insofar as such section 267 of this title requires payment of compensation by the master, owner, agent, or consignee of a vessel or conveyance, shall not apply to the owner, operator, or agent of a highway vehicle, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, nor to the lading or unlading of merchandise, baggage, or persons arriving in or departing from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry. At points of entry and customs stations where any merchandise, baggage, or persons shall arrive in or depart from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, the appropriate customs officer, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees to duty at such times during the twenty-four hours of each day, including Sundays and holidays, as the Secretary of the Treasury in his discretion may determine to be necessary to facilitate the inspection and passage of such merchandise, baggage, or persons. Officers and employees assigned to such duty at night or on Sunday or a holiday shall be paid compensation in accordance with existing law as interpreted by the United States Supreme Court in the case of the United States v. Howard C. Myers (320 U.S. 561); but all compensation payable to such customs officers and employees shall be paid by the United States without requiring any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway vehicle, bridge, tunnel, or ferry, or other person. As used in this section, the term "ferry" shall mean a passenger service operated with the use of vessels which arrive in the United States on regular schedules at intervals of at least once each hour during any period in which customs service is to be furnished without reimbursement as above provided.


Prior Provisions

Provisions similar to those in this section, but applying also to the issuance of a permit for immediate lading or unlading after preliminary entry, were contained in act Feb. 13, 1911, ch. 46, § 3, 36 Stat. 900, which was superseded in part by act Sept. 21, 1922, ch. 356, title IV, § 451, 42 Stat. 954, and was repealed by section 643 thereof. Section 451 of the 1922 act was superseded by section 451 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Amendments

1970—Pub. L. 91–271 substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

1954—Act Sept. 1, 1954, permitted the deposit of sufficient money to cover costs of night, Sunday, or holiday service in lieu of filing of bond.

1944—Act June 3, 1944, inserted proviso.


Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

Effective Date of 1938 Amendment

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

Transfer of Functions

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4895, 84 Stat. 1290, 1291, set out in the Appendix to Title 5, Government Organization and Employees.


Section, act June 3, 1944, ch. 238, § 2, 58 Stat. 270, provided that certain extra compensation of customs officers and employees assigned to performance of inspectional services in connection with traffic over highways, toll bridges, etc. on Sundays or holidays prior to June 3, 1944, was to be payable by the U.S. without reimbursement by the applicant for such services and that any reimbursement which had accrued and been collected since Jan. 6, 1941, was to be refunded.

Effective Date of Repeal

Repeal applicable to customs inspectional services provided on or after Jan. 1, 1994, see section 13811(c) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 267 of this title.

§ 1452. Lading on Sundays, holidays, or at night

No merchandise or baggage entered for transportation under bond or for exportation with the benefit of drawback, or other merchandise or baggage required to be laden under customs supervision, shall be laden on any vessel or vehicle at night or on Sunday or a holiday, except under special license therefor to be issued by the appropriate customs officer under the same conditions and limitations as pertain to the unloading of imported merchandise or merchandise being transported in bond.


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 452, 42
§ 1453. Lading and unloading of merchandise or baggage; penalties

If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the appropriate customs officer, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is $500 or more, the vessel or vehicle with customs seals or other proper fastenings shall not be removed without permission of the inspector or other customs officer. Such inspector or other customs officer may require any vessel or vehicle to discontinue or suspend unloading during the continuance of unfavorable weather or any conditions rendering the discharge of cargo dangerous or detrimental to the revenue. Any officer, owner, agent of the owner, or member of the crew of any such vessel who obstructs or hinders any such inspector or other customs officer in the performance of his duties, shall be liable to a penalty of not more than $500.


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 453, 42 Stat. 955. That section was superseded by section 453 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Amendments


Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1900 of this title.

§ 1454. Unloading of passengers; penalty

If any passenger is unladen from any vessel or vehicle without a special license or permit therefor issued by the appropriate customs officer, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, shall each be liable to a penalty of $1,000 for the first passenger and $500 for each additional such passenger.


Amendments

1986—Pub. L. 99–570 substituted “$1,000 for the first passenger and $500 for each additional such passenger” for “$500 for each such passenger”.


Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1900 of this title.

§ 1456. Compensation and expenses of inspectors between ports; reimbursement

The compensation of any inspector or other customs officer, stationed on any vessel or vehi-
The 1922 act was superseded by section 457 of act June 30, 1922, and were repealed by section 642 thereof. Section 456 of act Sept. 21, 1922, ch. 356, title IV, § 456, 42 Stat. 955, which was superseded by section 651(a)(1) of the 1930 act.

Provisions on the subject matter of this section were contained in R.S. §§ 2879, 2880 and 2969 (as amended by act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 458, 42 Stat. 956. That section was superseded by section 458 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section, but applicable only to vessels laden with specified articles, were contained in R.S. § 2881, as amended by act June 3, 1892, ch. 86, § 2, 27 Stat. 41, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1457. Time for unlading

Whenever any merchandise remains on board any vessel or vehicle from a foreign port more than twenty-five days after the date on which report of said vessel or vehicle was made, the appropriate customs officer may take possession of such merchandise and cause the same to be unladen at the expense and risk of the owners thereof, or may place one or more inspectors or other customs officers on board of said vessel or vehicle to protect the revenue. The compensation and expenses of any such inspector or customs officer for subsistence while on board of such vessel or vehicle shall be reimbursed to the Government by the master or owner of such vessel or vehicle.

(June 17, 1930, ch. 497, title IV, § 457, 46 Stat. 716.)

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 456, 42 Stat. 955. That section was superseded by section 456 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions on the subject matter of this section were contained in R.S. § 2878, and particular provisions for certain ports in sections 2588 and 2833. Section 2878 contained a further provision prohibiting inspectors from performing any other duties or service than what was required by that title. All these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1458. Bulk cargo, time for unlading

The limitation of time for unlading shall not extend to vessels laden exclusively with merchandise in bulk consigned to one consignee and arriving at a port for orders, but if the master of such vessel requests a longer time to discharge its cargo, the compensation of the inspectors or other customs officers whose services are required in connection with the unlading shall, for every day consumed in unlading in excess of twenty-five days from the date of the vessel’s entry, be reimbursed by the master or owner of such vessel.

(June 17, 1930, ch. 497, title IV, § 458, 46 Stat. 717.)

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 458, 42 Stat. 956. That section was superseded by section 458 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section, but applicable only to vessels laden with specified articles, were contained in R.S. § 2881, as amended by act June 3, 1892, ch. 86, § 2, 27 Stat. 41, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1459. Reporting requirements for individuals

(a) Individuals arriving other than by conveyance

Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

(1) enter the United States only at a border crossing point designated by the Secretary; and

(2) immediately—

(A) report the arrival, and

(B) present themselves, and all articles accompanying them for inspection;

to the customs officer at the customs facility designated for that crossing point.

(b) Individuals arriving by reported conveyance

Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 1433 or 1644 of this title or section 1644a(b)(1) or (c)(1) of this title, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

(c) Individuals arriving by unreported conveyance

Except as otherwise authorized by the Secretary, individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) of this section shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

(d) Departure from designated customs facilities

Except as otherwise authorized by the Secretary, any person required to report to a designated customs facility under subsection (a), (b), or (c) of this section may not depart that facility until authorized to do so by the appropriate customs officer.

(e) Unlawful acts

It is unlawful—
(1) to fail to comply with subsection (a), (b), or (c) of this section;
(2) to present any forged, altered, or false document or paper to a customs officer under subsection (a), (b), or (c) of this section without revealing the facts;
(3) to violate subsection (d) of this section;
or
(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d) of this section.

(f) Civil penalty
Any individual who violates any provision of subsection (e) of this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

(g) Criminal penalty
In addition to being liable for a civil penalty under subsection (f) of this section, any individual who intentionally violates any provision of subsection (e) of this section is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.

(6) Modification
(1) to fail to comply with subsection (a), (b), or (c) of this section;
(2) to present any forged, altered, or false document or paper to a customs officer under subsection (a), (b), or (c) of this section without revealing the facts;
(3) to violate subsection (d) of this section;
or
(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d) of this section.

(f) Civil penalty
Any individual who violates any provision of subsection (e) of this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

(g) Criminal penalty
In addition to being liable for a civil penalty under subsection (f) of this section, any individual who intentionally violates any provision of subsection (e) of this section is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.

(7) Amendment
Amendment by act June 25, 1938, effective on the thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 57 of act June 25, 1938, set out as a note under section 1461 of this title.

Section, acts June 17, 1930, ch. 497, title IV, §460, 46 Stat. 717; June 25, 1938, ch. 679, §10(b), 52 Stat. 1082, related to penalties for failure to report or file manifest.

§1461. Inspection of merchandise and baggage
All merchandise and baggage imported or brought in from any contiguous country, except as otherwise provided by law or by regulations of the Secretary of the Treasury, shall be unladen in the presence of and be inspected by a customs officer at the first port of entry at which the same shall arrive; and such officer may require the owner, or his agent, or other person having charge or possession of any trunk, traveling bag, sack, valise, or other container, or of any closed vehicle, to open the same for inspection, or to furnish a key or other means for opening the same.
§ 1462. Forfeiture

If such owner, agent, or other person shall fail to comply with his demand, the officer shall retain such trunk, traveling bag, sack, valise, or other container or closed vehicle, and open the same, and, as soon thereafter as may be practicable, examine the contents, and if any article subject to duty or any article the importation of which is prohibited is found therein, the whole contents and the container or vehicle shall be subject to forfeiture.

(June 17, 1930, ch. 497, title IV, § 462, 46 Stat. 718.)

Prior Provisions
Provisions similar to those in this section were contained in R.S. § 3101, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 462, 42 Stat. 956, and was repealed by section 642 thereof. Section 461 of the 1922 act was superseded by section 462 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1463. Sealed vessels and vehicles

To avoid unnecessary inspection of merchandise imported from a contiguous country at the first port of arrival, the master of the vessel or the person in charge of the vehicle in which such merchandise is imported may apply to the customs officer of the United States stationed in the place from which such merchandise is shipped, and such officer may seal such vessel or vehicle. Any vessel or vehicle so sealed may proceed with such merchandise to the port of destination under such regulations as the Secretary of the Treasury may prescribe.

(June 17, 1930, ch. 497, title IV, § 463, 46 Stat. 718.)

Prior Provisions
Provisions similar to those in this section were contained in R.S. § 3101, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 462, 42 Stat. 956, and was repealed by section 642 thereof. Section 462 of the 1922 act was superseded by section 463 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1464. Penalites in connection with sealed vessels and vehicles

If the master of such vessel or the person in charge of any such vehicle fails to proceed with reasonable promptness to the port of destination and to deliver such vessel or vehicle to the proper officers of the customs, or fails to proceed in accordance with such regulations of the Secretary of the Treasury, or unlades such merchandise or any part thereof at other than such port of destination, or disposes of any such merchandise by sale or otherwise, he shall be guilty of a felony and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than five years, or both; and any such vessel or vehicle, with its contents, shall be subject to forfeiture.

(June 17, 1930, ch. 497, title IV, § 464, 46 Stat. 718.)

Prior Provisions
Provisions somewhat similar to those in this section, with a further provision for seizure of the vessel, car, or vehicle with its contents, and a provision that nothing therein should prevent sales of cargo prior to arrival, to be delivered per manifest and after due inspection, were contained in R.S. § 3104, which was superseded in part by act Sept. 21, 1922, ch. 356, title IV, § 464, 42 Stat. 957, and was repealed by section 642 thereof. Section 463 of the 1922 act was superseded by section 464 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.


Section, act June 17, 1930, ch. 497, title IV, § 465, 46 Stat. 718, required master of any vessel engaged in certain foreign and coasting trade and conductor of any railway car to file, upon arrival from foreign contiguous country, a list of all supplies or other merchandise purchased in such foreign country.

§ 1466. Equipment and repairs of vessels

(a) Vessels subject to duty; penalties

The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country. If the owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties as herein required, or if he makes any false statement in respect of such purchases or repairs without reasonable cause to believe the truth of such statements, or aids or procures the making of any false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture. For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.

(b) Notice

If the appropriate customs officer has reasonable cause to believe a violation has occurred and determines that further proceedings are warranted, he shall issue to the person con-
cerned a written notice of his intention to issue a penalty claim. Such notice shall—

(1) describe the circumstances of the alleged violation;
(2) specify all laws and regulations allegedly violated;
(3) disclose all the material facts which establish the alleged violation;
(4) state the estimated loss of lawful duties, if any, and taking into account all of the circumstances, the amount of the proposed penalty; and
(5) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

(c) Violation

After considering representations, if any, made by the person concerned pursuant to the notice issued under subsection (b) of this section, the appropriate customs officer shall determine whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly notify, in writing, the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under paragraphs (1) through (4) of subsection (b) of this section.

(d) Remission for necessary repairs

If the owner or master of such vessel furnishes good and sufficient evidence that—

(1) such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination;
(2) such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs, was performed by residents of the United States, or by members of the regular crew of such vessel; or
(3) such equipments, or parts thereof, or materials, or labor, were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo;

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments or parts thereof or materials and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section, and the duties ac-

ruining thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

(e) Exclusions for arrivals two or more years after last departure

(1) In the case of any vessel referred to in subsection (a) of this section that arrives in a port of the United States two years or more after its last departure from a port in the United States, the duties imposed by this section shall apply only with respect to—

(A) fish nets and netting, and
(B) other equipments and parts thereof, repair parts and materials purchased, or repairs made, during the first six months after the last departure of such vessel from a port of the United States.

(2) If such vessel is designed and used primarily for transporting passengers or property, paragraph (1) shall not apply if the vessel departed from the United States for the sole purpose of obtaining such equipments, parts, materials, or repairs.

(f) Civil aircraft exception

The duty imposed under subsection (a) of this section shall not apply to the cost of equipments, or any part thereof, purchased, of repair parts or materials used, or of repairs made in a foreign country with respect to a United States civil aircraft, within the meaning of general note 3(c)(iv) of the Harmonized Tariff Schedule of the United States.

(g) Fish net and netting purchases and repairs

The duty imposed by subsection (a) of this section shall not apply to entries on and after October 1, 1979, and before January 1, 1982, of—

(1) tuna purse seine nets and netting which are equipments or parts thereof,
(2) repair parts for such nets and netting, or materials used in repairing such nets and netting,
(3) the expenses of repairs of such nets and netting,

for any United States documented tuna purse seine vessel of greater than 500 tons carrying capacity or any United States tuna purse seine vessel required to carry a certificate of inclusion under the general permit issued to the American Tunaboat Association pursuant to section 1374 of title 16.

(h) Foreign repair of vessels

The duty imposed by subsection (a) of this section shall not apply to—

(1) the cost of any equipment, or any part of equipment, purchased for, or the repair parts or materials to be used, or the expense of repairs made in a foreign country with respect to, LASH (Lighter Aboard Ship) barges documented under the laws of the United States and utilized as cargo containers;
(2) the cost of spare repair parts or materials (other than nets or nettings) which the owner or master of the vessel certifies are intended for use aboard a cargo vessel, documented under the laws of the United States and engaged in the foreign or coasting trade, for installation or use on such vessel, as needed, in
the United States, at sea, or in a foreign country, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country:

(3) the cost of spare parts necessarily installed before the first entry into the United States, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country; or

(4) the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, in foreign waters, or in a foreign port, and does not involve foreign shipyard repair work.

Declaration and entry shall not be required with respect to the installation, equipment, parts, and materials described in paragraph (4).

References in Text

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b) and (h)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

Prior Provisions

Provisions similar to those in subsecs. (a) and (b) of this section were contained respectively in R.S. §§3114 and 3115, as amended, which were formerly classified to sections 257 and 258 of this title prior to repeal by section 3 of Pub. L. 91–654.

Amendments

2004—Subsec. (e). Pub. L. 98–573 designated existing provisions as par. (1), in par. (1) as so designated substituted reference to any vessel referred to in subsec. (a) for reference to any vessel designed and used primarily for purposes other than transporting passengers or property in the foreign or coasting trade, redesignated former cls. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

1980—Subsec. (f). Pub. L. 96–467 substituted “of equipments, or any part thereof, purchased, of repair parts or materials used, or of repairs made in a foreign country with respect to” for “of repair parts, materials, or expenses of repairs in a foreign country upon” and “schedule 6” for “Schedule 6”.

Subsec. (g). Pub. L. 96–609 added subsec. (g).

1978—Subsec. (f). Pub. L. 95–610, §206(1), incorporated seizure and forfeiture provision formerly a part of first sentence in an inserted second sentence; substituted therein “willfully” and “knowingly” and “such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture” for “such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited”; and authorized the seizure and forfeiture for making false statements in respect of purchases or repairs or aiding or procuring the making of false statements.

Subsecs. (b) to (e). Pub. L. 95–610, §206(2), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as (d) and (e), respectively.


Effective Date of 2006 Amendment


Effective Date of 2004 Amendment


Effective Date of 1994 Amendment


Effective Date of 1990 Amendment


“(b) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply:

“(1) any entry made before the date of enactment of this Act [Aug. 20, 1990] that is not liquidated on the date of enactment of this Act,

“(2) any entry made—

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

“(B) on or before December 31, 1992.

“(3) any entry listed in subsection (c) that was made during the period beginning on January 1, 1993, and ending on December 31, 1994, to the extent such entry involves the purchase of equipment, the use of materials, or the expense of repairs in a foreign country for 66 LASH (Lighter Aboard Ship) barges documented under the laws of the United States if—

“(A) such entry was not liquidated on January 1, 1995, and

“(B) such entry, had it been made on or after January 1, 1995, would otherwise be eligible for the ex-
(4) any entry made pursuant to section 466(h)(1) or (2) of the Tariff Act of 1930 (19 U.S.C. 1466(h)(1) or (2)), on or after the date of the entry into force of the WTO Agreement with respect to the United States (Jan. 1, 1995).

(c) Entries.—The entries referred to in subsection (b)(3) are the following:

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<tr>
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<tr>
<td>C14–0025899–6</td>
<td>August 2, 1994</td>
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</tbody>
</table>
other provision of law, be liquidated or reliquidated as though such entry had been made on the day after the date of the enactment of this Act.'

§ 1467. Special inspection, examination, and search

Whenever a vessel from a foreign port or place or from a port or place in any Territory or possession of the United States arrives at a port or place in the United States or the Virgin Islands, whether directly or via another port or place in the United States or the Virgin Islands, the appropriate customs officer for such port or place of arrival may, under such regulations as the Secretary of the Treasury may prescribe and for the purpose of assuring compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, cause inspection, examination, and search to be made of the persons, baggage, and merchandise discharged or unloaded from such vessel, whether or not any all such persons, baggage, or merchandise has previously been inspected, examined, or searched by officers of the customs.

(June 17, 1930, ch. 497, title IV, § 467, as added June 25, 1938, ch. 769, § 11, 52 Stat. 1083; amended Pub. L. 91-271, title III, § 301(g), June 2, 1970, 84 Stat. 298.)

AMENDMENTS


EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-271, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title.

EFFECTIVE DATE

This section effective on the thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as an Effective Date of 1938 Amendment note under section 1461 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of reference to appropriate customs officer for reference to collector of customs included in the provisions of law, see section 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4965, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

§ 1481. Invoice; contents

(a) In general

All invoices of merchandise to be imported into the United States and any electronic equiv-alent thereof considered acceptable by the Secretary in regulations prescribed under this section shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including the commercial name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation:

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise, itemized by name and amount when known to the seller or shipper; or all charges by name (including commissions, insurance, freight, cases, containers, coverings, and cost of packing) included in the invoice prices when the amounts for such charges are unknown to the seller or shipper;

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise; and

(10) Any other fact that the Secretary may by regulation require as being necessary to a proper appraisement, examination and classification of the merchandise.

(b) Shipments not purchased and not shipped by manufacturer

If the merchandise is shipped to a person in the United States by a person other than the manufacturer, otherwise than by purchase, such person shall state on the invoice the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

(c) Importer provision of information

Any information required to be set forth on an invoice may alternatively be provided by any of
the parties qualifying as an "importer of record" under section 1484(a)(2)(B) of this title by such means, in such form or manner, and within such time as the Secretary shall by regulation prescribe.

(d) Exceptions by regulations

The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 481, 42 Stat. 958. That section was superseded by section 481 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions as to the weights or measures, and currency, in which invoices should be made out and the contents of invoices, with additional provisions as to invoices of merchandise intended for immediate transportation without appraisement, and a provision as to the signing of the invoice, were contained in R.S. § 2837 and act Oct. 3, 1913, ch. 16, § III, C, 38 Stat. 181 (superseding Customs Administrative Act of June 10, 1890, ch. 407, § 2, 26 Stat. 131, as amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §§ 28, 36 Stat. 91), which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 481, 42 Stat. 958, and repealed by sections 642 and 643 thereof.

R.S. §§ 2838, 2853 (as amended by Act June 10, 1880, ch. 190) and 2866, contained provisions concerning invoices and their contents, prior to repeal by Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141. Act May 27, 1921, ch. 14, § 401, 42 Stat. 16, required invoices to contain, in addition to statements then required by law, such other statements as the Secretary of the Treasury should prescribe, and a statement as to the currency in which made out, and section 402 of that Act required the owner, importer, etc., to set forth on the invoice or statement in form of an invoice, and in the entry, in addition to statements then required by law such statements, under oath if required, as the Secretary might prescribe. These provisions were omitted from the Code as superseded by this section, and section 1485(a) of this title.

Provisions on the subject matter of subdivision (c) of this section were contained in act Oct. 3, 1913, ch. 16, § III, W, 38 Stat. 190, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 481, 42 Stat. 958, and repealed by section 643 thereof.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182, § 636(1)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "All invoices of merchandise to be imported into the United States shall set forth—"

Subsec. (a)(3). Pub. L. 103–182, § 636(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed."

Subsec. (a)(10). Pub. L. 103–182, § 636(1)(C), amended par. (10) generally. Prior to amendment, par. (10) read as follows: "Any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise that the Secretary of the Treasury may require."

Subsec. (c). Pub. L. 103–182, § 636(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "When the merchandise has been purchased in different consular districts for shipment to the United States and is assembled for shipment and embraced in a single invoice which is produced for certification under the provisions of paragraph (2) of subdivision (a) of section 1482 of this title, the invoice shall have attached thereto the original bills or invoices received by the shipper, or extracts therefrom, showing the actual prices paid or to be paid for such merchandise. The consular officer to whom the invoice is so produced for certification may require that any such original bill or invoice be certified by the consular officer for the district in which the merchandise was purchased."

Subsec. (d). Pub. L. 103–182, § 636(3), inserted before period at end "and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section."
chandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to—

(i) properly assess duties on the merchandise,

(ii) collect accurate statistics with respect to the merchandise, and

(iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, and permit the filing of reconfigured entries, covering merchandise released under a special delivery permit pursuant to section 1448(b) of this title and entries or warehouse withdrawals made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month. Entries filed under paragraph (1)(A) shall not be liquidated if covered by an import activity summary statement, but instead each reconfigured entry in the import activity summary statement shall be subject to liquidation or reliquidation pursuant to section 1500, 1501, or 1504 of this title.

(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 1641 of this title. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration as the Secretary may require and shall be binding in the same manner and to the same extent as the Secretary may require. If the party so designated fails to file the required documentation on entry, the required documentation shall be transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 1641 of this title.

(c) Release of merchandise

(1) Entries shall be signed by the importer of record or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

(2) The Secretary, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of section 1124 of title 15 or any other applicable law, including a trademark appearing on the goods or packaging.

(d) Signing and contents

(1) Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

(e) Production of invoice

The Secretary may provide by regulation for the production of an invoice, parts thereof, or
the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

(f) Statistical enumeration

The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(g) Statement of cost of production

Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisal of such merchandise.

(h) Admissibility of data electronically transmitted

Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

(i) Special rule for foreign trade zone operations

(1) In general

Notwithstanding any other provision of law and except as provided in paragraph (3), all merchandise (including merchandise of different classes, types, and categories), withdrawn from a foreign trade zone during any 7-day period, shall, at the option of the operator or user of the zone, be the subject of a single estimated entry or release filed on or before the first day of the 7-day period in which the merchandise is to be withdrawn from the zone. The estimated entry or release shall be treated as a single entry and a single release of merchandise for purposes of section 58c(a)(9)(A) of this title and all fee exclusions and limitations of such section 58c of this title shall apply, including the maximum and minimum fee amounts provided for under subsection (b)(3)(A)(i) of such section. The entry summary for the estimated entry or release shall cover only the merchandise actually withdrawn from the foreign trade zone during the 7-day period.

(2) Other requirements

The Secretary of the Treasury may require that the operator or user of the zone—

(A) use an electronic data interchange approved by the Customs Service—

(i) to file the entries described in paragraph (1); and

(ii) to pay the applicable duties, fees, and taxes with respect to the entries; and

(B) satisfy the Customs Service that accounting, transportation, and other controls over the merchandise are adequate to protect the revenue and meet the requirements of other Federal agencies.

(3) Exception

The provisions of paragraph (1) shall not apply to merchandise the entry of which is prohibited by law or merchandise for which the filing of an entry summary is required before the merchandise is released from customs custody.

(4) Foreign trade zone; zone

In this subsection, the terms "foreign trade zone" and "zone" mean a zone established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(j) Treatment of multiple entries of merchandise as single transaction

In the case of merchandise that is purchased and invoiced as a single entity but—

(1) is shipped in an unassembled or disassembled condition in separate shipments due to the size or nature of the merchandise, or

(2) is shipped in separate shipments due to the inability of the carrier to include all of the merchandise in a single shipment (at the instruction of the carrier),

the Customs Service may, upon application by an importer in advance, treat such separate shipments for entry purposes as a single transaction.

References in Text


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 484, 42 Stat. 960. That section was superseded by section 484 of act June 18, 1934, comprising this section, and repealed by section 651(a)(1) of the 1930 act.
Provisions requiring entry of goods, and prescribing the manner of making it, the documents to be produced, etc., were contained in R.S. §2785. Provision for entry when the particulars of the merchandise were unknown was made by R.S. §2788. A special provision regarding entry of distilled spirits and wines was contained in R.S. §2794. All of these sections were repealed by act Sept. 21, 1922, ch. 6, §28, 42 Stat. 969.


R.S. §2842 required bond for the production of an invoice duly certified by the oath of the owner or one of them, in the case of merchandise belonging to a resident of the United States absent from the place of entry. R.S. §2852, provided that when merchandise was admitted to entry on invoice, the collector should certify the same, and no other evidence of value should be admitted on the part of the owner, except in corroboration of the entry. R.S. §2855, made special provision for entry of merchandise from countries where there was no United States consul, etc. These sections were all repealed by act Sept. 21, 1922, ch. 356, title IV, §462, 42 Stat. 969.

R.S. §§2847 and 2848 authorized the Secretary of the Treasury to admit to entry in certain cases merchandise subject to ad valorem duty, belonging to a person not residing in the United States, not accompanied with an invoice verified and authenticated as required by preceding section. They became inoperative by the repeal of R.S. §§2843, 2845, by the Customs Administrative Act of June 10, 1890, ch. 407, §29, 26 Stat. 141, reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 104, and the enactment of provisions for entry of goods without invoice by section 4 of said Customs Administrative Act amended by the Payne-Aldrich Tariff Act, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §111, E, and were repealed by act Sept. 21, 1922, ch. 356, title IV, §462, 42 Stat. 969.

R.S. §2838, provided that the Secretary of the Treasury, whenever it had become impracticable for the person desiring to make entry of merchandise to produce any invoice thereof, might authorize the entry thereof, and remit forfeitures in such cases, as in other cases under the revenue laws. It was repealed by the Customs Administrative Act of June 10, 1890, ch. 407, §29, 26 Stat. 141, reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 104. A provision relating to statistical enumeration of merchandise, except that the “accurate statement” was to be a part of the declaration therein provided for, and a further provision making it the duty of the consular officer to whom the invoice should be produced to require the information to be given, were contained in act Oct. 3, 1913, ch. 16, §111, F, 38 Stat. 182, amending the Customs Administrative Act of June 10, 1890, ch. 407, §5, 26 Stat. 132, as previously amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 95. Said section III, F, was repealed by act Sept. 21, 1922, ch. 356, title IV, §463, 42 Stat. 969.

Provisions on the subject of subsequent entry of part of merchandise and separate entry of packages contained in packages for delivery to others were contained in act May 1, 1878, ch. 69, §19, 19 Stat. 49, which was repealed by act Sept. 21, 1922, ch. 356, title IV, §463, 42 Stat. 969; and in act Oct. 3, 1913, ch. 16, §111, F, 38 Stat. 182, amending Customs Administrative Act of June 10, 1890, ch. 407, §5, 26 Stat. 132, as previously amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 95. Said section III, F, was repealed by act Sept. 21, 1922, ch. 356, title IV, §463, 42 Stat. 969.
entry, statistical enumeration, packages included, statement of cost of production, certification of owner by carrier, acceptance of duplicate bill of lading, and release of merchandise from customs custody.

1983—Subsec. (a)(1). Pub. L. 97–446, § 201(d)(1)(A), substituted "one of the parties qualifying as ‘importer of record’ under paragraph (2)(C) of this subsection" for "the consignee of imported merchandise", and "authorized by him" for "authorized by the consignee".

Subsec. (a)(2)(C), (D), Pub. L. 97–446, § 201(d)(1)(B), (C), added subpar. (C), redesignated former subpar. (C) as (D), and in subpar. (D) as so redesignated substituted "‘importers of record’ for ‘consignees’ after ‘treatment of all’.

Subsec. (c). Pub. L. 97–446, § 201(d)(2), substituted "‘importer of record’ for ‘consignee’ before ‘shall produce’.

Subsec. (d). Pub. L. 97–446, § 201(d)(2), substituted "‘importer of record’ for ‘consignee’ after ‘signed by the’.

Subsec. (h). Pub. L. 97–446, § 201(d)(3), substituted provision relating to authority of carrier of merchandise bringing it into the port to certify any person to receive the merchandise if the carrier has actual knowledge of the accuracy of the certification, for provision that any person certified by the carrier bringing the merchandise to the port at which entry was to be made to be the owner or consignee of the merchandise, or an agent of such owner or consignee, might make entry thereof, either in person or by an authorized agent, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483 of this title.

Subsec. (i). Pub. L. 97–446, § 201(d)(3), substituted provision authorizing appropriate customs officer to accept a duplicate bill of lading, for provision that any person might, upon the production of a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry was to be made, make entry for the merchandise in respect to which such bill of lading was issued, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483 of this title, except that such person was to make such entry in his own name.

1979—Subsec. (a). Pub. L. 95–410, § 102(a)(1), incorporated first sentence in introductory text of par. designated (1), added subpars. (A) and (B) and par. (2), and struck out second sentence which required the entry to be made at the customhouse within five days, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the appropriate customs officer authorized in writing a longer time.

Subsec. (c)(3). Pub. L. 95–410, § 102(a)(2), substituted "subsection (f)" for "subsection (d)".

Subsec. (j). Pub. L. 95–410, § 102(a)(3), struck out "The custom officer shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made."


Subsec. (c). Pub. L. 91–271, § 301(i)(2), (3), substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

Subsec. (g). Pub. L. 91–271, § 301(i)(4), substituted reference to appropriate customs officer for reference to collector or appraiser.

Subsec. (j). Pub. L. 91–271, § 301(i)(5), (6), substituted references to customs officer or such customs officer for references to collector wherever appearing.

1953—Subsec. (a). Act Aug. 8, 1953, § 16(b), substituted "five days" for "forty-eight hours.

Subsec. (b). Act Aug. 8, 1953, § 16(c), granted the Secretary of the Treasury discretion to require certified invoices with respect to merchandise entered as he deems advisable and to establish terms under which merchandise may be imported without a certified invoice, in lieu of former provision that all such merchandise should be accompanied by an invoice certified by a United States consulate except in certain enumerated situations, and of the former provision that the Secretary might grant certain other exceptions.

Subsec. (f). Act June 23, 1938, inserted provision relating to acceptance at port of entry designated by consignee or his agent in cases of articles not subject to a quantitative or tariff-rate quota.

1938—Subsec. (f). Act Aug. 8, 1938, inserted provision relating to authorization by the Secretary for inclusion of portions of merchandise in separate entries under such rules and regulations as he may prescribe.

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 3, 2004, see section 2108 of Pub. L. 109–280, set out as a note under section 58c of this title.

Effective Date of 2004 Amendment

Amendment by Pub. L. 108–429 applicable to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 58c of this title.

Effective Date of 2000 Amendments

Amendment by Pub. L. 106–476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after May 18, 2000, see section 1641 of Pub. L. 109–280, set out as a note under section 58c of this title.

Amendment by Pub. L. 106–200, title IV, § 410(b), May 18, 2000, 114 Stat. 296, provided that: "The amendments made by this section [amending this section] shall take effect on the date that is 60 days after the date of the enactment of this Act [May 18, 2000]"

Effective Date of 1983 Amendment

Section 201(g) of Pub. L. 97–446 provided that: "The amendments made by this section [amending the General headnotes of the Tariff Schedules, this section, and sections 1485, 1487, 1494, 1505, and 1557 of this title, and repealing section 1483 of this title] shall apply with respect to merchandise entered on and after the 30th day after the date of the enactment of this Act [Jan. 12, 1983]"

Effective Date of 1978 Amendment

Section 102(b) of Pub. L. 95–410 provided that: "The amendments made by this section [amending this section] shall take effect 60 days after the date of enactment of this Act [Oct. 3, 1978]"

Effective Date of 1975 Amendment

Section 608(e) of Pub. L. 93–618 provided that: "The amendment made by subsection (a) [amending this section] insofar as it related to export declarations shall take effect on January 1, 1976."
Effective Date of 1963 Amendment: Savings Provision

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1504 of this title.

Effective Date of 1938 Amendment

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 1277 of act June 25, 1938, set out as a note under section 1401 of this title.

REGULATIONS

Pub. L. 106-476, title I, §1469(b), Nov. 9, 2000, 114 Stat. 2371, provided that: "Not later than 6 months after the date of the enactment of this Act [Nov. 9, 2000], the Secretary of the Treasury shall issue regulations to carry out section 440(j) of the Tariff Act of 1930 (19 U.S.C. 1444(j)), as added by subsection (a)."

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Requirements Relating to Determination of Transaction Value of Imported Merchandise

Pub. L. 110-254, May 22, 2008, 122 Stat. 1664, provided that:

"(1) In general.—Pursuant to sections 444 and 445 of the Tariff Act of 1930 (19 U.S.C. 1444 and 1445), the Commissioner responsible for U.S. Customs and Border Protection shall require each importer of merchandise to provide to U.S. Customs and Border Protection at the time of entry of the merchandise the information described in paragraph (2).

"(2) Information required.—The information referred to in paragraph (1) is a declaration as to whether the transaction value of the imported merchandise is determined on the basis of the price paid by the buyer in the first or earlier sale occurring prior to introduction of the merchandise into the United States.

"(3) Effective date.—The requirement to provide information under this subsection shall be effective for the 1-year period beginning 90 days after the date of the enactment of this Act [June 18, 2008]."

"(b) Report to International Trade Commission.—

"(1) In general.—The Commissioner responsible for U.S. Customs and Border Protection shall submit to the United States International Trade Commission a monthly report on the transaction value of imported merchandise for the 1-year period beginning 90 days after the date of the enactment of this Act [June 18, 2008].

"(2) Matters to be included.—The report required under paragraph (1) shall include—

"(A) the aggregate number of importers that sell for export to the United States; and

"(B) the aggregate transaction value of such imported merchandise, including an analysis of the transaction value of such imported merchandise on a sectoral basis; and

"(c) Report to Congress.—

"(1) In general.—Not later than 90 days after the submission of the final report under subsection (b), the United States International Trade Commission shall submit to the appropriate congressional committees a report on the information contained in all reports submitted under subsection (b).

"(2) Matters to be included.—The report required under paragraph (1) shall include—

"(A) the aggregate transaction value of such imported merchandise, including an analysis of the transaction value of such imported merchandise on a sectoral basis; and

"(D) the aggregate transaction value of all merchandise imported into the United States during the 1-year period specified in subsection (a)(3).

"(4) Sense of Congress Regarding Prohibition on Proposed Interpretation of the Term ‘Sold for Exportation to the United States’.—

"(1) In general.—It is the sense of Congress that the Commissioner responsible for U.S. Customs and Border Protection should not implement a change to U.S. Customs and Border Protection’s interpretation of the term ‘sold for exportation to the United States’, as described in section 402(b) of the Tariff Act of 1930 (19 U.S.C. 1401a(b)), for purposes of applying the transaction value of the imported merchandise in a series of sales, before January 1, 2011.

"(2) Exception.—It is the sense of Congress that beginning on January 1, 2011, the Commissioner responsible for U.S. Customs and Border Protection may propose to change or change U.S. Customs and Border Protection’s interpretation of the term ‘sold for exportation to the United States’, as described in paragraph (1), only if U.S. Customs and Border Protection—

"(A) consults with, and provides notice to, the appropriate congressional committees—

"(i) not less than 180 days prior to proposing a change; and

"(ii) not less than 90 days prior to publishing a change;

"(B) consults with, provides notice to, and takes into consideration views expressed by, the Commercial Operations Advisory Committee—

"(i) not less than 120 days prior to proposing a change; and

"(ii) not less than 60 days prior to publishing a change; and

"(C) receives the explicit approval of the Secretary of the Treasury prior to publishing a change.

"(3) Consideration of International Trade Commission Report.—It is the sense of Congress that prior to publishing a change to U.S. Customs and Border Protection’s interpretation (as such interpretation is in effect on the date of the enactment of this Act [June 18, 2008]) of the term ‘sold for exportation to the United States’, as described in section 402(b) of the Tariff Act of 1930 (19 U.S.C. 1401a(b)), for purposes of applying the transaction value of the imported merchandise in a series of sales, the Commissioner responsible for U.S. Customs and Border Protection should take into consideration the matters included in the report prepared by the United States International Trade Commission under subsection (c) of section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a).

"(d) Definitions.—In this section:

"(1) Appropriate Congressional Committees.—The term ‘appropriate congressional committees’ means..."
the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(2) COMMERCIAL OPERATIONS ADVISORY COMMITTEE.—The term ‘Commercial Operations Advisory Committee’ means the Advisory Committee established pursuant to section 956(c) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) (19 U.S.C. 2071 note) or any successor committee.

(3) IMPORTER.—The term ‘importer’ means one of the parties qualifying as an ‘importer of record’ under section 424(a)(2)(B) in the Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B)).

(4) TRANSACTION VALUE OF THE IMPORTED MERCHANDISE.—The term ‘transaction value of imported merchandise’ has the meaning described in section 402(b) of the Tariff Act of 1930 (19 U.S.C. 1401(a)(b)).


DRUG PARAPHERNALIA


“(a) STATISTICAL ANNOTATIONS.—The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission shall take actions under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)) to implement the recommendations of the Commission regarding additional statistical annotations that were made in the report of the Commission on Investigation 332–277.

“(b) REPORT.—By no later than the date that is 1 year after the date of enactment of this Act [Aug. 20, 1990], the Commissioner of Customs shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the operational response of the United States Customs Service to the recommendations contained in the report of the United States Trade Commission described in subsection (a). The report submitted by the Commissioner of Customs under this subsection shall address the effectiveness of the United States Customs Service in monitoring and seizing drug paraphernalia, including crack bags, vials, and pipes.”

STUDY OF COMMODITY CLASSIFICATION SYSTEMS

Section 608(b) of Pub. L. 93–618 mandated a joint study by the Secretary of Commerce and the United States International Trade Commission with a view toward development of an enumeration of articles resulting in comparability of import, production, and export data, with the submission of a report to both Houses of Congress and to the President no later than Aug. 1, 1973.

INVESTIGATION BY UNITED STATES INTERNATIONAL TRADE COMMISSION; FORMULATION OF INTERNATIONAL COMMODITY CODE

Section 608(c) of Pub. L. 93–618 authorized an investigation by the United States International Trade Commission to provide the basis for the formulation of an international commodity code (with a report to be submitted to both Houses of Congress and to the President no later than June 1, 1975) and to provide the basis for full and immediate participation by the Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee to assure recognition of the needs of the business community in the development of a harmonized code.

COOPERATION OF GOVERNMENTAL AGENCIES WITH SECRETARY OF COMMERCE AND UNITED STATES INTERNATIONAL TRADE COMMISSION IN STUDIES AND INVESTIGATIONS

Section 608(d) of Pub. L. 93–618 provided that: “The President is requested to direct the appropriate agencies to cooperate fully with the Secretary of Commerce and the United States International Trade Commission in carrying out their responsibilities under subsections (a) [amending this section], (b), and (c) [see notes set out above].”

§1484a. Articles returned from space not to be construed as importation

The return of articles from space shall not be considered an importation, and an entry of such articles shall not be required, if:

(1) such articles were previously launched into space from the customs territory of the United States aboard a spacecraft operated by, or under the control of, United States persons and owned—

(A) wholly by United States persons, or

(B) in substantial part by United States persons, or

(C) by the United States;

(2) such articles were maintained or utilized while in space solely on board such spacecraft or aboard another spacecraft which meets the requirements of paragraph (1)(A) through (C) of this section; and

(3) such articles were returned to the customs territory directly from space aboard such spacecraft or aboard another spacecraft which meets the requirements of paragraph (1)(A) through (C) of this section; without regard to whether such articles have been advanced in value or improved in condition by any process of manufacture or other means while in space.


EFFECTIVE DATE

Section applicable with respect to articles launched into space from the customs territory of the United States on or after Jan. 1, 1985, see section 214(c)(4) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

§1484b. Deferral of duty on large yachts imported for sale at United States boat shows (a) In general

Notwithstanding any other provision of law, any vessel meeting the definition of a large yacht as provided in subsection (b) of this section and which is otherwise dutiable may be imported without the payment of duty if imported with the intention to offer for sale at a boat show in the United States. Payment of duty shall be deferred, in accordance with this section, until such large yacht is sold.

(b) Definition

As used in this section, the term “large yacht” means a vessel that exceeds 79 feet in length, is used primarily for recreation or pleasure, and has been previously sold by a manufacturer or dealer to a retail consumer.

(c) Deferral of duty

At the time of importation of any large yacht, if such large yacht is imported for sale at a boat show in the United States and is otherwise dutiable, duties shall not be assessed and collected if the importer of record—
(1) certifies to the Customs Service that the large yacht is imported pursuant to this section for sale at a boat show in the United States; and

(2) posts a bond, which shall have a duration of 6 months after the date of importation, in an amount equal to twice the amount of duty on the large yacht that would otherwise be imposed under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States.

(d) Procedures upon sale

(1) Deposit of duty

If any large yacht (which has been imported for sale at a boat show in the United States with the deferral of duties as provided in this section) is sold within the 6-month period after importation—

(A) entry shall be completed and duty calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the large yacht at the time of importation) shall be deposited with the Customs Service; and

(B) the bond posted as required by subsection (c)(2) of this section shall be returned to the importer.

(e) Procedures upon expiration of bond period

(1) In general

If the large yacht entered with deferral of duties is neither sold nor exported within the 6-month period after importation—

(A) entry shall be completed and duty calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the large yacht at the time of importation) shall be deposited with the Customs Service; and

(B) the bond posted as required by subsection (c)(2) of this section shall be returned to the importer.

(2) Additional requirements

No extensions of the bond period shall be allowed. Any large yacht exported in compliance with the bond period may not be reentered for purposes of sale at a boat show in the United States (in order to receive duty deferral benefits) for a period of 3 months after such expiration.

(f) Regulations

The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

(June 17, 1930, ch. 497, title IV, §484b, as added Pub. L. 106–36, title II, §2406(a), June 25, 1999, 113 Stat. 171, provided that: ‘‘The amendment made by subsection (a) [enacting this section] shall apply with respect to any large yacht imported into the United States after the date that is 15 days after the date of the enactment of this Act [June 25, 1999].’’

§1485. Declaration

(a) Requirement; form and contents

Every importer of record making an entry under the provisions of section 1484 of this title shall make and file or transmit electronically therewith, in a form and manner to be prescribed by the Secretary of the Treasury, a declaration under oath, stating—

(1) Whether the merchandise is imported in pursuance of a purchase or an agreement to purchase, or whether it is imported otherwise than in pursuance of a purchase or agreement to purchase;

(2) That the prices set forth in the invoice are true, in the case of merchandise purchased or agreed to be purchased; or in the case of merchandise secured otherwise than by purchase or agreement to purchase, that the statements in such invoice as to value or price are true to the best of his knowledge and belief;

(3) That all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and

(4) That he will produce at once to the appropriate customs officer any invoice, paper, letter, document, or information received showing that any such prices or statements are not true or correct.

(b) Books and periodicals

The Secretary of the Treasury is authorized to prescribe regulations for one declaration in the case of books, magazines, newspapers, and periodicals published and imported in successive parts, numbers, or volumes, and entitled to free entry.

(c) Agents

In the event that an entry is made by an agent under the provisions of section 1484 of this title and such agent is not in possession of such declaration of the importer of record, such agent shall give a bond to produce such declaration.

(d) Liability of importer of record for increased duties

An importer of record shall not be liable for any additional or increased duties if (1) he de-
clares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of an importer of record.

(e) Separate forms for purchase and nonpurchase importations

The Secretary of the Treasury shall prescribe separate forms for the declaration in the case of merchandise which is imported in pursuance of a purchase or agreement to purchase and merchandise which is imported otherwise than in pursuance of a purchase or agreement to purchase.

(f) Deceased or insolvent persons; partnerships and corporations

Whenever such merchandise is consigned to a deceased person, or to an insolvent person who has assigned the same for the benefit of his creditors, the executor or administrator, or the assignee of such person or trustee in a case under title 11, shall be considered as the importer of record; when consigned to a partnership the declaration of one of the partners only shall be required, and when consigned to a corporation such declaration may be made by any officer of such corporation. Whether the importer of record is an individual, a partnership, or a corporation, the declaration may be made by any person who has knowledge of the facts and who is specifically authorized by such individual, a member of such partnership, or an officer of such corporation to make such declaration.

(g) Exported merchandise returned as undeliverable

With respect to any importation of merchandise to which General Headnote 4(e) of the Harmonized Tariff Schedule of the United States applies, any person who gained any benefit from, or met any obligation to, the United States as a result of the prior exportation of such merchandise shall, in accordance with regulations prescribed by the Secretary, within a reasonable time inform the Customs Service of the return of the merchandise.


REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsections (g), is set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §485, 42 Stat. 981. That section was superseded by section 485 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 Act.

Prior provisions for a declaration to be filed when merchandise was entered by invoice, were contained in the Customs Administrative Act of June 10, 1890, ch. 407, §5, 26 Stat. 132, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 95, and by act Oct. 3, 1913, ch. 16, §113, F, 38 Stat. 182. The section of the acts of 1890 and 1913, referred to, were repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989. R.S. §2786, requiring entries to be verified by oath, was superseded by the Customs Administrative Act of June 10, 1890, ch. 407, §§4, 5, 22, 26 Stat. 131, 132, 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 92, 102, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §113, F, and section IV, S, of that act, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

R.S. §2341 prescribed the forms of oaths of which one, according to the nature of the case, was required to be administered by the collector at the time of the entry of merchandise by invoice. It was modified by act May 1, 1876, ch. 89, §2, 19 Stat. 49, and repealed by the Customs Administrative Act of June 10, 1890, ch. 407, §29, 26 Stat. 141, amended and reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 104, and declarations in lieu of oaths were required to accompany the invoice by section 5 of the Customs Administrative Act, amended by the Payne-Aldrich Act and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §113, F. All oaths administered by officers of the customs, except as provided in the Customs Administrative Act, were abolished by section 22 thereof, amended by section 29 of the Payne-Aldrich Act.

The provisions for the abolition of fees and oaths on entry of goods, made by the Customs Administrative Act of June 10, 1890, ch. 407, §22, 26 Stat. 140, as amended by the Payne-Aldrich Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 102, were superseded by a proviso annexed to section IV, S, of the Underwood Tariff Act of Oct. 3, 1913, which provided that "nothing in this act shall be construed to permit any oaths to be demanded or fees to be charged except as provided in this act," etc.

Act May 1, 1876, ch. 89, §2, 19 Stat. 49, modifying the form of oath prescribed by R.S. §2341, was repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989. R.S. §2849, relative to oaths when merchandise belonged in part to a resident of the United States and in part to a non-resident was superseded in part by the Customs Administrative Act of June 10, 1890, ch. 407, §§5, 22, 29, 26 Stat. 132, 140, 141, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 92, 102, 104, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §113, F, and was repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

Prior provisions requiring a bond to be taken when entry was made by an agent, factor, or person other than the owner or ultimate consignee, and prescribing the conditions, etc., of the bond, and the circumstances under which it might be canceled with a proviso authorizing the taking of a general penal bond, were contained in R.S. §2707, as amended by act Mar. 2, 1905, ch. 304, 33 Stat. 336, 33 Stat. 826, which was repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

Provisions concerning the statement to be presented to the collector when merchandise entered for customs duty had been consigned for sale to a person, agent, partner, or consignee, were contained in act Oct. 3, 1913, ch. 16, §113, F, 38 Stat. 185, which reenacted the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, and the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 96, and which was repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

A prior provision relative to oaths to invoices when merchandise belonged to estates of deceased persons or of persons insolvent was contained in R.S. §286, which was superseded, in part, by the abolition of the act administered by officers of the customs, except as provided therein, by the Customs Administrative Act of

| Page 163 | TITLE 19—CUSTOMS DUTIES | §1485 |

Amendments

Subsec. (d). Pub. L. 103–182, §657(2), substituted “An importer” for “A importer” and “an importer” for “a importer.”


_subsec. (c). Pub. L. 97–446 substituted “importer of record” for “consignee” after “declaration of the”.


1978—Subsec. (f). Pub. L. 95–598 substituted “trustee in a case under title 11” for “receiver or trustee in bankruptcy”.


1938—Subsec. (f). Act June 25, 1938, changed the comma to a period after “such declaration may be made by any officer of such corporation”, struck out “or by any other person specifically authorized by any officer of such corporation to make the same” after said comma, and inserted in lieu thereof a new sentence providing that whether the consignee is an individual, a partnership, or a corporation, the declaration may be made by any person having knowledge of the facts and authorized to make such declaration.

Effective Date of 1983 Amendment
Amendment by Pub. L. 97–446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97–446, set out as a note under section 1484 of this title.

Effective Date of 1978 Amendment
Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Effective Date of 1970 Amendment
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

Effective Date of 1938 Amendment
Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 57 of act June 25, 1938, set out as a note under section 1401 of this title.

Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service to the Secretary of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1486. Administration of oaths
(a) Customs officers
The following officers and employees may administer any oaths required or authorized by

law or regulations promulgated thereunder in respect of any matter coming before such officers or employees in the performance of their official duties: (1) Any customs officer appointed by the President; (2) the chief assistant of any such officer, or any officer or employee of the customs field service designated for the purpose by such officer or by the Secretary of the Treasury; and (3) any officer or employee of the United States Customs Service designated for the purpose by the Secretary of the Treasury.

(b) Postmasters
The postmaster or assistant postmaster of the United States at any post office where customs officers are not stationed, is authorized to administer any oaths required to be made to statements in customs documents by importers of merchandise, not exceeding $100 in value, through the mails.

(c) No compensation
No compensation or fee shall be demanded or accepted for administering any oath under the provisions of this section.

(d) Verification in lieu of oath
The Secretary of the Treasury may by regulation prescribe that any document required by any law administered by the Customs Service to be under oath may be verified by a written declaration in such form as he shall prescribe, such declaration to be in lieu of the oath otherwise required.


_Amendments_

_CHANGE OF NAME_

Effective Date of 1983 Amendment; Savings Provision
Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service to the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4965, 44 Stat. 1290, 1291, set out in the Appendix to Title 5, Government Organization and Employees.
§ 1487. Value in entry; amendment

The importer of record or his agent may, under such regulations as the Secretary of the Treasury may prescribe, at the time entry is made, make in the entry such additions to or deductions from the cost or value given in the invoice as, in his opinion, may raise or lower the same to the value of such merchandise.


PRIOR PROVISIONS

Provisions somewhat similar to those in this section were contained in act Oct. 3, 1923, ch. 16, §III, 48 Stat. 184, which were substituted for provisions made by the Customs Administrative Act of June 10, 1890, ch. 407, §7, 26 Stat. 134, as amended by act July 24, 1897, ch. 11, §32, 30 Stat. 211, and as further amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §26, 36 Stat. 95. Section III of the act of 1913 was superseded by act Sept. 21, 1922, ch. 356, title IV, §487, 42 Stat. 962, and was repealed by section 643 thereof. Section 467 of the 1922 act was superseded by section 487 of act June 17, 1930, comprising this section, and repealed by section 65(a)(1) of the 1930 act.

Provisions for addition to the invoice values made by R.S. §3900, were repealed by section 29 of the Customs Administrative Act.

AMENDMENTS

1965—Pub. L. 91–271, set out as an Effective Date of 1970 Amendment applicable with respect to merchandise entered on or after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97–446, set out as a note under section 1484 of this title.

1953—Pub. L. 82–502 substituted “importer of record” for “consignee” before “or his agent”.

1935—Act Aug. 8, 1935, struck out “or at any time before the invoice or the merchandise has come under the observation of the appraiser for the purpose of appraisement,” after “at the time entry is made.”


Section, act June 17, 1930, ch. 497, title IV, § 488, 46 Stat. 725, authorized a collector to cause the appraisal of entered merchandise.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 203 of Pub. L. 91–271, set out as an Effective Date of 1970 Amendment note under section 1500 of this title.


Section, acts June 17, 1930, ch. 497, title IV, § 489, 46 Stat. 725; Aug. 8, 1953, ch. 397, § 18(b), 67 Stat. 517, related to entry of antique furniture at designated ports.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 501(a) of Pub. L. 87–456, set out as an Effective Date of Tariff Classification Act of 1962 note preceding section 1202 of this title.

§ 1490. General orders

(a) Incomplete entry

(1) Whenever—

(A) the entry of any imported merchandise is not made within the time provided by law or by regulation prescribed by the Secretary;

(B) the entry of imported merchandise is incomplete because of failure to pay the estimated duties, fees, or interest;

(C) in the opinion of the Customs Service, the entry of imported merchandise cannot be made for want of proper documents or other cause; or

(D) the Customs Service believes that any merchandise is not correctly and legally invoiced;

the carrier (unless subject to subsection (c) of this section) shall notify the bonded warehouse of such unentered merchandise.

(2) After notification under paragraph (1), the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until—

(A) entry is made or completed and the proper documents are produced;

(B) the information and data necessary for entry are transmitted to the Customs Service pursuant to an authorized electronic data interchange system; or

(C) a bond is given for the production of documents or the transmittal of data.

(b) Request for possession by Customs

At the request of the consignee of any merchandise, or of the owner or master of the vessel or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the Customs Service after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made.

(c) Government merchandise

Any imported merchandise that—

(1) is described in any of subparagraphs (A) through (D) of subsection (a)(1) of this section; and

(2) is consigned to, or owned by, the United States Government;

shall be stored and disposed of in accordance with such rules and procedures as the Secretary shall by regulation prescribe.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 490, 42 Stat. 963. That section was superseded by section 490 of act June 17, 1930, comprising this section, and repealed by section 65(a)(1) of the 1930 act.

Prior provisions authorizing the collector to take possession of, or store merchandise were contained in the following sections, all of which were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989:
§ 1491

TITLE 19—CUSTOMS DUTIES

R.S. §2789, authorizing the collector, when an entry was imperfect, to take the merchandise into his custody until the quantity, quality, or value could be ascertained;
R.S. §2840, providing that when the collector should suspect that merchandise was not invoiced at a sum equal to that for which it had usually been sold, he should take possession and retain the same until its value had been ascertained and the duties paid or secured;
R.S. §2926, providing that merchandise of which incomplete or false documentation had been made, or entry without specification of particulars, should be conveyed to some warehouse or designated by the collector to remain until the particulars, cost or value should have been ascertained, and the duties paid or secured, and a permit for delivery granted;
R.S. §2963, providing that when merchandise had not been entered it should be deposited in a public warehouse, and there remain until an invoice was produced, but that it should not be construed to prohibit sales of merchandise to discharge duties and charges;
R.S. §2964, authorizing the collector to take possession of merchandise, and deposit it in public stores, or other stores to be agreed on, in case of failure or neglect to pay duties, or when the owner, etc., should make entry for warehousing;
R.S. §2965, providing for the storage in a public warehouse, or private bonded warehouse, of unclaimed merchandise required to be taken possession of by collectors, and making provision for payment of charges and expenses:
R.S. §2966, as amended by act June 26, 1884, ch. 121, §24, 23 Stat. 58, providing for the deposit in a bonded warehouse of merchandise imported in vessels, when it should appear by the bills of lading that it was to be delivered immediately after entry of the vessel, or on request, when it did not so appear.
A prior provision authorizing the collector to require a bond for the production of proof to enable the collector to ascertain the class or description of manufacture, or rate of duty to which merchandise was liable, was contained in R.S. §2925, which was also repealed by act Sept. 21, 1922, ch. 356, title IV, §442, 42 Stat. 868.

AMENDMENTS
1996—Subsec. (c)(1). Pub. L. 104–295 substituted "subparagraphs (A) through (D) of subsection (a)(1)" for "paragraphs (1) through (4) of subsection (a)".
1993—Subsec. (a). Pub. L. 103–182, §658(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the appropriate customs officer, entry of such merchandise can not be made for want of proper documents or other cause, or whenever the appropriate customs officer believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production."
Subsec. (b), Pub. L. 103–182, §658(2), substituted heading for one which read "At request of consignee" and in text substituted "Customs Service" for "appropriate customs officer".
Subsec. (c), Pub. L. 103–182, §658(3), added subsec. (c).
1970—Pub. L. 91–271 substituted references to appropriate customs officer for references to collector wherever appearing.

EFFECTIVE DATE OF 1970 AMENDMENT
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of Nov. 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1491. Unclaimed merchandise; disposition of forfeited distilled spirits, wines and malt liquor

(a) Appraisal and sale of unclaimed merchandise
Any entered or unentered merchandise (except merchandise entered under section 1557 of this title, but including merchandise entered for transportation in bond or for exportation) which shall remain in a bonded warehouse pursuant to section 1490 of this title for 6 months from the date of importation thereof, without all estimated duties, taxes, fees, interest, storage, or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by the Customs Service at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to deprecation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, taxes, fees, interest, storage, and other charges, if permitted to remain in1 pursuant to section 1490 of this title in a bonded warehouse for 6 months, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 1559 of this title may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, taxes, fees, interest, storage, and other charges that may have accrued thereon, but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, taxes, fees, interest, charges, and expenses nor may it be entered for warehouse. The computation of duties, taxes, interest, and fees for the purposes of this section and sections 1493 and 1559 of this title shall be at the rate or rates applicable at the time the merchandise becomes subject to sale.

(b) Notice of title vesting in United States
At the end of the 6-month period referred to in subsection (a) of this section, the Customs Service may, in lieu of sale of the merchandise, provide notice to all known interested parties that the title to such merchandise shall be considered to vest in the United States free and clear of any liens or encumbrances, on the 30th day after the date of the notice unless, before such 30th day—
(1) the subject merchandise is entered or withdrawn for consumption and
(2) payment is made of all duties, taxes, fees, transfer and storage charges, and other expenses that may have accrued thereon.

1 So in original. The word “in” probably should not appear.
(c) Retention, transfer, destruction, or other disposition

If title to any merchandise vests in the United States by operation of subsection (b) of this section, such merchandise may be retained by the Customs Service for official use, transferred to any other Federal agency or to any State or local agency, destroyed, or otherwise disposed of in accordance with such regulations as the Secretary shall prescribe. All transfer and storage charges or expenses accruing on retained or transferred merchandise shall be paid by the receiving agency.

(d) Petition

Whenever any party, having lost a substantial interest in merchandise by virtue of title vesting in the United States under subsection (b) of this section, can establish such title or interest under section 1493 of this title had the Secretary believes the party would have received under section 1493 of this title had the merchandise been sold and a proper claim filed. The decision of the Secretary with respect to any such petition is final and conclusive on all parties.

(e) Appraisal and sale or other disposition of forfeited distilled spirits, wines, and malt liquor

All distilled spirits, wines, and malt liquor forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Service, shall be appraised and disposed of by—

(1) delivery to such Government agencies, as in the opinion of the Secretary the agency has a need for such distilled spirits, wines, and malt liquor for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency;

(2) gifts to such eleemosynary institutions as, in the opinion of the Secretary, have a need for such distilled spirits, wines, and malt liquor for medical purposes;

(3) sale by Customs Service at public auction under such regulations as the Secretary shall prescribe, except that before making any such sale the Secretary shall determine that no Government agency or eleemosynary institution has established a need for such spirits, wines, and malt liquor under paragraph (1) or (2); or

(4) destruction.

(Prior Provisions)

Provisions similar to those in this section were contained in R.S. §§ 2973, 2975 and 2976, all of which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 491, 42 Stat. 963, and repealed by section 642 thereof. Section 491 of the 1922 act was superseded by section 491 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

(Amendments)

1996—Subsec. (a). Pub. L. 104–295, § 21(e)(8), Oct. 11, 1996, 901; Pub. L. 104–182, § 659(1), substituted “in a bonded warehouse pursuant to section 1490” for “in a bonded warehouse pursuant to section 1490” and “‘Customs Service’ for ‘appropriate customs officer’.”

§ 1492. Destruction of abandoned or forfeited merchandise

Except as provided in R.S. § 3369 (relating to tobacco and snuff), and in section 901 of the Revenue Act of 1926 (relating to distilled spirits), any merchandise abandoned or forfeited to the Government under the preceding or any other provision of the customs laws, which is subject to internal revenue tax and which the Customs Service shall be satisfied will not sell for a sufficient amount to pay such taxes, shall be forthwith destroyed, retained for official use, or otherwise disposed of under regulations to be prescribed by the Secretary of the Treasury, instead of being sold at auction.


References in Text

R.S. § 3369, referred to in text, is covered by sections 5723(a) and 5753 of Title 26, Internal Revenue Code. Section 901 of Revenue Act of 1926, referred to in text, is covered by section 5243 of Title 26.

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 492, 42 Stat. 963. That section was superseded by section 492 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act. Prior to its incorporation into the Code, this section read: "Except as provided in section 3369 of the Revised Statutes, as amended," etc. R.S. § 3369, as amended by act Oct. 14, 1921, ch. 107, 42 Stat. 205, related in part to abandoned, condemned or forfeited tobacco, snuff, cigars, or cigarettes, which would not bring a price equal to the internal revenue tax thereon. So far as it related to tobacco and snuff, it was incorporated into the Code as sections 702(a)(1), 803(a)(1), (c), (d), and 890, of Title 26, Internal Revenue Code, and so far as it applied to cigars and cigarettes, it was incorporated into the Code as sections 812(d)(2) and 890, of Title 26.

Amendments

1930—Pub. L. 103-182 substituted "taxes, and fees," after "duties," struck out "by the appropriate customs officer" after "shall be deposited", and substituted "the Customs Service" for "such customs officer".

1970—Pub. L. 91-271 substituted references to appropriate customs officer or such customs officer for reference to collector wherever appearing.

Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91-271, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as amended, set out as a note under section 542 of Title 6.

§ 1493. Proceeds of sale

The surplus of the proceeds of sales under section 1491 of this title, after the payment of storage charges, expenses, duties, taxes, and fees, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited in the Treasury of the United States, if claim therefor shall not be filed with the Customs Service within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale.


Prior Provisions

Provisions substantially similar in most respects to those in this section, with further provisions concerning the documents to be forwarded by the collector to the Treasury Department, were contained in R.S. § 2974, which was superseded and more nearly assimilated to the present section by act Sept. 21, 1922, ch. 356, title IV, § 493, 42 Stat. 964, and repealed by section 642 thereof. Section 493 of the 1922 act was superseded by section 493 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Amendments

1930—Pub. L. 103-182 inserted "taxes, and fees," after "duties", struck out "by the appropriate customs officer" after "shall be deposited", and substituted "the Customs Service" for "such customs officer".

1970—Pub. L. 91-271 substituted references to appropriate customs officer or such customs officer for reference to collector wherever appearing.

Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91-271, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as amended, set out as a note under section 542 of Title 6.

Appropriations

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title "Refunding proceeds of unclaimed merchandise (Customs) (22320)" effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

§ 1494. Expense of weighing and measuring

In all cases in which the invoice or entry does not state the weight, quantity, or measure of the merchandise, the expense of ascertaining the same shall be collected from the importer of record before its release from customs custody.
§ 643, 42 Stat. 989.
as amended by act Aug. 27, 1894, ch. 349, § 70, 28 Stat.
were contained in act June 20, 1876, ch. 136, 19 Stat. 60,
general transaction of business at any customs house, of duties or for any other purpose connected with the

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 494, 42 Stat. 989. That section was superseded by section 494 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision requiring merchandise to be weighed, gauged or measured at the expense of the owner, agent or consignee, in cases in which the invoice or entry did not contain the weight, quantity or measure was contained in R.S. § 2920, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

1883—Pub. L. 97–464 substituted “importer of record” for “consignee” after “collected from the”.

1889—Pub. L. 97–464 substituted “importer of record” for “consignee” after “collected from the”.


PROVISIONS

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 494, 42 Stat. 989. That section was superseded by section 494 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision requiring merchandise to be weighed, gauged or measured at the expense of the owner, agent or consignee, in cases in which the invoice or entry did not contain the weight, quantity or measure was contained in R.S. § 2920, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

1883—Pub. L. 97–464 substituted “importer of record” for “consignee” after “collected from the”.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 203(g) of Pub. L. 97–464, set out as a note under section 1344 of this title.

§ 1495. Partnership bond

When any bond is required by law or regulations to be executed by any partnership for any purpose connected with the transaction of business at any customhouse, the execution of such bond by any member of such partnership shall bind the other partners in like manner and to the same extent as if such other partners had personally joined in the execution, and an action or suit may be instituted on such bond against all partners as if all had executed the same.

(June 17, 1930, ch. 497, title IV, § 495, 46 Stat. 727.)

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 495, 42 Stat. 989. That section was superseded by section 495 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially similar to those in this section, except that they applied to bonds for the payment of duties or for any other purpose connected with the general transaction of business at any customhouse, were contained in act June 20, 1876, ch. 136, 19 Stat. 60, as amended by act Aug. 27, 1894, ch. 349, § 70, 28 Stat. 569, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

§ 1496. Examination of baggage

The appropriate customs officer may cause an examination to be made of the baggage of any person arriving in the United States in order to ascertain what articles are contained therein and whether subject to duty, free of duty, or prohibited notwithstanding a declaration and entry therefor has been made.


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 496, 42 Stat. 989. That section was superseded by section 496 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.


Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1496a. Clearance restrictions of individuals returning from abroad; special circumstances; “baggage and effects” defined

Except as otherwise provided by law, no individual returning to the United States from abroad shall be—

(1) entitled to the admission of his or her baggage and effects free of duty without entry; or

(2) entitled to expedited customs examination and clearance of his or her baggage and effects.

Paragraph (2) shall not apply to individuals in special circumstances (including being seriously ill or infirm, having been summoned by news of affliction or disaster, and accompanying the body of a deceased relative). For purposes of this section, the term “baggage and effects” means any article which was in the possession of the individual while abroad and is being imported in connection with his or her arrival and is intended for his or her bona fide personal or household use. Such term does not include any article imported as an accommodation to others or for sale or other commercial use.


Codification

Section was enacted as part of Customs Procedural Reform and Simplification Act of 1978, and not as part of Tariff Act of 1930 which comprises this chapter.

Clearance Procedures Study; Report to Congressional Committees

Section 216 of Pub. L. 95–410 provided that the Comptroller General, in cooperation with the Customs Service of the Department of the Treasury and the Immigration and Naturalization Service of the Department of Justice, study clearance procedures for individuals entering or reentering the United States, and to report the results of his study and any recommendations for expediting the clearance process to specific committees of the United States Senate and the House of Representatives not later than Sept. 1, 1979.

§ 1497. Penalties for failure to declare

(a) In general

(1) Any article which—

(A) is not included in the declaration and entry as made or transmitted; and

(B) is not mentioned before examination of the baggage begins—

(i) in writing by such person, if written declaration and entry was required, or

(ii) orally, if written declaration and entry was not required;

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—
(A) if the article is a controlled substance, either $500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and

(B) if the article is not a controlled substance, the value of the article.

(b) Value of controlled substances

(1) Notwithstanding any other provision of this chapter, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 497, 42 Stat. 964. That section was superseded by section 497 of the act June 17, 1930, comprising this section, and repealed section read as follows: ''Any article which is likely to be illegally sold to the consumer of such controlled substance, the value of the article.

(b) Application of general provisions

The Secretary of the Treasury is authorized to include in such rules and regulations any of the provisions of section 1484 or 1485 of this title (relating to supplies, repairs, and equipment on vessels and railway cars) at the first port of arrival;

(11) Merchandise when in the opinion of the Secretary of the Treasury the value thereof cannot be declared; and

(12) Merchandise within the provisions of paragraph 1631 of section 1201 of this title.

Amendments


References in Text


Section 1201 of this title, referred to in subsec. (a)(12), which comprised the free list for articles imported into the United States, was repealed by Pub. L. 87–456, title I, § 101(a), May 24, 1962, 76 Stat. 72, which act also revised the Tariff Schedules of the United States. See notes under section 1202 of this title.

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 498, 42 Stat. 961. That section was superseded by section 498 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provision for an entry, separate from that of other merchandise, of wearing apparel, personal baggage, and

1See References in Text note below.
tools and implements of a mechanical trade, was made by R.S. §2799, which also prescribed the contents of such entry, and of the accompanying oath. R.S. §2800 provided for a bond when the person making entry was not the owner. R.S. §2801 provided for a landing permit, and for an examination of baggage when deemed proper by the collector and naval officer, and for entry of articles not exempt from duty. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS
1993—Subsec. (a)(1). Pub. L. 103–132, §662(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ‘‘Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than $1,250 as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or different classes of transactions, except that this paragraph does not apply to articles valued in excess of $250 classified in—’’ (A) chapters 39 through 43, 61 through 65, 67 and 95; and (C) subchapters III and IV of chapter 99 of the Harmonized Tariff Schedule of the United States, or to any other article for which formal entry is required without regard to value.

1980—Subsec. (a)(2). Pub. L. 103–132, §662(2), substituted ‘‘such amounts as the Secretary may prescribe’’ for ‘‘$10,000’’ in introductory provisions.

1984—Subsec. (a)(3). Pub. L. 98–573, substituted ‘‘the Harmonized Tariff Schedule of the United States’’ for ‘‘the Tariff Schedules of the United States’’ in closing provisions, added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows: ‘‘(A) schedule 3, (B) parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and (C) subchapters III and IV of chapter 99 of the Harmonized Tariff Schedule of the United States, or to any other article for which formal entry is required without regard to value.’’

1953—Subsec. (a)(1). Act Aug. 8, 1953, §16(d), increased valuation figure with respect to informal entries from $100 to $250, and inserted provisions with respect to possible variation for different classes or kinds of merchandise and different classes of transactions.

1988 Amendment
Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 2127(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

1984 Amendment
Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

1953 Amendment; Savings Provision
Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

CUSTOMS DECLARATIONS; PROXIMITY OF LIVESTOCK
Pub. L. 108–90, title V, §513, Oct. 1, 2003, 117 Stat. 1154, provided that: ‘‘For fiscal year 2004 and thereafter, none of the funds appropriated or otherwise made available to the Department of Homeland Security may be used for the production of customs declarations that do not inquire whether the passenger had been in the proximity of livestock.’’

1499. Examination of merchandise
(a) Entry examination
(1) In general
Imported merchandise that is required by law or regulation to be inspected, examined, or appraised shall not be delivered from customs custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws, regulations, and instructions which the Secretary or the Customs Service is authorized to enforce) until the merchandise has been inspected, appraised, or examined and is reported by the Customs Service to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States.

(2) Examination
The Customs Service—
(A) shall designate the packages or quantities of merchandise covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise;
(B) shall order such packages or quantities to be sent to such place as is designated by the Secretary by regulation for such purpose;
(C) may require such additional packages or quantities as the Secretary considers necessary for such purpose; and
(D) shall inspect a sufficient number of shipments, and shall examine a sufficient number of entries, to ensure compliance with the laws enforced by the Customs Service.

(3) Unspecified articles
If any package contains any article not specified in the invoice or entry and, in the opinion of the Customs Service, the article was omitted from the invoice or entry—
(A) with fraudulent intent on the part of the seller, shipper, owner, agent, importer of record, or entry filer, the contents of the entire package in which such article is found shall be subject to seizure; or
(B) without fraudulent intent, the value of the article shall be added to the entry and the duties, fees, and taxes thereon paid accordingly.

(4) Deficiency
If a deficiency is found in quantity, weight, or measure in the examination of any package, the person finding the deficiency shall make a report thereof to the Customs Service. The Customs Service shall make allowance for the deficiency in the liquidation of duties.

(5) Information required for release
If an examination is conducted, any information required for release shall be provided, either electronically or in paper form, to the Customs Service at the port of examination.
The absence of such information does not limit the authority of the Customs Service to conduct an examination.

(b) Testing laboratories

(1) Accreditation of private testing laboratories

The Customs Service shall establish and implement a procedure, under regulations promulgated by the Secretary, for accrediting private laboratories within the United States which may be used to perform tests (that would otherwise be performed by Customs Service laboratories) to establish the characteristics, quantities, or composition of imported merchandise. Such regulations—

(A) shall establish the conditions required for the laboratories to receive and maintain accreditation for purposes of this subsection;

(B) shall establish the conditions regarding the suspension and revocation of accreditation, which may include the imposition of a monetary penalty not to exceed $100,000 and such penalty is in addition to the recovery, from a gauger or laboratory accredited under paragraph (1), of any loss of revenue that may have occurred, but the Customs Service—

(i) may seek to recover lost revenue only in cases where the gauger or laboratory intentionally falsified the analysis or gauging report in collusion with the importer; and

(ii) shall neither assess penalties nor seek to recover lost revenue because of a good faith difference of professional opinion; and

(C) may provide for the imposition of a reasonable charge for accreditation and periodic reaccreditation.

The collection of any charge for accreditation and reaccreditation under this section is not prohibited by section 58c(e)(6) of this title.

(2) Appeal of adverse accreditation decisions

A laboratory applying for accreditation, or that is accredited, under this section may contest any decision or order of the Customs Service denying, suspending, or revoking accreditation, or imposing a monetary penalty, by commencing an action in accordance with chapter 169 of title 28 in the Court of International Trade within 60 days after issuance of the decision or order.

(3) Testing by accredited laboratories

When requested by an importer of record of merchandise, the Customs Service shall authorize the release to the importer of a representative sample of the merchandise for testing, at the expense of the importer, by a laboratory accredited under paragraph (1). The testing results from a laboratory accredited under paragraph (1) that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing results obtained from a Customs Service laboratory, be accepted by the Customs Service if the importer of record certifies that the sample tested was taken from the merchandise in the entry. Nothing in this subsection shall be construed to limit in any way or preclude the authority of the Customs Service to test or analyze any sample or merchandise independently.

(4) Availability of testing procedure, methodologies, and information

Testing procedures and methodologies used by the Customs Service, and information resulting from any testing conducted by the Customs Service, shall be made available as follows:

(A) Testing procedures and methodologies shall be made available upon request to any person unless the procedures or methodologies are—

(i) proprietary to the holder of a copyright or patent related to such procedures or methodologies, or

(ii) developed by the Customs Service for enforcement purposes.

(B) Information resulting from testing shall be made available upon request to the importer of record and any agent thereof unless the information reveals information which is—

(i) proprietary to the holder of a copyright or patent; or

(ii) developed by the Customs Service for enforcement purposes.

(5) Miscellaneous provisions

For purposes of this subsection—

(A) any reference to a private laboratory includes a reference to a private gauger; and

(B) accreditation of private laboratories extends only to the performance of functions by such laboratories that are within the scope of those responsibilities for determinations of the elements relating to admissibility, quantity, composition, or characteristics of imported merchandise that are vested in, or delegated to, the Customs Service.

(c) Detentions

Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:

(1) In general

Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.

(2) Notice of detention

The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of—

(a) the initiation of the detention;

(b) the specific reason for the detention;

(c) the anticipated length of the detention;

(d) the nature of the tests or inquiries to be conducted; and
(E) the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

(3) Testing results
Upon request by the importer or other party having an interest in detained merchandise, the Customs Service shall provide the party with copies of the results of any testing conducted by the Customs Service on the merchandise and a description of the testing procedures and methodologies (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by the Customs Service for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

(4) Seizure and forfeiture
If otherwise provided by law, detained merchandise may be seized and forfeited.

(5) Effect of failure to make determination
(A) The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of section 1514(a)(4) of this title.

(B) For purposes of section 1511 of title 28, a protest against the decision to exclude the merchandise which has not been allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day.

(C) Notwithstanding section 2639 of title 28, once an action respecting a detention is commenced, unless the Customs Service establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 499, 42 Stat. 965. That section was superseded by section 499 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision prohibiting delivery of merchandise liable to be inspected or appraised, until it had been inspected or appraised, or until the packages sent to be inspected or appraised, should be found correctly invoiced, and be so reported, with a further provision as to the taking of bonds conditioned for delivery of the merchandise, and the forfeiture of such bonds, was contained in R.S. §2900.

Provisions substantially similar to those in this section concerning the number of packages to be examined (not including the provision for designation of a less number by the Secretary of the Treasury and concerning packages found to contain articles not specified in the invoice, with a further provision for remission of the forfeiture, were contained in R.S. §2951.

A prior provision, concerning deficiencies somewhat similar to that in this section, was contained in R.S. §2939.

A provision concerning returns by weighers, gaugers, and measurers, was contained in R.S. §2890.

All of the foregoing sections of the Revised Statutes were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS
1993—Pub. L. 103–182 amended section generally, substituting present provisions for provisions which required imported merchandise to be inspected, examined, appraised, and reported by appropriate customs officer to have been truly and correctly invoiced and found to comply with requirements of laws of the United States prior to release of such merchandise from customs custody.

1970—Pub. L. 91–271 substituted references to appropriate customs officer or such officer for references to collector or appraiser wherever appearing, and struck out references to duties of appraiser.

1938—Act June 25, 1938, amended section generally and among other changes inserted provision relating to invalidity of appraisements made after effective date of Customs Administrative Act of 1938.

EFFECTIVE DATE OF 1970 AMENDMENT
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT
Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 77 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2513, 551(d), 552(d), and 562 of Title 6, Homeland Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1290, 1291, set out in the Appendix to Title 5, Government Organization and Employees.

EXISTING LABORATORIES
Section §613(b) of Pub. L. 103–182 provided that: “Accreditation under section 499(b) of the Tariff Act of 1930 [19 U.S.C. 1499(b)] (as added by subsection (a)) is not required for any private laboratory (including any gauger) that was accredited or approved by the Customs Service as of the day before the date of the enactment of this Act (Dec. 8, 1993); but any such laboratory is subject to reaccreditation under the provisions of such section and the regulations promulgated thereunder.”
§ 1500. Appraisement, classification, and liquidation procedure

The Customs Service shall, under rules and regulations prescribed by the Secretary—
(a) fix the final appraisement of merchandise by ascertaining or estimating the value thereof, under section 1401a of this title, by all reasonable ways and means in his power; any statement of cost or costs of production in any invoice, affidavit, declaration, or other document to the contrary notwithstanding;
(b) fix the final classification and rate of duty applicable to such merchandise;
(c) fix the final amount of duty to be paid on such merchandise and determine any increased or additional duties, taxes, and fees due or any excess of duties, taxes, and fees deposited;
(d) liquidate the entry and reconciliation, if any, of such merchandise; and
(e) give or transmit, pursuant to an electronic data interchange system, notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall by regulation prescribe.


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989. That section was superseded by section 500 of the act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 99. Said section was repealed by act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 104.

AMENDMENTS

Subd. (a). Pub. L. 103–182, § 638(2), substituted “fix the final appraisement of” for “appraisal of”.
Subd. (b). Pub. L. 103–182, § 638(3), substituted “fix the final” for “ascertain the”.
Subd. (c). Pub. L. 103–182, § 638(4), inserted “final” after “fix the” and “taxes and fees” after “duties” in two places.
Subd. (d) and (e). Pub. L. 103–182, § 638(5), amended subds. (d) and (e) generally. Prior to amendment, subds. (d) and (e) read as follows:

“(d) Liquidate the entry of such merchandise; and

“(e) give notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in such regulations.”

1979—Subd. (a). Pub. L. 96–39 substituted “by ascertaining or estimating the value thereof under section 1401a of this title, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document” for “in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document”.

1976—Pub. L. 91–271 struck out “(a)” preceding first sentence and, in such provisions, as so redesignated, substituted provisions which set forth the customs functions to be performed by the appropriate customs officer for provisions which set forth the customs functions to be performed by the appraiser, and struck out subd. (b) to (f), which allocated specific customs functions to appraisers, assistant and deputy appraisers, and examiners, and authorized the designation of acting appraisers where necessary.

Effective Date of 1970 Amendment

Amendment by Pub. L. 96–39 effective July 1, 1980, see section 204(a) of Pub. L. 96–39, set out as a note under section 1401a of this title.

Effective Date of 1970 Amendment

Section 203 of Pub. L. 91–271 provided that: “Titles II and III of this Act [see Short Title of 1970 Amendment

such appraisement. This section was repealed by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, and was again repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.
R.S. § 2946 related to the ascertainment of value at ports where there were no appraisers, prior to repeal by section 642 of the act of Sept. 21, 1922, ch. 356.
A prior provision similar to subdivision (b) was contained in act Oct. 3, 1913, ch. 16, § III, M, 38 Stat. 186, the provisions of which were substitutes for those of the Customs Administrative Act of June 10, 1890, ch. 497, § 13, 26 Stat. 136, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 99. Section III, M, was repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.
An earlier provision on the subject was contained in R.S. § 2929, prior to repeal by Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.
Somewhat similar to subdivision (d), R.S. § 2943 provided that one of the assistant appraisers at the port of New York should be detailed for the supervision of examination of merchandise damaged on the voyage of importation, and to make examinations and appraisals and to report, etc. It was repealed, with R.S. § 2927, which provided for appraisal of such goods, and other sections, by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, reenacted and designated as section 28 by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 104.
note set out under section 1564 of this title] shall take effect with respect to articles entered, or withdrawn, from warehouse for consumption prior to such date, the appraisement of which has not become final before October 1, 1970, and for which an appeal for reappraisal has not been timely filed with the Bureau of Customs [now the United States Customs Service] before October 1, 1970, or with respect to which a protest has not been disallowed in whole or in part before October 1, 1970.”

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of Homeland Security, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1936, §§ 1, 2. eff. July 31, 1936, 51 F.R. 4945, 44 Stat. 1290, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1501. Voluntary reliquidations by Customs Service

A liquidation made in accordance with section 1500 or 1504 of this title or any reliquidation thereof made in accordance with this section may be reliquidated in any respect by the Customs Service, notwithstanding the filing of a protest, within ninety days from the date on which notice of the original liquidation is given or transmitted to the importer, his consignee or agent. Notice of such reliquidation shall be given or transmitted in the manner prescribed with respect to original liquidations under section 1500(e) of this title.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 501, 42 Stat. 966. That section was superseded by section 501 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for appeals to reappraisal and for a further appeal to be assigned to a board of general appraisers, with further provisions as to the fee to be paid, the proceedings on appeal, and the conclusiveness of decisions, were contained in act Oct. 3, 1913, ch. 16, § 3, 38 Stat. 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 443, 42 Stat. 989.


Provisions similar to some extent to those in section 13 of the Customs Administrative Act of 1890 were contained in R.S. §§ 2929, 2930, prior to repeal by section 29 of that Act.

R.S. § 2950 provided that the certificate of the appraiser should be deemed to be the appraisement. It was superseded by the provisions relating to appraisers made by the Customs Administrative Act of June 10, 1890, ch. 407, § 13, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, and the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § III, M, 38 Stat. 186, and was repealed by act Sept. 21, 1922, ch. 356, title IV, § 442, 42 Stat. 989.

AMENDMENTS


1993—Pub. L. 103–182 amended section catchline generally, substituting “Customs Service” for “appropriate customs officer; notice”, and in text substituted “the Customs Service” for “the appropriate customs officer on his own initiative” and inserted “or transmitted” after “given” in two places.

1970—Pub. L. 91–271 struck out “(a)” preceding first sentence and, in such provisions, as so redesignated, substituted provisions authorizing a reliquidation in any respect by the appropriate customs officer on his own initiative for a liquidation made in accordance with section 1500 of this title or any reliquidation thereof made in accordance with this section for provisions setting forth the procedure for an appeal for a reappraisement by the collector or the consignee.

1965—Subsec. (a). Act Aug. 8, 1963, inserted cl. (3) and “including all determinations entering into the same,” in second sentence, and struck out third sentence which provided that “No such appeal filed by the consignee or his agent shall be deemed valid, unless he has complied with all the provisions of this chapter relating to the entry and appraisement of such merchandise”.

1948—Subsec. (a). Act June 25, 1948, struck out fourth sentence and substituted new fourth sentence, and repealed the fifth, sixth, seventh, and eighth sentences dealing with review by Customs Court of Reappraisements of this material. See section 1582 of Title 28, Judiciary and Judicial Procedure.

Subsecs. (b) and (c), relating to practice and procedure in Customs Court, were repealed by Act June 25, 1948. See sections 2631 to 2637 of Title 28, Judiciary and Judicial Procedure.

1938—Act June 25, 1938, designated paragraphs as subsecs. (a) and (b) and added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–429 applicable to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 3, 2004, see section 2108 of Pub. L. 108–429, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1504 of this title.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise spe-
chologically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all officers of Department of the Treasury agencies and employees of Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, § 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1502. Regulations for appraisement and classification

(a) Powers of Secretary of the Treasury

The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law (including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned), and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry. The Secretary may direct any customs officer at any port to review entries of merchandise concerned) after “law”, substituted “of entry. The Secretary” for “ports of entry, and may direct any customs officer at any port to review entries of merchandise filed at any other port.” for “such port”.

Subsec. (b). Pub. L. 103–182, § 640(2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement.”

Pub. L. 103–182, § 412(a), which directed the insertion of “the North American Free Trade Agreement or” before “the United States-Canada Free-Trade Agreement”, could not be executed because the words “the United States-Canada Free-Trade Agreement” did not appear in subsec. (b) subsequent to amendment by Pub. L. 103–182, § 640(2), effective Dec. 8, 1993. See above.

Subsec. (c). Pub. L. 103–182, § 640(2), redesignated subsec. (c) as (b).

1988—Subsec. (b). Pub. L. 100–449 substituted “a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement” for “or a final decision of the United States Court of International Trade”.


Effective Date of 1993 Amendment

Amendment by section 412(a) of Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States (Jan. 1, 1994), but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of this title, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of this title, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review, that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of this title.

which includes a reappraisal of imported merchandise, the basis for such assessment shall be the final appraised value determined by such court.


REFERENCES IN TEXT

Section 1520(c) of this title, referred to in text, was repealed by Pub. L. 103–429, title II, §2105, Dec. 3, 2004, 118 Stat. 2596.

PRIOR PROVISIONS

Provisions somewhat similar to those in subsecs. (a) and (b) were contained in act Sept. 21, 1922, ch. 356, title IV, §489, 42 Stat. 962. Provisions similar to former subsec. (b) relating to entries pending reappraisal were contained in act Sept. 21, 1922, ch. 356, title IV, §489, 42 Stat. 962. Both of the acts of 1922 were in part superseded by act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A provision for assessment of duty on merchandise of different values when invoiced at an average price, was contained in R.S. §2910, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §462, 42 Stat. 969.

AMENDMENTS


1970—Pub. L. 91–271 substituted provisions that, except as provided in section 1520(c) or 1562 of this title, the basis for the assessment of duties on imported merchandise be the appraised value determined upon liquidation, in accordance with section 1500 of this title or any adjustment thereof pursuant to section 1501 of this title, and be the final appraised value where reliquidation is required pursuant to a final judgment or order of the United States Customs Court, for provisions that, except as provided in section 1562 of this title, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty be the final appraised value, and provisions that for the purpose of determining the rate of duty assessed upon any merchandise when the rate is based upon or regulated in any manner by the value of the merchandise, the final appraised value, except as provided in section 1562 of this title, be taken as the value of merchandise.

1963—Subsec. (a). Act Aug. 8, 1953, struck out “and in subdivision (b) of this section” after reference to section 1562 of this title, “the entered value or” after “shall be”, and “whichever is higher” at the end.

Subsecs. (b), (c). Act Aug. 8, 1953, redesignated subsec. (c) as (b). Former subsec. (b), which related to entries pending reappraisal, was repealed by act Aug. 8, 1953.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 761(a) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after the thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1301 of this title.

§1503. Dutiable value

§1503. Dutiable value

Except as provided in section 1520(c)1 of this title (relating to reliquidations on the basis of authorized corrections of errors) or section 1562 of this title (relating to withdrawal from manipulating warehouses), the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty or rates based upon or regulated in any manner by the value of the merchandise, shall be the appraised value determined upon liquidation, in accordance with section 1500 of this title or any adjustment thereof made pursuant to section 1501 of this title. Provided, however, That if reliquidation is required pursuant to a final judgment or order of the United States Court of International Trade

1See References in Text note below.

Section, act July 12, 1932, ch. 473, 47 Stat. 567, related to the construction of former subsection (b) of section 1503 of this title, which was omitted by section 18(d) of act Aug. 8, 1953.

Effective Date of Repeal; Savings Provision

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

§ 1504. Limitation on liquidation

(a) Liquidation

(1) Entries for consumption

Unless an entry of merchandise for consumption is extended under subsection (b) of this section or suspended as required by statute or court order, except as provided in section 1675(a)(3) of this title, an entry of merchandise for consumption not liquidated within 1 year from—

(A) the date of entry of such merchandise,

(B) the date of the final withdrawal of all such merchandise covered by a warehouse entry,

(C) the date of withdrawal from warehouse of such merchandise for consumption if, pursuant to regulations issued under section 1505(a) of this title, duties may be deposited after the filing of any entry or withdrawal from warehouse,

(D) if a reconciliation is filed, or should have been filed, the date of the filing under section 1484 of this title or the date the reconciliation should have been filed, whichever is earlier; or

(E) if a reconfigured entry is filed under an import activity summary statement, the date the import activity summary statement is filed or should have been filed, whichever is earlier;

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record. Notwithstanding section 1500(e) of this title, notice of liquidation need not be given of an entry deemed liquidated.

(2) Entries or claims for drawback

(A) In general

Except as provided in subparagraph (B) or (C), unless an entry or claim for drawback is extended under subsection (b) of this section or suspended as required by statute or court order, an entry or claim for drawback not liquidated within 1 year from the date of entry or claim shall be deemed liquidated at the drawback amount asserted by the claimant or claim. Notwithstanding section 1500(e) of this title, notice of liquidation need not be given of an entry deemed liquidated.

(B) Unliquidated imports

An entry or claim for drawback whose designated or identified import entries have not been liquidated and become final within the

1-year period described in subparagraph (A), or within the 1-year period described in subparagraph (C), shall be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise, and upon the filing with the Customs Service of a written request for the liquidation of the drawback entry or claim. Such a request must include a waiver of any right to payment or refund under other provisions of law. The Secretary of the Treasury shall prescribe any necessary regulations for the purpose of administering this subparagraph.

(C) Exception

An entry or claim for drawback filed before December 3, 2004, the liquidation of which is not final as of December 3, 2004, shall be deemed liquidated on the date that is 1 year after December 3, 2004, at the drawback amount asserted by the claimant at the time of the entry or claim.

(3) Payments or refunds

Payment or refund of duties owed pursuant to paragraph (1) or (2) shall be made to the importer of record or drawback claimant, as the case may be, not later than 90 days after liquidation.

(b) Extension

The Secretary of the Treasury may extend the period in which to liquidate an entry if—

(1) the information needed for the proper appraisement or classification of the imported or withdrawn merchandise, or for determining the correct drawback amount, or for ensuring compliance with applicable law, is not available to the Customs Service; or

(2) the importer of record or drawback claimant, as the case may be, requests such extension and shows good cause therefor.

The Secretary shall give notice of an extension under this subsection to the importer of record or drawback claimant, as the case may be, and the surety of such importer of record or drawback claimant. Notice shall be in such form and manner (which may include electronic transmission) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record, or the drawback amount asserted by the drawback claimant, at the expiration of 4 years from the applicable date specified in subsection (a) of this section.

(c) Notice of suspension

If the liquidation of any entry is suspended, the Secretary shall by regulation require that notice of the suspension be provided, in such manner as the Secretary considers appropriate, to the importer of record or drawback claimant, as the case may be, and to any authorized agent and surety of such importer of record or drawback claimant.

(d) Removal of suspension

Except as provided in section 1675(a)(3) of this title, when a suspension required by statute or court order is removed, the Customs Service
shall liquidate the entry, unless liquidation is extended under subsection (b) of this section, within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry (other than an entry with respect to which liquidation has been extended under subsection (b) of this section) not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record or (in the case of a drawback entry or claim) at the drawback amount asserted by the drawback claimant.


PRIOR PROVISIONS


AMENDMENTS

2004—Pub. L. 108–429, § 2102(2), struck out “at the time of entry” after “duties asserted” in subsec. (a)(1) (concluding provisions), after “asserted by the claimant” in subsec. (a)(2)(A), and after “of duty asserted” and “drawback amount asserted” in subsecs. (b) (concluding provisions) and (d).

Subsec. (a). Pub. L. 108–429, § 2102(1), which directed striking “or” at end of par. (3), substituting “filed,” whichever is earlier; or “for ‘filed,’” in par. (4), and adding “(5) after par. (4) was executed by striking: “or” at end of par. (1)(C), substituting “filed,” whichever is earlier; or “for ‘filed,’” in par. (1)(D), and adding the text of par. (5) after par. (1)(D) and editorially redesignating it as par. (1)(E). Pub. L. 108–429, § 2102(1), was technically incapable of execution subsequent to the amendments by Pub. L. 108–429, § 1565(e)(1). See below.

Subsec. (a). Pub. L. 108–429, § 1565(e)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ‘‘Unless an entry is extended under subsection (b) of this section or (in the case of a drawback entry or claim) at the drawback amount asserted by the drawback claimant, the Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer of record in such form and manner as the Secretary shall prescribe in regulations, if—’’

(1) the information needed for the proper appraisement or classification of the merchandise is not available to the appropriate customs officer;

(2) liquidation is suspended as required by statute or court order; or

(3) the importer of record requests such extension and shows good cause therefor.’’

Subsec. (b). Pub. L. 108–429, § 1566(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ‘‘The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer of record in such form and manner as the Secretary shall prescribe in regulations, if—’’

(1) the information needed for the proper appraisement or classification of the merchandise is not available to the appropriate customs officer;

(2) liquidation is suspended as required by statute or court order; or

(3) the importer of record requests such extension and shows good cause therefor.’’
§ 1505. Payment of duties and fees

(a) Deposit of estimated duties and fees

Unless the entry is subject to a periodic payment referred to in this subsection or the merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of entry, or at such later time as the Secretary may prescribe by regulation (but not later than 12 working days after entry or release) the amount of duties and fees estimated to be payable on such merchandise. As soon as a periodic payment module of the Automated Commercial Environment is developed, but no later than October 1, 2004, the Secretary shall promulgate regulations, after testing the module, permitting a participating importer of record to deposit estimated duties and fees for entries of merchandise, other than merchandise entered for warehouse, transportation, or under bond, no later than the 15 working days following the month in which the merchandise is entered or released, whichever comes first.

(b) Collection or refund of duties, fees, and interest due upon liquidation or reliquidation

The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys deposited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.

(c) Interest

Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest or, in a case in which a claim is made under section 1520(d) of this title, from the date upon which such claim is made, to the date of liquidation or reliquidation of the applicable entry or reconciliation. The Secretary may prescribe an alternative mid-point interest accounting methodology, which may be employed by the importer, based upon aggregate data in lieu of accounting for such interest from each deposit data provided in this subsection.

(d) Delinquency

If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b) of this section, any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.

(United States Statutes at Large Volume 192, Title 19, Customs Duties, Section 1505, Payment of Duties and Fees, Deposit of Estimated Duties and Fees, Collection or Refund of Duties, Fees, and Interest Due Upon Liquidation or Reliquidation, Interest, Delinquency)

**Prior Provisions**

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 396, title IV, §504, 42 Stat. 967. That section was superseded by section 505 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision that the collector or person acting as such should ascertain, fix, and liquidate the rate and amount of duties, and the dutiable costs and charges, was contained in act Oct. 3, 1913, ch. 16, §111, M, 38 Stat. 186, the provisions of which were substituted for provisions contained in the Customs Administrative Act of June 10, 1890, ch. 407, §13, 26 Stat. 136, as amended by the Payne–Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 99.

**Amendments**

2004—Subsec. (a). Pub. L. 108–429, in first sentence, inserted “referred to in this subsection” after “subject to a periodic payment” and substituted “12 working days” for “10 working days” and, in second sentence, substituted “12 working days” for “referred to in this subsection” after “subject to a periodic payment” and substituted “12 working days” for “12 working days”. Prior to amendment, text read as follows: “Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record to deposit estimated duties and fees for entries of merchandise no later than the 15th day of the month following the month in which the merchandise is entered or released, whichever comes first”.

2002—Subsec. (a). Pub. L. 107–210 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation, the amount of duties and fees estimated to be payable thereon. Such regulations may provide that estimated duties and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secretary, accruing from the first day of the month the statement is required to be filed until the date such statement is actually filed.”

2000—Subsec. (c). Pub. L. 106–476 substituted “The Secretary may prescribe” for “For the period beginning on October 1, 1996, and ending on the date on which the ‘Revised National Customs Automation Test Regarding Reconciliation’ of the Customs Service is terminated, or October 1, 2000, whichever occurs earlier, the Secretary may prescribe” in last sentence.

1999—Subsec. (c). Pub. L. 106–36 inserted at end “For the period beginning on October 1, 1996, and ending on the date on which the ‘Revised National Customs Automation Test Regarding Reconciliation’ of the Customs Service is terminated, or October 1, 2000, whichever occurs earlier, the Secretary may prescribe an alternative mid-point interest accounting methodology, which may be employed by the importer, based upon aggregate data in lieu of accounting for such interest from each deposit data provided in this subsection.”

1996—Subsec. (c). Pub. L. 104–295 inserted “or, in a case in which a claim is made under section 1520(d) of this title, from the date on which such claim is made,” after “deposits estimated duties, fees, and interest”. Prior to amendment, provisions relating to deposit, collection or refund of duties, fees, and interest for provisions relating to deposit, collection, or refund of duties and interest.


1993—Pub. L. 103–182 amended section generally, substituting provisions relating to deposit, collection or refund of duties, fees, and interest for provisions relating to deposit, collection, or refund of duties and interest.


1978—Subsec. (a). Pub. L. 95–410 authorized deposit of estimated duties to be made as prescribed by regulations after time of making entry but not later than thirty days after date of entry.

1970—Pub. L. 91–271 reorganized existing provisions into subsecs. (a) and (b), and struck out provisions authorizing receipt by a collector of various reports and the performance of certain functions in connection with the liquidation of an entry.

**Effective Date of 2002 Amendment**

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

**Effective Date of 2000 Amendment**

Amendment by Pub. L. 106–476, except as otherwise provided, applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106–476, set out as a note under section 58c of this title.

**Effective Date of 1999 Amendment**

Amendment by Pub. L. 106–36 effective 30 days after June 25, 1999, see section 2418(f) of Pub. L. 106–36, set out as a note under section 58c of this title.

**Effective Date of 1996 Amendment**

Section 2(b) of Pub. L. 104–295 provided that: “The amendment made by subsection (a) [amending this section] shall apply to claims made pursuant to section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) on or after June 7, 1996.”

**Effective Date of 1984 Amendment**


**Effective Date of 1983 Amendment**

Amendment by Pub. L. 97–446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97–446, set out as a note under section 1494 of this title.

**Effective Date of 1970 Amendment**

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1506 of this title.

**Transfer of Functions**

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of Novem ber 25, 2002, as modified, set out as a note under section 542 of Title 6.

(1) Abandonment within thirty days

Where the importer abandons to the United States, within thirty days after entry in the case of merchandise released without an examination, or within thirty days after the release in the case of merchandise sent to the Customs Service for examination, any imported merchandise representing 5 per centum or more of the total value of all the merchandise of the same class or kind entered in the invoice or entry in which the item appears, and delivers, within the applicable thirty-day period, the portion so abandoned to such place as the Customs Service directs unless the Customs Service is satisfied that the merchandise is so far destroyed as to be nondeliverable;

(2) Perishable merchandise, condemned

Where fruit or other perishable merchandise has been condemned at the port of entry, within ten days after landing, by the health officers or other legally constituted authorities, and the consignee, within five days after such condemnation, files, electronically or otherwise, with the Customs Service notice thereof, an invoiced description and the location thereof, and the name of the vessel or vehicle in which imported.

(2) Perishable merchandise, condemned

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § 6, 38 Stat. 60, reenacting the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, § 23, 26 Stat. 140, as amended by Act May 17, 1898, ch. 341, § 30, 30 Stat. 516, and further amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 103. Section III of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, title IV, § 506, 42 Stat. 967, and repealed by section 643 thereof. Section 506 of the 1922 act was superseded by section 506 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 2927 provided for the appraisal of articles damaged during the voyage, and for the allowances for such damages in estimating duties, prior to repeal by the Customs Administrative Act of June 10, 1890, ch. 407, § 23, 26 Stat. 140, as amended by Act May 17, 1898, ch. 341, § 30, 30 Stat. 516, and further amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 103. Section III of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, title IV, § 506, 42 Stat. 967, and repealed by section 643 thereof. Section 506 of the 1922 act was superseded by section 506 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 2926, providing for appraisement of merchandise taken from any wreck and of damages sustained during the course of the voyage, was superseded by the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, § 23, 26 Stat. 140, and repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

1993—Par. (1). Pub. L. 103–182, § 643(1), (2), substituted "merchandise released without an examination" for "merchandise not sent to the appraiser's stores for examination", struck out "of the examination packages or quantities of merchandise" after "thirty days after the release", substituted "merchandise sent to the Customs Service" for "merchandise sent to the appraiser's stores", inserted "or entry" after "invoice", and substituted "such place as the Customs Service" for "such place as the appropriate customs officer" and "unless the Customs Service" for "unless such customs officer".

Par. (2). Pub. L. 103–182, § 643(1), (3), inserted ", electronically or otherwise," after "files" and substituted "the Customs Service notice" for "the appropriate customs officer written notice".

1970—Par. (1). Pub. L. 91–271, § 301(m)(1), substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

Par. (2). Pub. L. 91–271, § 301(m)(2), substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service to the Department of the Treasury, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1507. Tare and draft

(a) In general

The Secretary of the Treasury is authorized to prescribe and issue regulations for the ascertainment of tare upon imported merchandise, including the establishment of reasonable and just schedule tares therefor, but (except as otherwise provided in this section) there shall not be any allowance for draft or for impurities, other than excessive moisture and impurities not usually found in or upon such or similar merchandise.

(b) Crude oil and petroleum products

In ascertaining tare on imports of crude oil, and on imports of petroleum products, allowance shall be made for all detectable moisture and impurities present in, or upon, the imported crude oil or petroleum products.

1998—Pub. L. 100–418 designated existing provision as subsec. (a), substituted "(except as otherwise provided in this section) there shall not be" for "in no case shall there be", and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

§ 1508. Recordkeeping

(a) Requirements

Any—

(1) owner, importer, consignee, importer of record, entry filer, or other party who—

(A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

(B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(2) agent of any party described in paragraph (1); or

(3) person whose activities require the filing of a declaration or entry, or both;

shall make, keep, and render for examination and inspection all records relating to the origin of the good (including the NAFTA Certificate of Origin) and the associated records.

(b) Exportations to NAFTA countries

(1) Definitions

As used in this subsection—

(A) The term “associated records” means, in regard to an exported good under paragraph (2), records associated with—

(i) the purchase of, cost of, value of, and payment for, the good;

(ii) the purchase of, cost of, value of, and payment for, all material, including indirect materials, used in the production of the good; and

(iii) the production of the good.

For purposes of this subparagraph, the terms “indirect material”, “material”, “preferential tariff treatment”, “used”, and “value” have the respective meanings given them in articles 415 and 514 of the North American Free Trade Agreement.

(B) The term “NAFTA Certificate of Origin” means the certification, established under article 501 of the North American Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

(2) Exports to NAFTA countries

(A) In general

Any person who completes and signs a NAFTA Certificate of Origin for a good for which preferential treatment under the North American Free Trade Agreement is claimed shall make, keep, and render for examination and inspection all records relating to the origin of the good (including the NAFTA Certificate or copies thereof) and the associated records.

(B) Claims for certain waivers, reductions, or refunds of duties or for credit against bonds

(i) In general

Any person that claims with respect to an article—

(I) a waiver or reduction of duty under the section 1312(b)(1) or (4) of this title, section 1562(2) of this title, or the proviso preceding the last proviso to section 81c(a) of this title;

(II) a credit against a bond under section 1312(d) of this title; or

(III) a refund, waiver, or reduction of duty under section 1313(n)(2) or (5)(1) of this title;

must disclose to the Customs Service the information described in clause (ii).

(ii) Information required

Within 30 days after making a claim described in clause (i) with respect to an article, the person making the claim must disclose to the Customs Service whether that person has prepared, or has knowledge that another person has prepared, a NAFTA Certificate of Origin for the article. If after such 30-day period the person making the claim either—

(I) prepares a NAFTA Certificate of Origin for the article; or

(II) learns of the existence of such a Certificate for the article;

that person, within 30 days after the occurrence described in subclause (I) or (II), must disclose the occurrence to the Customs Service.

(iii) Action on claim

If the Customs Service determines that a NAFTA Certificate of Origin has been prepared with respect to an article for which a claim described in clause (i) is made, the Customs Service may make such adjustments regarding the previous customs treatment of the article as may be warranted.

(3) Exports under the Canadian agreement

Any person who exports, or who knowingly causes to be exported, any merchandise to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to the exportations.

(c) Period of time

The records required by subsections (a) and (b) of this section shall be kept for such periods of time as the Secretary shall prescribe; except that—

(1) no period of time for the retention of the records required under subsection (a) or (b)(3)
of this section may exceed 5 years from the date of entry, filing of a reconciliation, or exportation, as appropriate;
(2) the period of time for the retention of the records required under subsection (b)(2) of this section shall be at least 5 years from the date of signature of the NAFTA Certificate of Origin; and
(3) records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.

(d) Limitation
For the purposes of this section and section 1509 of this title, a person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported unless—
(1) the terms and conditions of the importation are controlled by the person placing the order; or
(2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with knowledge that they will be used in the manufacture or production of the imported merchandise.

(e) Subsection (b) penalties
(1) Relating to NAFTA exports
Any person who fails to retain records required by paragraph (2) of subsection (b) of this section or the regulations issued to implement that paragraph shall be liable for—
(A) a civil penalty not to exceed $10,000; or
(B) the general recordkeeping penalty that applies under the customs laws; whichever penalty is higher.

(2) Relating to Canadian agreement exports
Any person who fails to retain the records required by paragraph (3) of subsection (b) of this section or the regulations issued to implement that paragraph shall be liable for a civil penalty not to exceed $10,000.

(f) Certificates of Origin for goods exported under the United States-Chile Free Trade Agreement
(1) Definitions
In this subsection:
(A) Records and supporting documents
The term “records and supporting documents” means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—
(i) the purchase, cost, and value of, and payment for, the good;
(ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and
(iii) the production of the good in the form in which it was exported.

(B) Chile FTA Certificate of Origin
The term “Chile FTA Certificate of Origin” means the certification established under article 4.13 of the United States-Chile Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

(2) Exports to Chile
Any person who completes and issues a Chile FTA Certificate of Origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the Certificate or copies thereof).

(3) Retention period
Records and supporting documents shall be kept by the person who issued a Chile FTA Certificate of Origin for at least 5 years after the date on which the certificate was issued.

(g) Certifications of origin for goods exported under the Dominican Republic-Central America-United States Free Trade Agreement
(1) Definitions
In this subsection:
(A) Records and supporting documents
The term “records and supporting documents” means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—
(i) the purchase, cost, and value of, and payment for, the good;
(ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and
(iii) the production of the good in the form in which it was exported.

(B) CAFTA-DR certification of origin
The term “CAFTA-DR certification of origin” means the certification established under article 4.16 of the Dominican Republic-Central America-United States Free Trade Agreement that a good qualifies as an originating good under such Agreement.

(2) Exports to CAFTA-DR countries
Any person who completes and issues a CAFTA-DR certification of origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the certification or copies thereof).

(3) Retention period
Records and supporting documents shall be kept by the person who issued a CAFTA-DR certification of origin for at least 5 years after the date on which the certification was issued.

(h) Certifications of origin for goods exported under the United States-Peru Trade Promotion Agreement
(1) Definitions
In this subsection:
(A) Records and supporting documents
The term “records and supporting documents” means, with respect to an exported
good under paragraph (2), records and documents related to the origin of the good, including—

(i) the purchase, cost, and value of, and payment for, the good;

(ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) the production of the good in the form in which it was exported.

(B) PTPA certification of origin

The term “PTPA certification of origin” means the certification established under article 4.15 of the United States-Peru Trade Promotion Agreement that a good qualifies as an originating good under such Agreement.

(2) Exports to Peru

Any person who completes and issues a PTPA certification of origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the certification or copies thereof).

(3) Retention period

The person who issues a PTPA certification of origin shall keep the records and supporting documents relating to that certification of origin for a period of at least 5 years after the date on which the certification is issued.

(i) Penalties

Any person who fails to retain records and supporting documents required by subsection (f), (g), or (h) of this section or the regulations issued to implement any such subsection shall be liable for the greater of—

(1) a civil penalty not to exceed $10,000; or

(2) the general record keeping penalty that applies under the customs laws of the United States.

(Amendment of section)

For termination of amendment by section 107(c) of Pub. L. 110–138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 110–138, see Effective and Termination Dates of 2005 Amendment note below.

Prior Provisions


AMENDMENTS


Subsec. (i). Pub. L. 110–138, §§ 107(c), 207(1), (3), temporarily redesignated subsec. (h) as (i) and, in introductory provisions, substituted “(f), (g), or (h)” for “(f) or (g)” and “and any such subsection” for “either such subsection”. See Effective and Termination Dates of 2007 Amendment note below.


Subsec. (h). Pub. L. 109–53, §§ 107(d), 208(1), (3), temporarily redesignated subsec. (g) as (h) and, in introductory provisions, inserted “or (g)” after “(f)” and substituted “either such subsection” for “that subsection”. See Effective and Termination Dates of 2005 Amendment note below.


Subsec. (b)(2)(B)(ii)(I). Pub. L. 109–53, §§ 107(d), 209, temporarily substituted “‘the last paragraph of section 1311 of this title’” for “‘the last paragraph of section 1311 of this title and the proviso preceding the last proviso to section 81(a) of this title’” for “‘the last proviso to section 81(a) of this title’”. See Effective and Termination Dates of 2003 Amendment note below.

Subsecs. (f), (g). Pub. L. 108–77, §§ 107(c), 207(2), temporarily added subsecs. (f) and (g). See Effective and Termination Dates of 2003 Amendment note below.


1993—Subsec. (a). Pub. L. 102–382, § 614(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Any person who exports, or who knowingly causes to be exported, any merchandise into the customs territory of the United States shall … declare the original country of origin for each article.”

‘(1) a civil penalty not to exceed $10,000; or

‘(2) the general record keeping penalty that applies under the customs laws of the United States.”

Effective and Termination Dates of 2003 Amendment note below.

Subsec. (b). Pub. L. 103–182, § 614(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Any person who exports, or who knowingly causes to be exported, any merchandise into the customs territory of the United States shall … declare the original country of origin for each article.”

‘(1) a civil penalty not to exceed $10,000; or

‘(2) the general record keeping penalty that applies under the customs laws of the United States.”

Effective and Termination Dates of 2005 Amendment note below.

Subsec. (c). Pub. L. 103–182, § 614(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The records required by subsection (a) and (b) of this sec-
tion shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe. “See Construction of 1993 Amendment note below.

Subsec. (e). Pub. L. 103–182, § 205(a)(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Any person who fails to retain records required by subsection (b) of this section or the regulations issued to implement that subsection shall be liable to a civil penalty not to exceed $10,000.” 1988—Subsecs. (b) to (e). Pub. L. 100–449 added subsec. (b), redesignated former subsec. (b) as (c) and inserted “and (b)” after “subsection (a)”, redesignated former subsec. (c) as (d), and added subsec. (e).

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Amendment by Pub. L. 110–138 effective on the date the United States-Peru Trade Promotion Agreement enters into force (Feb. 1, 2009) and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110–138, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109–53 effective on the date the United States-Free Trade Agreement with the Dominican Republic-Central America-United States (CAFTA–DR) enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as an Effective and Termination Dates note under section 4001 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–77, set out in a note under section 3805 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1521 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 206(a) of Pub. L. 103–182 effective on the date the Agreement enters into force with respect to the United States (Jan. 1, 1994), see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3301 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100–449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 206(a) of Pub. L. 103–182 to be made after amendment by section 614 of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 58c of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1509. Examination of books and witnesses

(a) Authority

In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees and taxes due or duties, fees and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may—

(1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that—

(A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and

(B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g) of this section;

(2) summon, upon reasonable notice—

(A) the person who—

(i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

(ii) exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country (as defined in section 3301(4) of this title) or to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada,

(iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or

(iv) filed a declaration, entry, or drawback claim with the Customs Service;

(B) any officer, employee, or agent of any person described in subparagraph (A);

(C) any person having possession, custody or care of records relating to the importation or other activity described in subparagraph (A); or

(D) any other person he may deem proper; to appear before the appropriate customs officer at the time and place within the customs
territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, as defined in subsection (d)(1)(A) of this section, and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

(3) take, or cause to be taken, such testimony of the person concerned, under oath, as may be relevant to such investigation or inquiry.

(b) Regulatory audit procedures

(1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.

(2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.

(3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the officer designated pursuant to regulations, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.

(4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the officer designated pursuant to regulations provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.

(5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.

(d) Special procedures for third-party summonses

(1) For purposes of this subsection—

(A) The term ‘records’ includes those—

(i) required to be kept under section 1508 of this title; or

(ii) regarding which there is probable cause to believe that they pertain to merchandise the importation of which into the United States is prohibited.

(B) The term ‘summons’ means any summons issued under subsection (a) of this section which requires the production of records or the giving of testimony relating to records. Such term does not mean any summons issued to aid in the collection of the liability of any person against whom an assessment has been made or judgment rendered.

(C) The term ‘third-party recordkeeper’ means—

(i) any customhouse broker, unless such customhouse broker is the importer of record on an entry;

(ii) any attorney; and

(iii) any accountant.

(2) If—

(A) any summons is served on any person who is a third-party recordkeeper; and

(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the transactions described in section 1508 of this title of any person (other than the person summoned) who is identified in the description of the records contained in such summons;

then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accom-
panied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.

(3) Any notice required under paragraph (2) of this subsection shall be sufficient if such notice is served in the manner provided in subsection (b) of this section upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person.

(4) Paragraph (2) of this subsection shall not apply to any summons—

(A) served on the person with respect to whose liability for duties, fees, or taxes the summons is issued, or any officer or employee of such person; or

(B) to determine whether or not records of the transactions described in section 1508 of this title of an identified person have been made or kept.

(5) Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under paragraph (2) of this subsection shall have the right—

(A) to intervene in any proceeding with respect to the enforcement of such summons under section 1510 of this title; and

(B) to stay compliance with the summons if, not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given—

(i) notice in writing is given to the person summoned not to comply with the summons; and

(ii) a copy of such notice not to comply with the summons is mailed by registered or certified mail to such person and to such office as the Secretary may direct in the notice referred to in paragraph (2) of this subsection.

(6) No examination of any records required to be produced under a summons as to which notice is required under paragraph (2) of this subsection may be made—

(A) before the expiration of the period allowed for the notice not to comply under paragraph (5)(B) of this subsection, or

(B) if the requirements of such paragraph (5)(B) have been met, except in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance.

(7) The provisions of paragraphs (2) and (5) of this subsection shall not apply with respect to any summons if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(e) List of records and information

The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A) of this section.

(f) Recordkeeping compliance program

(1) In general

After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 1508(a) of this title may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.

(2) Certification

A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program or after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certification requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it—

(A) understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;

(C) has in place procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding such program.

(g) Penalties

(1) “Information” defined

For purposes of this subsection, the term “information” means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A) of this section.

(2) Effects of failure to comply with demand

Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) of this section the following provisions apply:

(A) If the failure to comply is a result of the willful failure of the person to maintain,
store, or retrieve the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.

(B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(C) In addition to any penalty imposed under subparagraph (A) or (B) regarding demanded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise—

(i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or

(ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 1514 or 1520 of this title, at the applicable column 1 general rate of duty:

except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.

(3) Avoidance of penalty

No penalty may be assessed under this subsection if the person can show—

(A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or

(C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.

(4) Penalties not exclusive

Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for—

(A) a penalty imposed under section 1592 of this title for a material omission of the demanded information, or

(B) disciplinary action taken under section 1618 of this title.

(5) Remission or mitigation

A penalty imposed under this section may be remitted or mitigated under section 1618 of this title.

(6) Customs summons

Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.

(7) Alternatives to penalties

(A) In general

When a recordkeeper who—

(i) has been certified as a participant in the recordkeeping compliance program under subsection (f) of this section; and

(ii) is generally in compliance with the appropriate procedures and requirements of the program;

does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(B) Contents of notice

A notice of violation issued under subparagraph (A) shall—

(i) state that the recordkeeper has violated the recordkeeping requirements;

(ii) indicate the record or information which was demanded; and

(iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties.

(C) Response to notice

Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(D) Regulations

The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper’s cooperation.


REFERENCES IN TEXT

Title I, referred to in subsec. (g)(2)(C), means title I of act June 17, 1930, ch. 497, as amended, which contains the Harmonized Tariff Schedule of the United States and which is not set out in the Code. See notes preceding section 1202 of this title and Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions substantially the same, in most respects, as those in this section, were contained in act Oct. 3,
read as follows: "The term 'records' includes statements, declarations, or documents required to be kept under section 1508 of this title.

1979—Pub. L. 95–410 substituted subsec. (a) to (c) provisions for examination of books and witnesses for prior provisions for examination of importer and others, which authorized appropriate customs officers to issue citations for examination under oath of any owner, importer, consignee, agent, or other person upon any material matter or thing respecting any imported merchandise then under consideration or previously imported within one year, in ascertaining the classification or the value thereof or the rate or amount of duty and to require production of any letter, accounts, contracts, invoices, or other documents relating to the merchandise, and the reduction of the testimony to writing, required the testimony to be filed and preserved under Customs Court rules, and authorized consideration of the evidence in subsequent proceedings relating to the merchandise.


1948—Act June 25, 1948, struck out "and judges and divisions of the United States Customs Court" after "Collectors and appraisers" in first sentence.

EFFECTIVE DATE OF 2002 AMENDMENT
Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT
Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1996, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT
Amendment by section 205(b) of Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States (Jan. 1, 1994), see section 219(b) of Pub. L. 103–182, set out as an Effective Date note under section 3311 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1948 AMENDMENT
Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

CONSTRUCTION OF 1993 AMENDMENT
Amendment by section 205(b) of Pub. L. 103–182 to be made after amendment by section 615 of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 58c of this title.

TRANSFER OF FUNCTIONS
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2053(d) and 5524(d) and 517 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 522 of Title 6.

§ 1510. Judicial enforcement
(a) Order of court
If any person summoned under section 1509 of this title does not comply with the summons,
the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof and such court may assess a monetary penalty.

(b) Sanctions

(1) For so long as any person, after being adjudged guilty of contempt for neglecting or refusing to obey a lawful summons issued under section 1509 of this title and for refusing to obey the order of the court, remains in contempt, the Secretary may—

(A) prohibit that person from importing merchandise into the customs territory of the United States directly or indirectly or for his account, and

(B) instruct the appropriate customs officers to withhold delivery of merchandise imported directly or indirectly by that person or for his account.

(2) If any person remains in contempt for more than one year after the date on which the Secretary issues instructions under paragraph (1)(B) with respect to that person, the appropriate customs officers shall cause all merchandise held in customs custody pursuant to such instructions to be sold at public auction or otherwise disposed of under the customs laws.

(3) The sanctions which may be imposed under paragraphs (1) and (2) are in addition to any punishment which may be imposed by the court for contempt.


Provisions similar to those in this section were contained in act May 27, 1921, ch. 14, § 485, 42 Stat. 18, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 511, 42 Stat. 969. Section 511 of the 1922 act was superseded by section 511 of act June 17, 1930, comprising this section, and repealed by section 651a(a)(1) of the 1930 act.

Earlier provisions for assessment of additional duty for failure or refusal of persons importing merchandise or dealing in imported merchandise to submit their books, records, etc., to inspection, were contained in act Oct. 3, 1913, ch. 16, § III, V, 38 Stat. 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 969.

§ 1512. Deposit of duty receipts

All moneys paid to any customs officer for unascertained duties or for duties paid under protest against the rate or amount of duties charged shall be deposited to the credit of the Treasurer of the United States and shall not be held by the customs officers to await any ascertainment of duties or the result of any litigation in relation to the rate or amount of duties legally chargeable and collectible in any case where money is so paid.


PRIOR PROVISIONS

Provisions substantially the same as those in this section were contained in Act Oct. 10, 1880, ch. 5, 21 Stat. 264; in Act June 17, 1890, ch. 626, 26 Stat. 264; in Act Aug. 5, 1909, ch. 6, § 23, 36 Stat. 100. Section III, P. of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, title IV, § 509, 42 Stat. 968, and repealed by section 643 thereof. Section 509 of the 1922 act was superseded by section 510 of act June 17, 1930, comprising this section, and repealed by section 651a(a)(1) of the 1930 act.

Prior provisions similar to those in this section were contained in R.S. §§ 2923, 2924, prior to repeal by section 651 of the Customs Administrative Act of June 10, 1890, ch. 16, § 112D, P. 38 Stat. 188, which substantially reenacted the provisions of the Customs Administrative Act of June 10, 1890, ch. 47, § 17, 26 Stat. 139, as renumbered and reenacted without other change by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 23, 36 Stat. 100. Section III, P. of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, title IV, § 509, 42 Stat. 968, and repealed by section 643 thereof. Section 509 of the 1922 act was superseded by section 510 of act June 17, 1930, comprising this section, and repealed by section 651a(a)(1) of the 1930 act.

Prior provisions similar to those in this section were contained in R.S. §§ 2923, 2924, prior to repeal by section 29 of the Customs Administrative Act of June 10, 1890, 26 Stat. 141.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182 inserted before period at end “and such court may assess a monetary penalty.”

1978—Pub. L. 95–410 substituted judicial enforcement provisions covering court order for compliance with administrative summonses and imposition of specified sanctions for prior provisions covering imposition of penalties for refusal to give testimony, including provision for a penalty of not less than $20 nor more than $500 for refusing to appear or to produce documents or to subscribe his name to a deposition or refusing to answer interrogatories; deeming the last made appraisement of the merchandise as final where an owner, importer, or consignee failed to comply with examination provisions; deeming the person falsely swearing on an examination guilty of perjury; and forfeiture of the merchandise where the person was an owner, importer, or consignee, or the recovery of its value from him.

1970—Pub. L. 91–271 substituted references to appropriate customs officer for references to collector or appraiser wherever appearing, and struck out references to divisions of United States Customs Court.

Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.


Provisions similar to those in this section were contained in act May 27, 1921, ch. 14, § 485, 42 Stat. 18, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 511, 42 Stat. 969. Section 511 of the 1922 act was superseded by section 511 of act June 17, 1930, comprising this section, and repealed by section 651a(a)(1) of the 1930 act.

Earlier provisions for assessment of additional duty for failure or refusal of persons importing merchandise or dealing in imported merchandise to submit their books, records, etc., to inspection, were contained in act Oct. 3, 1913, ch. 16, § III, V, 38 Stat. 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 969.

§ 1512. Deposit of duty receipts

All moneys paid to any customs officer for unascertained duties or for duties paid under protest against the rate or amount of duties charged shall be deposited to the credit of the Treasurer of the United States and shall not be held by the customs officers to await any ascertainment of duties or the result of any litigation in relation to the rate or amount of duties legally chargeable and collectible in any case where money is so paid.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 3010, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 512, 42 Stat. 969, and was repealed by section 642 thereof. Section 512 of the 1922 act was superseded by section 512 of act June 17, 1930, comprising this section, and repealed by section 651a(a)(1) of the 1930 act.

AMENDMENTS


Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1513. Customs officer’s immunity

No customs officer shall be liable in any way to any person for or on account of—

(1) any ruling or decision regarding the appraisement or the classification of any im-


portated merchandise or regarding the duties, fees, and taxes charged thereon,
(2) the collection of any dues, charges, duties, fees, and taxes on or on account of any imported merchandise, or
(3) any other matter or thing as to which any person might under this chapter be entitled to protest or appeal from the decision of such officer.


PRIOR PROVISIONS
Provisions substantially the same as those in this section, except that they did not specifically refer to rulings or decisions as to appraisement, were contained in act Oct. 3, 1913, ch. 16, §III, Z, 38 Stat. 191, which reenacted without change the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, §25, 26 Stat. 141, as reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 103. Section III, Z, of the 1913 act was superseded and more closely assimilated to section 513 of the 1922 act was superseded by section 513 of act Sept. 21, 1922, ch. 356, title IV, §513, 42 Stat. 969, and repealed by section 643 thereof. Section 1913 act was superseded and more closely assimilated to the Administrative Act of June 10, 1890, ch. 407, §25, 26 Stat. 290; Pub. L. 103–182, title VI, §644, Dec. 8, 1993, 107 Stat. 2206.)

AMENDMENTS
1993—Pub. L. 103–182 amended section generally. Prior to amendment, section read as follows: “No customs officer shall be in any way liable to any owner, importer, consignee, or agent or any other person for or on account of any rulings or decisions as to the appraisement or the classification of any imported merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent might under this chapter be entitled to protest or appeal from the decision of such officer.”

1970—Pub. L. 91–271 substituted “customs officer” for “collector or other customs officer” and “such officer” for “such collector or other officer”.

EFFECTIVE DATE OF 1970 AMENDMENT
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1514. Protest against decisions of Customs Service

(a) Finality of decisions; return of papers

Except as provided in subsection (b) of this section, section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by domestic interested parties), section 1520 of this title (relating to refunds), and section 6501 of title 26 (but only with respect to taxes imposed under chapters 51 and 52 of such title), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and, decisions of the Customs Service, including the legality of all orders and findings entering into the same, as to—
(1) the appraised value of merchandise;
(2) the classification and rate and amount of duties chargeable;
(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;
(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 1337 of this title;
(5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof, including the liquidation of an entry, pursuant to either section 1500 of this title or section 1504 of this title;
(6) the refusal to pay a claim for drawback;
(7) the refusal to reliquidate an entry under subsection (d) of section 1520 of this title;

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the Customs Service, which shall take action accordingly.

(b) Finality of determinations

With respect to determinations made under section 1303 of this title or subtitle IV of this chapter which are reviewable under section 1516a of this title, determinations of the Customs Service are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 1516a of this title is commenced in the United States Court of International Trade, or review by a binational panel of a determination to which section 1516a(g)(2) of this title applies is commenced pursuant to section 1516a(g) of this title and article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.

(e) Form, number, and amendment of protest; filing of protest

(1) A protest of a decision made under subsection (a) of this section shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—
(A) each decision described in subsection (a) of this section as to which protest is made;
(B) each category of merchandise affected by each decision set forth under paragraph (1);
(C) the nature of each objection and the reasons therefor; and
(D) any other matter required by the Secretary by regulation.

Only one protest may be filed for each entry of merchandise, except that where the entry covers
merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise, or with respect to a determination of origin under section 3332 of this title, that is the subject of a protest are deemed to be part of a single protest. Unless a request for accelerated disposition is filed under section 1515(b) of this title, a protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) of this section which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 1515 of this title at any time prior to the disposition of the protest in accordance with that section.

New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 1515 of this title at any time prior to the disposition of the protest in accordance with that section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 1515 of this title at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 1485(d) and 1557 of this title, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section—

(A) the importers or consignees shown on the entry papers, or their sureties;
(B) any person paying any charge or exaction;
(C) any person seeking entry or delivery;
(D) any person filing a claim for drawback;
(E) with respect to a determination of origin under section 3332 of this title, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise; or
(F) any authorized agent of any of the persons described in clauses (A) through (E).

(3) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with the Customs Service within 180 days after but not before—

(A) date of liquidation or reliquidation, or
(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 180 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety’s protest shall certify that it is not being filed collusively to extend another authorized person’s time to protest as specified in this subsection.

(d) Limitation on protest of reliquidation

The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the Customs Service upon any question not involved in such reliquidation.

(e) Advance notice of certain determinations

Except as provided in subsection (f) of this section, an exporter or producer referred to in subsection (c)(2)(E) of this section shall be provided notice in advance of an adverse determination of origin under section 3332 of this title. The Secretary may, by regulations, prescribe the time period in which such advance notice shall be issued and authorize the Customs Service to provide in the notice the entry number and any other entry information considered necessary to allow the exporter or producer to exercise the rights provided by this section.

(f) Denial of preferential treatment

If the Customs Service finds indications of a pattern of conduct by an exporter or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 3332 of this title—

(1) the Customs Service, in accordance with regulations issued by the Secretary, may deny preferential tariff treatment to entries of identical goods exported or produced by that person; and

(2) the advance notice requirement in subsection (e) of this section shall not apply to that person;

until the person establishes to the satisfaction of the Customs Service that its representations are in conformity with section 3332 of this title.

(g) Denial of preferential tariff treatment under United States-Chile Free Trade Agreement

If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act, the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may deny preferential tariff treatment under the United States-Chile Free Trade Agreement to entries of identical goods imported by that person until the person establishes to the satisfaction of the Bureau of Customs and Border Protection that representations of that person are in conformity with such section 202.

(h) Denial of preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement

If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 4033 of this title, the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until the Bureau of Customs and Border Protection determines that representations of that person are in conformity with such section 4033 of this title.

(i) Denial of preferential tariff treatment under the United States-Peru Trade Promotion Agreement

If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 110–138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 110–53, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

Section 1303 of this title, referred to in subsec. (b), is defined in section 1677(b)(26) of this title to mean section 1593 as in effect on the day before Jan. 1, 1995.

Section 202 of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsec. (g), is section 202 of Pub. L. 108–77, which is set out in a note under section 8805 of this title.

Section 203 of the United States-Peru Trade Promotion Agreement Implementation Act, referred to in subsec. (1), is section 203 of Pub. L. 110–138, which is set out in a note under section 8805 of this title.

CODIFICATION

Section was formerly classified to former section 579 of this title subsequent to its classification to section 784 of title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 464, §1, 62 Stat. 699.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §514, 42 Stat. 969. That section was superseded by section 514 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions that the decision of the collector as to duties, including dutiable costs and charges, and as to all fees and exactions, should be final and conclusive unless a protest was filed within 30 days after ascertainment and liquidation of duties or within 15 days after payment of fees, charges and exactions, with further provisions as to fees, transmission of the papers to the Board of General Appraisers, etc., were contained in act Oct. 3, 1913, ch. 16, §§ 111, N. 38 Stat. 197; the provisions of which were substituted for provisions of a similar nature in the Customs Administrative Act of June 10, 1890, ch. 407, §14, 26 Stat. 137, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §208, 36 Stat. 100. Section III, N. of the 1913 act was repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

Provisions relating to decisions of the collector, and appeals therefrom to the Secretary of the Treasury were contained in R.S. §§ 2931, 2932, prior to repeal by section 29 of the Customs Administrative Act, 28 Stat. 141.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–3, in introductory provisions, substituted “section 1520 of this title (relating to refunds), and section 6501 of title 26 (but only with respect to taxes imposed under chapters 51 and 52 of such title)” for “and section 1520 of this title (relating to refunds)”.


2004—Subsec. (a). Pub. L. 108–429, §2103(1)(A), substituted “(relating to refunds), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and” for “(relating to refunds and errors)” in introductory provisions.

Subsec. (a)(4). Pub. L. 108–429, §2103(1)(B), inserted “, including the liquidation of an entry, pursuant to either section 1500 of this title or section 1504 of this title after “thereof”.”

Subsec. (a)(7). Pub. L. 108–429, §2103(1)(C), struck out “(c) or” after “subsection”.

Subsec. (c)(1). Pub. L. 108–429, §2103(2)(A), which directed substitution of “Unless a request for accelerated disposition is filed under section 1515(b) of this title, a protest may be amended,” for “A protest may be amended,” in the sixth sentence, was executed by making the substitution in the fifth sentence, to reflect the probable intent of Congress.

Subsec. (c)(3). Pub. L. 108–429, §2103(2)(B)(i), (iii), substituted “180 days” for “ninety days” in introductory provisions and “180 days” for “90 days” in concluding provisions.


Subsec. (a). Pub. L. 103–182, §645(1), in introductory provisions, substituted “Customs Service” for “appropriate customs officer”, in par. (5), inserted “or rec-
conciliation as to the issues contained therein,” after ‘‘entry,’’ in par. (6), substituted “or” for “and” at end, in par. (7), substituted a semicolon for the comma at end, and in concluding provisions, substituted “Customs Service, which” for “appropriate customs officer, who”.

Subsec. (b). Pub. L. 103–182, § 645(5), substituted “Customs Service” for “appropriate customs officer”.

Pub. L. 103–182, § 412(a), inserted “the North American Free Trade Agreement or” before “the United States-Canada Free-Trade Agreement”.

Subsec. (c)(1). Pub. L. 103–182, § 208(1), inserted in fourth sentence “, or with respect to a determination of origin under section 3332 of this title,” after “with respect to any one category of merchandise”.

See Construction of 1993 Amendment note below.

Pub. L. 103–182, § 645(3), substituted first two sentences, including subpars. (A) to (D), for former first sentence which read as follows: “A protest of a decision under subsection (a) of this section shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) of this section as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection and reasons therefor.” See Construction of 1993 Amendment note below.

Subsec. (c)(2). Pub. L. 103–182, § 208(2), added subpar. (E) and redesignated former subpar. (E) as (F) and substituted “clauses (A) through (E)” for “clauses (A) through (D)”.

See Construction of 1993 Amendment note below.


Subsec. (c)(3). Pub. L. 103–182, § 645(4), redesignated par. (2) as (3) and substituted “the Customs Service” for “such customs officer” in introductory provisions.

Subsec. (d). Pub. L. 103–182, § 645(6), substituted “Customs Service” for “appropriate customs officer”.

Subsecs. (e), (f). Pub. L. 103–182, § 208(3), added subsecs. (e) and (f).

1986—Subsec. (b). Pub. L. 99–514 inserted “, or review by a binational panel of a determination to which section 1516a(g)(2) of this title applies is commenced pursuant to section 1516a(g) of this title and article 1904 of the United States-Canada Free-Trade Agreement before or after the period at end.

1984—Subsec. (a). Pub. L. 98–573 substituted “section 1677a(C), (D), (E), and (F) of this title” for “section 1677a(C), (D), (E), and (F) of this title” in (f) thereof.

Subsec. (c). Pub. L. 98–573 redesignated former subsec. (c) as (d).

1980—Pub. L. 96–147, §§ 601(5), 605, redesignated the United States Customs Court as the United States Court of International Trade, inserted in item (4) provision for decisions as to a demand for redelivery to customs custody and the phrase “, except a determination appealable under section 1337 of this title” and substituted provision for contesting denial of a protest in accordance with chapter 169 of title 28 within the time prescribed by section 2636 of that title for provision for such contest in accordance with section 2632 of title 28 within the time prescribed by section 2631 of that title.

1979—Subsec. (a). Pub. L. 96–39, § 1001(b)(3)(A), (B), inserted reference to subsection (b) of this section and substituted “section 1516 of this title (relating to petitions by domestic interested parties as defined in section 1677a(C), (D), and (E) of this title)” for “section 1516 of this title (relating to petitions by American manufacturers, producers, and wholesalers)” in provisions preceding par. (1).


Subsec. (c)(1). Pub. L. 96–39, § 1001(b)(3)(C), (E), redesignated former subsec. (b)(1) as (c)(1) and substituted provisions that, except as provided in sections 1485(d) and 1557(b) of this title, protests may be filed by importers or consignees or their sureties, persons paying a charge or exaction, persons seeking entry or delivery, persons filing a claim for drawback, and authorized agents of such persons, for provisions that, except as otherwise provided in section 1557(b) of this title, protests could be filed only by importers, consignees, or the authorized agents of persons paying any charges, or exactions, persons filing claims for drawback, or persons seeking entry or delivery.

Subsec. (c)(2). Pub. L. 96–39, § 1001(b)(3)(C), (F), redesignated former subsec. (b)(2) as (c)(2) and inserted provision that a protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond and that, if another party has not filed a timely protest, the surety’s protest shall certify that it is not being filed collusively to extend another authorized person’s time to protest as specified in this subsection.

Subsec. (d). Pub. L. 96–39, § 1001(b)(3)(C), redesignated former subsec. (c) as (d).

1979—Pub. L. 91–271 designated existing provisions as subsec. (a), expanded references to sections excepted from application of this section, substituted decisions of the appropriate customs officer for all decisions of the collector as deemed to be final and conclusive, reorganized the categories of decisions and findings subject to such finality and conclusiveness, and revised the procedures for filing of protests, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 111–3 effective Apr. 1, 2009, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of Title 42, The Public Health and Welfare.


EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Amendment by Pub. L. 110–138 effective on the date the United States-Peru Trade Promotion Agreement enters into force (Feb. 1, 2009) and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110–138, set out in a note under section 3805 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 356c of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109–53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as an Effective and Termination Dates note under section 4001 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–429 applicable to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 3, 2004, see

**Effective and Termination Dates of 2003 Amendment**

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a)(c), of Pub. L. 108–77, set out in a note under section 3850 of this title.

**Effective Date of 1999 Amendment**

Pub. L. 106–36, title II, §2408(c), June 25, 1999, 113 Stat. 171, provided that: "The amendments made by this section [amending this section and section 1520 of this title] apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act [June 25, 1999]."

**Effective Date of 1993 Amendment**

Amendment by section 208 of Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

Amendment by section 412(a) of Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of this title, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of this title, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review, that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

**Effective and Termination Dates of 1988 Amendment**

Amendment by Pub. L. 100–449 effective on date the United States-Canada Free-Trade Agreement enters into force with respect to the United States (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of this title.

**Effective Date of 1984 Amendment**

Amendment by Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of subtitle IV of this chapter, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

**Effective Date of 1980 Amendment**

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

**Effective Date of 1979 Amendment**

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see sections 1002 and 107 of Pub. L. 96–39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

**Effective Date of 1970 Amendment**

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

**Construction of 1993 Amendment**

Amendment by section 208 of Pub. L. 103–182 to be made after amendment by section 645 of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 56c of this title.

**Transfer of Functions**

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, see section 5 of this title.

**Effect of Termination of NAFTA Country Status**

For provisions relating to effect of termination of NAFTA country status on the provisions of sections 401 to 416 of Pub. L. 103–182, see section 3451 of this title.

**Inconsistent Decisions of Customs Officers**

Pub. L. 100–690, title VII, §7361(c), Nov. 18, 1988, 102 Stat. 4474, provided that:

"(1) The Secretary of the Treasury shall prescribe regulations that—"

"(A) effect uniformity in—"

"(i) decisions described in section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) that are made by customs officers with respect to the same, or substantially similar, merchandise, and"

"(ii) decisions to conduct intensified inspections or examinations of merchandise at ports of entry, and"

"(B) establish procedures that allow individuals described in section 514(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1514(c)(1)), any port authority, and any other interested party (within the meaning of section 516(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1516(a)(2))) to petition the Secretary to obtain such uniformity in an expedited and timely fashion."

"(2) The Secretary of the Treasury shall publish in the Federal Register and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the proposed and final form of the regulations prescribed under paragraph (1) and shall receive and consider comments from the public regarding the proposed form of such regulations during the 60-day period beginning on the date the proposed form of such regulations are published in the Federal Register."

"(3) The regulations prescribed under paragraph (1) shall take effect no later than April 1, 1989."

"(4) By no later than September 1, 1989, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the effectiveness of the regulations prescribed under paragraph (1) and recommendations for permanent legislation addressing uniformity."
§ 1515. Review of protests

(a) Administrative review and modification of decisions

Unless a request for an accelerated disposition of a protest is filed in accordance with subsection (b) of this section the appropriate customs officer, within two years from the date the protest was filed in accordance with section 1514 of this title, shall review the protest and shall allow or deny such protest in whole or in part. Thereafter, any duties, charge, or excise found to have been assessed or collected in excess shall be remitted or refunded and any drawback found due shall be paid. Upon the request of the protesting party, filed within the time allowed for the filing of a protest under section 1514 of this title, a protest may be subject to further review by another appropriate customs officer, under the circumstances and in the form and manner that may be prescribed by the Secretary in regulations, but subject to the two-year limitation prescribed in the first sentence of this subsection. Within 90 days from the date an application for further review is filed, the appropriate customs officer shall allow or deny the application and, if allowed, the protest shall be forwarded to the customs officer who will be conducting the further review. Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary in regulations, but subject to the two-year limitation prescribed in the first sentence of this subsection. Within 30 days from the date an application for further review is filed, the appropriate customs officer shall allow or deny the application and, if allowed, the protest shall be forwarded to the customs officer who will be conducting the further review. Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary in regulations, but subject to the two-year limitation prescribed in the first sentence of this subsection. Within 30 days from the date an application for further review is filed, the appropriate customs officer shall allow or deny the application and, if allowed, the protest shall be forwarded to the customs officer who will be conducting the further review.

(b) Request for accelerated disposition of protest

A request for accelerated disposition of a protest filed in accordance with section 1514 of this title may be mailed by certified or registered mail to the appropriate customs officer any time concurrent with or following the filing of such protest. For purposes of section 1581 of title 28, a protest which has not been allowed or denied in whole or in part within thirty days following the date of mailing by certified or registered mail of a request for accelerated disposition shall be deemed denied on the thirtieth day following mailing of such request.

(c) Request for set aside of denial of further review

If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the Commissioner of Customs a written request that the denial of the application for further review be set aside. Such request must be filed within 60 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appropriate. If the Commissioner of Customs fails to act within 60 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2636 of title 28. If an action is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any administrative action taken subsequent to the commencement of the action is null and void.

(d) Voiding denial of protest

If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written request by the protesting party filed with the appropriate port director within 90 days after the date of the protest denial, void the denial of the protest.

(Prior Provisions)

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 515, 42 Stat. 970. That section was superseded by section 515 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for transmission of the invoice, papers, and exhibits to the board of general appraisers in case of protest, and provisions concerning the conclusiveness of its determination, were contained in act Oct. 3, 1913, ch. 16, § 11, 38 Stat. 187, the provisions of which were substituted for provisions of a similar nature in Customs Administrative Act of June 10, 1890, ch. 407, § 14, 26 Stat. 137, as amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 100.

Amendments


1996—Subsec. (a). Pub. L. 104–285 inserted after third sentence “Within 30 days from the date an application for further review is filed, the appropriate customs officer shall allow or deny the application and, if allowed, the protest shall be forwarded to the customs officer who will be conducting the further review.”


1993—Subsecs. (c) and (d). Pub. L. 102–182 added subsecs. (c) and (d).


1979—Subsec. (a). Pub. L. 96–39 required that notice of denial include a statement of reasons for denial, as well as a statement informing protesting party of his right to file a civil action contesting denial of a protest under section 1514 of this title.

1970—Pub. L. 91–271 designating existing provisions as subsec. (a), substituted provisions authorizing review by appropriate customs officer for provisions authorizing review by collector and revised such review procedures, and added subsec. (b).

Effective Date of 2004 Amendment

Amendment by Pub. L. 108–429 applicable to merchandise entered, or withdrawn from warehouse for con-
sumption, on or after the 15th day after Dec. 3, 2004, see section 2108 of Pub. L. 108–229, set out as a note under section 1401 of this title.

**Effective Date of 1996 Amendment**
Amendment by Pub. L. 104–285 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–285, set out as a note under section 1321 of this title.

**Effective Date of 1980 Amendment**
Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 761(a) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

**Effective Date of 1979 Amendment**
Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see sections 1062 and 107 of Pub. L. 96–39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

**Effective Date of 1970 Amendment**
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

**Transfer of Functions**
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of reorganization or the sale of assets, see sections 203(1), 551(d), 552(d), and 577 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**Functions of Secretary of the Treasury under this section insofar as they relate to any protest, petition, or notice of desire to contest described in section 2171 of this title.**

**Review of Protests in Import Surcharge Cases**
Pub. L. 93–418, title VI, §611, Jan. 3, 1975, 88 Stat. 2075, provided that: “Notwithstanding the provisions of section 513(a) of the Tariff Act of 1930 (19 U.S.C. 1513(a)), in the case of any protest under section 514 of such Act [section 1514 of this title] involving the imposition of an import surcharge in the form of a supplemental duty pursuant to Presidential Proclamation 4074, dated August 17, 1971 [set out as a note preceding section 1202 of this title], the time for review and allowing or denying the protest shall not expire until five years from the date the protest was filed in accordance with such section 514 [section 1514 of this title].”

**§ 1516. Petitions by domestic interested parties**

(a) Request for classification and rate of duty: petition

(1) The Secretary shall, upon written request by an interested party furnish the classification and the rate of duty imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by such interested party. If the interested party believes that the appraised value, the classification, or rate of duty is not correct, it may file a petition with the Secretary setting forth—

(A) a description of the merchandise,

(B) the appraised value, the classification, or the rate of duty that it believes proper, and

(C) the reasons for its belief.

(2) As used in this section, the term “interested party” means a person who is—

(A) a manufacturer, producer, or wholesaler in the United States;

(B) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States; or

(C) a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States.

(3) Any producer of a raw agricultural product who is considered under section 1677(h)(4)(E) of this title to be part of the industry producing a processed agricultural product of the same class or kind as the designated imported merchandise shall, for purposes of this section, be treated as an interested party producing such processed agricultural product.

(b) Determination on petition

If, after receipt and consideration of a petition filed by such an interested party, the Secretary determines that the appraised value, the classification, or rate of duty is not correct, he shall determine the proper appraised value, classification, or rate of duty and shall notify the petitioner of his determination. All such merchandise entered for consumption or withdrawn from warehouse for consumption more than thirty days after the date such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised, classified, or assessed as to the rate of duty in accordance with the Secretary’s determination.

(c) Contest by petitioner of appraised value, classification, or rate of duty

If the Secretary determines that the appraised value, classification, or rate of duty with respect to which a petition was filed pursuant to subsection (a) of this section is correct, he shall notify the petitioner. If dissatisfied with the determination of the Secretary, the petitioner may file with the Secretary, not later than thirty days after the date of the notification, notice that it desires to contest the appraised value, classification, or rate of duty. Upon receipt of notice from the petitioner, the Secretary shall cause publication to be made of his determination as to the proper appraised value, classification, or rate of duty and of the petitioner’s desire to contest, and shall thereafter furnish the petitioner with such information as to the entries and consignees of such merchandise, entered after the publication of the determination of the Secretary, at such ports of entry designated by the petitioner in his notice of desire to contest, as will enable the petitioner to contest the appraised value, classification, or rate of duty imposed upon such merchandise in the liquidation of one such entry at such port. The Secretary shall direct the appropriate customs
officer at such ports to immediately notify the petitioner by mail when the first of such entries is liquidated.

(d) Appraisal, classification, and liquidation of entries of merchandise covered by published decisions of Secretary

Notwithstanding the filing of an action pursuant to chapter 169 of title 28, merchandise of the character covered by the published decision of the Secretary (when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit, not in harmony with the published decision of the Secretary) shall be appraised or classified, or both, and the entries liquidated, in accordance with the decision of the Secretary and, except as otherwise provided in this chapter, the final liquidations of these entries shall be conclusive upon all parties.

(e) Consignee or his agent as party in interest before the Court of International Trade

The consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Court of International Trade.

(f) Appraisal, classification, and assessment of duty of merchandise covered by published decision of Secretary in accordance with final judicial decision of Court of International Trade or Court of Appeals for the Federal Circuit sustaining cause of action in whole or in part; suspension of liquidation of entries; publication

If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the final decision, shall be subject to appraisement, classification, and assessment of duty in accordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the final decision. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(g) Regulations implementing required procedures

Regulations implementing the procedures required under this section.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1930, ch. 356, title IV, §516, 42 Stat. 970. That section was superseded by section 516 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Application of subsection (b) of this section to complaints. Section 17(b) of act June 25, 1938, provided that: '(b) The provisions of subsection (b) of section 516 of the Tariff Act of 1930 [this section], as amended by this Act, shall apply only in the case of complaints filed after the effective date of this Act [see section 1653a of this title]. The provisions of subsection (b) of section 516 of the Tariff Act of 1930, as in force prior to the effective date of this Act, shall continue in force with respect to any proceedings commenced by the filing of a complaint thereunder, except that upon the expiration of thirty days after the effective date of this Act, or upon the expiration of thirty days after the date of a decision of the Secretary adverse to the complainant, whichever is the later, any such proceedings in which a protest has not been duly filed shall be deemed to have been terminated unless the complainant shall have filed with the Secretary after the effective date of this Act a notice that he desires to protest the classification of, or rate of duty assessed upon, the merchandise.'

AMENDMENTS


1986—Subsec. (a)(2). Pub. L. 99–514 inserted "Such term includes an association, a majority of whose members is composed of persons described in subparagraph (A), (B), or (C)."


1980—Subsec. (a). Pub. L. 96–417, §607(a), designated existing provisions as par. (1), redesignated subpars. (A), (B), and (C), former pars. (1), (2), and (3), struck out "(as defined in section 1677(9)(C), (D), and (E) of this Act)" and inserted in parentheses "(A), (B), or (C)."

1979—Pub. L. 96–39 completely revised the section to provide an expedited process for judicial review of an appealable determination, expanded the size of the group of parties having standing to obtain review of an appealable determination, and, in the process, revised subsecs. (a), (b), and (c), redesignated former subsecs. (e), (f), (g), and (h) as (d), (e), (f), and (g), and struck out former subsec. (d) relating to the contest of the Secretary’s determination that foreign merchandise was not being sold in the United States at less than fair value or that bounty or grant was not being paid.

1975—Subsec. (a)(2). Pub. L. 93–618, §331(b), inserted provisions relating to additional duty described in section 1933 of this title (to be known as "countervailing duties") and to special duty described in section 161 of this title (to be known as "antidumping duties")

Subsecs. (b), (c). Pub. L. 93–618, §331(b), inserted provisions relating to countervailing duties and antidumping duties.

Subsecs. (d) to (h). Pub. L. 93–618, §321(f)(1), added subsec. (d) and redesignated subsec. (d) to (g) as (e) to (h), respectively.

§ 1516  TITLE 19—CUSTOMS DUTIES  Page 200

1970—Subsec. (a). Pub. L. 91-271 substituted provisions requiring the Secretary to furnish to the American manufacturer, producer, or wholesaler the classification and the rate of duty, if any, imposed upon designated imported merchandise, and provisions authorizing the American manufacturer, etc., to file a protest with the Secretary if the appraised value is too low, the classification is not correct, or the proper rate of duty is not being assessed, for provisions setting forth the procedure for the determination of a protest by an American manufacturer, producer, or wholesaler that the classification of, and the rate of duty, if any, is not proper.

Subsec. (b). Pub. L. 91-271 substituted provisions authorizing the Secretary to determine the proper appraised value, classification, or rate of duty of the imported merchandise, and to notify the American manufacturer, producer, or wholesaler of his determination, for provision setting forth the procedure for the determination of a protest by an American manufacturer, producer, or wholesaler that the classification of, and the rate of duty, if any, is not correct, or the proper rate of duty is not being assessed, for provisions setting forth the procedure for the contest of a protest filed by an American manufacturer, producer, or wholesaler, and authorizing such consignee or his agent a copy of every appeal and every decision of the Secretary adverse to the complainant, or notice of desire to contest described in section 516(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, §15(a)(1x)(D), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 11286, Jan. 2, 1960, 45 F.R. 993, set out as notes under section 2171 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT
For effective date of amendment by Pub. L. 91-271, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1948 AMENDMENT
Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

EFFECTIVE DATE OF 1938 AMENDMENT
Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS
Functions of Secretary of the Treasury under this section insofar as they relate to any protest, petition, or notice of desire to contest described in section 516(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, §15(a)(1x)(D), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 11286, Jan. 2, 1960, 45 F.R. 993, set out as notes under section 2171 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989
For provisions directing that if any amendments made by title A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1801-1894A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 2171 of this title.

APPLICATION OF SUBSECTION (b) TO COMPLAINTS
Section 17(b), (c) of act of June 25, 1938, as amended by act June 16, 1961, ch. 141, §9(b), 65 Stat. 75, provided that:

“(b) The provisions of subsection (b) of section 516 of the Tariff Act of 1930 [this section], as amended by this act, shall apply only in the case of complaints filed after the effective date of this act [see Effective Date of 1938 Amendment note set out under section 1401 of this title]. The provisions of subsection (b) of section 516 of the Tariff Act of 1930, as in force prior to the effective date of this act, shall continue in force with respect to any proceedings commenced by the filing of a complaint thereunder, except that upon the expiration of thirty days after the effective date of this act, or upon the expiration of thirty days after the date of a decision of the Secretary adverse to the complainant, whichever is the later, any such proceedings in which a protest has not been duly filed shall be deemed to have been terminated unless the complainant shall have filed with the Secretary after the effective date of this act a notice that he desires to protest the classification of, or rate of duty assessed upon, the merchandise.

“(c) [Repealed. June 16, 1951, ch. 141, §9(b), 65 Stat. 75.]”
§ 1516a. Judicial review in countervailing duty and antidumping duty proceedings

(a) Review of determination

(1) Review of certain determinations

Within 30 days after the date of publication in the Federal Register of—

(A) a determination by the administering authority, under 1671a(c)\(^1\) or 1673a(c) of this title, not to initiate an investigation,

(B) a determination by the Commission, under section 1675(b) of this title, not to review a determination based upon changed circumstances,

(C) a negative determination by the Commission, under section 1671b(a) or 1673b(a) of this title, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, or

(D) a final determination by the administering authority or the Commission under section 1675(c)(3) of this title,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) Review of determinations on record

(A) In general

Within thirty days after—

(i) the date of publication in the Federal Register of—

(I) notice of any determination described in clause (ii), (iii), (iv), (v), or (viii) of subparagraph (B),

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(III) notice of the implementation of any determination described in clause (vii) of subparagraph (B), or

(ii) the date of mailing of a determination described in clause (vi) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) Reviewable determinations

The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the administering authority and by the

Commission under section 1671d or 1673d of this title, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 1671d or 1673d of this title, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by the administering authority or the Commission under section 1675 of this title.

(iv) A determination by the administering authority, under section 1671c or 1673c of this title, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net countervailable subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 1671(h) or 1673(h) of this title.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(vii) A determination by the administering authority or the Commission under section 3538 of this title concerning a determination under subtitle IV of this chapter.

(viii) A determination by the Commission under section 1675(a)(1) of this title.

(3) Exception

Notwithstanding the limitation imposed by paragraph (2)(A)(i)(II) of this subsection, a final affirmative determination by the administering authority under section 1671d or 1673d of this title may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 1671d or 1673d of this title.

(4) Procedures and fees

The procedures and fees set forth in chapter 169 of title 28 apply to an action under this section.

(5) Time limits in cases involving merchandise from free trade area countries

Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) of this section apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies:

\(^1\) So in original. Probably should be preceded by “section”.\)
§ 1516a

(1) Remedy

The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under subparagraph (A), (B), or (C) of subsection (a) of this section, to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,

(B) in an action brought under paragraph (2) of subsection (a) of this section, to be unsupported by substantial evidence on the record, or otherwise not in accordance with law, or

(ii) in an action brought under paragraph (1)(D) of subsection (a) of this section, to be

(2) Record for review

(A) In general

For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 1677(a)(3) of this title; and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) Confidential or privileged material

The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(3) Effect of decisions by NAFTA or United States-Canada binational panels

In making a decision in any action brought under subsection (a) of this section, a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the NAFTA or of the Agreement.

(c) Liquidation of entries

(1) Liquidation in accordance with determination

Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) of this section shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary, the administering authority of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) Injunctive relief

In the case of a determination described in paragraph (2) of subsection (a) of this section by the Secretary, the administering authority, or the Commission, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise cov-
erred by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

(3) Remand for final disposition
If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) Standing
Any interested party who was a party to the proceeding under section 1303(d) of this chapter shall have the right to appear and be heard as a party in interest before the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit—

(e) Liquidation in accordance with final decision
If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.

(e) Liquidation in accordance with final decision
If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(f) Definitions
For purposes of this section—

(1) Administering authority
The term “administering authority” means the administering authority described in section 1677(1) of this title.

(2) Commission
The term “Commission” means the United States International Trade Commission.

(3) Interested party
The term “interested party” means any person described in section 1677(9) of this title.

(4) Secretary
The term “Secretary” means the Secretary of the Treasury.

(5) Agreement
The term “Agreement” means the United States-Canada Free-Trade Agreement.

(6) United States Secretary
The term “United States Secretary” means—

(A) the secretary for the United States Section referred to in article 1908 of the NAFTA, and

(B) the secretary of the United States Section provided for in article 1909 of the Agreement.

(7) Relevant FTA Secretary
The term “relevant FTA Secretary” means the Secretary—

(A) referred to in article 1908 of the NAFTA, or

(B) provided for in paragraph 5 of article 1909 of the Agreement,

of the relevant FTA country.

(8) NAFTA
The term “NAFTA” means the North American Free Trade Agreement.

(9) Relevant FTA country
The term “relevant FTA country” means the free trade area country to which an antidumping or countervailing duty proceeding pertains.

(10) Free trade area country
The term “free trade area country” means the following:

(A) Canada for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Canada.

(B) Mexico for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Mexico.

(C) Canada for such time as—

(i) it is not a free trade area country under subparagraph (A); and

(ii) the Agreement is in force with respect to, and the United States applies the Agreement to, Canada.

(g) Review of countervailing duty and antidumping duty determinations involving free trade area country merchandise

(1) “Determination” defined
For purposes of this subsection, the term “determination” means a determination described in—

(A) paragraph (1)(B) of subsection (a) of this section, or

(B) clause (i), (ii), (iii), (vi), or (vii) of paragraph (2)(B) of subsection (a) of this section, if made in connection with a proceeding regarding a class or kind of free trade area country merchandise, as determined by the administering authority.

(2) Exclusive review of determination by binational panels
If binational panel review of a determination is requested pursuant to article 1904 of the NAFTA or of the Agreement, then, except as provided in paragraphs (3) and (4)—

(A) the determination is not reviewable under subsection (a) of this section, and

(B) no court of the United States has power or jurisdiction to review the deter-
Exception to exclusive binational panel review

(A) In general
A determination is reviewable under subsection (a) of this section if the determination sought to be reviewed is—

(i) a determination as to which neither the United States nor the relevant FTA country requested review by a binational panel pursuant to article 1904 of the NAFTA or of the Agreement,

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a) of this section, if neither the United States nor the relevant FTA country requested review of the original determination,

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) of this section prior to the entry into force of the NAFTA or of the Agreement,

(iv) a determination which a binational panel has determined is not reviewable by the binational panel,

(v) a determination as to which binational panel review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.

(B) Special rule
A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) of this section only if the party seeking to commence review has provided timely notice of its intent to commence such review to—

(i) the United States Secretary and the relevant FTA Secretary;

(ii) all interested parties who were parties to the proceeding in connection with which the matter arises; and

(iii) the administering authority or the Commission, as appropriate.

Such notice is timely provided if the notice is delivered no later than the date that is 30 days after the date described in subparagraph (A) or (B) of subsection (a)(5) of this section that is applicable to such determination, except that, if the time for requesting binational panel review is suspended under paragraph (B)(A)(ii) of this subsection, any unexpired time for providing notice of intent to commence judicial review shall, during the pendency of any such suspension, also be suspended. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(4) Exception to exclusive binational panel review for constitutional issues
(A) Constitutionality of binational panel review system
An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or the United States-Canada Free-Trade Agreement Implementation Act of 1988 implementing the binational dispute settlement system under chapter 19 of the Agreement, violates the Constitution may be brought only in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of such action.

(B) Other constitutional review
Review is available under subsection (a) of this section with respect to a determination solely concerning a constitutional issue (other than an issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

(C) Commencement of review
Notwithstanding the time limits in subsection (a) of this section, within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action under subparagraph (A) or (B) by filing an action in accordance with the rules of the court.

(D) Transfer of actions to appropriate court
Whenever an action is filed in a court under subparagraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

(E) Frivolous claims
Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 of title 28 and the Federal Rules of Civil Procedure.

(F) Security
(i) Subparagraph (A) actions
The security requirements of rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

(ii) Subparagraph (B) actions
No claim shall be heard, and no temporary restraining order or temporary or
permanent injunction shall be issued, under an action commenced under subparagraph (B), unless the party seeking review files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense parties affected for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justified or that special circumstances make an award unjust.

(G) Panel record

The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

(H) Appeal to Supreme Court of court orders issued in subparagraph (A) actions

Notwithstanding any other provision of law, any final judgment of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subparagraph (A) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

(5) Liquidation of entries

(A) Application

In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c) of this section.

(B) General rule

In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) Suspension of liquidation

(i) In general

Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) of subsection (a)(2)(B) of this section for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) Notice

At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary, the relevant FTA Secretary, and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) Application of suspension

If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E), or (F) of section 1677(9) of this title, the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the NAFTA or of the Agreement.

(iv) Judicial review

Any action taken by the administering authority or the United States Customs Service under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(6) Injunctive relief

Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the provisions of subsection (c)(2) of this section shall not apply.

(7) Implementation of international obligations under article 1904 of the NAFTA or the Agreement

(A) Action upon remand

If a determination is referred to a binational panel or extraordinary challenge committee under the NAFTA or the Agreement and the panel or committee makes a deci-
sion remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) Application if subparagraph (A) held unconstitutional

In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (A) and (H) of paragraph (4), the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the Commission within the period specified by the panel or committee. Upon acceptance by the President of such a decision, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, the administering authority, or the Commission under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(8) Requests for binational panel review

(A) Interested party requests for binational panel review

(i) General rule

An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A), (B), or (E) of subsection (a)(5) of this section that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the NAFTA or of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(ii) Suspension of time to request binational panel review under the NAFTA

Notwithstanding clause (i), the time for requesting binational panel review shall be suspended during the pendency of any stay of binational panel review that is issued pursuant to paragraph 11(a) of article 1905 of the NAFTA.

(B) Service of request for binational panel review

(i) Service by interested party

If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or personal service, on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(ii) Service by United States Secretary

If an interested party to the proceeding requests binational panel review of a determination by filing a request with the relevant FTA Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) Limitation on request for binational panel review

Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review of a determination under article 1904 of the NAFTA or the Agreement.

(9) Representation in panel proceedings

In the case of binational panel proceedings convened under chapter 19 of the NAFTA or of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission, respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) Notification of class or kind rulings

In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) of this section and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.

(11) Suspension and termination of suspension of article 1904 of the NAFTA

(A) Suspension of article 1904

If a special committee established under article 1905 of the NAFTA issues an affirmative finding, the Trade Representative may, in accordance with paragraph 8(a) or 9, as appropriate, of article 1905 of the NAFTA, suspend the operation of article 1904 of the NAFTA.
(B) Termination of suspension of article 1904

If a special committee is reconvened and makes an affirmative determination described in paragraph 10(b) of article 1905 of the NAFTA, any suspension of the operation of article 1904 of the NAFTA shall terminate.

(12) Judicial review upon termination of binational panel or committee review under the NAFTA

(A) Notice of suspension or termination of suspension of article 1904

(i) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) of this section that the operation of article 1904 of the NAFTA has been suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of suspension of article 1904 of the NAFTA.

(ii) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) of this section that the suspension of the operation of article 1904 of the NAFTA is terminated in accordance with paragraph 10 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of termination of suspension of article 1904 of the NAFTA.

(B) Transfer of final determinations for judicial review upon suspension of article 1904

If the operation of article 1904 of the NAFTA is suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA—

(i) upon the request of an authorized person described in subparagraph (C), any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section; or

(ii) in a case in which—

(I) a binational panel review was completed fewer than 30 days before the suspension, and

(II) extraordinary challenge committee review has not been requested,

upon the request of an authorized person described in subparagraph (C) which is made within 60 days after the completion of the binational panel review, the final determination that was the subject of the binational panel review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section.

(C) Persons authorized to request transfer of final determinations for judicial review

A request that a final determination be transferred to the Court of International Trade under subparagraph (B) may be made by—

(i) if the United States made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 8(a) of article 1905 of the NAFTA—

(I) the government of the relevant country described in subsection (f)(10)(A) or (B) of this section,

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired, or

(ii) if a country described in subsection (f)(10)(A) or (B) of this section made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 9 of article 1905 of the NAFTA—

(I) the government of that country,

(II) an interested party that is a person of that country and that was a party to the panel or committee review, or

(III) an interested party that is a person of that country and that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired.

(D) Transfer for judicial review upon settlement

(i) If the Trade Representative achieves a settlement with the government of a country described in subsection (f)(10)(A) or (B) of this section pursuant to paragraph 7 of article 1905 of the NAFTA, and referral for judicial review is among the terms of such settlement, any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall, upon a request described in clause (ii), be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section.

(ii) A request referred to in clause (i) is a request made by—

(I) the country referred to in clause (i),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time for filing notices of appearance in the panel review has not expired.

provisions relating to time limits for commencing review in cases involving Canadian merchandise.

Subsec. (b)(3). Pub. L. 103–182, § 411(2), inserted "NAFTA or" after "decisions by" in heading and "of the NAFTA or" after "article 1904" in text.

Subsec. (d)(6), (7). Pub. L. 103–182, § 411(3)(A), amended pars. (6) and (7) generally substituting present provisions for provisions which, in par. (6) defined "United States Secretary" as the secretary provided for in paragraph 4 of article 1909 of the United States-Canada Free-Trade Agreement, and in par. (7) defined "Canadian Secretary" as the secretary provided for in paragraph 5 of article 1909 of the Agreement.


Subsec. (g)(2). Pub. L. 103–182, § 411(4)(C), inserted "of the NAFTA or" after "article 1904" in introductory provisions.

Subsec. (g)(3)(A). Pub. L. 103–182, § 411(4)(D), in cl. (i), substituted "nor the relevant FTA country" for "nor Canada" and inserted "of the NAFTA or" before "of the Agreement", in cl. (ii), substituted "nor the relevant FTA country" for "nor Canada", in cl. (iii), inserted "of the NAFTA or" before "of the Agreement" and struck out "or" at end, in cl. (iv), struck out "under paragraph (2)(A)" before "is not reviewable" and substituted a comma for period at end, and added cls. (v) and (vi) in cl. (v).

Subsec. (g)(3)(B). Pub. L. 103–182, § 411(4)(E), substituted first two sentences for former sentences which read as follows: "A determination described in subparagraph (A) or (iv) is reviewable under subsection (a) of this section only if the party seeking to commence review has provided timely notice of its intent to commence such review to the United States Secretary, the Canadian Secretary, all interested parties who were parties to the proceeding in connection with which the matter arises, and the administering authority or the Commission, as appropriate. Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) of this section that is applicable to such determination."
NAFTA or the Agreement" for "under article 1904 of the Agreement of a determination".

Subsec. (g)(9). Pub. L. 103–182, § 411(b)(4)(M), inserted "of the NAFTA or"

Subsec. (g)(10). Pub. L. 103–182, § 411(d)(4)(N), substituted "Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement" for "Government of Canada received notice of the determination under article 1904(4) of the Agreement".

Subsec. (g)(11), (12). Pub. L. 103–182, § 413(c)(4), added pars. (11) and (12).

1990—Subsec. (a)(9)(A). Pub. L. 101–382, § 134(a)(3)(A)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: "the date of publication in the Federal Register of—

"(i) any notice of any determination described in paragraph (1)(B) or a determination described in clause (i) or (iii) of paragraph (2)(B), or—

(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of paragraph (2)(B), or—


Subsec. (b)(3). Pub. L. 100–149, § 401(d), added par. (3).

Subsec. (f)(5) to (7). Pub. L. 100–149, § 401(b), added pars. (5) to (7).

Subsec. (g). Pub. L. 100–149, § 401(c), added subsec. (g).

Amendment by Pub. L. 100–954 substituted "the date of publication in the Federal Register of", redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (a)(2)(B)(ii). Pub. L. 98–573, § 623(a)(1), amended par. (i) generally, and thereby struck out the designation "(A)" before "within 30 days"; redesignated former cls. (i) to (iii) as subpars. (A) to (C), respectively, in subpar. (A) as so redesignated struck out references to the Secretary and to section 1303(a)(3) of this title, in subpar. (B) as so redesignated struck out reference to the administering authority and to review of agreements based on changed circumstances, and struck out former subpar. (B), relating to a right of judicial review of certain determinations of the administering authority within 10 days after publication of notice of the determination in the Federal Register.

Subsec. (a)(2)(A). Pub. L. 98–573, § 623(a)(2), inserted the designation "(i)" before "the date of publication in the Federal Register of"; redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (a)(2)(B). Pub. L. 98–573, § 623(a)(3), amended cl. (i) generally and thereby struck out provisions referring to final affirmative determinations by the Secretary and by the Commission under section 1303 of this title, and inserted reference to any negative part of decisions under section 1671d or 1673d of this title.

Subsec. (a)(2)(B)(i). Pub. L. 98–573, § 623(a)(3), amended cl. (ii) generally and thereby struck out references to the Secretary and to section 1303 of this title and inserted provision relating to any part of a final affirmative determination which specifically excludes any company or product.

Subsec. (a)(2)(B)(iii). Pub. L. 98–573, § 623(a)(3), amended cl. (iii) generally and thereby substituted provisions relating to final determinations by the administering authority or the Commission for provisions relating to determinations by the Secretary, the administering authority, or the Commission.

Subsec. (a)(2)(B)(iv). Pub. L. 98–573, § 623(a)(3), amended cl. (iv) generally and thereby inserted provision relating to any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

EFFECIYE AND TERMINATION DATES OF 1988 AMENDMENTS

Amendment by Pub. L. 100–449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 applicable with respect to civil actions pending on, or filed on or after, Oct. 30, 1984, see section 626(b)(2) of Pub. L. 98–573, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT


EFFECTIVE DATE OF 1980 AMENDMENTS

Section 3 of Pub. L. 96–542 provided that: ‘‘The amendments made by this Act [amending this section and provisions set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure] shall be effective as of November 1, 1980.’’

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 761(a) of Pub. L. 96–417, set out as a note under section 251 of title 28.

EFFECTIVE DATE; TRANSITIONAL RULES

Section 1002 of title X of Pub. L. 96–59 provided that: ‘‘(a) EFFECTIVE DATE.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall take effect on the date (hereinafter in this section referred to as the ‘effective date’) on which title VII of the Tariff Act of 1930 [subtitle IV of this chapter] (as added by title I of this Act) takes effect.

(b) TRANSITIONAL RULES.—

(1) CERTAIN PROTESTS, PETITIONS, ACTIONS, ETC.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall take effect on that date (hereinafter in this section referred to as the ‘effective date’) on which title VII of the Tariff Act of 1930 [subtitle IV of this chapter] (as added by title I of this Act) takes effect [Oct. 1, 1980]; and section 515(a) of such Act of 1930 [section 1515(a) of this title] (as amended by section 1001(b)(2)) shall apply with respect to any denial, in whole or in part, of a protest filed under section 514 of such Act of 1930 [section 1514 of this title] on or after the effective date.

(2) LAW TO BE APPLIED FOR PURPOSES OF SUCH ACTIONS.—Notwithstanding the repeal of the Antidumping Act, 1921 [sections 160 to 171 of this title], by section 106(a) of this Act, and the amendment of section 303 of the Tariff Act of 1930 [section 1931 of this title] by section 103 of this Act, the law in effect on the date of any finding or determination contested in a civil action described in subparagraph (A), (B), or (C) of paragraph (1) shall be applied for purposes of that action.

(c) CERTAIN COUNTERVAILING AND ANTIDUMPING DUTY ASSESSMENTS.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall apply with respect to the review of the assessment of, or failure to assess, any countervailing duty or antidumping duty on entries subject to a countervailing duty order or antidumping finding if the assessment is made after the effective date.

If no assessment of such duty had been made before the effective date that could serve the party seeking review as the basis of a review of the underlying determination, made by the Secretary of the Treasury or the International Trade Commission before the effective date, on which such order, finding, or lack thereof is based, then the underlying determination shall be subject to review in accordance with the law in effect on the day before the effective date.

(4) CERTAIN COUNTERVAILING AND ANTIDUMPING DUTY DETERMINATIONS.—With respect to any preliminary determination or final determination of the Secretary of the Treasury under section 303 of the Tariff Act of 1930 [section 1303 of this title] or the Antidumping Act, 1921 [sections 160 to 171 of this title], which is treated under section 102 of this Act [set out as a note under section 1671 of this title] as if made under section 703(b), 705(a), 733(b), or 753(a) of the Tariff Act of 1930 [section 1671(b), 1675(a), 1673(b), or 1675(d) of this title] (as added by title I of this Act) such determinations shall be subject to judicial review in the same manner and to the same extent as if made on the day before the effective date.’’

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2303(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

For provisions relating to effect of termination of NAFTA country status on the provisions of sections 401 to 416 of Pub. L. 103–182, see section 3451 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1801–1899A] of Pub. L. 99–514 are amended by an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

ACCEPTANCE BY PRESIDENT OF PANEL AND COMMITTEE DECISIONS

For acceptance by President of decisions of binational panels and extraordinary challenge committees in event that subsec. (b)(7)(B) of this section takes effect, see section 2 of Ex. Ord. No. 12389, Dec. 27, 1993, 58 F.R. 69661, set out as a note under section 3311 of this title.

For provision that in the event that subsec. (g)(7)(B) of this section takes effect, the President accepts, as a whole, all decisions of binational panels and extraordinary challenge committees: see section 3 of Ex. Ord. No. 12962, Dec. 31, 1988, 54 F.R. 785, set out as a note under section 2112 of this title.

Section 1517, act June 17, 1930, ch. 497, title IV, §517, 46 Stat. 737, related to frivolous protest or appeal. See section 2641 of Title 28, Judiciary and Judicial Procedure.

Section 1518, acts June 10, 1890, ch. 407, §12, 26 Stat. 136; May 27, 1908, ch. 205, §3, 35 Stat. 406; Aug. 5, 1909, ch. 6, §28, 36 Stat. 98; May 28, 1926, ch. 411, §1, 44 Stat. 669; June 17, 1930, ch. 497, title IV, §518, 46 Stat. 737, related to the judges of the United States Customs Court: their appointment, salary, retirement, vacancies, and powers; the control of the fiscal affairs and of the clerical force of the court; and the division of the court. See sections 251 to 254, 456, 1581, 2071, 2639, and 2640 of Title 28, Judiciary and Judicial Procedure. Last sentence of section, relating to the transfer of unexpended appropriations for salaries to be available for expenditures for the same purposes, was omitted as executed.

Section 1519, act June 17, 1930, ch. 497, title IV, §519, 46 Stat. 739, related to publication of Customs Court’s decisions. See section 255 of Title 28, Judiciary and Judicial Procedure.

$§ 1520. Refunds and errors$$

(a) Cases in which refunds authorized

The Secretary of the Treasury is authorized to refund duties or other receipts in the following cases:

(1) Excess deposits.—Whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid.

(2) Fees, charges, and exactions.—Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected.

(3) Fines, penalties, and forfeitures.—Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.

(4) Prior to liquidation.—Prior to the liquidation of an entry or reconciliation, whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid.

(b) Authorization of appropriations

The necessary moneys to make such refunds are authorized to be appropriated annually from the general fund of the Treasury.


(d) Goods qualifying under free trade agreement rules of origin

Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin set out in section 3332 of this title, section 202 of the United States-Chile Free Trade Agreement Implementation Act, section 4033 of this title, section 202 of the United States-Oman Free Trade Agreement Implementation Act, or section 203 of the United States-Peru Trade Promotion Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

1. a written declaration that the good qualified under the applicable rules at the time of importation;
2. copies of all applicable NAFTA Certificates of Origin (as defined in section 1508(b)(1) of this title), or other certificates or certifications of origin, as the case may be; and
3. such other documentation and information relating to the importation of the goods as the Customs Service may require.


AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 110–138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 109–283, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

Section 202 of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsec. (d), is section 202 of Pub. L. 108–77, which is set out in a note under section 3305 of this title.

Section 202 of the United States-Oman Free Trade Agreement Implementation Act, referred to in subsec. (d), is section 202 of Pub. L. 109–283, which is set out in a note under section 3305 of this title.

Section 205 of the United States-Peru Trade Promotion Agreement Implementation Act, referred to in subsec. (d), is section 203 of Pub. L. 110–138, which is set out in a note under section 3305 of this title.

CODIFICATION

Act June 26, 1994, effective July 1, 1995, provided for repeal of certain permanent appropriations authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

PRIOR PROVISIONS

This section, as originally enacted, contained a paragraph (b) making a permanent appropriation of the
moneys necessary to make refunds. Effective July 1, 1935, paragraph (b) was repealed by act June 26, 1934, ch. 756, §2, 48 Stat. 1225, such act authorizing, in lieu there of, an annual appropriation from the general fund of the Treasury.

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 395, title IV, §539, 42 Stat. 931, that section was superseded by section 530 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in subdivisions (1) and (3) of paragraph (a) for refund of moneys paid on account of unascertained or estimated duties or payments on appeal, and for correction of clerical errors within one year, with further provisions making an appropriation and requiring reports to Congress of moneys refunded, were contained in act Oct. 3, 1913, ch. 16, 37 Stat. 18, which reenacted the provisions of Customs Administrative Act June 19, 1890, ch. 407, §24, 26 Stat. 140, as renumbered and reenacted by Payne-Aldrich Tariff Act of August 5, 1909, ch. 6, §28, 36 Stat. 103. Said section III, Y. of the 1913 act was repealed by act Sept. 21, 1922, ch. 395, title IV, §543, 42 Stat. 989.

Provisions concerning the refund of moneys collected as duties in accordance with any decision, etc., of the Secretary of the Treasury, with provisions concerning re-liquidations, correction of errors, household effects and other articles exempt from duty, were contained in act March 3, 1875, ch. 136, 18 Stat. 469, which was also repealed by section 643 of the act of Sept. 21, 1922.

R.S. §3011 (as amended by act Feb. 27, 1877, ch. 69, §1, 19 Stat. 247, and act Feb. 1, 1888, ch. 4, 25 Stat. 6) and section 3012, relative to actions to recover duties paid under protest, and sections 3012A and 3013, relative to refunds, were repealed by the Customs Administrative Act of June 10, 1906, ch. 407, §29, 26 Stat. 141.

Act June 7, 1924, ch. 357, 43 Stat. 660, authorizing the remission of unpaid customs duties on material belonging to the United States and theretofore imported by the War Department, was omitted from the Code as temporary.

AMENDMENTS


Subsec. (a). Pub. L. 109–283, §107(c), 205(c), temporarily substituted “Or where there is an error in the construction of a law, in

2006—Subsec. (d). Pub. L. 109–182, §464(b), inserted “or reconciliation” after “entry”.

Subsec. (c). Pub. L. 103–182, §464(2)(A), (B), substituted “Customs Service” for “appropriate customs officer” and inserted “or reconciliation” after “entry” in introductory provisions.

Subsec. (c)(1). Pub. L. 103–182, §464(2)(A), (C), inserted “ , whether or not resulting from or contained in electronic transmission,” before “not amounting to”, and substituted “Customs Service” for “appropriate customs officer”.


2003—Subsec. (d). Pub. L. 106–182, §206(b), struck out subsec. (d) which read as follows: “If a determination is made to reliquidate an entry as a result of a protest filed under section 1514 of this title or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as increased or additional duties under section 1505(c) of this title at the annual rate established pursuant to that section and determined as of the 15th day after the date of liquidation or reliquidation. The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section 2632 of title 26, whichever occurs first.” See Construction of 1993 Amendment note below.


Subsec. (d). Pub. L. 108–77, §§107(c), 206(4), temporarily Inserted “ , or other certificates of origin, as the case may be” before semicolon. See Effective and Termination Dates of 2003 Amendment note below.


Subsec. (c). Pub. L. 103–182, §464(2)(A), (B), substituted “Customs Service” for “appropriate customs officer” and inserted “or reconciliation” after “entry” in introductory provisions.

1953—Subsec. (c)(2). Act Aug. 8, 1953, extended the relief provision to situations involving clerical errors, mistakes of fact, or any other inadvertence not amounting to an error in the construction of a law, in any entry, liquidation, appraisement or other customs transaction, when such error, mistake or other inadvertence is adverse to the record or established by written evidence.

1938—Subsecs. (b), (c). Act June 25, 1938, added subsecs. (b) and (c).

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Amendment by Pub. L. 110–138 effective on the date the United States-Peru Trade Promotion Agreement enters into force (Feb. 1, 2009) and to cease to be effective on the date the Agreement ceases to be in force,
see section 107(a), (c) of Pub. L. 110–138, set out in a note under section 3805 of this title.

**Effective and Termination Dates of 2006 Amendment**

Amendment by Pub. L. 109–283 effective on the date on which the United States–Oman Free Trade Agreement enters into force (Jan. 1, 2009) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 109–283, set out in a note under section 3805 of this title.

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1611 of Pub. L. 109–280, set out as a note under section 58c of this title.

**Effective and Termination Dates of 2005 Amendment**

Amendment by Pub. L. 109–53 effective on the date the Dominican Republic–Central America–United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as an Effective and Termination Dates note under section 4001 of this title.

**Effective Date of 2004 Amendment**


**Effective Date of 1998 Amendment**

Amendment by act June 25, 1998, effective on thirtieth day following June 25, 1998, and savings provision, see notes set out under section 1304 of this title.

**Effective Date of 1997 Amendment**

Amendment by section 210(b) of Pub. L. 103–182 to be made after amendment by section 642(b) of Pub. L. 103–182 is executed, see section 210(b) of Pub. L. 103–182, set out as a note under section 58c of this title.

**Transfer of Functions**

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2331–1 et seq. of Title 16, Code of Federal Regulations, part 36, effective as provided by section 355(d) of the Homeland Security Act of 2002, see section 355(d) of Pub. L. 107–296, set out as a note under section 58c of this title.

**Availability of Transportation and Storage Facilities for Military Purposes**


**Provision for mailing of returns**


**Construction of 1993 Amendment**

Amendment by section 206 of Pub. L. 103–182 to be made after amendment by section 642(b) of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 58c of this title.

**Plan Amendments Not Required Until January 1, 1989**

For provisions directing that any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.


**§ 1522. Omitted**

**Codification**


**§ 1523. Examination of accounts**

The Secretary of the Treasury or such officer or employee as he shall designate, shall, under regulations and instructions prescribed by the Secretary—

1. examine the customs officers’ accounts of receipts and disbursements of money and receipts and disposition of merchandise; and
2. verify, to such extent as the Secretary of the Treasury shall direct, assessments of duties and taxes and allowances of drawback.
§ 1524. Deposit of reimbursable charges

Receipts for any reimbursable charges or expenses which have been paid for out of any appropriation for collecting the revenue from customs shall be deposited as a refund to such appropriation instead of being covered into the Treasury as miscellaneous receipts, as provided by section 527 of this title.

(June 17, 1930, ch. 497, title IV, §524, 46 Stat. 741; June 25, 1938, ch. 769, §19(b), 52 Stat. 1087.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §523, 42 Stat. 974. That section was superseded by section 523 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1930—Act June 17, 1930, amended section generally.

1938—Act June 25, 1938, effective on and after thirtieth day following June 25, 1938, and savings provision, see notes set out under section 1304 of this title.


Section, act June 17, 1930, ch. 497, title IV, §525, 46 Stat. 741, authorized the Secretary of the Treasury to employ not more than ten persons in the District of Columbia who have been detailed from the field force of the Customs Service.

§ 1526. Merchandise bearing American trademark

(a) Importation prohibited

Except as provided in subsection (d) of this section, it shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trademark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent and Trademark Office by a person domiciled in the United States, under the provisions of sections 81 to 109 of title 15, and if a copy of the certificate of registration of such trademark is filed with the Secretary of the Treasury, in the manner provided in section 106 of said title 15, unless written consent of the owner of such trademark is produced at the time of making entry.

(b) Seizure and forfeiture

Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

(c) Injunction and damages

Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trademark and shall be liable for the same damages and profits provided for wrongful use of a trade-mark, under the provisions of sections 81 to 109 of title 15.

(d) Exemptions; publication in Federal Register; forfeitures; rules and regulations

(1) The trademark provisions of this section and section 1124 of title 15, do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trade-marked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trade-mark laws under this subsection is sold within one year after the date of importation, such article, or its value (to be recovered from the importer), is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not subject to the provisions of this paragraph.

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

(e) Merchandise bearing counterfeit mark; seizure and forfeiture; disposition of seized goods

Any such merchandise bearing a counterfeit mark (within the meaning of section 1127 of title
15) imported into the United States in violation of any of the provisions of section 1124 of title 15, shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may obliterate the trademark where feasible and dispose of the goods seized—

1. by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,
2. by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise, or
3. more than 90 days after the date of forfeiture, by sale by the Customs Service at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2).

(f) Civil penalties

(1) Any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under subsection (e) of this section shall be subject to a civil fine.

(2) For the first such seizure, the fine shall be not more than the value that the merchandise would have had if it were genuine, according to the manufacturer’s suggested retail price, determined under regulations promulgated by the Secretary.

(3) For the second seizure and thereafter, the fine shall be not more than twice the value that the merchandise would have had if it were genuine, as determined under regulations promulgated by the Secretary.

(4) The imposition of a fine under this subsection shall be within the discretion of the Customs Service, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law.

References in Text

Sections 81 to 109 of title 15, referred to in subsec. (a) and (c), were repealed by act July 5, 1946, ch. 540, § 46(a), 61 Stat. 444. See sections 1051 to 1127, respectively, of Title 15, Commerce and Trade.

Section 106 of title 15, referred to in subsec. (a), was repealed by act July 5, 1946, ch. 540, § 46(a), 61 Stat. 444. See section 1124 of Title 15.

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 526, 42 Stat. 975. That section was superseded by section 526 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Amendments

1996—Subsec. (e). Pub. L. 104–153, § 9, inserted “destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may” after “shall, after forfeiture,” in second sentence, inserted “or” at end of par. (2), substituted period for “, or” at end of par. (3), and struck out par. (4) which read as follows: “if the merchandise is unsafe or a hazard to health, by destruction.”


1993—Subsec. (e)(3). Pub. L. 103–182 substituted “90 days” for “1 year” and “the Customs Service” for “appropriate customs officers”.

1978—Subsec. (a). Pub. L. 95–410, § 211(a)(1), substituted “Except as provided in subsection (d) of this section, it” for “It”.


Subsec. (e). Pub. L. 95–410, § 211(c), added subsec. (e).

Change of Name


Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

§1527. Importation of wild mammals and birds in violation of foreign law

(a) Importation prohibited

If the laws or regulations of any country, dependency, province, or other subdivision of government restrict the taking, killing, possession, or exportation to the United States, of any wild mammal or bird, alive or dead, or restrict the exportation to the United States of any part or product of any wild mammal or bird, whether raw or manufactured, no such mammal or bird, or part or product thereof, shall, after the expiration of ninety days after June 17, 1930, be imported into the United States from such country, dependency, province, or other subdivision of government, directly or indirectly, unless accompanied by a certification of the United States consul, for the consular district in which is located the port or place from which such mammal or bird, or part or product thereof, was exported from such country, dependency, province, or other subdivision of government, that such mammal or bird, or part or product thereof, has not been acquired or exported in violation of the laws or regulations of such country, dependency, province, or other subdivision of government.

(b) Forfeiture

Any mammal or bird, alive or dead, or any part or product thereof, whether raw or manufactured, imported into the United States in violation of the provisions of the preceding subdivi-
§ 1528. Taxes not to be construed as duties

No tax or other charge imposed by or pursuant to any law of the United States shall be construed to be a customs duty for the purpose of any statute relating to the customs revenue, unless the law imposing such tax or charge designates it as a customs duty or contains a provision to the effect that it shall be treated as a duty imposed under the customs laws. Nothing in this section shall be construed to limit or restrict the jurisdiction of the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit

Amendments


Effective Date of 1982 Amendment


Effective Date of 1980 Amendment

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 751(a) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

§ 1529. Collection of fees on behalf of other agencies

The Customs Service shall be reimbursed from the fees collected for the cost and expense, administrative and otherwise, incurred in collecting any fees on behalf of any government agency for any reason.


Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of references to Secretary of the Treasury, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6

PART IV—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE

§ 1551. Designation as carrier of bonded merchandise

Under such regulations and subject to such terms and conditions as the Secretary of the Treasury shall prescribe—

(1) any common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route for the transportation of merchandise in the United States;

(2) any contract carrier authorized to operate as such by any agency of the United States, and

(3) any freight forwarder authorized to operate as such by any agency of the United States, upon application, may, in the discretion of the Secretary, be designated as a carrier of bonded merchandise for the final release of which from customs custody a permit has not been issued. A private carrier, upon application, may, in the discretion of the Secretary, be designated under the preceding sentence as a carrier of bonded merchandise, subject to such regulations and, in the case of each applicant, to such special terms
and conditions as the Secretary may prescribe to safeguard the revenues of the United States with respect to the transportation of bonded merchandise by such applicant.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 1551, 42 Stat. 975. That section was superseded by section 551 of act June 17, 1930, comprising this section, and repealed by section 65(a)(1) of the 1930 act.

Prior provisions concerning transportation of merchandise in bond without appraisement to another port of entry were contained in the Immediate Transportation Act of June 10, 1880, ch. 190, 21 Stat. 173, as amended, section 3 of which required the merchandise to be transported by carriers designated by the Secretary of the Treasury, and required them to give bonds as the Secretary should require. That act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 663, 42 Stat. 989.

AMENDMENTS

1968—Pub. L. 90–240 provided that a private carrier, upon application, could, in the discretion of the Secretary, be designated as a carrier of bonded merchandise, subject to regulations, terms, and conditions prescribed by the Secretary, safeguard the revenues of the United States with respect to the transportation of bonded merchandise by such applicant.

1962—Pub. L. 87–854 included any contract carrier authorized to operate as such by any agency of the United States.

Pub. L. 87–596 substituted “authorized to operate as such” for “as provided in section 1022(3) of title 49.”

1945—Act Dec. 28, 1945, substituted “Under such regulations and subject to such terms and conditions as the Secretary of the Treasury shall prescribe, any common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route for the transportation of merchandise in the United States, or any freight forwarder, as defined in section 1002(5) of title 49, upon application, may, in the discretion of the Secretary” for “Any common carrier of merchandise owning or operating railroad, steamship, or other transportation lines or routes for the transportation of merchandise in the United States, upon application and filing of a bond in a form and penalty and with such sureties as may be approved by the Secretary of the Treasury, may.”

§ 1551a. Bonded cartmen or lightermen

The Secretary of the Treasury be, and he is, authorized, when it appears to him to be in the interest of commerce, and notwithstanding any provision of law or regulation requiring that the transportation of imported merchandise be by a bonded common carrier, to permit such merchandise which has been entered and examined for customs purposes to be transported by bonded cartmen or bonded lightermen between the ports of New York, Newark, and Perth Amboy, when all included in Customs Collection District Numbered 10 (New York): Provided, That this resolution shall not be construed to deprive any of the ports affected of its rights and privileges as a port of entry.

(June 19, 1936, ch. 611, 49 Stat. 1538.)

CODIFICATION

Section was not enacted as part of Tariff Act of 1930 which comprises this chapter.

§ 1552. Entry for immediate transportation

Any merchandise, other than explosives and merchandise the importation of which is prohibited, arriving at a port of entry in the United States may be entered, under such rules and regulations as the Secretary of the Treasury may prescribe, for transportation in bond without appraisement to any other port of entry designated by the consignee, or his agent, and by such bonded carrier as he designates, there to be entered in accordance with the provisions of this chapter.

(June 17, 1930, ch. 497, title IV, § 552, 46 Stat. 742.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 1552, 42 Stat. 975. That section was superseded by section 552 of act June 17, 1930, comprising this section, and repealed by section 65(a)(1) of the 1930 act.

Prior provisions for transportation in bond without appraisement of merchandise with certain exceptions, when imported at certain named ports and destined for certain ports, were contained in act June 16, 1880, ch. 190, § 41 (as amended by act June 14, 1880, ch. 215), act June 20, 1884, ch. 103 (2) 2, 7, and 9, 21 Stat. 173, 174, 175. Sections 8 (as amended by act July 2, 1884, ch. 142, and act Feb. 23, 1897, ch. 215, and act Feb. 2, 1899, ch. 84) and 6 (as amended by act July 2, 1894, ch. 142), regulated the transportation and transfer of the merchandise. The act of June 10, 1880 was amended by act Feb. 23, 1887, ch. 218, 24 Stat. 414, and its provisions were extended by various acts to ports other than those originally named. The act of June 10, 1880, ch. 190, as amended, and the acts of Feb. 23, 1887, ch. 218, and Feb. 2, 1899, ch. 84, were all repealed by act Sept. 21, 1922, ch. 356, title IV, § 663, 42 Stat. 989, and the various acts extending the provisions of the act of June 10, 1880, thereupon became inoperative.

R.S. §§ 2990–2997, as amended by act Feb. 18, 1875, ch. 80, 18 Stat. 319, and as extended by act Mar. 14, 1876, ch. 23, 19 Stat. 7, and act Aug. 14, 1876, ch. 270, 19 Stat. 139, contained provisions somewhat similar to those of the act of June 10, 1880, ch. 190, and were repealed by section 8 of the 1880 act.

R.S. § 2381, relative to the transshipment of merchandise transported in bond to the port of Brownsville, by Brazos Harbor; R.S. §§ 2816–2831, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 246, 247, and act June 16, 1880, ch. 239, 21 Stat. 283, relative to transportation of merchandise intended to be imported into certain ports of delivery; and R.S. §§ 2996, prescribing a penalty for breaking or entering any car, etc., containing merchandise transported under sections 2990–2997, or defacing any lock or seal, etc.—were all repealed by act Sept. 21, 1922, ch. 356, title IV, § 663, 42 Stat. 989.

§ 1553. Entry for transportation and exportation; lottery material from Canada

(a) Any merchandise, other than explosives and merchandise the importation of which is prohibited, shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe; and any baggage or personal effects not containing merchandise the importation of which is prohibited arriving in the United States destined to a foreign country may, upon the request of the owner or carrier having the same in possession for transpor-
tation, be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duty, under such regulations as the Secretary of the Treasury may prescribe. In places where no bonded common-carrier facilities are reasonably available, such merchandise may be so transported otherwise than by a bonded common carrier under such regulations as the Secretary of the Treasury shall prescribe.

(b) Notwithstanding subsection (a) of this section, the entry for transportation in bond through the United States of any lottery ticket, printed paper that may be used as a lottery ticket, or any advertisement of any lottery, that is printed in Canada, shall be permitted without appraisement or the payment of duties under such regulations as the Secretary of the Treasury may prescribe, except that such regulations shall not permit the transportation of lottery materials in the personal baggage of a traveler.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 553, 42 Stat. 976. That section was superseded by section 553 of act June 17, 1890, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision that merchandise destined for a foreign country might be entered and conveyed through the territory of the United States without payment of duties under regulations to be prescribed by the Secretary of the Treasury was contained in R.S. § 3005, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, and act May 21, 1900, ch. 487, § 1, 31 Stat. 181. Res. March 1, 1895, No. 23, 28 Stat. 973, partially suspending the operation of that section, was repealed by act May 21, 1900, ch. 487, § 1, 31 Stat. 181, and the section was itself repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

A provision that baggage or personal effects in transit to a foreign country might be delivered to the collector for retention without payment of duty, or forwarding to the collector of the port of departure, was contained in act Oct. 3, 1913, ch. 16, § III, CC, 38 Stat. 192, which reenacted Customs Administrative Act June 10, 1890, ch. 407, § 126, 26 Stat. 141, as reenacted by Payne– Aldrich Tariff Act Aug. 5, 1909, ch. 6, § 126, 36 Stat. 104. Said section III, CC, of the 1913 act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

R.S. § 2883, on the same subject, was superseded by section 28 of the Customs Administrative Act of June 10, 1890, and repealed by section 642 of the act of Sept. 21, 1922.

R.S. § 2866, provided for the entry and conveyance in transit, without payment of duties, of merchandise arriving at certain ports in the United States destined for a foreign country, and for conveyance in transit from such possessions for export from said ports, in pursuance of provisions of the treaty with Great Britain of May 8, 1871. It was repealed on the termination of articles 18–25, 30, of that treaty, pursuant to the Joint Resolution of Mar. 3, 1883, No. 22, 22 Stat. 641.

AMENDMENTS

1990—Pub. L. 101–382 redesignated existing provisions as subsec. (a) and added subsec. (b).

1989—Act June 25, 1938, inserted sentence providing for transportation otherwise than by bonded carrier where no bonded common-carrier facilities are reasonably available.

§ 1553–1. Report on in-bond cargo

(a) Report

Not later than June 30, 2007, the Commissioner shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Finance of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Ways and Means of the House of Representatives that includes—

(1) a plan for closing in-bond entries at the port of arrival;
(2) an assessment of the personnel required to ensure 100 percent reconciliation of in-bond entries between the port of arrival and the port of destination or exportation;
(3) an assessment of the status of investigations of overdue in-bond shipments and an evaluation of the resources required to ensure adequate investigation of overdue in-bond shipments;
(4) a plan for tracking in-bond cargo within the Automated Commercial Environment (ACE);
(5) an assessment of whether any particular technologies should be required in the transport of in-bond cargo;
(6) an assessment of whether ports of arrival should require any additional information regarding shipments of in-bond cargo;
(7) an evaluation of the criteria for targeting and examining in-bond cargo; and
(8) an assessment of the feasibility of reducing the transit time for in-bond shipments, including an assessment of the impact of such a change on domestic and international trade.

(b) Definition

In this section, the term ‘‘Commissioner’’ means the Commissioner responsible for the United States Customs and Border Protection in the Department of Homeland Security.

(June 17, 1938, ch. 679, § 21, 52 Stat. 1087; Pub. L. 101–382, § 5, Oct. 11, 1996, 110 Stat. 3517, provided that: ‘‘The amendments made by this section [amending this section] shall apply with respect to articles entered for transportation in bond on or after the date that is 15 days after the date of enactment of this Act [Aug. 20, 1990].’’)

EFFECTIVE DATE OF 1990 AMENDMENT

Section 484H(b) of Pub. L. 101–382, as amended by Pub. L. 104–295, § 5, Oct. 11, 1996, 110 Stat. 3517, provided that: ‘‘The amendments made by this section [amending this section] shall apply with respect to articles entered for transportation in bond on or after the date that is 15 days after the date of enactment of this Act [Aug. 20, 1990].’’

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

§ 1553–1. Report on in-bond cargo

(a) Report

Not later than June 30, 2007, the Commissioner shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Finance of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Ways and Means of the House of Representatives that includes—

(1) a plan for closing in-bond entries at the port of arrival;
(2) an assessment of the personnel required to ensure 100 percent reconciliation of in-bond entries between the port of arrival and the port of destination or exportation;
(3) an assessment of the status of investigations of overdue in-bond shipments and an evaluation of the resources required to ensure adequate investigation of overdue in-bond shipments;
(4) a plan for tracking in-bond cargo within the Automated Commercial Environment (ACE);
(5) an assessment of whether any particular technologies should be required in the transport of in-bond cargo;
(6) an assessment of whether ports of arrival should require any additional information regarding shipments of in-bond cargo;
(7) an evaluation of the criteria for targeting and examining in-bond cargo; and
(8) an assessment of the feasibility of reducing the transit time for in-bond shipments, including an assessment of the impact of such a change on domestic and international trade.

(b) Definition

In this section, the term ‘‘Commissioner’’ means the Commissioner responsible for the United States Customs and Border Protection in the Department of Homeland Security.

§ 1553a. Recordkeeping for merchandise transported by pipeline

Merchandise in Customs\(^1\) custody that is transported by pipeline may be accounted for on a quantitative basis, based on the bill of lading, or equivalent document of receipt, issued by the pipeline carrier. Unless the Customs Service has reasonable cause to suspect fraud, the Customs Service may accept the bill of lading, or equivalent document of receipt, issued by the pipeline carrier to the shipper and accepted by the consignee to maintain identity. The shipper, pipeline operator, and consignee shall be subject to the recordkeeping requirements of sections 1508 and 1509 of this title.


Codification

Another section 553A of act June 17, 1930, is classified to section 1553–1 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(n), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1554. Transportation through contiguous countries

With the consent of the proper authorities, imported merchandise, in bond or duty-paid, and products and manufactures of the United States may be transported from one port to another in the United States through contiguous countries, under such regulations as the Secretary of the Treasury shall prescribe, unless such transportation is in violation of section 4347 of the Revised Statutes, as amended, section 55102 of title 46, or section 1588 of this title.

(June 17, 1930, ch. 497, title IV, §554, 46 Stat. 743.)

References in Text

Section 4347 of the Revised Statutes, as amended, referred to in text, was superseded by act Feb. 17, 1898, ch. 26, §1, 30 Stat. 248, which was classified to section 290 of former Title 46, Shipping, and was subsequently repealed by Pub. L. 109–344, §19, Oct. 6, 2006, 120 Stat. 1710. Provisions similar to those in section 1 of act Feb. 17, 1898, ch. 26, were also contained in section 27 of act June 5, 1920, ch. 250, 41 Stat. 999, and were classified to section 883 of the former Appendix to Title 46, Shipping. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

Codification


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §554, 42 Stat. 976. That section was superseded by section 554 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions the same in effect as those in this section, except that they did not contain the provision commencing with the words “unless such transportation,” were contained in R.S. §3906, which also provided that the merchandise so transported should be treated as if transported entirely within the United States. R.S. §3907 exempted cars and vehicles from the payment of fees for receiving or certifying manifests. Both sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §462, 42 Stat. 989.

§ 1555. Bonded warehouses

(a) Designation; preconditions; bonding requirements; supervision

Subject to subsection (b) of this section, buildings or parts of buildings and other enclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the appropriate customs officer, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as public bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimburmed to the Government by the proprietor of such warehouse.

(b) Duty-free sales enterprises

(1) Duty-free sales enterprises may sell and deliver for export from the customs territory duty-free merchandise in accordance with this subsection and such regulations as the Secretary may prescribe to carry out this subsection.

(2) A duty-free sales enterprise may be located anywhere within

(A) the same port of entry, as established under section 1 of the Act of August 24, 1912 (37 Stat. 434), from which a purchaser of duty-free merchandise departs the customs territory; or

\(^1\) So in original. Probably should not be capitalized.
§ 1555

The Secretary may prescribe, restrictions on the sale of duty-free merchandise to any one individual to personal use quantities; (C) shall display in prominent places within its place of business notices which state clearly that any duty-free merchandise purchased from the enterprise—

(i) has not been subject to any Federal duty or tax,

(ii) if brought back into the customs territory, must be declared and is subject to Federal duty and tax, and

(iii) is subject to the customs laws and regulation of any foreign country to which it is taken;

(D) shall not be required to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate that the items were sold by a duty-free sales enterprise, unless the Secretary finds a pattern in which such items are being brought back into the customs territory without declaration;

(E) may unpack merchandise into saleable units after it has been entered for warehouse and placed in a duty-free sales enterprise, without requirement of further permits; and

(F) shall deliver duty-free merchandise—

(i) in the case of a duty-free sales enterprise that is an airport store—

(I) to the purchaser (or a family member or companion traveling with the purchaser) in an area that is within the airport and to which access to passengers is restricted to those departing from the customs territory;

(II) to the purchaser (or a family member or companion traveling with the purchaser) at the exit point of a specific departing flight;

(III) by placing the merchandise within the aircraft on which the purchaser will depart for carriage as passenger baggage;

or

(iv) if the duty-free sales enterprise has made a good faith effort to effect delivery for exportation through one of the methods described in subclause (I), (II), or (III) but is unable to do so, by any other reasonable method to effect delivery; or

(ii) in the case of a duty-free sales enterprise that is a border store—

(I) at a merchandise storage location at or beyond the exit point; or

(II) at any location approved by the Secretary before the date of enactment of the Omnibus Trade Act of 1987.

(4) If a State or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to or through such facility unless the operator of the duty-free sales enterprise demonstrates to the Secretary that the concession or approval required for the enterprise has been obtained.

(5) This subsection does not prohibit a duty-free sales enterprise from offering for sale and delivering to, or on behalf of, individuals departing from the customs territory merchandise other than duty-free merchandise, except that such other merchandise may not be stored in a bonded warehouse facility other than a bonded facility used for retail sales.

(6)(A) Except as provided in subparagraph (B), merchandise that is purchased in a duty-free sales enterprise is not eligible for exemption from duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States if such merchandise is brought back to the customs territory.

(B) Except in the case of travel involving transit to, from, or through an insular possession of the United States, merchandise described in subparagraph (A) that is purchased by a United States resident shall be eligible for exemption from duty under subheadings 9804.00.65, 9804.00.70, and 9804.00.72 of the Harmonized Tariff Schedule of the United States upon the United States resident’s return to the customs territory of the United States, if the resident meets the eligibility requirements for the exemption claimed. Notwithstanding any other provision of law, such merchandise shall be considered to be an article acquired abroad as an incident of the journey from which the resident is returning, for purposes of determining eligibility for any such exemption.

(7) The Secretary shall by regulation establish a separate class of bonded warehouses for duty-free sales enterprises. Regulations issued to carry out this paragraph shall take into account the unique characteristics of the different types of duty-free sales enterprises.

(8) For purposes of this subsection—

(A) The term “airport store” means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory from an international airport located within the customs territory.

(B) The term “border store” means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory through a land or water border by a means of conveyance other than an aircraft.
(C) The term “customs territory” means the customs territory of the United States and foreign trade zones.

(D) The term “duty-free sales enterprise” means a person that sells, for use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory.

(E) The term “duty-free merchandise” means merchandise sold by a duty-free sales enterprise on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory.

(F) The term “exit point” means the area in close proximity to an actual exit for departing from the customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that duty-free merchandise delivered in the gate holding area will be exported from the customs territory.

(G) The term “personal use quantities” means quantities that are only suitable for use other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others.

(c) International travel merchandise

(1) Definitions

For purposes of this section—

(A) the term “international travel merchandise” means duty-free or domestic merchandise which is placed on board aircraft on international flights for sale to passengers but which is not merchandise incidental to the operation of a duty-free sales enterprise;

(B) the term “staging area” is an area controlled by the proprietor of a bonded warehouse outside of the physical parameters of the bonded warehouse in which manipulation of international travel merchandise in carts occurs;

(C) the term “duty-free merchandise” means merchandise on which the liability for payment of duty or tax imposed by reason of importation has been deferred pending exportation from the customs territory;

(D) the term “manipulation” means the repackaging, cleaning, sorting, or removal from or placement on carts of international travel merchandise; and

(E) the term “cart” means a portable container holding international travel merchandise on an aircraft for exportation.

(2) Bonded warehouse for international travel merchandise

The Secretary shall by regulation establish a separate class of bonded warehouse for the storage and manipulation of international travel merchandise pending its placement on board aircraft departing for foreign destinations.

(3) Rules for treatment of international travel merchandise and bonded warehouses and staging areas

(A) The proprietor of a bonded warehouse established for the storage and manipulation of international travel merchandise shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. The warehouse proprietor’s bond shall also secure the manipulation of international travel merchandise in a staging area.

(B) A transfer of liability from the international carrier to the warehouse proprietor occurs when the carrier assigns custody of international travel merchandise to the warehouse proprietor for purposes of entry into warehouse or for manipulation in the staging area.

(C) A transfer of liability from the warehouse proprietor to the international carrier occurs when the bonded warehouse proprietor assigns custody of international travel merchandise to the carrier.

(D) The Secretary is authorized to promulgate regulations to require the proprietor and the international carrier to keep records of the disposition of any cart brought into the United States and all merchandise on such cart.


References in Text

For provisions relating to ports of entry established under section 1 of the Act of August 24, 1912 (37 Stat. 434), referred to in subsec. (b)(2)(A), (C), see Prior Provisions note under section 1 of this title.


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §555, 42 Stat. 976. That section was superseded by section 555 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions dealing with the subject matter of this section were contained in R.S. §2958, authorizing cellars and vaults of stores for storage of wines and distilled spirits, and yards for storage of coal, etc., to be constituted bonded warehouses; section 2969, authorizing parts of buildings to be bonded for the storage of grain; section 2961 requiring bonds to hold the United States harmless, and providing that imports deposited in warehouses should be at the risk and expense of the owner or importer; section 2968, authorizing the extension of warehouse privileges to the port of Albany; and
§ 1556. Bonded warehouses; regulations for establishing

The Secretary of the Treasury shall from time to time establish such rules and regulations as may be necessary for the establishment of bonded warehouses and to protect the interests of the Government in the conduct, management, and operation of such warehouses and in the withdrawal of and accounting for merchandise deposited therein.

(Prior provisions)

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §556, 46 Stat. 743. That section was superseded by section 556 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions on the subject matter of this section were contained in R.S. §2899, as amended by act Feb. 27, 1877, ch. 69, §19, 19 Stat. 247, authorizing the Secretary of the Treasury to establish rules and regulations for the execution of the provisions of that chapter (chapter 7 of Title 34 of the Revised Statutes, The Bond and Warehouse System); and in act June 22, 1874, ch. 391, §42, 18 Stat. 191, authorizing the Secretary to make regulations for the conduct and management of bonded warehouses, general order stores and other depositories, and to revise, alter or revoke regulations or orders, issued by collectors, prohibiting the bonding of warehouses or the establishment of general order stores without his authority and approval, and making it his duty to require warehouses to be located contiguous, or as near as might be, to landing places of vessels. These sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§642, 643, 42 Stat. 989.

§ 1557. Entry for warehouse

(a) Withdrawal of merchandise; time; payment of charges

(1) duty-free sales enterprises play a significant role in attracting international passengers to the United States and thereby their operations favorably affect our balance of payments; 

(2) concession fees derived from the operations of authorized duty-free sales enterprises constitute an important source of revenue for the State, local and other governmental authorities that collect such fees; 

(3) there is inadequate statutory and regulatory recognition of, and guidelines for the operation of, duty-free sales enterprises; and 

(4) there is a need to encourage uniformity and consistency of regulation of duty-free sales enterprises.

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"(4) there is a need to encourage uniformity and consistency of regulation of duty-free sales enterprises."
drawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port; except that—

(A) the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown; and

(B) merchandise upon which the duties have been paid and which shall have remained in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within 5 years after the date of importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

(b) Transferal of right of withdrawal

The right to withdraw any merchandise entered in accordance with subsection (a) of this section for the purposes specified in such subsection may be transferred upon compliance with regulations prescribed by the Secretary of the Treasury and upon the filing by the transferee of a bond in such amount and containing such conditions as the Secretary of the Treasury shall prescribe. The bond shall include an obligation to pay, with respect to the merchandise the subject of the transfer, all unpaid regular, increased, and additional duties, all unpaid taxes imposed upon or by reason of importation, and all unpaid charges and exactions. Such transfers shall be irrevocable, shall relieve the transferee from all customs liability with respect to obligations assumed by the transferee under the bond herein provided for, and shall confer upon the transferee all rights to the privileges provided for in this section and in sections 1562 and 1563 of this title which were vested in the transferor prior to the transfer. The transferee shall also have the right to receive all lawful refunds of money paid by him to the United States with respect to the merchandise the subject of the transfer, and shall have the right to file a protest under section 1514 of this title to the same extent that such right would have been available to the transferor. Notice of liquidation shall be given to the transferee in the form and manner prescribed by the Secretary of the Treasury. A transferee may further transfer the right to withdraw merchandise, subject to the provisions of this subsection relating to original transfers.

(c) Destruction of merchandise at request of consignee

Merchandise entered under bond, under any provision of law, may, upon payment of all charges other than duty on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such merchandise shall be liquidated without payment of duty and any duties collected shall be refunded.

(d) Withdrawal before payment

Merchandise may be withdrawn for consumption without the payment of the duty thereon if the importer of record or transferee is permitted to pay duty at a later time pursuant to regulations prescribed by the Secretary under section 1505 of this title.

(Prior provisions)

Prior provisions similar to those in this section were contained in title VI of the Act of Aug. 17, 2006, 120 Stat. 1170.)
ed for warehousing, in any public warehouse owned or leased by the United States, the private warehouse of the importer used exclusively for the storage of the imported warehoused merchandise; or a warehouse used as a general warehouse for the storage of warehoused merchandise; section 2964, providing that when the owner, etc., should make entry for warehousing, the collector should take possession and deposit the merchandise in the public stores, or in stores to be agreed on, there to be kept at the risk of the owner, importer, etc., and subject to their order, on payment of duties and expenses to be ascertained on entry, and secured by bond with surety; section 2970 (superseded by Customs Administrative Act of June 10, 1890, ch. 407, § 20, 26 Stat. 140), relative to the withdrawal of merchandise; section 2971, authorizing withdrawal for exportation, or transshipment to the Pacific Coast, and providing for exclusion of periods when exportation or transshipment should be prevented in computing the three years; section 2977 relative to return of duties on merchandise subject to duty" in first sentence of introductory provisions, and repealed by act Sept. 21, 1922, ch. 356, title IV, section 108(b)(1), substituted ""5 years" for ""three years"" wherever appearing.

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse, for consumption, on or after the 15th day after Aug. 17, 2006, see section 1611 of Pub. L. 109–280, set out as a note under section 1881 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97–446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97–446, set out as a note under section 1481 of this title.

Effective Date of 1978 Amendment

Section 108(b)(2) of Pub. L. 95–410 provided that: "For purposes of applying the amendments made by paragraph (1) (amending this section and section 1559 of this title) to merchandise remaining in a bonded warehouse on the date of enactment of this Act (Oct. 3, 1978), any period of time the merchandise was in the bonded warehouse before that date shall be disregarded."

Effective Date of 1971 Amendment

Section 2 of Pub. L. 91–685 provided that: "The amendment made by the first section of this Act (amending this section) shall apply with respect to ar-
articles entered for warehousing on or after the date of the enactment of this Act [Jan. 12, 1971]."

**Effective Date of 1970 Amendment**
For effective date of amendment by Pub. L. 91-271, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title.

**Effective Date of 1955 Amendment**
Amendment by act June 30, 1955, effective July 1, 1955, see note set out under section 1401 of this title.

**Effective Date of 1953 Amendment**
Section 21(b) of act Aug. 8, 1953, provided that: "Notwithstanding any other provision of this Act [amending this section and sections 258, 1001, 1201, 1304, 1308, 1309, 1313, 1315, 1317, 1321, 1431, 1439, 1440, 1482, 1484, 1486, 1487, 1489, 1498, 1501, 1503, 1508, 1520, 1523, and 1562 of this title], enacting sections 1322 and 1464a of this title, and repealing sections 33 to 35, 39, 42 to 45, 273, 274, 472 to 475, 1320, and 1503a of this title], the foregoing subsection (a) shall be effective with respect to merchandise entered after the date of the enactment of this Act [Aug. 8, 1953] and to merchandise which has been entered before that date and is the subject of a transfer within the purview of section 557(b) of the Tariff Act [subsec. (b) of this section], as amended by this Act, and made after the date of the enactment of this Act."

**Effective Date of 1938 Amendment**
Section 22(b) of act June 25, 1938, provided that: "On and after the effective date of this Act [see note set out under section 1401 of this title], this section [amending this section] shall be effective with respect to merchandise entered for warehouse prior to, as well as after, such date."

Section 23(b) of act June 25, 1938, provided that: "The amendments made by subsection (a) of this section [amending this section] shall apply in the case of grain imported prior to the effective date of this Act [see note set out under section 1401 of this title] which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930 [section 1491 or 1559 of this title], and which has remained in the custody of customs officers."

**Savings Provision**
Savings provision of act Aug. 8, 1953, which amended subsec. (b) of this section, see note set out under section 1304 of this title.

**Extension of Three-Year Period**
For extension of three year period prescribed in this section, see Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41, set out as a note under section 1318 of this title.


**Appropriations**
Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title "Debentures or drawbacks, bounties, or allowances (Customs) (25321)" effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

§1558. No remission or refund after release of merchandise

(a) Exceptions
No remission, abatement, refund, or drawback of estimated or liquidated duty shall be allowed because of the exportation or destruction of any merchandise after its release from the custody of the Government, except in the following cases:

(1) When articles are exported with respect to which a drawback of duties is expressly provided by law;

(2) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to a law of the United States and under such regulations as the Secretary of the Treasury may prescribe; and

(3) When articles entered under bond, under any provision of law, are destroyed within the bonded period as provided for in section 1557 of this title, or are destroyed within the bonded period by death, accidental fire, or other casualty, and proof of such destruction is furnished which shall be satisfactory to the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied.

(b) Payment of duties required notwithstanding export or destruction of articles; exception
When articles are exported or destroyed under customs supervision after once having been released from customs custody, as provided for in subsection (h) of section 1304 of this title, such exportation or destruction shall not exempt such articles from the payment of duties other than the marking duty provided for in such subsection (h).


**References in Text**
Subsection (h) of section 1304 of this title, referred to in subsec. (b), was redesignated subsection (i) and a new subsection (h) of section 1304 was added by Pub. L. 106-36, title II, §2423(a), June 25, 1999, 113 Stat. 180.

**Prior Provisions**
Provisions similar to those in this section were contained in R.S. §25703, as amended by act Feb. 27, 1877, ch. 69, §1, 19 Stat. 247, and in R.S. §3025, both of which were superseded by act Sept. 21, 1922, ch. 356, title IV, §558, 42 Stat. 977, and were repealed by section 622 thereof. Section 558 of the 1932 act was superseded by section 558 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

**Amendments**
1999—Subsec. (b). Pub. L. 106-36 substituted "subsection (h)" for "subsection (c)" in two places.

1908—Act June 25, 1908, designated existing provisions as subsecs. (a) and (b).

**Effective Date of 1938 Amendment**
Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

§1559. Warehouse goods deemed abandoned after 5 years
Merchandise upon which any duties or charges are unpaid, remaining in bonded warehouse be-
yond 5 years from the date of importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, shall be regarded as abandoned and sold, and the proceeds paid to the owner, or signee of such amount, if any, as shall remain after deduction of duties, charges, and expenses. Merchandise upon which all duties and charges have been paid, remaining in bonded warehouse beyond 5 years from the date of importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, shall be held to be no longer in the custody or control of the officers of the customs.

PRIOR PROVISIONS


AMENDMENTS

2006—Pub. L. 109–280 inserted "or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown" after "date of importation" in two places.

1978—Pub. L. 95–410 substituted "8 years" for "three years" wherever appearing.

1938—Act June 25, 1938, struck out "(or ten months in the case of grain)" wherever appearing.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 86c of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Period of time prior to Oct. 3, 1978, disregarded in application of amendment to merchandise in bonded warehouses, see section 108(b)(1) of Pub. L. 95–410, set out as a note under section 1557 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Section 23(b) of act June 25, 1938, provided as follows: "The amendments made by subsection (a) of this section [amending this section] shall apply in the case of grain imported prior to the effective date of this act [set out under section 1401 of this title] which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930 [section 1491 or 1559 of this title], and which has remained in the custody of customs officers."

EFFECTIVE DATE OF 1934 AMENDMENT

Period of time prior to Oct. 3, 1934, disregarded in application of amendment to merchandise in bonded warehouse, see section 108(b)(1) of Pub. L. 95–410, set out as a note under section 1557 of this title.

EFFECTIVE DATE OF 1930 AMENDMENT

Section 2 of act June 26, 1934, ch. 736, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title "Refunding proceeds of unclaimed merchandise (Customs) (2x326)" effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

§ 1560. Leasing of warehouses

The Secretary of the Treasury may cause to be set aside any available space in a building used as a customhouse for the storage of bonded merchandise or may lease premises for the storage of unclaimed merchandise or other imported merchandise required to be stored by the Government, and set aside a portion of such leased premises for the storage of bonded merchandise:

Provided, That no part of any premises owned or leased by the Government may be used for the storage of bonded merchandise at any port at which a public bonded warehouse has been established and is in operation. All the premises so leased shall be leased on public account and the storage and other charges shall be deposited and accounted for as customs receipts, and the rates therefor shall not be less than the charges for storage and similar services made at such port of entry by commercial concerns for the storage and handling of merchandise. No officer of the customs shall own, in whole or in part, any bonded warehouse or enter into any contract or agreement for the lease or use of any building to be thereafter erected as a public store or warehouse. No lease of any building to be so used shall be taken for a longer period than three years, nor shall rent for any such premises be paid, in whole or in part, in advance.

2006—Pub. L. 109–280 inserted "or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown" after "date of importation" in two places.
goods or goods required to be stored; section 2955, prohibiting the leasing of warehouses at ports at which there was any private bonded warehouse, but excepting buildings for use of appraisers, etc.; section 2906, providing that warehouses hired should be on public account, and be appropriated exclusively to receipt of foreign merchandise, subject, as to rates of storage, to regulation by the Secretary of the Treasury; and section 2957, prohibiting leases for more than three years, or the payment of rent in advance. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§ 356, 42 Stat. 989.

A prior provision that no officer of the customs should have any personal ownership of, or interest in, any bonded warehouse or general order store, was contained in act June 17, 1930, comprising this section, and repealed by act Sept. 21, 1922, ch. 356, title IV, §§ 356, 42 Stat. 989. That section was superseded by section 561 of the Act to establish for that purpose and be withdrawn therefrom—

AMENDMENTS

1970—Pub. L. 91–271 substituted “officer of the customs” for “collector or other officer of the customs”.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203(a) of Pub. L. 91–271, set out as a note under section 1562(a) of this title.

§ 1561. Public stores

Any premises owned or leased by the Government and used for the storage of merchandise for the final release of which from customs custody a permit has not been issued shall be known as a “public store.”

(Prior Provisions)

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §§ 356, 46 Stat. 745.)

§ 1562. Manipulation in warehouse

Merchandise shall only be withdrawn from a bonded warehouse in such quantity and in such condition as the Secretary of the Treasury shall by regulation prescribe. Upon permission being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom—

(1) without payment of duties for exportation to a NAFTA country, as defined in section 3301(d) of this title, if the merchandise is of a kind described in any of paragraphs (1) through (8) of section 3333(a) of this title;

(2) for exportation to a NAFTA country if the merchandise consists of goods subject to NAFTA drawback, as defined in section 3333(a) of this title, except that—

(A) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of withdrawal from the warehouse with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition, and

(B) duty shall be paid on the merchandise before the 61st day after the date of exportation, but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the merchandise, the customs duty may be waived or reduced (subject to section 1598(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

(i) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or

(ii) the total amount of customs duties paid on the merchandise to the NAFTA country;

(3) without payment of duties for exportation to any foreign country other than to Chile, to a NAFTA country, or to Canada when exports to that country are subject to paragraph (4);

(4) without payment of duties for exportation to Canada (if that country ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates), but the exemption from the payment of duties under this paragraph applies only in the case of an exportation during the period such Agreement is in operation of merchandise—

(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

(B) is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988;

(5) without payment of duties for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam; and

(A) without payment of duties for exportation to Chile, if the merchandise is of a kind described in any of paragraphs (1) through (5) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act; and

(B) for exportation to Chile if the merchandise consists of goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, except that—

(i) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of withdrawal from the warehouse with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition, and

(ii) duty shall be paid on the merchandise before the 61st day after the date of exportation, except that such duties may be waived or reduced by—

(I) 100 percent during the 8-year period beginning on January 1, 2004,

(II) 75 percent during the 1-year period beginning on January 1, 2012,

(III) 50 percent during the 1-year period beginning on January 1, 2013, and
Merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph (4) of the preceding sentence does not apply, upon the payment of duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in bonded warehouse.

(Amendment of Section)

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendment note below.

References in Text

Section 204 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in par. (4)(B), is section 204 of Pub. L. 100–449, title II, §204(c)(4), Sept. 28, 1988, 102 Stat. 1803; Pub. L. 103–182 substituted “be withdrawn therefrom” for “be withdrawn therefrom without payment of duties” in second sentence, substituted “paragraph (4) of the preceding sentence” for “paragraph (1) of the preceding sentence” in third sentence, added pars. (1) to (6), and struck out former pars. (1) to (3) which read as follows:

“(1) for exportation to Canada, but on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, such exemption from the payment of duties applies only in the case of the exportation to Canada of merchandise that—

‘‘(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

‘‘(B) is a drawback eligible good under section 204(a) of such Act of 1988;

“(2) for exportation to any foreign country except Canada; and

“(3) for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island, or the island of Guam.”

1988—Pub. L. 100–449 substituted the except clause and following sentence for proviso at end of second section which read as follows: ‘‘: Provided, That upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without payment of the duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition.”


1945—Act June 30, 1945, inserted “Johnston Island”.

1933—Act Aug. 8, 1933, in third sentence struck out “the entered value or” after “consumption shall be”, “whichever is higher,” after “the adjusted final appraised value,” and “, but for the purpose of the ascertainment and assessment of additional duties under section 1489 of this chapter adjustments of the final appraised value shall be disregarded” after “such adjusted final appraised value”.

1926—Act June 25, 1926, inserted sentence providing for manipulation of imported merchandise entering and remaining in continuous customs custody in cases
where neither the protection of the revenue nor proper conduct of business requires such manipulation be done in a bonded warehouse, and inserted “Wake Island, Midway Islands, Kingman Reef” before “or the island of Guam”.

Effective Date of 2006 Amendment
Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 58c of this title.

Effective and Termination Dates of 2003 Amendment
Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–77, set out in a note under section 3885 of this title.

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1994, except as otherwise specifically provided, see section 2205 of Pub. L. 103–182, set out as a note under section 37 of this title.

Effective and Termination Dates of 1993 Amendment
Amendment by Pub. L. 103–182 applicable (1) with respect to exports from the United States to Mexico on Jan. 1, 1994, except as otherwise specifically provided, see section 2205 of Pub. L. 103–182, set out as a note under section 37 of this title.

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1994, except as otherwise specifically provided, see section 2205 of Pub. L. 103–182, set out as a note under section 37 of this title.

Effective and Termination Dates of 1968 Amendment
Amendment by Pub. L. 100–449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on the date Agreement ceases to be in force, see section 213(c) of Pub. L. 100–449, set out as an Effective Date note under section 3331 of this title.

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–182 applicable (1) with respect to exports from the United States to Mexico on Jan. 1, 1994, except as otherwise specifically provided, see section 2205 of Pub. L. 103–182, set out as a note under section 37 of this title.

Effective and Termination Dates of 1968 Amendment
Amendment by Pub. L. 100–449 effective on date the United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on the date Agreement ceases to be in force, see section 213(c) of Pub. L. 100–449, set out as an Effective Date note under section 3331 of this title.

Effective Date of 1970 Amendment
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

Effective Date of 1955 Amendment
Amendment by act June 30, 1955, effective July 1, 1955, see note set out under section 1401 of this title.

Effective Date of 1953 Amendment: Savings Provision
Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

Effective Date of 1938 Amendment
Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 57 of act June 25, 1938, set out as a note under section 1401 of this title.

§ 1563. Allowance for loss, abandonment of warehouse goods
(a) Abatement or allowance for deterioration, loss or damage to merchandise in customs custody; exception

In no case shall there be any abatement or allowance made in the duties for any injury, deterioration, loss, or damage sustained by any merchandise while remaining in customs custody, except that the Secretary of the Treasury is authorized, upon production of proof satisfactory to him of the loss or theft of any merchandise while in the appraiser’s stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the appraiser’s stores, or while in transportation under bond, or while in the custody of the officers of the customs, although not in bond, or while within the limits of any port of entry and before having been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, the duties upon such merchandise, in whole or in part, and to pay any such refund out of any moneys in the Treasury not otherwise appropriated, and to cancel any warehouse bond or bonds, or enter satisfaction thereon in whole or in part, as the case may be, but no abatement or refund shall be made in respect of injury or destruction of any merchandise in bonded warehouse occurring after the expiration of three years from the date of importation. The decision of the Secretary of the Treasury as to the abatement or refund of the duties on any such merchandise shall be final and conclusive upon all persons.

The Secretary of the Treasury is authorized to prescribe such regulations as he may deem necessary to carry out the provisions of this subdivision and he may by such regulations limit the time within which proof of loss, theft, injury, or destruction shall be submitted, and may provide for the abatement or refund of duties, as authorized herein, by appropriate customs officers in cases in which the amount of the abatement or refund claimed is less than $25 and in which the importer has agreed to abide by the decision of the customs officer. The decision of the customs officer in any such case shall be final and conclusive upon all persons.

(b) Abandonment of merchandise to Government; remittal or refund of duties paid

Under such regulations as the Secretary of the Treasury may prescribe and subject to any conditions imposed thereby the consignee may at any time within three years from the date of original importation, abandon to the Government any merchandise in bonded warehouse, whereupon any duties on such merchandise may be remitted or refunded as the case may be, but any merchandise so abandoned shall not be less than an entire package and shall be abandoned in the original package without having been re-packed while in a bonded warehouse (other than a bonded manipulating warehouse).


Codification
Provisions of this section authorizing transfer of cases before the United States Customs Court on June 18, 1930, to the Secretary of the Treasury, or to the collector, for consideration and determination, were omitted.

Prior Provisions
Prior provisions somewhat similar to those in this section, were contained in R.S. §2863, and section 2984 as amended by act Feb. 27, 1877, ch. 69, §1, 19 Stat. 249, which contained a further provision for cancellation of satisfaction of warehouse bonds. Both of these sections were superseded by act Sept. 21, 1922, ch. 356, title IV,
§ 1564. Liens

Whenever a customs officer shall be notified in writing of the existence of a lien for freight, charges, or contribution in general average upon any imported merchandise sent to the appraiser's store for examination, entered for warehousing or taken possession of by him, he shall refuse to permit delivery thereof from public store or bonded warehouse until proof shall be produced that the said lien has been satisfied or discharged. The rights of the United States shall not be prejudiced or affected by the filing of such lien, nor shall the United States or its officers be liable for losses or damages consequent upon such refusal to permit delivery. If merchandise, regarding which such notice of lien has been filed, shall be forfeited or abandoned and sold, the freight, charges, or contribution in general average due thereon shall be paid from the proceeds of such sale in the same manner as other lawful charges and expenses are paid therefrom. The provisions of this section shall apply to licensed customs brokers who otherwise possess a lien for the purposes stated above upon the merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any State.


1938—Act June 23, 1938, struck out "(or ten months in the case of grain)" wherever appearing.

Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

Effective Date of 1938 Amendment

Section 23(b) of act June 25, 1938, provided as follows: "The amendments made by subsection (a) of this section [amending this section] shall apply in the case of grain imported prior to the effective date of this act [see note set out under section 1401 of this title] which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930 [section 1491 or 1559 of this title], and which has remained in the custody of customs officers."

Appropriations

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title "Refunding duties on goods destroyed (Customs) (2x330)" effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

§ 1564. Liens

The cartage of merchandise entered for warehouse shall be done by—

(1) cartmen appointed and licensed by the Customs Service, for the protection of the Government against any loss of, or damage to, the merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores and of merchandise taken into custody by the customs officer as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe.


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §564, 42 Stat. 978. That section was superseded by section 564 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section were contained in R.S. §2981, as amended by act June 10, 1880, ch. 190, §10, 21 Stat. 175, and act May 21, 1896, ch. 217, 29 Stat. 129, which also required notice to be given the party claiming the lien before delivery of the goods, and provided that possession by officers of the customs should not affect the discharge of the lien. That section was repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 986.

Amendments

1984—Pub. L. 98–573 inserted provision making this section applicable to licensed customs brokers who otherwise possess a lien for the purposes stated above upon the merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any State.


Effective Date of 1984 Amendment


Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

Plan Amendments Not Required Until

January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1565. Cartage

The cartage of merchandise entered for warehouse shall be done by—

(1) cartmen appointed and licensed by the Customs Service, for the protection of the Government against any loss of, or damage to, the merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores and of merchandise taken into custody by the customs officer as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe.


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §564, 42 Stat. 978. That section was superseded by section 564 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section were contained in R.S. §2981, as amended by act June 10, 1880, ch. 190, §10, 21 Stat. 175, and act May 21, 1896, ch. 217, 29 Stat. 129, which also required notice to be given the party claiming the lien before delivery of the goods, and provided that possession by officers of the customs should not affect the discharge of the lien. That section was repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 986.

Amendments

1984—Pub. L. 98–573 inserted provision making this section applicable to licensed customs brokers who otherwise possess a lien for the purposes stated above upon the merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any State.

§ 1581. Boarding vessels

(a) Customs officers

Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or, as he may be authorized, within a customs-enforcement area established under the Anti-Smuggling Act [19 U.S.C. 1701 et seq.], or at any other authorized place, without as well as within his district, and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance.

(b) Officers of Department of the Treasury

Officers of the Department of the Treasury and other persons authorized by such department may go on board of any vessel at any place in the United States or within the customs waters and hail, stop, and board such vessel in the enforcement of the navigation laws and arrest or, in case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws. (c) Penalty for presenting forged, altered, or false documents

Any master of a vessel being examined as herein provided, who presents any forged, altered, or false document or paper to the examining officer, knowing the same to be forged, altered, or false and without revealing the fact shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than $5,000 nor less than $500.

(d) Penalty for failure to stop at command

Any vessel or vehicle which, at any authorized place, is directed to come to a stop by any officer of the customs, or is directed to come to a stop by signal made by any vessel employed in the service of the customs and displaying proper insignia, shall come to a stop, and upon failure to comply a vessel or vehicle so directed to come to a stop shall become subject to pursuit and the master, owner, operator, or person in charge thereof shall be liable to a penalty of not more than $5,000 nor less than $1,000.

(e) Seizure of vessel or merchandise

If upon the examination of any vessel or vehicle it shall appear that a breach of the laws of the United States is being or has been committed so as to render such vessel or vehicle, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel or vehicle, liable to forfeiture or to secure any fine or penalty, the same shall be seized and any person who has engaged in such breach shall be arrested.

(f) Duty of customs officers to seize vessel

It shall be the duty of the several officers of the customs to seize and secure any vessel, vehicle, or merchandise which shall become liable to seizure, and to arrest any person who shall become liable to arrest, by virtue of any law respecting the revenue, as well without as within their respective districts, and to use all necessary force to seize or arrest the same.

(g) Vessels deemed employed within United States

Any vessel, within or without the customs waters, from which any merchandise is being, or has been, unlawfully introduced into the United States by means of any boat belonging to, or owned, controlled, or managed in common with, said vessel, shall be deemed to be employed within the United States and, as such, subject to the provisions of this section.

(h) Application of section to treaties of United States

The provisions of this section shall not be construed to authorize or require any officer of the United States to enforce any law of the United States upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon said vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government.
§ 1582

Search of persons and baggage; regulations

The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and he is authorized to employ female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations.

(June 17, 1930, ch. 497, title IV, § 582, 46 Stat. 748.)

Prior Provisions

Provisions similar to those in this section were contained in R.S. § 3064, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 582, 42 Stat. 979, and was repealed by section 842 thereof. Section 582 of the 1922 act was superseded by section 582 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1583. Examination of outbound mail

(a) Examination

(1) In general

For purposes of ensuring compliance with the Customs laws of the United States and other laws enforced by the Customs Service, including the provisions of law described in paragraph (2), a Customs officer may, subject to the provisions of this section, stop and search at the border, without a search warrant, mail of domestic origin transmitted for export by the United States Postal Service and foreign mail transiting the United States that is being imported or exported by the United States Postal Service.

(2) Provisions of law described

The provisions of law described in this paragraph are the following:

(A) Section 5016 of title 31 (relating to reports on exporting and importing monetary instruments).

(B) Sections 1461, 1463, 1465, and 1466, and chapter 110 of title 18 (relating to obscenity and child pornography).

(C) Section 953 of title 21 (relating to exportation of controlled substances).

(D) The Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.).

(E) Section 2778 of title 22.


(b) Search of mail not sealed against inspection and other mail

Mail not sealed against inspection under the postal laws and regulations of the United States, mail which bears a Customs declaration, and mail with respect to which the sender or addressee has consented in writing to search, may be searched by a Customs officer.

(c) Search of mail sealed against inspection weighing in excess of 16 ounces

(1) In general

Mail weighing in excess of 16 ounces sealed against inspection under the postal laws and regulations of the United States may be searched by a Customs officer, subject to paragraph (2), if there is reasonable cause to suspect that such mail contains one or more of the following:

(A) Monetary instruments, as defined in section 1956 of title 18.

(B) A weapon of mass destruction, as defined in section 2332a(b) of title 18.

(C) A drug or other substance listed in schedule I, II, III, or IV in section 812 of title 21.

(D) National defense and related information transmitted in violation of any of sections 793 through 798 of title 18.

(E) Merchandise mailed in violation of section 1715 or 1716 of title 18.

(F) Merchandise mailed in violation of any provision of chapter 71 (relating to obscenity) or chapter 110 (relating to sexual exploitation and other abuse of children) of title 18.

1 See References in Text note below.
(G) Merchandise mailed in violation of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.).

(H) Merchandise mailed in violation of section 2778 of title 22.


(J) Merchandise mailed in violation of the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.).

(K) Merchandise subject to any other law enforced by the Customs Service.

(2) Limitation

No person acting under the authority of paragraph (1) shall read, or authorize any other person to read, any correspondence contained in mail sealed against inspection unless prior to so reading—

(A) a search warrant has been issued pursuant to rule 41 of the Federal Rules of Criminal Procedure; or

(B) the sender or addressee has given written authorization for such reading.

d) Search of mail sealed against inspection weighing 16 ounces or less

Notwithstanding any other provision of this section, subsection (a)(1) of this section shall not apply to mail weighing 16 ounces or less sealed against inspection under the postal laws and regulations of the United States.


REFERENCES IN TEXT

The Customs laws of the United States, referred to in subsec. (a)(1), are classified generally to title II, 59 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

The International Emergency Economic Powers Act, referred to in subsecs. (a)(2)(D) and (c)(1)(G), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

Section 2332a(b) of title 18, referred to in subsec. (c)(1)(B), does not define the term "weapon of mass destruction". However, that term is defined elsewhere in that section.

The Trading with the Enemy Act, referred to in subsec. (c)(1)(K), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

Rule 41 of the Federal Rules of Criminal Procedure, referred to in subsec. (c)(2)(A), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

or vehicle the master or other person in charge of or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of $1,000: Provided, That if the Customs Service shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. For purposes of this subsection, the term “clerical error” means a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission (electronically or otherwise) of the manifest.

(2) If any of such merchandise so found consists of heroin, morphine, cocaine, isonipecaine, or opiate, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for heroin, morphine, cocaine, isonipecaine, or opiate being in such merchandise shall be liable to a penalty of $1,000 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium, opium prepared for smoking, or marijuana, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marijuana being in such merchandise shall be liable to a penalty of $500 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for crude opium being in such merchandise shall be liable to a penalty of $200 for each ounce thereof so found. Such penalties shall, notwithstanding the provisions of section 1594 of this title (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or unless the master or owner of such vessel or vehicle or any person directly or indirectly responsible for such narcotic drugs was on board satisfies the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of such vessel may be withheld until such penalties are paid or unless the master or owner of such vessel or vehicle or any person directly or indirectly responsible for such narcotic drugs was on board satisfies the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board.

(b) Procedures

(1) If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a)(1) of this section and determines that further proceedings are warranted, the Customs Service shall issue or electronically transmit to the person concerned a notice of intent to issue or electronically transmit a claim for a monetary penalty. Such notice shall—

(A) describe the merchandise;

(B) set forth the details of the error in the manifest;

(C) specify all laws and regulations allegedly violated;

(D) disclose all the material facts which establish the alleged violation;

(E) state the estimated loss of lawful duties, if any, and, taking into account all of the circumstances, the amount of the proposed monetary penalty; and

(F) inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

No notice is required under this subsection for any violation of subsection (a)(1) of this section for which the proposed penalty is $1,000 or less.

(2) After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a)(1) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue or electronically transmit a statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, the Customs Service shall issue or electronically transmit a penalty claim to such person. The penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 566, title IV, §584, 42 Stat. 980. Section 584 of the 1922 act was superseded by section 584 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions dealing with the subject matter of this section were contained in R.S. §4009, imposing a penalty and providing for forfeiture for bringing in merchandise not included in the manifest, or without a
section 1584

**MANIFEST; SECTION 2810, AS AMENDED BY ACT FEB. 27, 1877, CH. 69, § 19 STAT. 246, MAKING AN EXCEPTION IN CASE OF MISTAKE OR ACCIDENT, ETC.; SECTION 2814, IMPOSING PENALTIES FOR Failing TO PRODUCE OR DELIVER COPIES OF THE MANIFESTS, ETC.; SECTION 2815, REQUIRING OFFICERS TO REPORT VIOLATIONS; SECTION 2887, IMPOSING A PENALTY IF ANY PACKAGE REPORTED WAS NOT FOUND, OR IF THE MERCHANDISE DID NOT CONFORM WITH THE REPORTED MANIFEST, ETC. ALL OF THESE VIEWS WERE REPEALED BY ACT SEPT. 21, 1922, CH. 356, TITLE IV, § 642, 42 STAT. 989.**

**AMENDMENTS**

1999—Subsec. (a)(2). Pub. L. 106–36, § 1001(b)(7)(A), in last sentence, substituted “802(18) and 802(16), respectively, of title 21” for “802(17) and 802(15), respectively, of title 21.”

Subsec. (a)(3). Pub. L. 106–36, § 1001(b)(7)(B), struck out “or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 1707 of this title and the required certificate be not shown,” after “‘United States is prohibited,” and substituted period at end for “; and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalties herein provided in the case of merchandise properly manifested: Provided, That if the Customs Service shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.”


**EFFECTIVE DATE OF 1970 AMENDMENTS**

Amendment by Pub. L. 91–513 effective on first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1506 of this title.

**SAVINGS PROVISION**

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

**TRANSFER OF FUNCTIONS**

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 205(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 422 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 408(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**STANDARDS OF CARE IN DISCOVERING CONTRABAND**

Pub. L. 100–690, title VII, § 7369, Nov. 18, 1988, 102 Stat. 4881, directed Secretary of the Treasury, no later than

**SECTION 2810, AS AMENDED BY ACT FEB. 27, 1877, CH. 69, § 19 STAT. 246, MAKING AN EXCEPTION IN CASE OF MISTAKE OR ACCIDENT, ETC.; SECTION 2814, IMPOSING PENALTIES FOR Failing TO PRODUCE OR DELIVER COPIES OF THE MANIFESTS, ETC.; SECTION 2815, REQUIRING OFFICERS TO REPORT VIOLATIONS; SECTION 2887, IMPOSING A PENALTY IF ANY PACKAGE REPORTED WAS NOT FOUND, OR IF THE MERCHANDISE DID NOT CONFORM WITH THE REPORTED MANIFEST, ETC. ALL OF THESE VIEWS WERE REPEALED BY ACT SEPT. 21, 1922, CH. 356, TITLE IV, § 642, 42 STAT. 989.**

**AMENDMENTS**

1999—Subsec. (a)(2). Pub. L. 106–36, § 1001(b)(7)(A), in last sentence, substituted “802(18) and 802(16), respectively, of title 21” for “802(17) and 802(15), respectively, of title 21.”

Subsec. (a)(3). Pub. L. 106–36, § 1001(b)(7)(B), struck out “or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 1707 of this title and the required certificate be not shown,” after “‘United States is prohibited,” and substituted period at end for “; and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalties herein provided in the case of merchandise properly manifested: Provided, That if the Customs Service shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.”

120 days after Nov. 18, 1988, and after an opportunity for public comment, to prescribe regulations which set forth criteria for use by the owner, master, pilot, operator, or officer of, or other employee in charge of, any common carrier in meeting the standards under sections 1584(a)(2) and 1594(c) of this title for the exercise of the highest degree of care and diligence to know whether controlled substances imported into the United States are on board the common carrier and, within 6 months after Nov. 18, 1988, to issue controlled substances regulations for a 2-year demonstration program to establish procedures for air carrier development and Customs Service approval of foreign and domestic security and inspection practices by permitting air carriers to request the Secretary of the Treasury to permit air carriers, the Customs Service, or an approved agent of the Customs Service to inspect at United States airports of entry, and aircraft arriving from foreign locations.


§ 1586. Unlawful unloading or transshipment

(a) Penalty for unloading or delivering merchandise while outside the territorial sea, who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unladen, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited.

(b) Penalty for transshipment to any vessel for purpose of unlawful entry

The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen, without permit to unladen, at any place upon the high seas adjacent to the customs waters of the United States, or at any place in the United States or within customs waters, if a foreign national, shall engage or aid or assist in any unlawful transshipment of any merchandise in consequence of which any vessel becomes subject to forfeiture under the provisions of this section shall, in addition to any other penalties provided by law, be liable to imprisonment for not more than 15 years.

(c) Penalty for unlawful transshipment to any vessel of United States

The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) destined to the United States, the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen, without permit to unladen, at any place upon the high seas adjacent to the customs waters of the United States, to be transshipped to or placed in or received on any vessel of the United States or any other vessel which is owned by any person a citizen of, or domiciled in, the United States, or any corporation incorporated in the United States, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(d) Liability of master of receiving vessel in unlawful transshipment

If any merchandise (including sea stores) unladen in violation of the provisions of this section is transshipped to or placed in or received on any other vessel, the master of the vessel on which such merchandise is placed, and any person aiding or assisting therein, shall be liable to a penalty equal to twice the value of the merchandise, but not less than $10,000, and such vessel, and its cargo and such merchandise, shall be seized and forfeited.

(e) Imprisonment of persons aiding in unlawful unloading or transshipment

Whoever, at any place, if a citizen of the United States, or at any place in the United States or within customs waters, if a foreign national, shall engage or aid or assist in any unloading or transshipment of any merchandise in consequence of which any vessel becomes subject to forfeiture under the provisions of this section shall, in addition to any other penalties provided by law, be liable to imprisonment for not more than 15 years.

(f) Unloading or transshipment because of accident, stress of weather, etc.

Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify the Customs Service at the district within which such unloading or transshipment has occurred, or the Customs Service at the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unloading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the Customs Service is satisfied that the unloading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §§586, 587, 42 Stat. 980, 981. These sections were superseded by section 586 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act. 

Provisions somewhat similar to those in this section, but applicable only to vessels “bound to the United States” were contained in R.S. §2868, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989. 

Provisions substantially the same in effect as those contained in the act of 1922, §587, except that the penalty was treble the value of the merchandise, and the provision for forfeiture applied only to the vessel was contained in R.S. §2868, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989. 

AMENDMENTS

1937—Subsecs. (a) to (c). Pub. L. 103–182, §620(1), inserted “, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea,” after “from a foreign port or place”. 

Subsec. (f). Pub. L. 103–182, §620(2), substituted “the Customs Service at the district” for “the appropriate customs officer of the district” and “the Customs Service at the district” for “the appropriate customs officer is satisfied”. 

1936—Subsec. (d). Pub. L. 99–570, §3119(1), substituted “$10,000” for “$1,000” wherever appearing. 

Subsec. (e). Pub. L. 99–570, §3119(2)(A), substituted “customs waters” for “one league of the coast of the United States”. 

Pub. L. 99–570, §3119(2)(B), which directed that “15 years” be substituted for “2 years” was executed by making the substitution for “two years” as the probable intent of Congress. 


1935—Act Aug. 5, 1935, redesignated existing provisions as subsecs. (a) and (f) and added subsec. (b) to (e). 

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title. 

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1587. Examination of hovering vessels

(a) Boarding and examination

Any hovering vessel, or any vessel which falls (except for unavoidable cause), at any place within the customs waters or within a customs-enforcement area established under the Anti-Smuggling Act [19 U.S.C. 1701 et seq.] to display lights as required by law, or which has become subject to pursuit as provided in section 1581 of this title, or which, being a foreign vessel to which subsection (h) of section 1581 of this title applies, is permitted by special arrangement with a foreign government to be so examined without the customs waters of the United States, may at any time be boarded and examined by any officer of the customs, and the provisions of said section 1581 shall apply thereto, as well without as within his district, and in examining the same, any such officer may also examine the master upon oath respecting the cargo and voyage of the vessel, and may also bring the vessel into the most convenient port of the United States to examine the cargo, and if the master of said vessel refuses to comply with the lawful directions of such officer or does not truly answer such questions as are put to him respecting the vessel, its cargo, or voyage, he shall be liable to a penalty of not more than $5,000 nor less than $500. If, upon the examination of any such vessel or its cargo by any officer of the customs, any dutiable merchandise destined to the United States is found, or discovered to have been, on board thereof, the vessel and its cargo shall be seized and forfeited. It shall be presumed that any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, so found, or discovered to have been, on board thereof, is destined to the United States.

(b) Unexplained lightness of vessel or discharge of cargo

If any vessel laden with cargo be found at any place in the United States or within the customs waters or within a customs-enforcement area established under the Anti-Smuggling Act [19 U.S.C. 1701 et seq.] and such vessel afterwards is found light or in ballast or having discharged its cargo or any part thereof, the master is unable to give a due account of the port or place at which the cargo, or any part thereof, consisting of any merchandise the importation of which into the United States is prohibited or any spirits, wines, or other alcoholic liquors, was lawfully discharged, the vessel shall be seized and forfeited.

(c) Vessel bona fide bound from one foreign port to another foreign port

Nothing contained in this section shall be construed to render any vessel liable to forfeiture which is bona fide bound from one foreign port to another foreign port, and which is pursuing her course, wind and weather permitting.


REFERENCES IN TEXT

The Anti-Smuggling Act, referred to in subsecs. (a) and (b), is act Aug. 5, 1935, ch. 438, 49 Stat. 517, as amended, which is classified principally to chapter 5 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1711 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §§586, 587, 42 Stat. 981. That section was superseded by section 586 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially the same as those in this section, except that they applied only to ports on the northern, northeastern and northwestern frontiers, were contained in R.S. §3110, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

§ 1588. Transportation between American ports via foreign ports

If any merchandise is laden at any port or place in the United States upon any vessel belonging wholly or in part to a subject of a foreign country, and is taken thence to a foreign port or place to be reladen and reshipped to any other port in the United States, either by the same or by another vessel, foreign or American, with intent to evade the provisions relating to the transportation of merchandise from one port or place of the United States to another port or place of the United States in a vessel belonging wholly or in part to a subject of any foreign power, the merchandise shall, on its arrival at such last-named port or place, be seized and forfeited to the United States, and the vessel shall pay a tonnage duty of 50 cents per net ton.

(June 17, 1930, ch. 497, title IV, § 588, 46 Stat. 749.)


CODIFICATION

Another section 589 of act June 17, 1930, was added by Pub. L. 98–473, title II, § 320, Oct. 12, 1984, 98 Stat. 2056, and is classified to section 1589a of this title.

 CODIFICATION

A prior section 589 of act June 17, 1930, ch. 497, title IV, 46 Stat. 750, related to unlawful relanding and was classified to section 1544 of Title 18, Crimes and Criminal Procedure.

§ 1589a. Enforcement authority of customs officers

Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

(1) carry a firearm;
(2) execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States;
(3) make an arrest without a warrant for any offense against the United States committed in the officer’s presence or for a felony, cognizable under the laws of the United States committed outside the officer’s presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and
(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.


CODIFICATION


PRIOR PROVISIONS

A prior section 589 of act June 17, 1930, ch. 497, title IV, 46 Stat. 750, related to unlawful relanding and was classified to this section, prior to repeal by act June 26, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 544 of Title 18, Crimes and Criminal Procedure.

§ 1590. Aviation smuggling

(a) In general

It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.

(b) Sea transfers

It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

(1) either—
(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or
(B) the vessel is a vessel of the United States (within the meaning of section 1703(b) of this title), or
(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

(c) Civil penalties

Any person who violates any provision of this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than $10,000. The value of any controlled substance included in the merchandise shall be determined in accordance with section 1497(b) of this title.

(d) Criminal penalties

In addition to being liable for a civil penalty under subsection (c) of this section, any person who intentionally commits a violation of any provision of this section is, upon conviction—

(1) liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved was a controlled substance;
(2) liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both, if any of the merchandise involved was a controlled substance.

(e) Seizure and forfeiture

(1) Except as provided in paragraph (2), a vessel or aircraft used in connection with, or in aiding or facilitating, any violation of this section, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with the customs laws.
(2) Paragraph (1) does not apply to a vessel or aircraft operated as a common carrier.

(f) “Merchandise” defined

As used in this section, the term “merchandise” means only merchandise the importation of which into the United States is prohibited or restricted.

(g) Intent of transfer of merchandise

For purposes of imposing civil penalties under this section, any of the following acts, when per-
formed within 250 miles of the territorial sea of the United States, shall be prima facie evidence that the transportation or possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (e) of this section or section 1595a of this title, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:
(1) The operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law.
(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.
(3) The failure to identify correctly—
   (A) the vessel by name or country of registration, or
   (B) the aircraft by registration number and country of registration,
   when requested to do so by a customs officer or other government authority.
(4) The external display of false registration numbers, false country of registration, or, in the case of a vessel, false vessel name.
(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.
(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under the Single Convention on Narcotic Drugs or other international treaty.
(7) The presence of any compartment or equipment which is built or fitted out for smuggling.
(8) The failure of a vessel to stop when hailed by a customs officer or other government authority.


Prior Provisions

Title of Territory of United States
For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.


§1592. Penalties for fraud, gross negligence, and negligence

(a) Prohibition
(1) General rule
Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax, or fee thereby, no person, by fraud, gross negligence, or negligence—
   (A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—
      (i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or
      (ii) any omission which is material, or
   (B) may aid or abet any other person to violate subparagraph (A).

(2) Exception
Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) Procedures
(1) Pre-penalty notice
(A) In general
If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) of this section and determines that further proceedings are warranted, it shall issue to the person concerned a written notice of its intention to issue a claim for a monetary penalty. Such notice shall—
   (i) describe the merchandise;
   (ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;
   (iii) specify all laws and regulations allegedly violated;
   (iv) disclose all the material facts which establish the alleged violation;
   (v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;
   (vi) state the estimated loss of lawful duties, taxes, and fees, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty; and
   (vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) Exceptions
The preceding subparagraph shall not apply if—
   (i) the importation with respect to which the violation of subsection (a) of this section occurs is noncommercial in nature, or
   (ii) the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less.

(2) Penalty claim
After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation
of subsection (a) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, it shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, it shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 1618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum penalties

(1) Fraud

A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

(2) Gross negligence

A grossly negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 10 percent of the dutiable value of the merchandise.

(3) Negligence

A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) Prior disclosure

If the person concerned discloses the circumstances of a violation of subsection (a) of this section before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) of this section shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties, taxes, and fees of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount.

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of title 26) on the amount of lawful duties, taxes, and fees of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) of this section existed.

(5) Prior disclosure regarding NAFTA claims

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim for preferential tariff treatment under section 3332 of this title if the importer—

(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 1508(b)(1) of this title) on which the claim was based contains incorrect information; and

(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(6) Prior disclosure regarding claims under the United States-Chile Free Trade Agreement

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim for preferential tariff treatment under section 202 of the United States-Chile Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(7) Prior disclosure regarding claims under the United States-Singapore Free Trade Agreement

(A) An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Singapore Free Trade Agreement

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...
flies as an originating good under section 202 of the United States-Singapore Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim that a good qualifies as an originating good.

(8) Prior disclosure regarding claims under the United States-Australia free trade agreement

(A) In general

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Australia Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) Time periods for making corrections

In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim.

(9) Prior disclosure regarding claims under the United States-Peru Trade Promotion Agreement

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 203 of this title if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing.

(10) Prior disclosure regarding claims under the United States-Peru Trade Promotion Agreement

An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Peru Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

(11) Seizure

If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) of this section and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c) of this section.

(d) Deprivation of lawful duties, taxes, or fees

Notwithstanding section 1514 of this title, if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a) of this section, the Customs Service shall require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed.

(e) Court of International Trade proceedings

Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

(f) False certifications regarding exports to NAFTA countries

(1) In general

Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 1508(b)(1) of this title) that a good to be exported to a NAFTA country (as defined in section 3301(4) of this title) qualifies under the rules of origin set out in section 3332 of this title.

(2) Applicable provisions

The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of paragraph (1), except that—
(A) subsection (d) of this section does not apply, and
(B) subsection (c)(5) of this section applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

(3) Exception
A person may not be considered to have violated paragraph (1) if—
(A) the information was correct at the time it was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and
(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

(g) False certifications of origin under the United States-Chile Free Trade Agreement

(1) In general
Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a Chile FTA Certificate of Origin (as defined in section 1508(f)(1)(B) of this title) that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of this subsection.

(2) Immediate and voluntary disclosure of incorrect information
No penalty shall be imposed under this subsection if, immediately after an exporter or producer that issued a CAFTA–DR certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception
A person may not be considered to have violated paragraph (1) if—
(A) the information was correct at the time it was provided in a CAFTA–DR certification of origin but was later rendered incorrect due to a change in circumstances; and
(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(h) False certifications of origin under the Dominican Republic-Central America-United States Free Trade Agreement

(1) In general
Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a CAFTA–DR certification of origin (as defined in section 1508(g)(1)(B) of this title) that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 4033 of this title. The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of this subsection.

(2) Prompt and voluntary disclosure of incorrect information
No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CAFTA–DR certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception
A person may not be considered to have violated paragraph (1) if—
(A) the information was correct at the time it was provided in a CAFTA–DR certification of origin but was later rendered incorrect due to a change in circumstances; and
(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(i) False certifications of origin under the United States-Peru Trade Promotion Agreement

(1) In general
Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a PTPA certification of origin (as defined in section 1508(h)(1)(B) of this title) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States-Peru Trade Promotion Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

(2) Prompt and voluntary disclosure of incorrect information
No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a PTPA certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception
A person shall not be considered to have violated paragraph (1) if—
(A) the information was correct at the time it was provided in a PTPA certification of origin but was later rendered incorrect due to a change in circumstances; and
(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.
AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 110–138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 108–286, see Effective and Termination Dates of 2004 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 108–78, see Effective and Termination Dates of 2003 Amendments note below.

REFERENCES IN TEXT

Section 202 of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsec. (c)(6) and (g)(1), is section 202 of Pub. L. 108–77, which is set out in a note under section 3805 of this title.

Section 202 of the United States-Singapore Free Trade Agreement Implementation Act, referred to in subsec. (c)(7)(A), is section 202 of Pub. L. 108–78, which is set out in a note under section 3805 of this title.

Section 203 of the United States-Australia Free Trade Agreement Implementation Act, referred to in subsec. (c)(8)(A), is section 203 of Pub. L. 108–286, which is set out in a note under section 3805 of this title.

Prior Provisions

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, §111, H. Stat. 83, which was superseded by act Sept. 21, 1922, ch. 356, title IV, §592, 42 Stat. 962, and was repealed by section 643 thereof. Section 592 of the 1922 act was superseded by section 592 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.


Act June 22, 1974, ch. 391, §16, 88 Stat. 189, required special findings as to fraud in actions, etc., to enforce forfeitures, etc., prior to repeal by Customs Administrative Act of June 10, 1980, ch. 407, §29, 96 Stat. 141.

AMENDMENTS


2006—Subsec. (c)(9), (10). Pub. L. 109–53, §§107(d), 206(a)(1), temporarily added par. (9) and redesignated former par. (9) as (10). See Effective and Termination Dates of 2005 Amendment note below.


2004—Subsec. (c)(8), (9). Pub. L. 108–286, §§106(c), 205, temporarily added par. (6) and redesignated former par. (8) as (9). See Effective and Termination Dates of 2004 Amendment note below.


See Effective and Termination Dates of 2003 Amendments note below.


Pub. L. 104–295, §3(a)(5), substituted “and fees be restored” for “or fees be restored”.


Subsec. (a)(2). Pub. L. 103–182, §621(2), inserted at end “The mere unintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.”

Subsec. (b)(1)(A). Pub. L. 103–182, §621(3)(A), substituted “the Customs Service” for “the appropriate customs officer” “it shall issue” for “he shall issue” and “its intention” for “his intention” in introductory provisions.

Subsec. (b)(2). Pub. L. 103–182, §621(3)(B), substituted “the Customs Service shall determine” for “the appropriate customs officer shall determine” “the Customs Service determines” for “such officer determines” in
two places, "it shall" for "he shall" in two places, and "the Customs Service shall provide" for "the appropriate customs officer shall provide".

Subsec. (c)(4). Pub. L. 103-182, §621(a)(4), inserted at end "For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) of this section existed."

Subsec. (c)(4)(A)(i). Pub. L. 103-182, §621(a)(4), as amended by Pub. L. 104-295, §21(e)(12); Pub. L. 106-36, §1001(b)(8), substituted "time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its" for "time of disclosure of, or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his".

Subsec. (c)(4)(B). Pub. L. 103-182, §621(a)(4), as amended by Pub. L. 104-295, §21(e)(12); Pub. L. 106-36, §1001(b)(8), which directed the substitution of "time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its" for "time of disclosure, or within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his", was executed by making the substitution for text which began "time of disclosure or within 30 days", to reflect the probable intent of Congress.

Subsec. (c)(5), (6). Pub. L. 103-182, §205(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d). Pub. L. 103-182, §621(5), inserted "taxes or fees" after "duties" in heading and in text substituted "duties, taxes, or fees" for "duties" in two places and "the Customs Service" for "the appropriate customs officer".


1980—Subsec. (e). Pub. L. 96-417 substituted in heading "Court of International Trade" for "District court" and in text "proceeding commenced by the United States in the Court of International Trade" for "proceeding in a United States district court commenced by the United States pursuant to section 1604 of this title.

1978—Pub. L. 95-410 substituted subsecs. (a) to (e) relating to penalties for fraud, gross negligence, and negligence for prior provisions which provided for forfeiture of merchandise, or recovery of value thereof, where entry or attempted entry of the merchandise was made using fraudulent or false invoice, declaration, affidavit, letter, paper, or false statement, written or verbal, false or fraudulent practice or appliance, or false statement in a declaration on entry without reasonable cause to believe the truth of the statement or aid or procure the making any such false statement as to any material matter without reasonable cause to believe the truth of the statement, regardless of deprivation of lawful duties, or guilty of any willful act or omission when there was a deprivation of such duties; made the forfeiture applicable to the whole of the merchandise or the value thereof where package contained the particular articles to which the fraud or false paper or statement related; and defined attempt to enter the merchandise without an actual entry having been made or offered.

1955—Act Aug. 5, 1955, inserted "whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement":

Effective and Termination Dates of 2007 Amendment

Amendment by Pub. L. 110-138 effective on the date the United States-Peru Trade Promotion Agreement enters into force (Feb. 1, 2009) and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110-138, set out in a note under section 3805 of this title.

Effective and Termination Dates of 2005 Amendment

Amendment by Pub. L. 109-53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAPTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109-53, set out as an Effective and Termination Dates note under section 4001 of this title.

Effective and Termination Dates of 2004 Amendment

Amendment by Pub. L. 108-286 effective on the date on which the United States-Australia Free Trade Agreement enters into force (Jan. 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 108-286, set out in a note under section 3805 of this title.

Effective and Termination Dates of 2003 Amendments

Amendment by Pub. L. 108-77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108-77, set out in a note under section 3805 of this title.

Effective Date of 1996 Amendment

Amendment by section 3(a)(4), (5) of Pub. L. 104-295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104-295, set out as a note under section 1321 of this title.

Effective Date of 1993 Amendment

Amendment by section 205(c) of Pub. L. 103-182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 219(b) of Pub. L. 103-182, set out as an Effective Date note under section 3331 of this title.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96-417 applicable with respect to civil actions commenced on or after 90th day after Nov. 1, 1980, see section 701(c)(2) of Pub. L. 96-417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1976 Amendment

Section 110(f) of Pub. L. 95-410 provided that:

"(1)(A) Except as provided in subparagraphs (B) and (C), subsections (a), (b), and (c) (other than new subsection (e) of section 592 of the Tariff Act of 1930 as added by subsection (a)) (subsec. (a), (b), and (c), not including (e) of this section) shall be effective with respect to proceedings commenced after the 89th day after the date of enactment of this Act (Oct. 3, 1976)."
"(B) Except as provided in subparagraph (C), section 592 of the Tariff Act of 1930 [this section] (as such section existed on the day before the date of enactment of this Act) (Oct. 3, 1978) shall apply to any alleged intentional violation thereof involving television receivers that are the product of Japan and that were or are the subject of antidumping proceedings if the alleged intentional violation—

"(i) occurred before the date of enactment of this Act, and

"(ii) was the subject of an investigation by the Customs Service which was begun before the date of enactment of this Act.

"(C) Except as provided in the next sentence, subsection (e) of section 592 of the Tariff Act of 1930 (as added by subsection (a) [subsec. (e) of this section]) shall be effective on the date of enactment of this Act [Oct. 3, 1978]. Notwithstanding any provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 604 of the Tariff Act of 1930 [section 1604 of this title] for the recovery of any monetary penalty claimed under section 592 of such Act [this section] for an alleged intentional violation described in subparagraph (B)—

"(i) all issues, including the amount of the penalty, shall be tried de novo, and

"(ii) the United States shall have the burden of proof to establish such violation by a preponderance of the evidence.

"(2)(A) The amendment made by subsection (e) [to section 1621 of this title] shall apply with respect to alleged violations of section 592 of the Tariff Act of 1930 [this section] resulting from gross negligence or negligence which are committed on or after the date of enactment of this Act [Oct. 3, 1978].

"(B) In the case of any alleged violation of such section 592 [this section] resulting from gross negligence or negligence which was committed before the date of the enactment of this Act [Oct. 3, 1978] and for which no suit or action for recovery was commenced before such date of enactment, no suit or action for recovery with respect to such alleged violation shall be instituted after—

"(i) the closing date of the 5-year period beginning on the date on which the alleged violation was committed, or

"(ii) the closing date of the 2-year period beginning on the date of enactment, whichever date later occurs, except that no such suit or action may be instituted after the date on which such suit or action would have been barred under section 521 of the Tariff Act of 1930 [section 1621 of this title] (as in effect on the day before such date of enactment)."

TRANFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1592a. Special provisions regarding certain violations

(a) Publication of names of certain violators

(1) Publication

The Secretary of the Treasury is authorized to publish in the Federal Register a list of the name of any producer, manufacturer, supplier, seller, exporter, or other person located outside the customs territory of the United States—

(A) against whom the Customs Service has issued a penalty claim under section 1592 of this title, and

(B) if a petition with respect to that claim has been filed under section 1618 of this title, against whom a final decision has been issued under such section after exhaustion of administrative remedies,

(citing any of the violations of the customs laws referred to in paragraph (2). Such list shall be published not later than March 31 and September 30 of each year.

(2) Violations

The violations of the customs laws referred to in paragraph (1) are the following:

(A) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products.

(B) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products.

(C) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labelled as to country of origin or source.

(D) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

(3) Removal from list

Any person whose name has been included in a list published under paragraph (1) may petition the Secretary to be removed from such list. If the Secretary finds that such person has not committed any violations described in paragraph (2) for a period of not less than 3 years after the date on which the person’s name was so published, the Secretary shall remove such person from the list as of the next publication of the list under paragraph (1).

(4) Reasonable care required for subsequent imports

(A) Responsibility of importers and others

After the name of a person has been published under paragraph (1), the Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labelling that are accurate as to its origin. Such reasonable care shall not include reliance solely on a source of information which is the named person.
(B) Failure to exercise reasonable care

If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 1481(a) of this title.

(b) List of high risk countries

(1) List

The President or his designee, upon the advice of the Secretaries of Commerce and Treasury, and the heads of other appropriate departments and agencies, is authorized to publish a list of countries in which illegal activities have occurred involving transshipped textile or apparel products or activities designed to evade quotas of the United States on textile or apparel products, if those countries fail to demonstrate a good faith effort to cooperate with United States authorities in ceasing such activities. Such list shall be published in the Federal Register not later than March 31 of each year. Any country that is on the list and that subsequently demonstrates a good faith effort to cooperate with United States authorities in ceasing illegal activities described in the first sentence shall be removed from the list, and such removal shall be published in the Federal Register as soon as practicable.

(2) Reasonable care required for subsequent imports

(A) Responsibility of importers of record

The Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products indicated, on the documentation, packaging, or labelling accompanying such products, to be from any country on the list published under paragraph (1) to show, to the satisfaction of the Secretary, that such importer, consignee, or purchaser has exercised reasonable care to ascertain the true country of origin of the textile or apparel products.

(B) Failure to exercise reasonable care

If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 1481(a) of this title.

(3) “Country” defined

For purposes of this subsection, the term “country” means a foreign country or territory, including any overseas dependent territory or possession of a foreign country.

(iv) disclose all the material facts which establish the alleged violation;
(v) state whether the alleged violation occurred as a result of fraud or negligence;
(vi) state the estimated actual or potential loss of revenue due to the drawback claim, and, taking into account all circumstances, the amount of the proposed monetary penalty; and
(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) Exceptions

The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less. In such cases, the Customs Service may proceed directly with a penalty claim.

(C) Prior approval

No prepenalty notice in which the alleged violation occurred as a result of fraud shall be issued without the prior approval of Customs Headquarters.

(2) Penalty claim

After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 1618 of this title, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum penalties

(1) Fraud

A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) Negligence

(A) In general

A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

(B) Repetitive violations

If the Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in an amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

(3) Prior disclosure

(A) In general

Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection (a) of this section before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed—

(i) if the violation resulted from fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of title 26 on the amount of actual revenue of which the United States is or may be deprived during the period that—

(I) begins on the date of the overpayment of the claim; and

(II) ends on the date on which the person concerned tenders the amount of the overpayment.

(B) Condition affecting penalty limitations

The limitations in subparagraph (A) on the amount of the monetary penalty to be assessed under this subsection apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.

(C) Burden of proof

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(4) Commencement of investigation

For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) of this section existed.

(5) Exclusivity

Penalty claims under this section shall be the exclusive civil remedy for any drawback
related violation of subsection (a) of this section.

(d) Deprivation of lawful revenue

Notwithstanding section 1514 of this title, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a) of this section, the Customs Service shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.

(e) Drawback compliance program

(1) In general

After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs Service under paragraph (2). Participation in the drawback compliance program is voluntary.

(2) Certification

A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party’s drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it—

(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;
(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;
(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;
(D) has designated a dependable individual or individuals to be responsible for compliance under the program and whose duties include maintaining familiarity with the drawback requirements of the Customs Service;
(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or record-keeping formats other than the original records; and
(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.

(f) Alternatives to penalties

(1) In general

When a party that—

(A) has been certified as a participant in the drawback compliance program under subsection (e) of this section; and
(B) is generally in compliance with the appropriate procedures and requirements of the program;

commits a violation of subsection (a) of this section, the Customs Service, shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(2) Contents of notice

A notice of violation issued under paragraph (1) shall—

(A) state that the party has violated subsection (a) of this section;
(B) explain the nature of the violation; and
(C) warn the party that future violations of subsection (a) of this section may result in the imposition of monetary penalties.

(3) Response to notice

Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(g) Repetitive violations

(1) A party who has been issued a written notice under subsection (f)(1) of this section and subsequently commits a repeat negligent violation involving the same issue is subject to the following monetary penalties:

(A) 2d violation
An amount not to exceed 20 percent of the loss of revenue.

(B) 3rd violation
An amount not to exceed 50 percent of the loss of revenue.

(C) 4th and subsequent violations
An amount not to exceed 100 percent of the loss of revenue.

(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) of this section commits an alleged violation which was not repetitive, the party shall be issued a “warning letter”, and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).

(h) Regulation

The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify that for purposes of subsections (c) and (g) of this section, a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

(i) Court of International Trade proceedings

Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the re-


covery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence; and

(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.


AMENDMENTS

2004—Subsec. (b). Pub. L. 108–429 substituted “subsections (c) and (g)” for “subsection (g)”.  

EFFECTIVE DATE OF 2004 AMENDMENT


EFFECTIVE DATE

Section 622(b) of Pub. L. 103–182 provided that: “The amendment made by subsection (a) [enacting this section] applies to drawback claims filed on and after Dec. 3, 2004, and to those filed before Dec. 3, 2004, if liquidation of the drawback entry is not final on Dec. 3, 2004, see section 1563(g)(1) of Pub. L. 108–429, set out as a note under section 1313 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§1594. Seizure of conveyances

(a) In general

Whenever—

(1) any vessel, vehicle, or aircraft; or

(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft;

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

(b) Exceptions

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure and forfeiture under the customs laws for violations relating to merchandise contained—

(A) on the person; or

(B) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

(C) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest; unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

(2) Except as provided in paragraph (1) or subsection (c) of this section, no vessel, vehicle, or aircraft is subject to forfeiture to the extent of an interest of an owner for a drug-related offense established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

(c) Prohibited merchandise on conveyance

If any merchandise the importation of which is prohibited is found to be, or to have been—

(1) on board a conveyance used as a common carrier in a transaction of business as a common carrier in one or more packages or containers—

(A) that are not manifested (or not shown on bills of lading or airway bills); or

(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it is established that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board.

(d) Definitions

For purposes of this section—

(1) The term “owner or operator” includes—

(A) a lessee or person operating a conveyance under a rental agreement or charter party; and

(B) the officers and directors of a corporation;

(C) station managers and similar supervisory ground personnel employed by airlines;

(D) one or more partners of a partnership;

(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

(F) and other persons with similar responsibilities.

(2) The term “master” and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.
§ 1595

TITe 19—CUSTOMS DUTIES

Page 250

(e) Costs and expenses of seizure

When a common carrier has been seized in accordance with the provisions of subsection (c) of this section and it is subsequently determined that a violation of such subsection occurred but that the vessel will be released, the conveyance is liable for the costs and expenses of the seizure and detention.


PRIOR PROVISIONS

Provisions substantially similar to subsection (a) of this section, so far as it relates to vessels, except that they referred to the "revenue laws," instead of the "customs laws," were contained in R.S. §3086. Provisions substantially similar to subsection (b), so far as it relates to vessels, were contained in act Feb. 8, 1881, ch. 34, 21 Stat. 322. Provisions similar to subsection (b), except that they applied to railway cars, engines, other vehicles, and teams, and referred to the owner, superintendent, or agent of the owner in charge, instead of the "conductor, driver," et cetera, were contained in R.S. §3083. All of these provisions were superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, §594, 42 Stat. 982, and repealed by sections 642 and 643 thereof. Section 594 of the 1922 act was superseded by section 594 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-100 designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, and added par. (2).

1986—Pub. L. 99-570 amended section generally. Prior to amendment, section catchline read "Libel of vessels and vehicles" and text read as follows: "Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs-revenue laws of the United States, such vessel or vehicle shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same: Provided, That no vessel or vehicle used by any person as a common carrier in the trans- action of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto."

§ 1595. Searches and seizures

(a) Warrant

(1) If any officer or person authorized to make searches and seizures has probable cause to believe that—

(A) any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States unlawfully;

(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service; or

(C) any document, container, wrapping, or other article which is evidence of a violation of section 1592 of this title involving fraud or of any other law enforced or administered by the United States Customs Service,

is in any dwelling house, store, or other building or place, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate judge, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise or other article described in the warrant.

(2) If any house, store, or other building or place, in which any merchandise or other article subject to forfeiture is found, is upon or within 10 feet of the boundary line between the United States and a foreign country, such portion thereof that is within the United States may be taken down or removed.

(b) Entry upon property of others

Any person authorized by this chapter to make searches and seizures, or any person assisting him or acting under his directions, may, if deemed necessary by him or them, enter into or upon or pass through the lands, inclosures, and buildings, other than the dwelling house, of any person whomever, in the discharge of his official duties.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §595, 42 Stat. 983. That section was superseded by section 595 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in subsection (a), but authorizing searches in the daytime only, with a further provision as to forfeitures, were contained in R.S. §3066, as amended by act Apr. 29, 1892, ch. 89, 22 Stat. 49. Provisions for searches of buildings on or near the boundary line, and for seizure and forfeiture of merchandise, and removal of the building, were contained in R.S. §3077. Provisions empowering persons, authorized to make searches and seizures, to enter into or upon lands, inclosures, and buildings, were contained in R.S. §3063. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

R.S. §3091, authorized the issuance of a warrant, upon complaint and affidavit of fraud on the revenue, directing the marshal of the district to enter any place and seize books or papers relating to merchandise in respect to which the alleged fraud was committed, and produce them before the judge.

R.S. §3092, provided that no warrant for such seizure should be issued unless the complaint should set forth the character of the fraud alleged, its nature, the importations in respect to which it was committed, and the papers to be seized, and required the return of such warrant as other warrants are returned.

R.S. §3093, provided that books and papers so seized should be subject to the order of the judge, who should allow the examination of the same by the collector or any officer authorized by him, and authorized the retention by the judge of such books and papers as he might deem necessary.

The provisions of act July 18, 1866, §39, and of act Mar. 2, 1867, §2, which were incorporated into these three sections, were repealed by the Anti-Moey Act of June 22, 1874, ch. 391, §1, 18 Stat. 136. These sections were repealed, therefore, by that act, it having effect as subsequent to the Revised Statutes, and as repealing any portion of the revision inconsistent therewith, by virtue of R.S. §5601.
§ 1595a. Forfeitures and other penalties
(a) Importation, removal, etc. contrary to laws of United States

Except as specified in subsection (b) or (c) of section 1594 of this title, every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unloading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, or other thing or otherwise, may be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment.

(b) Penalty for aiding unlawful importation

Every person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity mentioned in the preceding subsection shall be liable to a penalty equal to the value of the article or articles introduced or attempted to be introduced.

(c) Merchandise introduced contrary to law

Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:

(1) The merchandise shall be seized and forfeited if it—
   (A) is stolen, smuggled, or clandestinely imported or introduced;
   (B) is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law;
   (C) is a contraband article, as defined in section 841(q) of title 18, which does not contain a detection agent, as defined in section 841(p) of such title.

(2) The merchandise may be seized and forfeited if—
   (A) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;
   (B) its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;
   (C) it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 1124, 1125, or 1127 of title 15, section 506 of title 17, or section 2318 or 2320 of title 18);
   (D) it is trade dress merchandise involved in the violation of a court order citing section 1125 of title 15;
   (E) it is merchandise which is marked intentionally in violation of section 1304 of this title; or
   (F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 1304 of this title.

(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document, and the visa, permit, license, or similar document or stamp is presented to the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, the merchandise shall be subject to detention in accordance with section 1499 of this title unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license, or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.

(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification or value of merchandise and there are no issues as to the admissibility of the merchandise into the United States, it shall not be seized except in accordance with section 1592 of this title.

(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may—
(A) remit the forfeiture under section 1618 of this title, or
(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

d) Merchandise exported contrary to law

Merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law, or the proceeds or value thereof, and property used to facilitate the exporting or sending of such merchandise, the attempted exporting or sending of such merchandise, or the receipt, purchase, transportation, concealment, or sale of such merchandise prior to exportation shall be seized and forfeited to the United States.


REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (c)(1)(B), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1342, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

CODIFICATION


AMENDMENTS

2008—Subsec. (c)(2)(C), Pub. L. 110–403, which directed amendment of section 596(c)(2)(C) of the Tariff Act of 1950 by striking out “or 509”, was executed by striking out “or 509” after “506” in subsec. (c)(2)(C) of this section, which is section 596 of the Tariff Act of 1930, to reflect the probable intent of Congress.


1993—Subsec. (c). Pub. L. 103–182 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 1592 of this title) may be seized and forfeited.”

1986—Subsec. (a). Pub. L. 99–570, § 3123(1), (2), substituted “subsection (b) or (c) of section 1594” for “the proviso to section 1594” and “may be seized” for “shall be seized”. Subsec. (c). Pub. L. 99–570, § 3123(3), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 effective 1 year after Apr. 24, 1996, see section 697 of Pub. L. 104–132, set out as a note under section 841 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2631(a), 3551, 3552, and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.


Section 1596, act June 17, 1930, ch. 497, title IV, § 596, 46 Stat. 732, related to buildings on boundary. See section 547 of Title 18, Crimes and Criminal Procedure.


§ 1599. Officers not to be interested in vessels or cargo

No person employed under the authority of the United States, in the collection of duties on imports or tonnage, shall own, either in whole or in part, any vessel (other than a yacht or other pleasure boat), or act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the same; nor shall any such person import, or be concerned directly or indirectly in the importation of, any merchandise for sale into the United States. Every person who violates this section shall be liable to a penalty of $500.


PRIOR PROVISIONS

Identical provisions were contained in R.S. § 2638, which was superseded by act Sept. 1, 1922, ch. 356, title IV, § 599, 42 Stat. 994, and repealed by section 642 thereof. Section 599 of the 1922 act was superseded by section 599 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1978—Pub. L. 95–410 excepted from the interest prohibition ownership of a yacht or other pleasure boat.

§ 1600. Application of the customs laws to other seizures by customs officers

The procedures set forth in sections 1602 through 1619 of this title shall apply to seizures of any property effected by customs officers under any law enforced or administered by the Customs Service unless such law specifies different procedures.


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the
Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.


Section 1601, act June 17, 1930, ch. 497, title IV, § 601, 46 Stat. 753, related to bribery. Section 1601a, act Aug. 5, 1935, ch. 438, title III, § 309, 49 Stat. 528, related to wearing of uniform or badge of Coast Guard or Customs Service while violating revenue laws. See sections 702, 703, and 912 of Title 18.

§ 1602. Seizure; report to customs officer

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the appropriate customs officer for the district in which such violation occurred, and to turn over and deliver to such customs officer any vessel, vehicle, aircraft, merchandise, or baggage seized by him, and to report immediately to such customs officer every violation of the customs laws.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 602, 42 Stat. 984. That section was superseded by section 602 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions requiring officers or persons employed in the customs revenue service, upon detection of any violation of the customs laws, to make complaint to the collector, were contained in act June 22, 1874, ch. 391, § 15, 18 Stat. 189, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 644, 42 Stat. 989.

Amendments


1970—Pub. L. 91–271 substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

Effective Date of 1984 Amendment


Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1506 of this title.

§ 1603. Seizure; warrants and reports

(a) Any property which is subject to forfeiture to the United States for violation of the customs laws and which is not subject to search and seizure in accordance with the provisions of section 1595 of this title, may be seized by the appropriate officer or person upon process issued in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure. This authority is in addition to any seizure authority otherwise provided by law.

(b) Whenever a seizure of merchandise for violation of the customs laws is made, or a violation of the customs laws is discovered, and legal proceedings by the United States attorney in connection with such seizure or discovery are required, it shall be the duty of the appropriate customs officer to report promptly such seizure or violation to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, and to include in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses and a citation to the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction.


References in Text

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 603, 42 Stat. 984. That section was superseded by section 603 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision requiring the collector or other person causing a seizure to be made to give information thereof to the Solicitor of the Treasury, was contained in R.S. § 3083, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247. R.S. § 3084 required collectors to report to the district attorney of the district in which any fine, penalty, or forfeiture might be incurred, a statement of all the facts and circumstances. Officers of customs detecting violations of the customs laws were required to report to the collectors, and the latter were required to report to the district attorneys, by act June 22, 1874, ch. 391, § 15, 18 Stat. 189. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§ 642, 643, 42 Stat. 989.

Amendments

1988—Pub. L. 100–650, § 7365, substituted “Seizure; warrants and reports” for “Seizure; customs officer’s reports” in section catchline, added subsec. (a), and designated existing provisions as subsec. (b).


Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1506 of this title.

Effective Date of 1938 Amendment

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.
§ 1604. Seizure; prosecution

It shall be the duty of the Attorney General of the United States immediately to inquire into the facts of cases reported to him by customs officers and the laws applicable thereto, and if it appears probable that any fine, penalty, or forfeiture has been incurred by reason of such violation, for the recovery of which the institution of proceedings in the United States district court or the Court of International Trade is necessary, forthwith to cause the proper proceedings to be commenced and prosecuted, without delay, for the recovery of such fine, penalty, or forfeiture in such case provided, unless, upon inquiry and examination, the Attorney General decides that such proceedings cannot probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case he shall report the facts to the Secretary of the Treasury for his direction in the premises.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §§ 642, 643, 391, § 15, 18 Stat. 189. Both of these sections were reenacted by act Sept. 21, 1922, ch. 356, title IV, §§ 604, 605, 42 Stat. 984. That section was superseded by section 604 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially similar to those in this section so far as it relates to merchandise or property seized under the customs laws, were contained in R.S. § 3086. That section was superseded by section 605 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act. Provisions substantially similar to those in this section so far as it relates to merchandise or property seized under the customs laws, were contained in R.S. § 3086, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

The 1922 act also superseded a provision contained in R.S. § 3087, requiring collectors to cause suits to be commenced without delay and prosecuted to effect.

AMENDMENTS


1970—Pub. L. 91–271 substituted references to appropriate customs officer or customs officer for references to collector wherever appearing.

1964—Act Sept. 1, 1964, permitted collector of seized property to store it in such places as he considers convenient or appropriate, whether within or without the judicial district in which it was seized, without affecting the jurisdiction of the court over such property.

EFFECTIVE DATE OF 1984 AMENDMENT


EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1605. Seizure; custody; storage

All vessels, vehicles, aircraft, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the appropriate customs officer for the district in which the seizure was made to await disposition according to law.

Pending such disposition, the property shall be stored in such place as, in the customs officer's opinion, is most convenient and appropriate with due regard to the expense involved, whether or not the place of storage is within the judicial district or the customs collection district in which the property was seized; and storage of the property outside the judicial district or customs collection district in which it was seized shall in no way affect the jurisdiction of the court which would otherwise have jurisdiction over such property.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §§ 605, 606, 42 Stat. 985. That section was superseded by section 605 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially similar to those in this section so far as it relates to merchandise or property seized under the customs laws, were contained in R.S. § 3086, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS


1970—Pub. L. 91–271 substituted references to appropriate customs officer or customs officer for references to collector wherever appearing.

1964—Act Sept. 1, 1964, permitted collector of seized property to store it in such places as he considers convenient or appropriate, whether within or without the judicial district in which it was seized, without affecting the jurisdiction of the court over such property.

EFFECTIVE DATE OF 1984 AMENDMENT


EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1606. Seizure; appraisement

The appropriate customs officer shall determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws.

PRIORITY PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 606, 42 Stat. 985. That section was superseded by section 656 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act. Prior provisions for appraisement of property seized under the customs laws, or laws relating to the registering, enrolling or licensing of vessels, were contained in R.S. § 3075, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 985.

AMENDMENTS


1970—Pub. L. 91–271 substituted “appropriate customs officer” for “collector shall require the appraiser to”.

EFFECTIVE DATE OF 1984 AMENDMENT


EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1607. Seizure; value $500,000 or less, prohibited articles, transporting conveyances

(a) Notice of seizure

If—

(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed $500,000;

(2) such seized merchandise is merchandise the importation of which is prohibited;

(3) such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance or listed chemical; or

(4) such seized merchandise is any monetary instrument within the meaning of section 5312(a)(3) of title 31;

then the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

(b) “Controlled substance” and “listed chemical” defined

As used in this section, the terms “controlled substance” and “listed chemical” have the meaning given such terms in section 802 of title 21.

(c) Report to Congress

The Commissioner of Customs shall submit to the Congress, by no later than February 1 of each fiscal year, a report on the total dollar value of uncontested seizures of monetary instruments having a value of over $100,000 which, or the proceeds of which, have not been deposited into the Customs Forfeiture Fund under section 1613b of this title within 120 days of seizure, as of the end of the previous fiscal year.
§ 1608. Seizure; claims; judicial condemnation

Any person claiming such vessel, vehicle, aircraft, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure filed with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of $5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than $250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in R.S. § 3076, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 608, 42 Stat. 956, and was repealed by section 612 thereof. Section 608 of the 1922 act was superseded by section 608 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1986—Pub. L. 99–570, § 1862(b), substituted “$5,000” for “$2,500”. See 1984 Amendment notes below.

Pub. L. 99–570, § 1862(b), which provided that “Section 608 of such Act [this section], as enacted by Public Law 96–473, is repealed”, was not executed to text because such section was amended (rather than enacted) by Pub. L. 98–473, and to reflect the probable intent of Congress to repeal the amendment made by Pub. L. 98–473 in view of later amendment by Pub. L. 98–573. See 1984 Amendment notes below.

1984—Pub. L. 98–573, § 213(a)(5)(B), which directed the insertion of “$5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than $250”, was executed to text as superseding the amendment made by Pub. L. 98–473 to reflect the probable intent of Congress. See 1986 Amendment note above.

Pub. L. 98–473, § 312, inserted “$5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than $250”, was executed to text as superseding the amendment made by Pub. L. 98–473 to reflect the probable intent of Congress. See 1986 Amendment note above.


1970—Pub. L. 91–271 substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

EFFECTIVE DATE OF 1970 AMENDMENT
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1900 of this title.

§ 1609. Seizure; summary forfeiture and sale

(a) In general
If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise dispose of the same according to law, and shall deposit the proceeds of sale, after deducting the expenses described in section 1613 of this title, into the Customs Forfeiture Fund.

(b) Effect
A declaration of forfeiture under this section shall have the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a district court of the United States. Title shall be deemed to vest in the United States free and clear of any liens or encumbrances (except for first preferred ship mortgages pursuant to subsection O of section 30 of the Ship Mortgage Act, 1920 (46 U.S.C. App. 961) or any corresponding revision, consolidation, and enactment of such subsection in title 46) from the date of the act for which the forfeiture was incurred. Officials of the various States, insular possessions, territories, and commonwealths of the United States shall, upon application of the appropriate customs officer accompanied by a certified copy of the declaration of forfeiture, remove any recorded liens or encumbrances which apply to such property and issue or reissue the necessary certificates of title, registration certificates, or similar documents to the United States or to any transferee of the United States.

REFERENCES IN TEXT

Subsection O of section 30 of the Ship Mortgage Act, 1920 (46 U.S.C. App. 961), referred to in subsec. (b), was classified to section 901 of the former Appendix to Title 46, Shipping, and was repealed and partially reenacted in sections 31326(a), 31327, 31328, and 31329 of Title 46, Shipping, by Pub. L. 100–710, title I, §§ 102(c), 106(b)(2), Nov. 23, 1988, 102 Stat. 4738, 4752. Section 31328 of Title 46 was subsequently repealed by Pub. L. 104–324, title XI, §1113(b)(1), Oct. 19, 1996, 110 Stat. 3670. Section 156(a) of Pub. L. 100–710, set out as a note preceding section 101 of Title 46, provides that a reference to a law repealed by section 102 of Pub. L. 100–710 is deemed to refer to the corresponding provision of Pub. L. 100–710. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §§ 609, 610, 42 Stat. 985. That section was superseded by section 651(a)(1) of the 1930 act. Provisions for sale of the property by the collector if no claim should be filed or bond given, were contained in R.S. §3077, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1988—Pub. L. 100–690 amended section generally. Prior to amendment, section read as follows:

“(a) If no such claim is filed or bond given within the twenty days hereinafter specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, aircraft, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage under the customs laws, provide in its decree of forfeiture

Specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

§ 1610. Seizure; judicial forfeiture proceedings

If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §§ 609, 610, 42 Stat. 985. That section was superseded by section 610 of act June 25, 1938, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS


1984—Pub. L. 98–573 substituted “If any vessel, vehicle, aircraft, merchandise, or baggage is not under the customs laws, provide in its decree of forfeiture

If the sale of any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title” for “If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than $10,000”.


For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

$1611. Seizure; sale unlawful

If the sale of any vessel, vehicle, aircraft, merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, aircraft, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage under the customs laws, provide in its decree of forfeiture

If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

that the vessel, vehicle, aircraft, merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: Provided, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §612, 42 Stat. 985. That section was superseded by section 611 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

EFFECTIVE DATE OF 1984 AMENDMENT

§ 1612. Seizure; summary sale
(a) Whenever it appears to the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 1607 of this title, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, the Customs Service shall forthwith advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, the Customs Service shall forthwith transmit its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the Customs Service or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §612, 42 Stat. 985. That section was superseded by section 612 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS
1993—Subsec. (a). Pub. L. 103–182, §667(1), substituted “the Customs Service” for “the appropriate customs officer” after “Whenever it appears to,” for “for such officer” after “delivered under bond,”, for “for such officer” before “shall forthwith transmit” and for “for the customs officer” after “Whether such sale be made by” and substituted “its report of the seizure” for “the appraiser’s report of the seizure”.

Subsec. (b). Pub. L. 103–182, §667(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than $1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property, under regulations prescribed by the Secretary of the Treasury.”


1984—Subsec. (a). Pub. L. 98–573 designated existing provisions as subsec. (a), inserted reference to aircraft in six places and substituted “the value thereof, and such vessel” for “the value thereof, and the value of such vessel” “is subject to section 1607 of this title,” for “as determined under section 1607 of this title, does not exceed $10,000,” “If such vessel” for “If such value of such vessel”, and “baggage is not subject to section 1607 of this title,” for “baggage exceeds $10,000,” and added subsec. (b).

Pub. L. 98–473 made section in manner substantially identical to amendment by Pub. L. 98–573, but did not add a subsec. (b) or provisions similar thereto.

1979—Pub. L. 95–410 substituted “$10,000” for “$2,500” wherever appearing.

1970—Pub. L. 91–271 substituted references to appropriate customs officer or such officer for references to collector wherever appearing therein, and struck out references to appraiser and appraiser’s return of value.

1954—Act Sept. 1, 1954, substituted “$2,500” for “$1,000” wherever appearing.

CHANGE OF NAME
Act June 25, 1948, eff. Sept. 1, 1948, substituted “United States attorney” for “United States district
§ 1613. Disposition of proceeds of forfeited property

(a) Application for remission of forfeiture and restoration of proceeds of sale; disposition of proceeds when no application has been made

Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, aircraft, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this chapter, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, and contributions in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, the proceeds of sale shall be disposed of as follows:

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(3) The residue shall be deposited in the general fund of the Treasury of the United States.1

(b) Disposition of proceeds in excess of penalty assessed under section 1592

If merchandise is forfeited under section 1592 of this title, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a)(1) and (2) of this section or subsection (a)(1), (a)(3), or (a)(4) of section 1613b of this title incurred in such sale shall be returned to the person against whom the penalty was assessed.

(c) Treatment of deposits

If property is seized by the Secretary under law enforced or administered by the Customs Service, or otherwise acquired under section 1605 of this title, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

(d) Expenses

In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.

1 See 1984 Amendment note below.
$3090, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248, also specified how the proceeds of fines, penalties, and forfeitures incurred under customs laws, should be applied and distributed. All these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1986—Subsecs. (c), (d). Pub. L. 99–570 added subsecs. (c) and (d).


Subsec. (a)(3). Pub. L. 98–573, § 213(a)(10)(B), substituted “in the general fund of the Treasury of the United States” for “with the Treasurer of the United States as a customs or navigation fine’’.

Pub. L. 98–473, § 316, which directed the substitution of “The residue shall be deposited in the Customs Forfeiture Fund” for “The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine’’ was not executed to text in view of the later amendment by section 213(a)(10)(B) of Pub. L. 98–573.


1978—Subsec. (a). Pub. L. 95–410, § 110(c)(1), designated existing provisions as subsec. (a) and substituted “Except as provided in subsection (b) of this section, any” for “Any”.


1938 Act June 25, 1938, inserted “and” at end of subd. (2), struck out subd. (3), and redesignated subd. (4) as (3).

EFFECTIVE DATE OF 1984 AMENDMENT


EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–971, see section 203 of Pub. L. 91–971, set out as a note under § 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 307 of act June 25, 1938, set out as a note under § 1401 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under § 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under § 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 16(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1–2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Customs, referred to in text, was an officer in Department of the Treasury. Functions of Coast Guard and Commandant of Coast Guard excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14, Coast Guard.

By Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5, Government Organization and Employees, functions of Secretary of Commerce relating to remission and mitigation of fines, penalties and forfeitures incurred for violation of navigation laws were transferred to Commandant of Coast Guard and Commissioner of Customs, subject to direction and control of Secretary of the Treasury, except as otherwise provided by law with respect to United States Coast Guard whenever it operates as a part of Navy. Accordingly, references to Commandant of Coast Guard and Commissioner of Customs substituted in text for “the Secretary of Commerce”.

APPROPRIATIONS

Section 2 of act June 25, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title “Proceeds of goods seized and sold (Customs) (2x322)” effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.


Section 1152(b)(1) of Pub. L. 99–570, which amended this section subsequently to repeal by Pub. L. 99–514, was repealed by section 101 of Pub. L. 100–71, which also provided in part that section 1152(b) of Pub. L. 99–570 be treated as though it had never been enacted.

$1613b. Customs Forfeiture Fund

(a) In general

(1) There is established in the Treasury of the United States a fund to be known as the “Customs Forfeiture Fund” (hereafter in this section referred to as the “Fund”), which shall be available to the United States Customs Service, subject to appropriation, with respect to seizures and forfeitures by the United States Customs Service and the United States Coast Guard under any law enforced or administered by those agencies for payment, or for reimbursement to the appropriation from which payment was made, for—

(A) all proper expenses of the seizure (including investigative costs incurred by the United


States Customs Service leading to seizures) or the proceedings of forfeiture and sale, including, but not limited to, the expenses of inventory, security, and maintenance of custody of the property, advertisement and sale of the property, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court;

(B) awards of compensation to informers under section 1619 of this title;

(C) satisfaction of—

(i) liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law, and

(ii) other liens against forfeited property;

(D) amounts authorized by law with respect to remission and mitigation;

(E) claims of parties in interest to property disposed of under section 1612(b) of this title, in the amounts applicable to such claims at the time of seizure; and

(F) equitable sharing payments made to other Federal agencies, State and local law enforcement agencies, and foreign countries under the authority of section 1616a(c) of this title or section 981 of title 18.

(2) (A) Any payment made under subparagraph (C) or (D) of paragraph (1) with respect to a seizure or a forfeiture of property shall not exceed the value of the property at the time of the seizure.

(B) Any payment made under subparagraph (F) of paragraph (1) with respect to a seizure or forfeiture of property shall not exceed the value of the property at the time of disposition.

(3) In addition to the purposes described in paragraph (1), the Fund shall be available for—

(A) purchases by the United States Customs Service of evidence of—

(i) smuggling of controlled substances, and

(ii) violations of the currency and foreign transaction reporting requirements of chapter 51 of title 31, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances;

(B) equipment for any vessel, vehicle, or aircraft available for official use by the United States Customs Service to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(C) the reimbursement, at the discretion of the Secretary, of private persons for expenses incurred by such persons in cooperating with the United States Customs Service in investigations and undercover law enforcement operations;

(D) publication of the availability of awards under section 1619 of this title;

(E) equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Customs Service; and

(F) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Customs Service.

(b) United States Coast Guard

The Commissioner of Customs shall make available to the United States Coast Guard, from funds appropriated under subsection (f)(2) of this section in excess of $10,000,000 for a fiscal year, proceeds in the Fund derived from seizures by the Coast Guard. Funds made available under this subsection may be used for—

(1) equipment for any vessel, vehicle, or aircraft available for official use by the United States Coast Guard to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(2) equipment for any vessel, vehicle, equipment, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Coast Guard;

(3) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Coast Guard; and

(4) expenses incurred in bringing vessels into compliance with applicable environmental laws prior to disposal by sinking.

(c) Deposits

There shall be deposited into the Fund all forfeited currency and proceeds from forfeiture under any law enforced or administered by the United States Customs Service or the United States Coast Guard and all income from investments made under subsection (d) of this section.

(d) Investment

Amounts in the Fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

(e) Annual reports; audits

(1) The Commissioner of Customs shall transmit to the Congress, by no later than February 1 of each fiscal year the following detailed reports:

(A) a report on—

(i) the estimated total value of property forfeited under any law enforced or administered by the United States Customs Service or the United States Coast Guard with respect to which funds were not deposited in the Fund during the previous fiscal year, and

(ii) the estimated total value of all such property transferred to any State or local law enforcement agency;

(B) a report on—

(i) the balance of the Fund at the beginning of the preceding fiscal year;

(ii) liens and mortgages paid and amount of money shared with State and local law enforcement agencies during the previous fiscal year;

(iii) the net amount realized from the operations of the Fund during the previous fis-
(v) the balance of the Fund at the end of the previous fiscal year; and
(C) a report containing, for the previous fiscal year—
   (i) a complete set of audited financial statements (including a balance sheet, income statement, and cash flow analysis) prepared in a manner consistent with the requirements of the Comptroller General, and
   (ii) an analysis of income and expenses showing the revenue received or lost—
      (I) by property category (general property, vehicles, aircraft, cash, and real property) and
      (II) by type of disposition (sales, remissions, cancellations, placed into official use, sharing with State and local agencies, and destructions).

(2) The Fund shall be subject to audits conducted by the Comptroller General of the United States, under such conditions as the Comptroller General determines appropriate.

(f) Authorization of appropriations

(1) There are hereby appropriated from the Fund such sums as may be necessary to carry out the purposes set forth in subsection (a)(1) of this section.

(2)(A) Subject to subparagraph (B), there are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) of this section for such fiscal year.

(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following shall be available to carry out the purposes set forth in subsection (a)(3) of this section:
   (i) $14,355,000 for fiscal year 1991.
   (ii) $15,598,000 for fiscal year 1992.

(3) At the end of each fiscal year, any unobligated amount in excess of $15,000,000 remaining in the Fund shall be deposited into the general fund of the Treasury of the United States.


(A) $14,855,000 for fiscal year 1991.
(B) $15,598,000 for fiscal year 1992.”

was repealed by Pub. L. 101–508, §1001(a), Jan. 25, 1990.

Subsec. (a)(2). Pub. L. 100–70, §1001(a)(2), amended par. (2) as follows: “There are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) of this section for such fiscal year.”


Subsec. (a)(3)(v). Pub. L. 100–500, §1012(b), substituted “‘forfeited property’” for “‘private persons’” for “‘private citizens’”.

Subsec. (c). Pub. L. 100–418, §1912(1), substituted “described in subsection (a) of this section for which the fund is available to the United States Customs Service,” for “beginning on October 30, 1984, and ending on September 30, 1987.”


(A) $14,855,000 for fiscal year 1991.
(B) $15,598,000 for fiscal year 1992.”

was repealed by Pub. L. 101–508, §1001(a), Jan. 25, 1990.

Subsec. (a)(2). Pub. L. 100–70, §1001(a)(2), amended par. (2) as follows: “There are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) of this section for such fiscal year.”


Subsec. (a)(3)(v). Pub. L. 100–500, §1012(b), substituted “‘forfeited property’” for “‘private persons’” for “‘private citizens’”.

Subsec. (c). Pub. L. 100–418, §1912(1), substituted “described in subsection (a) of this section for which the fund is available to the United States Customs Service,” for “beginning on October 30, 1984, and ending on September 30, 1987.”


(A) $14,855,000 for fiscal year 1991.
(B) $15,598,000 for fiscal year 1992.”

was repealed by Pub. L. 101–508, §1001(a), Jan. 25, 1990.

Subsec. (a)(2). Pub. L. 100–70, §1001(a)(2), amended par. (2) as follows: “There are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) of this section for such fiscal year.”

“(1) There are authorized to be appropriated from the fund for each of the four fiscal years beginning with fiscal year 1984, not more than $10,000,000.

“(2) At the end of each of the first three of such four fiscal years, any amount in the fund in excess of $10,000,000 shall be deposited in the general fund of the Treasury. At the end of the last of such four fiscal years, any amount in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.”

**Effective Date of 1990 Amendment**

Section 10012(c) of Pub. L. 101-508 provided that: “The provisions of this section [amending this section] take effect August 21, 1990.”

**Effective Date of 1986 Amendment**

Section 3142(b) of Pub. L. 99-177 provided that: “The amendments made by subsection (a) [amending this section] take effect October 1, 1986.”

**Repeal and Revival of Section**

Section 1152(b)(2) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

**Construction of 1990 Amendment**

Section 10012(a)(1) of Pub. L. 101-508 provided that: “Paragraph (5) of section 121 of the Customs and Trade Act of 1990 (Pub. L. 101–382) is repealed and subsection (f) of section 613A of the Tariff Act of 1930 [subsec. (f) of this section] shall be applied as if the amendment made by such paragraph (5) had not been enacted.”

**Transfer of Functions**

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Department of Homeland Security, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Substitution in text of reference to Commandant of the Coast Guard or Commissioner of Customs for “the Secretary of Commerce” under the authority of Reorg. Plan No. 3 of 1946, see Transfer of Functions note set out under section 1506 of this title.

**§ 1614. Release of seized property**

If any person claiming an interest in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter offers to pay the value of such vessel, vehicle, aircraft, merchandise, or baggage, as determined under section 1606 of this title, and it appears that such person has in fact a substantial interest therein, the appropriate customs officer may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, accept such offer and re-lease the vessel, vehicle, aircraft, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 1613 of this title.


**Prior Provisions**

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §614, 42 Stat. 987. That section was superseded by section 614 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision authorizing collectors, subject to the approval of the Secretary of the Treasury, to re-release seized merchandise on payment of the appraised value when the appraised value did not exceed $1,000, were contained in R.S. §3081, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

**Amendments**


**Effective Date of 1984 Amendment**


**Effective Date of 1970 Amendment**

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1506 of this title.

**Transfer of Functions**

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Substitution in text of reference to Commandant of the Coast Guard or Commissioner of Customs for “the Secretary of Commerce” under the authority of Reorg. Plan No. 3 of 1946, see Transfer of Functions note set out under section 1506 of this title.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

Substitution in text of reference to Commandant of the Coast Guard or Commissioner of Customs for “the Secretary of Commerce” under the authority of Reorg. Plan No. 3 of 1946, see Transfer of Functions note set out under section 1506 of this title.

**§ 1615. Burden of proof in forfeiture proceedings**

In all suits or actions (other than those arising under section 1592 of this title) brought for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof
shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, aircraft, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: Provided. That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel, vehicle, or aircraft, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise, or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel.


PRIOR PROVISIONS

Provisions somewhat similar to those in this section were contained in act Oct. 3, 1913, ch. 16, §113, T. R. 36 Stat. 189, the provisions of which were originally enacted in the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 140, and reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 875, and amended by the 1913 act. Section III of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, §228, 42 Stat. 189, the provisions of which were originally contained in act Oct. 3, 1913, ch. 16, §III, T. R. 36 Stat. 101, and amended by the 1913 act. Section of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, §228, 42 Stat. 189, and was repealed by section 643 thereof. Section 615 of the 1922 act was superseded by section 615 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS


1978—Pub. L. 95–410 inserted “other than those arising under section 1592 of this title” after “In all suits or actions”.

1935—Act Aug. 5, 1935, inserted a comma in place of a period at the end, inserted “subject to the following rules of proof”, and added subds. (1) to (3).

EFFECTIVE DATE OF 1984 AMENDMENT


1 So in original. Probably should be “merchandise”.


§1616a. Disposition of forfeited property

(a) State proceedings

The Secretary of the Treasury may discontinue forfeiture proceedings under this chapter in favor of forfeiture under State law. If a complaint for forfeiture is filed under this chapter, the Attorney General may seek dismissal of the complaint in favor of forfeiture under State law.

(b) Transfer of seized property; notice

If forfeiture proceedings are discontinued or dismissed under this section—

(1) the United States may transfer the seized property to the appropriate State or local official; and

(2) notice of the discontinuance or dismissal shall be provided to all known interested parties.

(c) Retention or transfer of forfeited property

(1) The Secretary of the Treasury may apply property forfeited under this chapter in accordance with subparagraph (A) or (B), or both:

(A) Retain any of the property for official use.

(B) Transfer any of the property to—

(i) any other Federal agency;

(ii) any State or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property; or

(iii) the Civil Air Patrol.

(2) The Secretary may transfer any forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 2291(b) of title 22.

(3) Aircraft may be transferred to the Civil Air Patrol under paragraph (1)(B)(iii) in support of air search and rescue and other emergency services and, pursuant to a memorandum of understanding entered into with a Federal agency, illegal drug traffic surveillance. Jet-powered aircraft may not be transferred to the Civil Air Patrol under the authority of paragraph (1)(B)(iii).

(d) Liability of United States after transfer

The United States shall not be liable in any action relating to property transferred under
this section if such action is based on an act or omission occurring after the transfer.


CODIFICATION

Another section 616 of act June 17, 1930, as added by Pub. L. 98–473, title II, § 318, Oct. 12, 1984, 98 Stat. 2855, was classified to section 1616 of this title and subsequently repealed.

AMENDMENTS

1994—Subsec. (c)(2)(C). Pub. L. 103–447 substituted “section 2291(b) of title 22” for “section 2291(h) of title 22”.

1989—Subsec. (c)(1)(B). Pub. L. 101–207, § 3(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Transfer any of the property to any—

(i) another Federal agency; or

(ii) State or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property.”


1988—Subsec. (c). Pub. L. 100–690 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The Secretary of the Treasury may transfer any property forfeited under this chapter to any other Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property.”

1986—Subsec. (c). Pub. L. 99–570 inserted “any other Federal agency or to” after “property forfeited under this chapter to”.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7366(b) of Pub. L. 100–690 provided that: “The amendment made by subsection (a) [amending this section] applies with respect to property forfeited under the Tariff Act of 1930 (this chapter) on or after the date of the enactment of this Act (Nov. 18, 1988).”

EFFECTIVE DATE

Section effective Oct. 15, 1984, see section 214(c) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

§ 1617. Compromise of Government claims by Secretary of the Treasury

Upon a report by a customs officer, United States attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order the discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition: Provided, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.


AMENDMENTS


CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted “United States attorney” for “district attorney”. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Note thereunder.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1508 of this title.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury, General Counsel of Department of the Treasury, or Department of the Treasury under this section with respect to functions transferred to Secretary of Commerce in sections 1933 and 1671 et seq. of this title by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979 were transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(C), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 12186, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2301 of this title.

Act May 10, 1934, ch. 277, § 512(b), 48 Stat. 759, abolished offices of General Counsel and Assistant General Counsel for Bureau of Internal Revenue, and office of Solicitor and Assistant Solicitor of the Treasury and transferred powers, duties, and functions thereof to General Counsel for Department of the Treasury.
§ 1619. Award of compensation to informers

(a) In general

If—

(1) any person who is not an employee or officer of the United States—

(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

(i) any fraud upon the customs revenue, or

(ii) any violation of the customs laws or the navigation laws which has been, or has been, perpetrated or contemplated by any other person; and

(2) such detection and seizure or such information leads to a recovery of—

(A) any duties withheld, or

(B) any fine, penalty, or forfeiture of property incurred;

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

(b) Forfeited property not sold

If—

(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

(A) destroyed under the customs or navigation laws, or

(B) delivered to any governmental agency for official use, and

(2) any person would be eligible to receive an award under subsection (a) of this section but for the lack of sale of such forfeited property, the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

(c) Dollar limitation

The amount awarded and paid to any person under this section may not exceed $250,000 for any case.

(d) Source of payment

Unless otherwise provided by law, any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

(e) Recovery of bail bond

For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 618, 42 Stat. 987. That section was superseded by section 618 of act June 17, 1930, comprising this section, and was repealed by section 619(a)(1) of the 1930 act.

Provisions for a petition to the judge of the district, a summary investigation before the judge or a United States Commissioner, and transmission of the facts appearing thereon, with a certified copy of the evidence, to the Secretary of the Treasury, and provisions authorizing the Secretary to remit fines and penalties, etc., were contained in act June 22, 1874, ch. 391, §§ 17, 18, 20, 18 Stat. 189, 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Provisions somewhat similar to those in this section, and functions of the Secretary of Commerce under the authority of Reorg. Plan No. 3 of 1946, see note set out under section 1613 of this title.

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 618, 42 Stat. 987. That section was superseded by section 618 of act June 17, 1930, comprising this section, and was repealed by section 619(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section, and functions of the Secretary of Commerce under the authority of Reorg. Plan No. 3 of 1946, see note set out under section 1613 of this title.

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 618, 42 Stat. 987. That section was superseded by section 618 of act June 17, 1930, comprising this section, and was repealed by section 619(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section, and functions of the Secretary of Commerce under the authority of Reorg. Plan No. 3 of 1946, see note set out under section 1613 of this title.
ings. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

Section 2 of the act of June 22, 1874, ch. 391, repealed all provisions under which moieties of fines, etc., were paid to informers, etc., and required the proceeds of all fines, penalties, and forfeitures to be paid into the Treasury. This last provision was omitted from the Code as superseded by section 527 of this title (act Mar. 4, 1907, ch. 2918, §1, 34 Stat. 1315).

Section 25 of that Act repealed inconsistent laws and saved existing rights. It was omitted from the Code as temporary and executed.

R.S. §2948, providing that additional duties were not to be deemed fines, etc., for distribution to customs of -

42 Stat. 989.

An appropriation for compensation in lieu of moieties was made by act Mar. 2, 1926, ch. 43, §1, 44 Stat. 141. Similar appropriations were contained in prior acts.

AMENDMENTS

1986—Pub. L. 99–570 amended section generally. Prior to amendment, section read as follows: “Any person not an officer of the United States who detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who furnishes to a United States attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws, perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed $250,000 in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed $250,000 in any case. In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs.”

1985—Pub. L. 99–570, §213(a)(1), inserted “In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs.”

Prior to amendment, section read as follows: “Any person, except that the period of limitation was three years, who pays to any such officer, or to any person for the use of such officer, or his legal representatives, or against such person, or his legal representatives, and shall be entitled to recover the money so paid or the thing of value so given.

(June 17, 1930, ch. 497, title IV, §620, 46 Stat. 758.)

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §620, 42 Stat. 988. That section was superseded by section 620 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section but excepting cases of smuggling were contained in act June 22, 1874, ch. 391, §7, 18 Stat. 187, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

§ 1621. Limitation of actions

No suit or action to recover any duty under section 1592(d), 1593a(d) of this title, or any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered, or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later; except that—

(1) in the case of an alleged violation of section 1592 or 1593a of this title, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and

(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.


Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §621, 42 Stat. 988. That section was superseded by section 620 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially similar to those in this section, except that the period of limitation was three years, were contained in act June 22, 1974, ch. 391, §22, 18 Stat. 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

§ 1620. Acceptance of money by United States officers

Any officer of the United States who directly or indirectly receives, accepts, or contracts for any portion of the money which may accrue to any person making such detection and seizure, or furnishing such information, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or both, and shall be thereafter ineligible to any office of honor, trust, or emolument. Any such person who pays to any such officer, or to any person for the use of such officer, any portion of such money, or anything of value for or because of such money, shall have a right of action against such officer, or his legal representatives, or against such person, or his legal representatives, and shall be entitled to recover the money so paid or the thing of value so given.

(Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §620, 42 Stat. 988. That section was superseded by section 620 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section but excepting cases of smuggling were contained in act June 22, 1874, ch. 391, §7, 18 Stat. 187, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.)
AMENDMENTS

2000—Pub. L. 106–185 inserted ‘‘, or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later’’ after ‘‘within five years after the time when the alleged offense was discovered’’ in introductory provisions.

1995—Pub. L. 104–141 inserted ‘‘any duty under section 1592(d), 1593a(d) of this title, or’’ before ‘‘any pecuniary penalty’’ and substituted ‘‘discovered; except that—’’ along with pars. (1) and (2) for ‘‘discovered: Provided, That the time of the alleged offense was discovered arising out of gross negligence or negligence a five year limitation period following date of alleged violation. That in the case of an alleged violation of section 1592 of this title in effect prior to such date, see section 110(f)(2) of this title, or’’ for ‘‘discovered’’.

1986—Pub. L. 99–570 inserted ‘‘, or to comply with any other provision of law, regulation, or instruction’’ after ‘‘in the case of any ordinance, law, regulation, or instruction’’.

1978—Pub. L. 95–410 prescribed for any suit or action for violation of section 1592 of this title arising out of gross negligence or negligence a five year limitation period following date of alleged violation.

1975—Act Aug. 5, 1975, substituted ‘‘the alleged offense was discovered’’ for ‘‘such penalty or forfeiture accrued’’.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1978 AMENDMENT

Effective date of amendment by Pub. L. 95–410 for alleged violation of section 1592 of this title arising out of gross negligence or negligence a five year limitation period following date of alleged violation.

§ 1622. Foreign landing certificates

The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the United States, or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue, or to comply with international obligations.


AMENDMENTS

1986—Pub. L. 99–570 inserted ‘‘, or to comply with international obligations’’ before period at end.

§ 1623. Bonds and other security

(a) Requirement of bond by regulation

In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize customs officers to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce.

(b) Conditions and form of bond

Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may—

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond and the manner in which the bond may be taken or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum: Provided, That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law, regulation, or instruction.

(2) Provide for the approval of the sureties on such bond, without regard to any general provision of law.

(3) Authorize the execution of a term bond the conditions of which shall extend to and cover similar cases of importations over such period of time, not to exceed one year, or such longer period as he may fix when in his opinion special circumstances existing in a particular instance require such longer period.

(4) Authorize, to the extent that he may deem necessary, the taking of a consolidated bond (single entry or term), in lieu of separate bonds to assure compliance with two or more provisions of law, regulations, or instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce. A consolidated bond taken pursuant to the authority contained in this subsection shall have the same force and effect in respect of every provision of law, regulation, or instruction for the purposes for which it is required as though separate bonds had been taken to assure compliance with each such provision.

(c) Cancellation of bond

The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.

(d) Validity of bond

No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond. Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.
(e) Deposit of money or obligation of United States in lieu of bond

The Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States, in such amount and upon such conditions as he may by regulation prescribe, in lieu of sureties on any bond required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce.


Amendments

1994—Subsec. (c). Pub. L. 103–182, §647(2), inserted at end "‘any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.'’


1938—Act June 25, 1938, amended section generally, among other changes adding subsecs. (c) to (e).

Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

Effective Date of 1938 Amendment

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 13 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs Service was under Department of the Treasury.

§ 1624. General regulations

In addition to the specific powers conferred by this chapter the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this chapter.

(June 17, 1930, ch. 497, title IV, §624, 46 Stat. 759.)

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §623, 42 Stat. 988. That section was superseded by section 624 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1938 act.

§ 1625. Interpretive rulings and decisions; public information

(a) Publication

Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.

(b) Appeals

A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.

(c) Modification and revocation

A proposed interpretive ruling or decision which would—

(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

(d) Publication of customs decisions that limit court decisions

A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.

(e) Public information

The Secretary may make available in writing or through electronic media, in an efficient,
comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5.

(April 25, 1986, Pub. L. 99-250, title VI, § 627a, 100 Stat. 237, set out as a note under section 552 of Title 5.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–295 made technical amendment to reference in original act which appears in text as reference to “this chapter”.

1993—Pub. L. 103–182 amended section generally. Prior to amendment, section read as follows: “Within 120 days after issuing any written rule or guidance, including any rule letter, internal advice memorandum, or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection.”

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Customs Service of the Secretary of Homeland Security, see sections 203(1), 551(d), 552(d), and 557 of Title 49.

STUDY AND REPORT RELATING TO TIMELINESS OF PROSPECTIVE RULINGS

Pub. L. 107–210, div. A, title III, § 388, Aug. 6, 2002, 116 Stat. 978, required the Comptroller General, not later than 1 year after Aug. 6, 2002, to conduct a study and report to committees of Congress on the extent to which the Office of Regulations and Rulings of the Customs Service had made improvements to decrease the time between requests for, and issuance of, prospective rulings relating to the proper classification, valuation, or marking of goods proposed to be imported into the United States.

§ 1626. Steel products trade enforcement

(a) Export validation requirement

In order to monitor and enforce export measures required by a foreign government or customs union, pursuant to an international arrangement with the United States, the Secretary of the Treasury may, upon receipt of a request by the President of the United States and by a foreign government or customs union, require the presentation of a valid export license or other documents issued by such foreign government or customs union as a condition for entry into the United States of steel mill products specified in the request. The Secretary may provide by regulation for the terms and conditions under which such merchandise attempted to be entered without an accompanying valid export license or other documents may be denied entry into the United States.

(b) Period of applicability

This section applies only to requests received by the Secretary of the Treasury prior to January 1, 1983, and for the duration of the arrangements.


§ 1627a. Unlawful importation or exportation of certain vehicles; inspections

(a) Violations; penalties; seizures and forfeitures

(1) Whoever knowingly imports, exports, or attempts to import or export—

(A) any stolen self-propelled vehicle, vessel, aircraft, or part of a self-propelled vehicle, vessel, or aircraft; or

(B) any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with, or altered;

shall be subject to a civil penalty in an amount determined by the Secretary, not to exceed $10,000 for each violation.

(2) Any violation of this subsection shall make such self-propelled vehicle, vessel, aircraft, or part thereof subject to seizure and forfeiture under this chapter.

(b) Regulations; violations; penalties

A person attempting to export a used self-propelled vehicle shall present, pursuant to regulations prescribed by the Secretary, to the appropriate customs officer both the vehicle and a document describing such vehicle which includes the vehicle identification number, before lading if the vehicle is to be transported by vessel or aircraft, or before export if the vehicle is to be transported by rail, highway, or under its own power. Failure to comply with the regulations of the Secretary shall subject such person to a civil penalty of not more than $500 for each violation.

(c) Definitions

For purposes of this section—

(1) the term “self-propelled vehicle” includes any automobile, truck, tractor, bus, motorhome, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail;

(2) the term “aircraft” has the meaning given it in section 40102(a)(6) of title 49;

(3) the term “used” refers to any self-propelled vehicle the equitable or legal title to
which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser; and

(4) the term "ultimate purchaser" means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

(d) Cooperation of law enforcement and governmental authorities

Customs officers may cooperate and exchange information concerning motor vehicles, off-highway mobile equipment, vessels, or aircraft, either before exportation or after exportation or importation, with such Federal, State, local, and foreign law enforcement or governmental authorities, and with such organizations engaged in theft prevention activities, as may be designated by the Secretary.


Codification


Another section 627 of act June 17, 1930, as added by Pub. L. 98–573, title II, § 302, Oct. 30, 1984, 98 Stat. 2771, was classified to section 1627 of this title and subsequently repealed.

Effective Date

Section effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

§ 1628. Exchange of information

(a) In general

The Secretary may by regulation authorize customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

(1) insure compliance with any law or regulation enforced or administered by the Customs Service;

(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; and

(4) an action comparable to any of those described in paragraphs (1) through (4) undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

(b) Nondisclosure and uses of information provided

(1) Information may be provided to foreign customs and law enforcement agencies under subsection (a) of this section only if the Secretary obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Secretary.

(2) No information may be provided under subsection (a) of this section to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (1).

(c) Government agency of NAFTA country

The Secretary may authorize the Customs Service to exchange information with any government agency of a NAFTA country, as defined in section 3301(4) of this title, if the Secretary—

(1) reasonably believes the exchange of information is necessary to implement chapter 3, 4, or 5 of the North American Free Trade Agreement, and

(2) obtains assurances from such country that the information will be held in confidence and used only for governmental purposes.


Amendments


Effective Date of 1993 Amendment

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2301(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1629. Inspections and preclearance in foreign countries

(a) In general

When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in, or subsequent to their exit from, the United States.

(b) Functions and duties

Customs officers stationed in a foreign country under subsection (a) of this section may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

(c) Compliance

The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the impor-
tation or exportation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station is a port of entry or exit within the customs territory of the United States.

(d) Seizures

When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory of the United States to be proceeded against under the customs law.

(e) Stationing of foreign customs and agriculture inspection officers in the United States

The Secretary of State, in coordination with the Secretary and the Secretary of Agriculture, may enter into agreements with any foreign country authorizing the stationing in the United States of customs and agriculture inspection officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of ensuring that persons and merchandise going directly to that country from the United States, or that have gone directly from that country to the United States, comply with the customs and other laws of that country governing the importation or exportation of merchandise. Any foreign customs or agriculture inspection official stationed in the United States under this subsection may exercise such functions, perform such duties, and enjoy such privileges and immunities as United States officials may be authorized to perform or are afforded in that foreign country by treaty, agreement, or law.

(f) Application of certain laws

When customs officials of a foreign country are stationed in the United States in accordance with subsection (e) of this section, and if similar provisions are applied to United States officials stationed in that country—

(1) sections 111 and 1114 of title 18 shall apply as if the officials were designated in those sections; and

(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, is liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(g) Privileges and immunities

Any person designated to perform the duties of an officer of the Customs Service pursuant to section 1901(i) of this title shall be entitled to the same privileges and immunities as an officer of the Customs Service with respect to any actions taken by the designated person in the performance of such duties.

(h) Customs procedures and commitments

(1) In general

The Secretary of Homeland Security, the United States Trade Representative, and other appropriate Federal officials shall work through appropriate international organizations including the World Customs Organization (WCO), the World Trade Organization (WTO), the International Maritime Organization, and the Asia-Pacific Economic Cooperation, to align, to the extent practicable, customs procedures, standards, requirements, and commitments in order to facilitate the efficient flow of international trade.

(2) United States Trade Representative

(A) In general

The United States Trade Representative shall seek commitments in negotiations in the WTO regarding the articles of GATT 1994 that are described in subparagraph (B) that make progress in achieving—

(i) harmonization of import and export data collected by WTO members for customs purposes, to the extent practicable;

(ii) enhanced procedural fairness and transparency with respect to the regulation of imports and exports by WTO members;

(iii) transparent standards for the efficient release of cargo by WTO members, to the extent practicable; and

(iv) the protection of confidential commercial data.

(B) Articles described

The articles of the GATT 1994 described in this subparagraph are the following:

(i) Article V (relating to transit);

(ii) Article VIII (relating to fees and formalities associated with importation and exportation);

(iii) Article X (relating to publication and administration of trade regulations).

(C) GATT 1994

The term "GATT 1994" means the General Agreement on Tariff and Trade annexed to the WTO Agreement.

(3) Customs

The Secretary of Homeland Security, acting through the Commissioner and in consultation with the United States Trade Representative, shall work with the WCO to facilitate the efficient flow of international trade, taking into account existing international agreements and the negotiating objectives of the WTO. The Commissioner shall work to—

(A) harmonize, to the extent practicable, import data collected by WCO members for customs purposes;

(B) automate and harmonize, to the extent practicable, the collection and storage of commercial data by WCO members;

(C) develop, to the extent practicable, transparent standards for the release of cargo by WCO members;

(D) develop and harmonize, to the extent practicable, standards, technologies, and protocols for physical or nonintrusive ex-
aminations that will facilitate the efficient flow of international trade; and
(E) ensure the protection of confidential commercial data.

(4) Definition

In this subsection, the term "Commissioner" means the Commissioner responsible for the United States Customs and Border Protection in the Department of Homeland Security.


AMENDMENTS


Subsec. (a). Pub. L. 108–429, § 1561(b)(1), inserted "or" and "and" after "prior to their arrival in" after "prior to their arrival in".

Subsec. (b). Pub. L. 108–429, § 1561(b)(2), inserted "or exportation" after "relating to the importation" and "or exit" after "port of entry".

Subsec. (c). Pub. L. 108–429, § 1561(b)(3), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs and officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of ensuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions, and perform such duties, as United States officials may be authorized to perform in that foreign country under reciprocal agreement."


2003—Subsec. (a). Pub. L. 108–7, § 127(c)(1), which directed insertion of "or", or subsequent to their exit from," after "prior to their arrival in" in section 1629 of title 19, was repealed by Pub. L. 108–429, § 1561(c).

Subsec. (c). Pub. L. 108–7, § 127(c)(2), which directed insertion of "or exportation" after "relating to the importation" and "or exit" after "port of entry" in section 1629 of title 19, was repealed by Pub. L. 108–429, § 1561(c).

Subsec. (e). Pub. L. 108–7, § 127(c)(3), which directed substitution of "such functions," for "such functions and" and "by treaty, agreement or law" for "under reciprocal agreement," and insertion of "and agriculture inspection" after "States of customs and foreign customs," and the Secretary of Agriculture after "in coordination with the Secretary"; "or that have gone directly from that country to the United States" after "to that country from the United States"; "or exportation" after "governing the importation"; "or" and "and" after "authorized to perform"; and "in section 1629 of title 19," was repealed by Pub. L. 108–429, § 1561(c).

Subsec. (g). Pub. L. 108–7, § 127(c)(4), which directed addition of subsec. (g) to section 1629 of title 19, was repealed by Pub. L. 108–429, § 1561(c).

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006; see section 1641 of Pub. L. 109–280, set out as a note under section 58c of this title.

AUTHORITY FOR THE ESTABLISHMENT OF INTEGRATED BORDER INSPECTION AREAS AT THE UNITED STATES-CANADA BORDER


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

"(1) The increased security and safety concerns that developed in the aftermath of the terrorist attacks in the United States on September 11, 2001, need to be addressed.

"(2) One concern that has come to light is the vulnerability of the international bridges and tunnels along the United States borders.

"(3) It is necessary to ensure that potentially dangerous vehicles are inspected prior to crossing bridges and tunnels; however, currently these vehicles are not inspected until after they have crossed into the United States.

"(4) Establishing Integrated Border Inspection Areas (IBIAs) would address these concerns by inspecting vehicles before they gained access to the infrastructure of international bridges and tunnels joining the United States and Canada.

"(b) CREATION OF INTEGRATED BORDER INSPECTION AREAS.—

"(1) IN GENERAL.—The Commissioner of the Custom Service [Bureau of Customs and Border Protection], in consultation with the Canadian Customs and Revenue Agency (CCRA), shall seek to establish Integrated Border Inspection Areas (IBIAs), such as areas on either side of the United States-Canada border, in which United States Customs officers can inspect vehicles entering the United States from Canada before they enter the United States, or Canadian Customs officers can inspect vehicles entering Canada from the United States before they enter Canada. Such inspections may include, where appropriate, employment of reverse inspection techniques.

"(2) ADDITIONAL REQUIREMENT.—The Commissioner of Customs, in consultation with the Administrator of the General Services Administration when appropriate, shall seek to carry out paragraph (1) in a manner that minimizes adverse impacts on the surrounding community.

"(3) ELEMENTS OF THE PROGRAM.—Using the authority granted by this section and under section 629 of the Tariff Act of 1930 [19 U.S.C. 1629], the Commissioner of Customs, in consultation with the Canadian Customs and Revenue Agency, shall seek to—

"(A) locate Integrated Border Inspection Areas in areas with bridges or tunnels with high traffic volume, significant commercial activity, and that have experienced backups and delays since September 11, 2001;

"(B) ensure that United States Customs officers stationed in any such IIBIA on the Canadian side of the border are vested with the maximum authority to carry out their duties and enforce United States law;

"(C) ensure that United States Customs officers stationed in any such IIBIA on the Canadian side of the border possess the same immunity that they would possess if they were stationed in the United States; and

"(D) encourage appropriate officials of the United States to enter into an agreement with Canada permitting Canadian Customs officers stationed in any such IIBIA on the United States side of the border to enjoy such immunities as permitted in Canada.”

CREATION OF INTEGRATED BORDER INSPECTION AREAS

$1630. Authority to settle claims

(a) In general
With respect to a claim that cannot be settled under chapter 171 of title 28, the Secretary may settle, for not more than $50,000 in any one case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28) who is employed by the Customs Service and acting within the scope of his or her employment.

(b) Limitations
The Secretary may not pay a claim under subsection (a) that—
(1) concerns commercial property;
(2) is presented to the Secretary more than 1 year after it occurs; or
(3) is presented by an officer or employee of the United States Government and arose within the scope of employment.

(c) Final settlement
A claim may be paid under this section only if the claimant accepts the amount of settlement in complete satisfaction of the claim.


Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 2617, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

$1631. Use of private collection agencies

(a) In general
Notwithstanding any other provision of law, the Secretary, under such terms and conditions as the Secretary considers appropriate, shall enter into contracts and incur obligations with one or more persons for collection services to recover indebtedness arising under the customs laws and owed the United States Government, but only after the Customs Service has exhausted all administrative efforts, including all claims against applicable surety bonds, to collect the indebtedness.

(b) Contract requirements
Any contract entered into under subsection (a) of this section shall provide that—
(1) the Secretary retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and
(2) the person is subject to—
(A) section 552a of title 5 to the extent provided in subsection (m) of such section; and
(B) laws and regulations of the United States Government and State governments related to debt collection practices.

(c) Payment of costs
The debtor shall be assessed and pay any and all costs associated with collection efforts pursuant to this section. Notwithstanding section 3302(b) of title 31, any sum so collected shall be used to pay the costs of debt collection services.


Amendments

Effective Date of 1996 Amendment
Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2617, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

PART VI—MISCELLANEOUS PROVISIONS

$1641. Customs brokers

(a) Definitions
As used in this section:
(1) the term “customs broker” means any person granted a customs broker’s license by the Secretary under subsection (b) of this section;
(2) the term “customs business” means those activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof; it also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs;
(3) the term “Secretary” means the Secretary of the Treasury.

(b) Customs broker’s licenses

(1) In general
No person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker’s license issued by the Secretary under paragraph (2) or (3).

(2) License requirement
A person may conduct customs business (other than solely on behalf of that person) only if that person holds a valid customs broker’s license issued by the Secretary under this section.

(3) Application
No person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker’s license issued by the Secretary under paragraph (2) or (3).
(2) Licenses for individuals
The Secretary may grant an individual a customs broker’s license only if that individual is a citizen of the United States. Before granting the license, the Secretary may require an applicant to show any facts deemed necessary to establish that the applicant is of good moral character and qualified to render valuable service to others in the conduct of customs business. In assessing the qualifications of an applicant, the Secretary may conduct an examination to determine the applicant’s knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters.

(3) Licenses for corporations, etc.
The Secretary may grant a customs broker’s license to any corporation, association, or partnership that is organized or existing under the laws of any of the several States of the United States if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker’s license granted under paragraph (2).

(4) Duties
A customs broker shall exercise responsible supervision and control over the customs business that it conducts.

(5) Lapse of license
The failure of a customs broker that is licensed as a corporation, association, or partnership under paragraph (3) to have, for any continuous period of 120 days, at least one officer of the corporation or association, or at least one member of the partnership, validly licensed under paragraph (2) shall, in addition to causing the broker to be subject to any other sanction under this section (including paragraph (6)), result in the revocation by operation of law of its license.

(6) Prohibited acts
Any person who intentionally transacts customs business, other than solely on the behalf of that person, without holding a valid customs broker’s license granted to that person under this subsection shall be liable to the United States for a monetary penalty not to exceed $10,000 for each such transaction as well as for each violation of any other provision of this section. This penalty shall be assessed in the same manner and under the same procedures as the monetary penalties provided for in subsection (d)(2)(A) of this section.

(c) Customs broker’s permits
(1) In general
Each person granted a customs broker’s license under subsection (b) of this section shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:
(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.
(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual who is licensed under subsection (b)(2) of this section to exercise responsible supervision and control over the customs business conducted by that person in that district.

(2) Exception
If a person granted a customs broker’s license under subsection (b) of this section can demonstrate to the satisfaction of the Secretary that:
(A) he regularly employs in the region in which that district is located at least one individual who is licensed under subsection (b)(2) of this section, and
(B) that sufficient procedures exist within the company for the person employed in that region to exercise responsible supervision and control over the customs business conducted by that person in that district, the Secretary may waive the requirement in paragraph (1)(B).

(3) Lapse of permit
The failure of a customs broker granted a permit under paragraph (1) to employ, for any continuous period of 180 days, at least one individual who is licensed under subsection (b)(2) of this section within the district or region (if paragraph (2) applies) for which a permit was issued shall, in addition to causing the broker to be subject to any other sanction under this section (including any in subsection (d) of this section), result in the revocation by operation of law of the permit.

(4) Appointment of subagents
Notwithstanding subsection (c)(1) of this section, upon the implementation by the Secretary under section 1413(b)(2) of this title of the component of the National Customs Automation Program referred to in section 1411(a)(2)(B) of this title, a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.

(d) Disciplinary proceedings
(1) General rule
The Secretary may impose a monetary penalty in all cases with the exception of the infractions described in clause (iii) of subparagraph (B) of this subsection, or revoke or suspend a license or permit of any customs broker, if it is shown that the broker—
(A) has made or caused to be made in any application for any license or permit under this section, or report filed with the Customs Service, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein;
(B) has been convicted at any time after the filing of an application for license under subsection (b) of this section of any felony or misdemeanor which the Secretary finds—

(i) involved the importation or exportation of merchandise;
(ii) arose out of the conduct of its customs business; or
(iii) involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(C) has violated any provision of any law enforced by the Customs Service or the rules or regulations issued under any such provision;

(D) has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by the Customs Service, or the rules or regulations issued under any such provision;

(E) has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of such employment from the Secretary; or

(F) has, in the course of its customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client.

(2) Procedures

(A) Monetary penalty

Unless action has been taken under subparagraph (B), the appropriate customs officer shall serve notice in writing upon any customs broker to show cause why the broker should not be subject to a monetary penalty not to exceed $30,000 in total for a violation or violations of this section. The notice shall advise the customs broker of the allegations or complaints against him and shall explain that the broker has a right to respond to the allegations or complaints in writing within 30 days of the date of the notice. Before imposing a monetary penalty, the customs officer shall consider the allegations or complaints and any timely response made by the customs broker and issue a written decision. A customs broker against whom a monetary penalty has been issued under this section shall have a reasonable opportunity under section 1618 of this title to make representations seeking remission or mitigation of the monetary penalty. Following the conclusion of any proceeding under section 1618 of this title, the appropriate customs officer shall provide to the customs broker a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(B) Revocation or suspension

The Customs Service may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or the Customs Service determines that the revocation or suspension is still warranted, it shall notify the customs broker in writing of a hearing to be held within 30 days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of title 5 who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. The hearing officer shall transmit promptly the record of the hearing along with the findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based solely on the record, setting forth the findings of fact and the reasons for the decision. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed $30,000, than was contained in the notice to show cause.

(3) Settlement and compromise

The Secretary may settle and compromise any disciplinary proceeding which has been instituted under this subsection according to the terms and conditions agreed to by the parties, including but not limited to the reduction of any proposed suspension or revocation to a monetary penalty.

(4) Limitation of actions

Notwithstanding section 1621 of this title, no proceeding under this subsection or subsection (b)(6) of this section shall be commenced unless such proceeding is instituted by the appropriate service of written notice within 5 years from the date the alleged violation was committed; except that if the alleged violation consists of fraud, the 5-year period of limitation shall commence running from the time such alleged violation was discovered.

(e) Judicial appeal

(1) In general

A customs broker, applicant, or other person directly affected may appeal any decision of the Secretary denying or revoking a license or permit under subsection (b) or (c) of this section, or revoking or suspending a license or permit or imposing a monetary penalty in lieu thereof under subsection (d)(2)(B) of this sec-
tion, by filing in the Court of International Trade, within 60 days after the issuance of the decision or order, a written petition requesting that the decision or order be modified or set aside in whole or in part. A copy of the petition shall be transmitted promptly by the clerk of the court to the Secretary or his designee. In cases involving revocation or suspension of a license or permit or imposition of a monetary penalty in lieu thereof under subsection (d)(2)(B) of this section, after receipt of the petition, the Secretary shall file in court the record upon which the decision or order complained of was entered, as provided in section 2635(d) of title 28.

(2) Consideration of objections

The court shall not consider any objection to the decision or order of the Secretary, or to the introduction of evidence or testimony, unless that objection was raised before the hearing officer in suspension or revocation proceedings unless there were reasonable grounds for failure to do so.

(3) Conclusiveness of findings

The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) Additional evidence

If any party applies to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and that reasonable grounds existed for the failure to present the evidence in the proceedings before the hearing officer, the court may order the additional evidence to be taken before the hearing officer and to be presented in a manner and upon the terms and conditions prescribed by the court. The Secretary may modify the findings of facts on the basis of the additional evidence presented. The Secretary shall then file with the court any new or modified findings of fact which shall be conclusive if supported by substantial evidence, together with a recommendation, if any, for the modification or setting aside of the original decision or order.

(5) Effect of proceedings

The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the decision of the Secretary except in the case of a denial of a license or permit.

(6) Failure to appeal

If an appeal is not filed within the time limits specified in this section, the decision by the Secretary shall be final and conclusive. In the case of a monetary penalty imposed under subsection (d)(2)(B) of this section, if the amount is not tendered within 60 days after the decision becomes final, the license shall automatically be suspended until payment is made to the Customs Service.

(f) Regulations by the Secretary

The Secretary may prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and the furnishing by customs brokers of any other information relating to their customs business to any duly accredited officer or employee of the Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this chapter pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.

(g) Triennial reports by customs brokers

(1) In general

On February 1, 1985, and on February 1 of each third year thereafter, each person who is licensed under subsection (b) of this section shall file with the Secretary of the Treasury a report as to—

(A) whether such person is actively engaged in business as a customs broker; and

(B) the name under, and the address at, which such business is being transacted.

(2) Suspension and revocation

If a person licensed under subsection (b) of this section fails to file the required report by March 1 of the reporting year, the license is suspended, and may be thereafter revoked subject to the following procedures:

(A) The Secretary shall transmit written notice of suspension to the licensee no later than March 31 of the reporting year;

(B) If the licensee files the required report within 60 days of receipt of the Secretary's notice, the license shall be reinstated;

(C) In the event the required report is not filed within the 60-day period, the license shall be revoked without prejudice to the filing of an application for a new license.

(h) Fees and charges

The Secretary may prescribe reasonable fees and charges to defray the costs of the Customs Service in carrying out the provisions of this section, including, but not limited to, a fee for licenses issued under subsection (b) of this section and fees for any test administered by him or under his direction; except that no separate fees shall be imposed to defray the costs of an individual audit or of individual disciplinary proceedings of any nature.

The act entitled "An Act to license customhouse brokers," approved June 10, 1910, is hereby repealed, except that any license, or under such or any other provision of the customs service by the President (see notes to section 1 of this title).

Act June 10, 1910, ch. 283, §1, 36 Stat. 464, prior to its incorporation into the Code, referred to the collector or chief officer of the customs "at any port of entry or delivery." Ports of delivery, not specifically mentioned as ports of entry, were abolished in the reorganization of the customs service by the President (see notes to section 1 of this title).

Act June 10, 1910, ch. 283, §3, 36 Stat. 465, prior to its incorporation into the Code, referred to the United States Circuit Court instead of the District Court. Section 291 of the act of Mar. 3, 1911, provided that any reference, in any law not embraced in that act, to the Circuit Court, or any power or duty conferred upon them, should be deemed to refer to, and to confer such power and duty upon, the District Courts.

AMENDMENTS


1993—Subsec. (a)(2). Pub. L. 103–182, §648(1), inserted at end "It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs."

Subsec. (c)(1). Pub. L. 103–182, §648(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Each person granted a customs broker’s license under subsection (b) of this section shall—" "(A) be issued a permit, in accordance with regulations prescribed under this section, for each customs district in which that person conducts customs business; and "(B) except as provided in paragraph (2), regularly employ in each customs district for which a permit is so issued at least one individual who is licensed under subsection (b)(2) of this section to exercise responsibilities supervision and control over the customs business conducted by that person in that district." Subsec. (c)(2). Pub. L. 103–182, §648(3), added par. (4). Subsec. (d)(2)(B). Pub. L. 103–182, §648(4), in first sentence, substituted "Customs Service" for "appropriate customs officer", in third sentence, substituted "Customs Service" for "appropriate customs officer", and inserted a proviso for "appropriate customs officer", in third sentence, substituted "Customs Service" for "appropriate customs officer", "it shall notify" for "he shall notify", and "30" for "15", in fourth sentence, substituted "Customs Service" for "the appropriate customs officer and the customs broker; they". In the seventh sentence, substituted "the findings of fact" for "his findings of fact", and in the eighth sentence, substituted "for the decision" for "for his decision".

Subsec. (f). Pub. L. 103–182, §648(5), substituted "Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electronically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker’s business system." for "United States Customs Service." for "customs officer", in third sentence, substituted "Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electronically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker’s business system." for "United States Customs Service."
section 701(b)(2) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1970 AMENDMENT
For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989
For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1109–1117 and 1117–1117] or title XVIII [§§1801–1899A] of Pub. L. 99–473 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–473, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1642. Omitted

CODIFICATION
In compliance with a request from the President on July 2, 1952, the survey authorized by this section, act June 17, 1930, ch. 497, title IV, § 642, 46 Stat. 760, was made and submitted to the President on February 28, 1933. See Tariff Commission Reports, No. 70, Second Series.

§ 1643. Application of customs reorganization act

The rights, privileges, powers, and duties vested in or imposed upon the Secretary of the Treasury by this chapter shall be subject to the provisions of subdivision (a) of section 2073 of this title.

(June 17, 1930, ch. 497, title IV, § 643, 46 Stat. 761.)

REFERENCES IN TEXT
Subdivision (a) of section 2073 of this title, referred to in text, was repealed by act Sept. 3, 1954, ch. 1263, § 10, 68 Stat. 1229.

§ 1644. Application of section 1644a(b)(1) of this title and section 1518(d) of title 33

(a) The authority vested by section 1644a(b)(1) of this title in the Secretary of the Treasury, by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of customs, and of the laws and regulations relating to the entry and clearance of vessels, shall extend to the application in like manner of any of the provisions of this chapter, or of the Anti-Smuggling Act of 1935 [19 U.S.C. 1701 et seq.], or of any regulations promulgated hereunder.

(b) For purposes of section 1518(d) of title 33, the term "customs laws administered by the Secretary of the Treasury" shall mean this chapter and any other provisions of law classified to this title.


REFERENCES IN TEXT
The Anti-Smuggling Act of 1935, referred to in subsec. (a), probably means the Anti-Smuggling Act which is set Aug. 5, 1935, ch. 436, 49 Stat. 517, as amended, which is classified principally to chapter 5 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1109 of this title and Tables.

CODIFICATION
In subsec. (a), "section 1644a(b)(1) of this title" substituted for "section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. 1509)" on authority of Pub. L. 88–272, § 6(b), July 5, 1954, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1980–Pub. L. 96–467 designated existing provisions as subsec. (a) and added subsec. (b).

§ 1644a. Ports of entry

(a) Definitions

The definitions in section 40102(a) of title 49 apply to this section.

(b) Secretary of the Treasury

(1) The Secretary of the Treasury may—

(A) designate ports of entry in the United States for civil aircraft arriving in the United States from a place outside the United States and property transported on that aircraft;

(B) detail to ports of entry officers and employees of the United States Customs Service the Secretary considers necessary;

(C) give an officer or employee of the United States Government stationed at a port of entry (with the consent of the head of the department, agency, or instrumentality of the Government with jurisdiction over the officer or employee) duties and powers of officers or employees of the Customs Service;

(D) by regulation, apply to civil air navigation the laws and regulations on carrying out the customs laws, to the extent and under conditions the Secretary considers necessary; and

(E) by regulation, apply to civil aircraft the laws and regulations on entry and clearance of vessels, to the extent and under conditions the Secretary considers necessary.

(2) A person violating a customs regulation prescribed under paragraph (1)(A)–(D) of this subsection or a public health or customs law or regulation made applicable to aircraft by a regulation under paragraph (1)(A)–(D) is liable to the Government for a civil penalty of $5,000 for each violation. An aircraft involved in the violation may be seized and forfeited under the customs laws. The Secretary of the Treasury may remit or mitigate a penalty and forfeiture under this paragraph.

(3) A person violating a regulation made applicable under paragraph (1)(E) of this subsection
or an immigration regulation prescribed under paragraph (1)(E) is liable to the Government for a civil penalty of $5,000 for each violation. The Secretary of the Treasury or the Attorney General may remit or mitigate a penalty under this paragraph.

(4) In addition to any other penalty, when a controlled substance described in section 1584 of this title is found on, or to have been unloaded from, an aircraft to which this subsection applies, the owner of, or individual commanding, the aircraft is liable to the Government for the penalties provided in section 1584 of this title for each violation unless the owner or individual, by a preponderance of the evidence, demonstrates that the owner or individual did not know, and by exercising the highest degree of care and diligence, could not have known, that a controlled substance was on the aircraft.

(5) If a violation under this subsection is by the owner or operator of, or individual commanding, the aircraft, the aircraft is subject to a lien for the penalty.

c) Secretary of Agriculture

(1) The Secretary of Agriculture by regulation may apply laws and regulations on animal and plant quarantine (including laws and regulations on importing, exporting, transporting, and quarantining animals, plants, animal and plant products, insects, bacterial and fungal cultures, viruses, and serums) to civil air navigation to the extent and under conditions the Secretary considers necessary.

(2) A person violating a law or regulation made applicable under paragraph (1) of this subsection is liable for the penalties provided under that law or regulation.

d) Remission and mitigation of penalties

A decision to remit or mitigate a civil penalty under this section is final. When libel proceedings are pending during a proceeding to remit or mitigate a penalty, the appropriate Secretary shall notify the Attorney General of the remission or mitigation proceeding.

e) Summary seizure of aircraft

(1) An aircraft subject to a lien under this section may be seized summarily by and placed in the custody of a person authorized by regulations of the appropriate Secretary or the Attorney General. A report of the case shall be sent to the Attorney General. The Attorney General shall bring promptly a civil action in rem to enforce the lien or notify the appropriate Secretary that the action will not be brought.

(2) An aircraft seized under this subsection shall be released from custody when—

(A) the civil penalty or amount not remitted or mitigated is paid;

(B) the aircraft is seized under process of a court in a civil action in rem to enforce the lien;

(C) the Attorney General gives notice that a civil action will not be brought under paragraph (1) of this subsection; or

(D) a bond is deposited with the appropriate Secretary or the Attorney General in an amount and with a surety the appropriate Secretary or the Attorney General prescribes, conditioned on payment of the penalty or amount not remitted or mitigated.

(f) Collection of civil penalties

A civil penalty under this section may be collected by bringing a civil action against the person subject to the penalty, a civil action in rem against an aircraft subject to a lien for a penalty, or both. The action shall conform as nearly as practicable to a civil action in admiralty, regardless of the place an aircraft in a civil action in rem is seized. However, a party may demand a trial by jury of an issue of fact if the value of the matter in controversy is more than $20. An issue of fact tried by jury may be reexamined only under common law rules.

g) Authorization of appropriations

Necessary amounts may be appropriated to allow the head of a department, agency, or instrumentality of the Government to acquire space at a public airport (as defined in section 47102 of title 49) when the head decides the space is necessary to carry out inspections, clearance, collection of taxes or duties, or a similar responsibility of the head, related to transporting passengers or property in air commerce. The head must consult with the Secretary of Transportation before making a decision on space.


Codification

Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

Section is based on sections 1474 and 1509(b)–(e) of former Title 49, Transportation, which were repealed and restated as this section by Pub. L. 103–272, §§ 2, 7(b), July 5, 1994, 108 Stat. 1358, 1379.

Transfer of Functions

For transfers of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

§ 1645. Transportation and interment of remains of deceased employees in foreign countries; travel or shipping expenses incurred on foreign ships

(a) Transfers in foreign countries

The expense of transporting the remains of customs officers and employees who die while in or in transit to foreign countries in the discharge of their official duties, to their former homes in this country for interment, and the ordinary and necessary expenses for such interment, at their posts of duty or at home, are authorized to be paid upon the written order of the Secretary of the Treasury. The expenses authorized by this subdivision shall be paid from the appropriation for the collection of the revenue from customs.

(b) Transportation on foreign ships

Notwithstanding the provisions of section 601 of the Merchant Marine Act, 1928, or of any other law, any allowance, within the limitations prescribed by law, for travel or shipping expenses incurred on a foreign ship by any officer
or employee of the Bureau of Customs or the Customs Service, shall be credited if the Secretary of the Treasury certifies to the Comptroller General that transportation on such foreign ship was necessary to protect the revenue.

(June 17, 1930, ch. 497, title IV, §645(a), (c), 46 Stat. 761; Aug. 2, 1946, ch. 744, §2, 60 Stat. 807.)

REFERENCES IN TEXT

Section 601 of the Merchant Marine Act, 1928, referred to in subsec. (b), was classified to section 891r of former Title 46, Shipping, and was repealed by the Merchant Marine Act, 1936 (approved June 29, 1936, ch. 858, §903(c), 49 Stat. 196), but was reenacted in substance by section 901 of that Act, which was classified to section 1241 of the former Appendix to Title 46, Shipping. Section 901 of the Merchant Marine Act, 1936 was subsequently repealed and restated in sections 55392, 55393, and 55395 of Title 46, Shipping, by Pub. L. 109–304, §§8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

CODIFICATION

Section is comprised of subsecs. (a) and (c) of section 645 of act June 17, 1930. Subsec. (b) of section 645 repealed in part section 48 of this title.

AMENDMENTS


CHANGE OF NAME


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PILOT STUDY AUTHORIZING UTILITY OF NONDESTRUCTIVE EXAMINATION SYSTEM

Section 402 of Pub. L. 102–519 provided that: “The Secretary of the Treasury, acting through the Commissioner of Customs, shall conduct a pilot study of the utility of a nondestructive examination system to be used for inspection of containers that may contain automobiles leaving the country for the purpose of determining whether such automobiles have been stolen.

$1646c. Export reporting requirement

The Commissioner of Customs shall require all persons or entities exporting used automobiles, including automobiles exported for personal use, by air or ship to provide to the Customs Service, at least 72 hours before the export, the vehicle identification number of each such automobile and proof of ownership of such automobile. The Commissioner shall establish specific criteria for randomly selecting used automobiles scheduled to be exported, consistent with the risk of stolen automobiles being exported and shall check the vehicle identification number of each automobile selected pursuant to such criteria against the information in the National Crime Information Center to determine whether such automobile has been reported stolen. At the request of the Director of the Bureau of Investigation, the Commissioner shall make available to the Director all vehicle identification numbers obtained under this section.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.


Section, act June 17, 1930, ch. 497, title IV, § 647, 46 Stat. 762, which repealed that part of section 195 of act Mar. 3, 1911, ch. 231, that read as follows: “in any case in which there is drawn in question the construction of the Constitution of the United States, or any part thereof, or of any treaty made pursuant thereto, or in any other case when the Attorney General of the United States shall, before the decision of the Court of Customs Appeals is rendered, file with the court a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court.” was repealed by act June 25, 1948, which repealed section 195 of act Mar. 3, 1911, ch. 231.

§ 1648. Uncertified checks, United States notes, and national bank notes receivable for customs duties

Customs officers may receive uncertified checks, United States notes, and circulating notes of national banking associations in payment of duties on imports, during such time and under such rules and regulations as the Secretary of the Treasury shall prescribe; but if a check so received is not paid the person by whom such check has been tendered shall remain liable for the payment of the duties and for all legal penalties and additions to the same extent as if such check had not been tendered.


AMENDMENTS


Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1649. Change in designation of customs attaches

On and after June 17, 1930, customs attaches shall be known as “Treasury attaches.”

(June 17, 1930, ch. 497, title IV, §649, 46 Stat. 762.)

§ 1650. Transferred

Codification

Section, act June 17, 1930, ch. 497, title IV, §650, 46 Stat. 762, is set out as part of section 2072 of this title.

§ 1651. Repeals

(a) Specific repeals

The following Acts and parts of Acts are repealed, subject to the limitations provided in subdivision (c) of this section:

(1) The Tariff Act of 1922, except that the repeal of sections 304 and 482 (relating to marking of imported articles and to certified invoices, respectively) shall take effect sixty days after the enactment of this chapter;

(2) Section 16 of the Act entitled “An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes”, approved June 26, 1884, as amended (relating to supplies for certain vessels);

(3) The Joint Resolution entitled “Joint Resolution Authorizing certain customs officials to administer oaths”, approved April 2, 1928;

and

(4) Section 2804 of the Revised Statutes, as amended (relating to limitations on importation packages of cigars).

(b) General repeal

All Acts and parts of Acts inconsistent with the provisions of this chapter are repealed.

(c) Rights and liabilities under acts repealed or modified

The repeal of existing laws or modifications or reenactments thereof embraced in this chapter shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal, modifications, or reenactments, but all liabilities under such laws shall continue and may be enforced in the same manner as if such repeal, modifications, or reenactments had not been made. All offenses committed and all penalties, under any statute embraced in, or changed, modified, or repealed by this chapter, may be prosecuted and punished in the same manner and with the same effect as if this chapter had not been passed. No Acts of limitation now in force, whether applicable to civil causes and proceedings, or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in, modified, changed, or repealed by this chapter, shall affect any suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to June 18, 1930, which may be commenced and prosecuted within the same time and with the same effect as if this chapter had not been passed.

(d) Certain acts not affected

Nothing in this chapter shall be construed to amend or repeal any of the following provisions of law:

(1) Section 60501 or 60502 of title 46;

(2) Subsection 2 of paragraph N of Section IV of such Act of October 3, 1913, ch. 16 (relating to the manufacture of alcohol for denaturation only);

(3) Section 296 of title 5 (providing for an Assistant Attorney General in charge of customs matters);

(4) The Act entitled “An Act relating to the use or disposal of vessels or vehicles forfeited to the United States for violation of the customs laws or the National Prohibition Act, and for other purposes”, approved March 3, 1925; and

(June 17, 1930, ch. 497, title IV, §651, 46 Stat. 762.)

REFERENCES IN TEXT
The Tariff Act of 1922, referred to in subsec. (a)(1), is act June 21, 1922, ch. 356, §42 Stat. 858, as amended. For complete classification of this act to the Code, see Tables. Section 304 of that act was classified, prior to its repeal, to sections 132 and 133 of this title, and section 482 of that act was classified, prior to its repeal, to sections 334 to 337, 342, and 343 of this title.

Section 16 of the act approved June 26, 1884, referred to in subsec. (a)(2), is section 16 of act June 26, 1884, ch. 121, 23 Stat. 57, and was classified, prior to its repeal, to section 145 of this title. See section 1309 of this title.

Section 2804 of the Revised Statutes, referred to in subsec. (a)(4), was classified, prior to its repeal, to section 192 of this title.

Subsection 2 of paragraph N of Section IV of act of October 3, 1913, ch. 16, referred to in subsec. (d)(2), which appears at 38 Stat. 199 and which was classified, prior to its repeal, to 32 Stat. 462, was repealed by act Feb. 10, 1939, ch. 2, §4, 53 Stat. 1110.

The Attorney General in charge of customs matters was abolished by Reorg. Plan No. 4 of 1953, §2, eff. June 20, 1953.

The Tariff Act of 1922, referred to in subsec. (a)(3), was repealed by act Sept. 21, 1922, ch. 356, title IV, §645, 42 Stat. 858, as amended. For complete classification of this act to the Code, see Tables. That section was superseded by section 652 of the 1930 Act.

Provisions similar to those in subd. (c) of this section were contained in act Sept. 21, 1922, ch. 356, title IV, §641, 42 Stat. 899. That section was superseded by section 651 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1652. Separability

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(June 17, 1930, ch. 497, title IV, §652, 46 Stat. 763.)
1541, and 1508 of this title and section 2383 of Title 10, Armed Forces, and enacting provisions set out as notes preceding section 1302 of this title and under section 1861 of this title and section 4501 of Title 26) may be cited as the ‘‘Tariff Classification Act of 1962’’.

**SHORT TITLE OF 1958 AMENDMENT**

Section 1 of Pub. L. 85–686, Aug. 20, 1958, 72 Stat. 673, provided: ‘‘That this Act [enacting section 1355 of this title, amending sections 1333, 1336, 1337, 1331, 1332a, 1360, and 1361 of this title, and enacting provisions set out as notes under sections 1351 and 1352 of this title] may be cited as the ‘‘Trade Agreements Extension Act of 1958’’.’’

**SHORT TITLE OF 1956 AMENDMENT**

Section 1 of act Aug. 2, 1956, ch. 699, 70 Stat. 943, provided: ‘‘That this Act [amending sections 1001, 1462, 1500, and 1583 of this title, and section 372 of former Title 31, Money and Finance, repealing sections 12 to 18, 21, 24, 26 to 28, 30, 40, 53 to 57, 59, 61, 62, 67, 376, 379, 390, 494, 529, 541, 542, 549, and 579 of this title, and section 711 of former Title 31, and enacting provisions set out as notes under sections 2, 160, 1351, 1661a, and 1462 of this title] may be cited as the ‘‘Customs Simplification Act of 1956’’.’’

**SHORT TITLE OF 1955 AMENDMENT**

Section 1 of act June 21, 1955, ch. 169, 69 Stat. 162, provided: ‘‘That this Act [amending sections 1351, 1352, 1352a, 1363, and 1364 of this title] may be cited as the ‘‘Trade Agreements Extension Act of 1955’’.’’

**SHORT TITLE OF 1954 AMENDMENT**

Section 1 of act Sept. 1, 1954, ch. 1213, 68 Stat. 1136, provided: ‘‘That this Act [enacting sections 1301a and 1565a of this title, amending sections 161, 1001, 1201, 1441, 1451, 1561, 1603, 1607, 1610, 1612 of this title, section 545 of Title 18, Crimes and Criminal Procedure, section 91 of Title 46, Appendix, Shipping, sections 1421e, 1644 of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under sections 160 and 1352 of this title] may be cited as the ‘‘Customs Simplification Act of 1954’’.’’

**SHORT TITLE OF 1953 AMENDMENTS**

Section 1 of act Aug. 8, 1953, ch. 397, 67 Stat. 507, provided in part: ‘‘That this Act [amending sections 298, 1001, 1201, 1304, 1306, 1309, 1313, 1315, 1317, 1321, 1431, 1439, 1440, 1452, 1463, 1464, 1467, 1489, 1496, 1501, 1503, 1508, 1520, 1523, 1557, and 1562 of this title, enacting sections 1322 and 1644a of this title, and repealing sections 33–35, 39, 42–45, 273, 274, 472–475, 1320, and 1363a of this title] may be cited as the ‘‘Customs Simplification Act of 1953’’.’’

**SHORT TITLE OF 1951 AMENDMENT**

Section 1 of act June 16, 1951, ch. 141, 65 Stat. 72, provided: ‘‘That this Act [enacting sections 1360 to 1367 of this title, amending sections 1352 and 1354 of this title, provisions set out as a note under section 1356 of this title, and section 624 of Title 7, Agriculture] may be cited as the ‘‘Trade Agreements Extension Act of 1951’’.’’

**SHORT TITLE OF 1949 AMENDMENT**

Section 1 of act Sept. 26, 1949, ch. 585, 63 Stat. 697, provided: ‘‘That this Act [amending sections 1351, 1352, and 1354 of this title and repealing sections 1357 to 1359 of this title] may be cited as the ‘‘Trade Agreements Extension Act of 1949’’.’’

**SHORT TITLE OF 1938 AMENDMENT**

Section 1 of act June 25, 1938, ch. 679, 52 Stat. 1077, provided: ‘‘That this Act [enacting sections 1321, 1467, 1528 of this title, amending sections 1001, 1201, 1304, 1308, 1309, 1315, 1317, 1401, 1402, 1451, 1459, 1460, 1484, 1485, 1491, 1499, 1501, 1516, 1520, 1524, 1533, 1537 to 1539, 1562, 1563, 1603, 1607, 1613, 1625, 1709 of this title, and section 331 of former Title 46, Shipping, and enacting provisions set out as a note under section 1516 of this title] may be cited as the ‘‘Customs Administrative Act of 1938’’.’’

**SUBTITLE IV—COUNTERVAILING AND ANTIDUMPING DUTIES**

**PART I—IMPOSITION OF COUNTERVAILING DUTIES**

**CODIFICATION**

The designations ‘‘SUBTITLE IV’’ and ‘‘PART I’’ were in the original ‘‘TITLE VII’’ and ‘‘Subtitle A’’ respectively, and were editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

§ 1671. Countervailing duties imposed

(a) General rule

If—

(1) the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) in the case of merchandise imported from a Subsidies Agreement country, the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy. For purposes of this subsection and section 1671d(b)(1) of this title, a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(b) Subsidies Agreement country

For purposes of this subtitle, the term “Subsidies Agreement country” means—

(1) a WTO member country,

(2) a country which the President has determined has assumed obligations with respect to the United States which are substantially equivalent to the obligations under the Subsidies Agreement, or

(3) a country with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on December 8, 1994, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States, and
(B) the agreement described in subparagraph (A) does not expressly permit—
   (i) actions required or permitted by the GATT 1947 or GATT 1994, as defined in section 3501(1) of this title, or required by the Congress, or
   (ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) Countervailing duty investigations involving imports not entitled to a material injury determination

In the case of any article or merchandise imported from a country which is not a Subsidies Agreement country—
   (1) no determination by the Commission under section 1671b(a), 1671c, or 1671d(b) of this title shall be required,
   (2) an investigation may not be suspended under section 1671c(c) or 1671l(c) of this title,
   (3) no determination as to the presence of critical circumstances shall be made under section 1671b(e) or 1671a(2) of this title,
   (4) section 1671c(c) of this title shall not apply,
   (5) any reference to a determination described in paragraph (1) or (3), or to the suspension of an investigation under section 1671c(c) or 1671l(c) of this title, shall be disregarded, and
   (6) section 1675(c) of this title shall not apply.

(d) Treatment of international consortia

For purposes of this part, if the members (or other participating entities) of an international consortium that is engaged in the production of merchandise that is equivalent to the sale of the merchandise is being paid or being assisted, permit, or otherwise enable their participation in that consortium through production of merchandise provided directly to the international consortium, in determining any countervailing duty upon such merchandise.

(e) Upstream subsidies

Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 1677–1(a)(1) of this title, is being paid or bestowed, and if so, shall include the upstream subsidy as provided in section 1677–1(a)(3) of this title.


Amendments

1994—Subsecs. (a) to (c). Pub. L. 103–465, §262, amended subsec. (a) to (c) generally, substituting present provisions for provisions which generally authorized the imposition of countervailing duties, defined “country under the Agreement”, and provided for revocation of status as country under the Agreement.


Amendment by section 1671c(c) or 1671c(d) of Pub. L. 103–465, set out as a note under section 1671c of this title, is being paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 1677–1(a)(3) of this title.
“(B) pursuant to a request filed after such date,
“(3) investigations initiated under section 753 of such Act [19 U.S.C. 1675b] after such date,
“(4) petitions filed under sections 750 of such Act [19 U.S.C. 1677] after such date, and
“(5) inquiries initiated under section 761 of such Act [19 U.S.C. 1677].—

(A) by the administering authority on its own initiative after such date, or

(B) pursuant to a request filed after such date.

(2) Date Described.—The date described in this subsection is the date on which the WTO Agreement (as defined in section 2(b) [19 U.S.C. 3501(b)]) enters into force with respect to the United States [Jan. 1, 1995].”

**Effective Date of 1988 Amendments**

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

(Pub. L. 100–647, title IX, § 9001(a)(6), Nov. 10, 1988, 102 Stat. 3807, provided that:

“(a) In General.—Except as otherwise provided in this Act, the amendments made by this part [part 2 (§§1311–1337) of subtitle C of title I of Pub. L. 100–418, enacting sections 1673h, 1673i, 1677, 1677e, 1677f, and 1677g of this Act, amending this Act and sections 1517, 1671a to 1671i, 1673a to 1673c, 1673d, 1673e, 1673f, and 1673g of this Act, and enacting provisions set out as a note under section 2231 of this Act] shall take effect on the date of enactment of this Act [Aug. 23, 1988].

“(b) Investigations and Reviews After Enactment.—The amendments made by sections 1312, 1315, 1316, 1318, 1325, 1326, 1327, 1328, 1329, 1331, and 1332 [amending this section and sections 1516, 1671a to 1671c, 1673a to 1673c, 1673d, 1673e, 1677, 1677e, and 1677f of this title] shall apply only with respect to—

“(1) investigations initiated after the date of enactment of this Act [Aug. 23, 1988], and

“(2) reviews initiated under section 735(c) or 751 of the Tariff Act of 1930 [19 U.S.C. 1675(c) or 1676(c)] after the date of enactment of this Act [Aug. 23, 1988].

“(c) Investigations After Enactment.—The amendments made by sections 1321 and 1330 [amending sections 1671a, 1671b, 1671d, 1673a, 1673b, 1673c, and 1677 of this title] shall apply only with respect to investigations initiated after the date of enactment of this Act [Aug. 23, 1988].

“(d) Prevention of Circumvention of Duties; Drawback.—The provisions of section 761 of the Tariff Act of 1930, as added by section 1231(a) [19 U.S.C. 1677], and the amendments made by section 1234 [amending section 1677h of this Act] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of enactment of this Act [Aug. 23, 1988].

“(e) Governmental Importations; Steel.—The amendments made by sections 1322 [amending provisions set out as a note under section 2231 of this title] and 1335 [amending section 1677 of this title] shall apply with respect to entries, and withdrawals from warehouse for consumption, that are liquidated on or after November 4, 1984.

“(f) Fictitious Markets.—The amendment made by section 1319 [amending section 1677b of this Act] shall only apply with respect to—

“(1) reviews initiated under section 735(c) or 751 of the Tariff Act of 1930 [19 U.S.C. 1675(c) or 1676(c)] after the date of enactment of this Act [Aug. 23, 1988], and

“(2) reviews initiated under such sections—

“(A) which are pending on the date of enactment of this Act, and

“(B) in which a request for revocation is pending on the date of enactment of this Act.”

**Effective Date of 1984 Amendment**


“(A) Except as provided in subsections (b) and (c), this Act [probably should be “this title’’], and the amendments made by it [enacting sections 1671i, 1677–1, and 1677h of this title, amending this Act and sections 1671b to 1671l, 1673c, 1673d, 1677a to 1677l, and 1677g of this title, and repealing sections 1673h and 1673i of this title], shall take effect on the date of the enactment of this Act [Oct. 30, 1984].

“(B)(1) The amendments made by sections 602, 609, 611, 612, and 620 [enacting sections 1676, 1676a, and 1677–1 of this title and amending this section and sections 1514, 1671c, 1671d, 1673a, 1673d, 1673e, 1673f, 1675, 1677, and 1677b of this title, section 2631 of Title 28, Judiciary and Judicial Procedure, and provisions set out as a note under this section] shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 [parts I and II of this subtitle], and to reviews begun under section 753 of that Act [section 1673 of this title], on or after such effective date.

“(2) The amendments made by section 623 [amending section 1516a of this title and sections 2636 and 2647 of Title 28] shall apply with respect to civil actions pending on, or filed on or after, the date of the enactment of this Act [Oct. 30, 1984].

“(3) The administering authority may delay implementation of any of the amendments referred to in subsections (a) and (b)(1) with respect to any investigations in progress on the date of enactment of this Act [Oct. 30, 1984] if the administering authority determines that immediate implementation would prevent compliance with a statutory deadline in title VII of the Tariff Act of 1930 [this subtitle] that is applicable to that investigation.

“(4) The amendment made by section 621 [amending section 1677(h) of this Act] shall apply with respect to mercehandise that is unliquidated on or after November 4, 1984.

“(c)(1) No provision of title VII of the Tariff Act of 1930 [this subtitle] shall be interpreted to prevent the refiling of a petition under section 702 or 732 of that title [sections 1671a and 1673a of this title] that was filed before the date of the enactment of this title, if the purpose of such refiling is to avail the petitioner of the amendment made by section 612(a)(1) [amending section 1677(h)(4)(A) of this title].

“(2) The amendment made by section 612(a)(1) shall not apply with respect to petitions filed (or refiled under paragraph (1)) under section 702 or 732 of the Tariff Act of 1930 after September 30, 1986.’’

**Effective Date**

Section 107 of title I of Pub. L. 96–39 provided that:

“Except as otherwise provided in this title, this title and the amendments made by it [enacting this subtitle, amending sections 1303, 1337, 2033, and 2251 of this title, repealing sections 160 and 1303 of this title] shall take effect on January 1, 1980, if—

“(1) the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures), and

“(2) the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures), approved by the Congress under section 2(a) of this Act [section 2503(a) of this title] have entered into force with respect to the United States as of that date.”

[These agreements entered into force with respect to the United States on Dec. 17, 1979.]
§ 1671

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (§§1101–1147 and 1171–1177) or title XVIII (§§1801–1896a) of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

INVESTIGATIONS PENDING ON JANUARY 1, 1980

Section 102 of Pub. L. 96–39 provided that:

“(a) PENDING INVESTIGATIONS OF BOUNTIES OR GRANTS.—If, on the effective date of the application of title VII of the Tariff Act of 1930 [see Effective Date note set out above] to imports from a country, there is an investigation in progress under section 303 of that Act [section 1303 of this title] as to whether a bounty or grant is being paid or bestowed on imports from such country, then:

“(1) If the Secretary of the Treasury has not yet made a preliminary determination under section 303 of that Act [section 1303 of this title] as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under section 303 [section 1303 of this title] and the matter previously under investigation shall be subject to this title [this subtitle] as if the affirmative determination called for in section 702 of that Act [section 1671a of this title] were made with respect to that matter on the effective date of the application of title VII of that Act (this subtitle) to such country.

“(2) If the Secretary has made a preliminary determination under such section 303 [section 1303 of this title], but not a final determination, as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under such section 303 [section 1303 of this title] and the matter previously under investigation shall be subject to the provisions of title VII of that Act [this subtitle] as if the preliminary determination under section 303 [section 1303 of this title] were a preliminary determination under section 703 of that title [section 1671b of this title] made on the effective date of the application of that title [this subtitle] to such country.

“(b) PENDING INVESTIGATIONS OF LESS-THAN-FAIR-VALUE SALES.—If, on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above], there is an investigation in progress under the Antidumping Act, 1921 [sections 160 to 171 of this title], or if the investigation is pending under the Antidumping Act, 1921 [section 1671d(a) of this title], as to whether imports from a country are being, or are likely to be, sold in the United States or elsewhere at less than fair value, then:

“(1) If the Secretary has not yet made a preliminary determination under section 1671 of the Tariff Act of 1930 [section 1671d(a) of this title], as to whether imports from such country are being, or are likely to be, sold in the United States or elsewhere at less than fair value, the investigation shall be terminated and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 [this subtitle] as if the preliminary determination under the Antidumping Act, 1921 [sections 160 to 171 of this title], were a preliminary determination under section 733 of that title [section 1673b of this title] made on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above], and

“(c) PENDING INVESTIGATIONS OF INJURY.—If, on the effective date of the application of title VII of the Tariff Act of 1930 [see Effective Date note set out above] to imports from a country, the United States International Trade Commission is conducting an investigation under section 303 of the Tariff Act of 1930 [section 1303 of this title] or section 201(a) of the Antidumping Act, 1921 [section 160(a) of this title], as to whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation, under subtitle A or B of title VII of the Tariff Act of 1930 (part 1 or II of this subtitle), which shall be completed within 75 days, and—

“(1) treat any final determination of the Secretary of the Treasury under section 303 [section 1303 of this title] as a final determination under section 705(a) of the Tariff Act of 1930 [section 1671d(a) of this title] and consider the net amount of the bounty or grant estimated or determined under section 303 [section 1303 of this title] as the net subsidy amount under subtitle A of that title [part I of this subtitle]; and

“(2) treat any final determination of the Secretary of the Treasury under the Antidumping Act, 1921 [sections 160 to 171 of this title], as a final determination under section 735(a) of the Tariff Act of 1930 [section 1673d(a) of this title].

TRANSITION RULES FOR COUNTERVAILING DUTY ORDERS


“(a) WAIVED COUNTERVAILING DUTY ORDERS.—

“(1) NOTIFICATION OF COMMISSION.—The administering authority shall notify the United States International Trade Commission by January 7, 1980, of any countervailing duty order in effect on January 1, 1980—

“(A) if the Secretary of the Treasury has waived the imposition of countervailing duties under section 306(d) of the Tariff Act of 1930 (19 U.S.C. 1306(d)), and

“(B) applicable to frozen, boneless beef from the European Communities under Treasury Decision 76–109, and shall furnish to the Commission the most current information it has with respect to the net subsidy benefitting the merchandise subject to the countervailing duty order.

“(2) DETERMINATION BY THE COMMISSION.—Within 180 days after the date on which it receives the information from the administering authority under paragraph (1), the Commission shall make a determination of whether—

“(A) an industry in the United States—

“(i) is threatened with material injury, or

“(ii) is materially injured, or

“(B) the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise subject to the order.

“(3) EFFECT OF DETERMINATION.—

“(A) AFFIRMATIVE DETERMINATION.—Upon being notified by the Commission of an affirmative determination under paragraph (2), the administering authority shall terminate the waiver of imposition

ENDING
of countervailing duties for merchandise subject to the order, if any. The countervailing duty order under section 333 of the Tariff Act of 1930 [section 1333 of this title] which applies to that merchandise shall remain in effect until revoked, in whole or in part, under section 751(d) of such Act [section 1675(d) of this title].

NEGATIVE DETERMINATION.—Upon being notified by the Commission of a negative determination under paragraph (2), the administering authority shall revoke the countervailing duty order, and publish in notice in the Federal Register of the revocation.

(b) OTHER COUNTervAILING DUTY ORDERS.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 [19 U.S.C. 1303]—

(A) which is not a countervailing duty order to which subsection (a) applies,

(B) which applies to merchandise which is the product of a country under the Agreement, and

(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act [section 1516(d) of this title] before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above] shall make a determination under paragraph (2) of this subsection.

(2) DETERMINATION BY THE COMMISSION.—In a case described in paragraph (1) with respect to which it has received a request for review, the Commission shall commence an investigation to determine whether—

(A) an industry in the United States—

(i) would be materially injured, or

(ii) would be threatened with material injury,

or

(B) the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked. A negative determination by the Commission of this subsection shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidization.

(3) SUSPENSION OF LIQUIDATION; INVESTIGATION TIME LIMITS.—Whenever the Commission receives a request under paragraph (1), it shall promptly notify the administering authority and the administering authority shall suspend liquidation of entries of the affected merchandise made on or after the date of receipt of the Commission’s notification, or in the case of butter from Australia, entries of merchandise subject to the assessment of countervailing duties under Treasury Decision 42937, as amended, and collect estimated countervailing duties pending the determination of the Commission. The Commission shall issue its determination in any investigation under this subsection not later than 3 years after the date of commencement of such investigation.

(4) EFFECT OF DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified of an affirmative determination under paragraph (2) by the Commission, the administering authority shall liquidate entries of merchandise the liquidation of which was suspended under paragraph (3) of this subsection and impose countervailing duties in the amount of the estimated duties required to be deposited. The countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(c) of the Tariff Act of 1930 [section 1671c of this title].

(B) NEGATIVE DETERMINATION.—Upon being notified of a negative determination under paragraph (2) by the Commission, the administering authority shall revoke the countervailing duty order then in effect, publish notice thereof in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation.

(c) ALL OUTSTANDING COUNTervAILING DUTY ORDERS.—Subject to the provisions of subsection (a) and (b), any countervailing duty order issued under section 303 of the Tariff Act of 1930 [section 1303 of this title] which is—

(1) in effect on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above] (as added by section 101 of this Act), or

(2) issued pursuant to court order in a proceeding brought before that date under section 333(d) of the Tariff Act of 1930 [section 1516(d) of this title], shall remain in effect after that date and shall be subject to review under section 751 of the Tariff Act of 1930 [section 1675 of this title].

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the Commission makes a determination under subsection (a) or (b), it shall publish notice of that determination in the Federal Register and notify the administering authority of its determination.

(e) DEFINITIONS.—Whenever any term which is defined in section 771 of the Tariff Act of 1930 [section 1671 of this title] is used in this section, it has the same meaning as when it is used in title VII of that Act [this subtitle].

§ 1671a. Procedures for initiating a countervailing duty investigation

(a) Initiation by administering authority

A countervailing duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 1671(a) of this title exist.

(b) Initiation by petition

(1) Petition requirements

A countervailing duty proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 1671(a) of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission

The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) Petition based upon a derogation of an international undertaking on official export credits

If the sole basis of a petition filed under paragraph (1) is the derogation of an international undertaking on official export credits, the Administering Authority shall immediately notify the Secretary of the Treasury who shall, in consultation with the Administering Authority, within 5 days after the
date on which the administering authority initiates an investigation under subsection (c) of this section, determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

(4) Action with respect to petitions

(A) Notification of governments

Upon receipt of a petition filed under paragraph (1), the administering authority shall—

(i) notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country; and

(ii) provide the government of any exporting country named in the petition that is a Subsidies Agreement country an opportunity for consultations with respect to the petition.

(B) Acceptance of communications

The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 1677(9)(C), (D), (E), (F), or (G) of this title before the administering authority makes its decision whether to initiate an investigation, except as provided in subparagraph (A)(ii) and subsection (c)(4)(D) of this section, and except for inquiries regarding the status of the administering authority’s consideration of the petition.

(C) Nondisclosure of certain information

The administering authority and the Commission shall not disclose information with respect to any draft petition submitted for review and comment before it is filed under paragraph (1).

(c) Petition determination

(1) In general

(A) Time for initial determination

Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

(i) after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 1671(a) of this title and contains information reasonably available to the petitioner supporting the allegations, and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) Extension of time

In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting “a maximum of 40 days” for “20 days”.

(C) Time limits where petition involves same merchandise as an order that has been revoked

If a petition is filed under this section with respect to merchandise that was the subject merchandise of—

(i) a countervailing duty order that was revoked under section 1675(d) of this title in the 24 months preceding the date the petition is filed, or

(ii) a suspended investigation that was terminated under section 1675(d) of this title in the 24 months preceding the date the petition is filed,

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) Affirmative determinations

If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether a countervailable subsidy is being provided with respect to the subject merchandise.

(3) Negative determinations

If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) Determination of industry support

(A) General rule

For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) Certain positions disregarded

(i) Producers related to foreign producers

In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 1677(4)(B)(ii) of this title, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of a countervailing duty order.

(ii) Producers who are importers

The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.
(C) Special rule for regional industries

If the petition alleges that the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A) on the basis of production in the region.

(D) Polling the industry

If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority shall—
(i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or
(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) Comments by interested parties

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 1677(d)(1) of this title if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination shall not be reconsidered.

(5) "Domestic producers or workers" defined

For purposes of this subsection, the term "domestic producers or workers" means those interested parties who are eligible to file a petition under subsection (b)(1) of this section.

(d) Notification to Commission of determination

The administering authority shall—
(1) notify the Commission immediately of any determination it makes under subsection (a) or (c) of this section, and
(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Information regarding critical circumstances

If, at any time after the initiation of an investigation under this part, the administering authority finds a reasonable basis to suspect that the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the administering authority may request the Commissioner of Customs to compile information on the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 1671d(a) of this title, the investigation is terminated, or the administering authority withdraws the request.


AMENDMENTS

Subsec. (b)(3). Pub. L. 103–465, §§211(a)(1), 212(b)(1)(E), substituted “paragraph (1)” for “subsection (b)(1) of this section” and “5 days after the date on which the administering authority initiates an investigation under subsection (c) of this section” for “twenty days”.
Subsec. (c). Pub. L. 103–465, §212(a)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “Within 20 days after the date on which an investigation is initiated, any person who would qualify as an interested party under section 1677(d)(1) of this title may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Information regarding critical circumstances

If, at any time after the initiation of an investigation under this part, the administering authority finds a reasonable basis to suspect that the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the administering authority may request the Commissioner of Customs to compile information on the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 1671d(a) of this title, the investigation is terminated, or the administering authority withdraws the request.


AMENDMENTS

Subsec. (b)(3). Pub. L. 103–465, §§211(a)(1), 212(b)(1)(E), substituted “paragraph (1)” for “subsection (b)(1) of this section” and “5 days after the date on which the administering authority initiates an investigation under subsection (c) of this section” for “twenty days”.
Subsec. (c). Pub. L. 103–465, §212(a)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “Within 20 days after the date on which a petition is filed under subsection (b) of this section, and provide for the publication of notice of the determination to commence an investigation in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.”
Subsec. (e). Pub. L. 103–465, §270(a)(1)(A), (d), substituted “countervailable subsidy” for “subsidy” and “Subsidies Agreement” for “Agreement”.
Pub. L. 103–465, §233(a)(5)(B), substituted “subject merchandise” for “class or kind of merchandise that is the subject of the investigation” in two places.
1988—Subsec. (b)(1). Pub. L. 100–418, §1326(d)(1), substituted “‘(F), or (G)’” for “‘or (F)’”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed on or after that date.
§ 1671b

TITLE 19—CUSTOMS DUTIES

(tions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1324(a)(1) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and amendment by section 1326(a)(1) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and to reviews initiated under section 1675(e)(c) or 1675 of this title after Aug. 23, 1988, see section 1327(b), (c) of Pub. L. 100–418, set out as a note under section 1671 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1671b. Preliminary determinations

(a) Determination by Commission of reasonable indication of injury

(1) General rule

Except in the case of a petition dismissed by the administering authority under section 1671a(c)(3) of this title, the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded, by reason of imports of the subject merchandise that are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) Time for Commission determination

The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 1671a(b) of this title—

(i) within 45 days after the date on which the petition is filed, or

(ii) if the time has been extended pursuant to section 1671a(c)(1)(B) of this title, within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 1671a(a) of this title, within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b) Preliminary determination by administering authority; expedited determinations; waiver of verification

(1) Within 65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title, or an investigation is initiated under section 1671a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a countervailable subsidy is being provided with respect to the subject merchandise.

(2) Notwithstanding paragraph (1), when the petition is one subject to section 1671a(b)(3) of this title, the administering authority shall, when taking into account that a countervailable subsidy is being provided with respect to the subject merchandise, make the determination required by paragraph (1) on an expedited basis and within 65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title unless the provisions of subsection (c) of this section apply.

(3) Within 55 days after the initiation of an investigation the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 50 days of the investigation, and, if there appears to be sufficient information available upon which the determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 1677f of this title. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a determination made on the basis of the record then available to the authority if a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made on an expedited basis on the basis of the record established.
during the first 50 days after the investigation was initiated.

(4) DE MINIMIS COUNTERVAILABLE SUBSIDY.—

(A) GENERAL RULE.—In making a determination under this subsection, the administering authority shall disregard any de minimis countervailable subsidy. For purposes of the preceding sentence, a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies is less than 1 percent ad valorem or the equivalent specific rate for the subject merchandise.

(B) EXCEPTION FOR DEVELOPING COUNTRIES.—In the case of subject merchandise imported from a Subsidies Agreement country (other than a country to which subparagraph (C) applies) designated by the Trade Representative as a developing country in accordance with section 1677(36) of this title, a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies does not exceed 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(C) CERTAIN OTHER DEVELOPING COUNTRIES.—In the case of subject merchandise imported from a Subsidies Agreement country that is—

(i) a least developed country, as determined by the Trade Representative in accordance with section 1677(36) of this title, or

(ii) a developing country with respect to which the Trade Representative has notified the administering authority that the country has eliminated its export subsidies on an expedited basis within the meaning of Article 27.11 of the Subsidies Agreement,

subparagraph (B) shall be applied by substituting “3 percent” for “2 percent”.

(D) LIMITATIONS ON APPLICATION OF SUBPARAGRAPH (C).—

(i) In general.—In the case of a country described in subparagraph (C)(i), the provisions of subparagraph (C) shall not apply after the date that is 8 years after the date the WTO Agreement enters into force.

(ii) SPECIAL RULE FOR SUBPARAGRAPH (C)(ii) COUNTRIES.—In the case of a country described in subparagraph (C)(ii), the provisions of subparagraph (C) shall not apply after the earlier of—

(I) the date that is 8 years after the date the WTO Agreement enters into force, or

(II) the date on which the Trade Representative notifies the administering authority that such country is providing an export subsidy.

(5) NOTIFICATION OF ARTICLE 8 VIOLATION.—If the only subsidy under investigation is a subsidy with respect to which the administering authority received notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement, paragraph (1) shall be applied by substituting “60 days” for “65 days”.

(c) Extension of period in extraordinarily complicated cases

(1) In general

If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b) of this section, or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b) of this section until not later than the 130th day after the date on which the administering authority initiates an investigation under section 1671a(c) of this title, or an investigation is initiated under section 1671a(a) of this title.

(2) Notice of postponement

The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b) of this section, if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement. Notice of the postponement shall be published in the Federal Register.

(d) Effect of determination by the administering authority

If the preliminary determination of the administering authority under subsection (b) of this section is affirmative, the administering authority—

(1) shall—

(A) identify the subject merchandise,

(B) determine an estimated individual countervailable subsidy rate for each exporter and producer individually investigated, and, in accordance with section 1671d(c)(5) of this title, an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 1677f–1(e)(2)(B) of this title, or

(ii) if section 1677f–1(e)(2)(B) of this title applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers, and

(B) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable.

(2) shall order the suspension of liquidation of all entries of merchandise subject to the de-
termination which are entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date on which notice of the determination is published in the Federal Register, or

(B) the date that is 60 days after the date on which notice of the determination to initiate the investigation is published in the Federal Register, and

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months.

(e) Critical circumstances determinations

(1) In general

If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this part) determine, on the basis of the information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

(2) Suspension of liquidation

If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(2) of this section shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.

(f) Notice of determination

Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2) of this section, the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

(g) Time period where upstream subsidization is involved

(1) In general

Whenever the administering authority concludes prior to a preliminary determination under subsection (b) of this section, that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 1671a(b) of this title or initiation of an investigation under section 1671a(a) of this title (310 days in cases declared extraordinarily complicated under subsection (c) of this section), if the administering authority concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

(2) Exceptions

Whenever the administering authority concludes, after a preliminary determination under subsection (b) of this section, that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed—

(A) in cases in which the preliminary determination was negative, the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 1671d(a)(1) of this title; or

(B) in cases in which the preliminary determination is affirmative, the determination concerning upstream subsidization—

(i) need not be made until the conclusion of the first annual review under section 1675 of this title of any eventual Countervailing Duty Order, or, at the option of the petitioner, or

(ii) will be made in the investigation and the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 1671d(a)(1) of this title, as appropriate, except that the suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination and not be resumed unless and until the publication of a Countervailing Duty Order under section 1671e(a) of this title.

There may be an extension of time for the making of a final determination under this subsection only if the administering authority determines that such additional time is necessary to make the required determination concerning upstream subsidization.


1So in original. The words “as appropriate,” probably should not appear.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465, §212(b)(1)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Except in the case of a petition dismissed by the administering authority under section 1671a(c)(3) of this title, the Commission, within 45 days after the date on which a petition is filed under section 1671a(b) of this title or on which it receives notice from the administering authority under section 1671a(c)(3) of this title, the Commission shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.”


Pub. L. 103–465, §212(b)(1)(C)(ii), substituted “warehouse, for consumption on or after the later of—” and “in the United States” for “warehouse, for consumption on or after the later of—” and “in the United States”.

Subsec. (b)(2). Pub. L. 103–465, §270(a)(1)(C), substituted “countervailable subsidy” for “subsidy”.

Pub. L. 103–465, §212(b)(1)(C)(i)(I), as amended by Pub. L. 104–295, substituted “65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title” for “65 days after the date on which a petition is filed under section 1671a(b) of this title”.

Subsec. (b)(2). Pub. L. 103–465, §270(a)(1)(C), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Pub. L. 103–465, §212(b)(1)(C)(ii), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Pub. L. 103–465, §212(b)(1)(C)(ii), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Pub. L. 103–465, §212(b)(1)(C)(i)(I), as amended by Pub. L. 104–295, substituted “65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title” for “65 days after the date on which a petition is filed under section 1671a(b) of this title”.

Pub. L. 103–465, §212(b)(1)(C)(i)(I), substituted “65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title” for “65 days after the date on which a petition is filed under section 1671a(b) of this title”.

Pub. L. 103–465, §212(b)(1)(C)(i)(I), substituted “65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title” for “65 days after the date on which a petition is filed under section 1671a(b) of this title” and substituted “for commencement”. Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter on or after that date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Effective Date of 1994 Amendment
Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter on or after that date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.
§ 1671c. Termination or suspension of investigation

(a) Termination of investigation upon withdrawal of petition

(1) In general

(A) Withdrawal of petition

Except as provided in paragraphs (2) and (3), an investigation under this part may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 1671a(a) of this title.

(B) Refiling of petition

If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) Special rules for quantitative restriction agreements

(A) In general

Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting, with the government of the country in which the countervailable subsidy practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors

In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of countervailing duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations

Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission

The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 1671b(b) of this title.

(b) Agreements to eliminate or offset completely a countervailable subsidy or to cease exports of subject merchandise

The administering authority may suspend an investigation if the government of the country in which the countervailable subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the subject merchandise agree—

(1) to eliminate the countervailable subsidy completely or to offset completely the amount of the net countervailable subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) Agreements eliminating injurious effect

(1) General rule

If the administering authority determines that extraordinary circumstances are present
in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b) of this section, or from exporters described in subsection (b) of this section, if the agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise.

(2) Certain additional requirements

Except in the case of an agreement by a foreign government to restrict the volume of imports of the subject merchandise into the United States, the administering authority may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net countervailable subsidy will be offset.

(3) Quantitative restrictions agreements

The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of subject merchandise into the United States, but it may not accept such an agreement with exporters.

(4) Definition of extraordinary circumstances

(A) Extraordinary circumstances

For purposes of this subsection, the term “extraordinary circumstances” means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) Complex

For purposes of this paragraph, the term “complex” means—

(i) there are a large number of alleged countervailable subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) Additional rules and conditions

(1) Public interest; monitoring

The administering authority shall not accept an agreement under subsection (b) or (c) of this section unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c) of this section, the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B)(i), (ii), and (iii) of this section as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C)(i) and (ii) of this section.

(2) Exports of merchandise to United States not to increase during interim period

The administering authority may not accept any agreement under subsection (b) of this section unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the countervailable subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) Regulations governing entry or withdrawals

In order to carry out an agreement concluded under subsection (b) or (c) of this section, the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of subject merchandise.

(e) Suspension of investigation procedure

Before an investigation may be suspended under subsection (b) or (c) of this section the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d) of this section, and

(3) permit all interested parties described in section 1677(9) of this title to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A) of this section.

(f) Effects of suspension of investigation

(1) In general

If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c) of this section, then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 1671b(b) of this title with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and
§ 1671c  TITLE 19—CUSTOMS DUTIES  Page 298

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) Liquidation of entries

(A) Cessation of exports; complete elimination of net countervailable subsidy

If the agreement accepted by the administering authority is an agreement described in subsection (b) of this section, then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of subject merchandise shall not be suspended under section 1671b(d)(2) of this title,

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 1671b(d)(1)(B) of this title.

(B) Other agreements

If the agreement accepted by the administering authority is an agreement described in subsection (c) of this section, then the liquidation of entries of such merchandise shall be suspended under section 1671b(d)(2) of this title, or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3) of this section, but the security required under section 1671b(d)(1)(B) of this title may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued

If, pursuant to subsection (g) of this section, the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c) of this section, then—

(A) if the final determination by the administering authority or the Commission under section 1671d of this title is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue a countervailing duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d) of this section, and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) Investigation to be continued upon request

If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the countervailable subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title which is a party to the investigation, then the administering authority and the Commission shall continue the investigation.

(b) Review of suspension

(1) In general

Within 20 days after the suspension of an investigation under subsection (c) of this section, an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation

Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission’s determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 1671b(b) of this title had been made on that date.

(3) Suspension of liquidation to continue during review period

The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 1671b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1671b(d)(1)(B) of this title.

(i) Violation of agreement

(1) In general

If the administering authority determines that an agreement accepted under subsection (b) or (c) of this section is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1) of this section, of elimination of injury) and subsection (d) of this section, then, on the date of publication of its determination, it shall—
(A) suspend liquidation under section 1671b(d)(2) of this title of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d) of this section, was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 1671b(b) of this title were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g) of this section, issue a countervailing duty order under section 1671e(a) of this title effective with respect to entries of merchandise the liquidation of which was suspended.

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) Intentional violation to be punished by civil penalty

Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) of this section, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d) of this section, was first entered, or withdrawn from warehouse, for consumption,

(3) Effect of suspension agreement on countervailing duty order

If an agreement described in paragraph (1) is accepted after the countervailing duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 1671b(d)(1)(B) of this title, and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to countervailing duties.

(2) Requirements for suspension agreements

Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b) or (c) of this section, except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 1671b(b) of this title but not in the preliminary affirmative determination under section 1671b(a) of this title, any agreement described in paragraph (1) may be accepted within 60 days after the countervailing duty order is published under section 1671e of this title.

Amendments


Subsec. (a)(2)(A). Pub. L. 103–465, §§ 233(a)(5)(D), 270(a)(1)(E), substituted “countervailable subsidy” for “subsidy” and “subject merchandise” for “merchandise that is subject to the investigation”.

Subsec. (b). Pub. L. 103–465, § 270(a)(2)(A), (c)(1), in heading, substituted “countervailable subsidy” for “subsidy” and “subject merchandise” for “subsidized merchandise”.

Pub. L. 103–465, §§ 233(a)(5)(E), 270(a)(1)(E), in introductory provisions, substituted “countervailable subsidy” for “subsidy” and “subject merchandise” for “merchandise which is the subject of the investigation”.


Subsec. (c)(1), (2). Pub. L. 103–465, § 233(a)(5)(F), (G), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.


Subsec. (c)(3). Pub. L. 103–465, § 270(a)(5)(E), substituted “subject merchandise” for “merchandise which is the subject of an investigation”.

Amendments


Subsec. (d)(1). Pub. L. 103–465, § 218(a), in concluding proviso, substituted “Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. In applying” for “In applying”.


Subsec. (d)(3). Pub. L. 103–465, § 233(a)(5)(i), substituted “subject merchandise” for “merchandise covered by such agreement”.

Subsec. (f)(1)(A). Pub. L. 103–465, § 233(a)(5)(J), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (f)(2)(B). Pub. L. 103–465, § 233(a)(5)(L), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.


Subsec. (h)(2). Pub. L. 103–465, § 233(a)(5)(L), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (i)(1)(A). Pub. L. 103–465, § 264(c)(6), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (j). Pub. L. 103–465, § 233(a)(5)(M), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.


1988—Subsec. (g)(2), (h)(1). Pub. L. 100–418 substituted “subject merchandise” for “merchandise which is the subject of the investigation”. In subpar. (A), substituted “subject merchandise” for “merchandise which is the subject of the investigation”, and in subpar. (B), substituted “subject merchandise” for “merchandise which is the subject of the investigation”, and in subpar. (C), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (i)(1)(A). Pub. L. 100–418 substituted “subject merchandise” for “merchandise which is the subject of the investigation”. In subpar. (A), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

1984—Subsec. (a). Pub. L. 98–573, § 604(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “An investigation under this part may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 1671b(b) of this title.”

Subsec. (d)(1). Pub. L. 98–573, § 604(a)(2), inserted provision, following subpar. (B), that in applying subpar. (A) with respect to any quantitative restriction agreement under subsec. (c) of this section, the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsec. (a)(2)(B)(i), (ii), and (iii) of this section as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsec. (a)(2)(C)(i) and (ii) of this section.

Subsec. (d)(2), (3). Pub. L. 98–573, § 604(a)(2), redesignated par. (3) as (2) and struck out former par. (2) which provided that exports of merchandise to the United States were not to increase during the interim period.

Subsec. (e)(3). Pub. L. 98–573, § 604(a)(3), substituted “all interested parties described in section 1677(9) of this title” for “all parties to the investigation”.

Subsecs. (g)(2), (h)(1). Pub. L. 98–573, § 612(b)(2), substituted reference to subpar. (D), (E), and (F)” for “(C), (D), or (E)” of section 1677(9) of this title.


Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and reviews initiated under section 1677(c) or 1675 of this title after Aug. 23, 1988, see section 1337(b) of Pub. L. 100–418, set out as a note under section 1671 of this title.

Effective Date of 1984 Amendment

Amendment by section 604(a) of Pub. L. 98–573 effective Oct. 30, 1984, and amendment by section 612(b)(2) of Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

Transfer of Functions


Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1671d. Final determinations

(a) Final determination by administering authority

(1) In general

Within 75 days after the date of the preliminary determination under section 1671b(b) of this title, the administering authority shall make a final determination of whether or not
a countervailable subsidy is being provided with respect to the subject merchandise; except that when an investigation under this part is initiated simultaneously with an investigation under part II of this subtitle, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under part II of this subtitle.

(2) Critical circumstances determinations

If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 1671b(e) of this title, shall also contain a finding as to whether—

(A) the countervailable subsidy is inconsistent with the Subsidies Agreement, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 1671b(e)(1) of this title was negative.

(3) De minimis countervailable subsidy

In making a determination under this subsection, the administering authority shall disregard any countervailable subsidy that is de minimis as defined in section 1671b(b)(4) of this title.

(b) Final determination by Commission

(1) In general

The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section. If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.

(2) Period for injury determination following affirmative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1671b(b) of this title is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 1671b(b) of this title, or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a) of this section.

(3) Period for injury determination following negative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1671b(b) of this title is negative, and its final determination under subsection (a) of this section is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) Certain additional findings

(A) Commission standard for retroactive application.

(i) In general.—If the finding of the administering authority under subsection (a)(2) of this section is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(2) of this section are likely to undermine seriously the remedial effect of the countervailing duty order to be issued under section 1671e of this title.

(ii) Factors to consider.—In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

(I) the timing and the volume of the imports,

(II) any rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the countervailing duty order will be seriously undermined.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section would have been found but for the presence of critical circumstances has been alleged under section 1671b(e) of this title.

(c) Effect of final determinations

(1) Effect of affirmative determination by the administering authority

If the determination of the administering authority under subsection (a) of this section is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(B)(i) the administering authority shall—

(I) determine an estimated individual countervailable subsidy rate for each exporter and producer individually inves-
§ 1671d

(3) Effect of negative determinations under section 1671b(b) and 1671b(e)(1)(A) of this title, respectively.

(ii) Order of cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was negative, the administering authority shall order the suspension of liquidation and security requirement ordered under section 1671b(d) of this title.

(2) Issuance of order; effect of negative determination

If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) of this section are affirmative, then the administering authority shall issue a countervailing duty order under section 1671e(a) of this title. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the investigation under subsection (a)(2) of this section, respectively, shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 1671b(d)(2) of this title, and

(B) release any bond or other security and refund any cash deposit required under section 1671b(d)(1)(B) of this title.

(3) Effect of negative determinations under subsections (a)(2) and (b)(4)(A) of this section

If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A) of this section, respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 1671b(e)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit required, under section 1671b(d)(1)(B) of this title with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 1671b(e)(2) of this title.

(4) Effect of affirmative determination under subsection (a)(2) of this section

If the determination of the administering authority under subsection (a)(2) of this section is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 1671b(b) and 1671b(e)(1) of this title were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 1671b(e)(2) of this title;

(B) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was affirmative, but the preliminary determination under section 1671b(e)(1) of this title was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 1671b(d) of this title to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was negative, shall apply any suspension of liquidation and security requirement ordered under subsection (c)(1)(B) of this section to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(5) Method for determining the all-others rate and the country-wide subsidy rate

(A) All-others rate

(i) General rule

For purposes of this subsection and section 1671b(d) of this title, the all-others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.

(ii) Exception

If the countervailable subsidy rates established for all exporters and producers individually investigated are zero or de minimis rates, or are determined entirely under section 1677e of this title, the administering authority may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.

(B) Country-wide subsidy rate

The administering authority may calculate a single country-wide subsidy rate, applicable to all exporters and producers, if the administering authority limits its examination pursuant to section 1677f–1(e)(2)(B) of this title. The estimated country-wide rate determined under section 1671b(d)(1)(A)(ii) of this title or paragraph (1)(B)(iii)(II) of this subsection shall be based on industry-wide data regarding the use of subsidies determined to be countervailable.
(d) Publication of notice of determinations

Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) Correction of ministerial errors

The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term “ministerial error” includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.


AMENDMENTS


1994—Subsec. (a)(1). Pub. L. 103–465, §§223(a)(5)(N), 270(a)(1)(F), substituted “countervailable subsidy” for “subsidy” and “the subject merchandise” for “the merchandise”.


Subsec. (b)(1). Pub. L. 103–465, §212(b)(1)(B), inserted at end of conclusion provisions “If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.”

Subsec. (b)(4)(A). Pub. L. 103–465, §214(a)(2)(B), amended subpar. (A) generally, substituting present provisions for provisions requiring, in the case of an affirmative critical circumstances determination, an additional finding as to whether retroactive imposition of a countervailing duty would be necessary to prevent recurrence of material injury caused by massive imports of subject merchandise over a relatively short period of time.

Subsec. (c)(1). Pub. L. 103–465, §264(b)(1), struck out “and at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C) and substituted “the suspension of liquidation under paragraph (2) of section 1671b(d) of this title” for “under paragraphs (1) and (2) of section 1671b(d) of this title the suspension of liquidation and the posting of a cash deposit, bond, or other security”.

Subsec. (c)(2). Pub. L. 103–465, §264(c)(7), in subpar. (A), substituted “1671b(d)(2)” for “1671b(d)(1)” in subpar. (B), substituted “1671b(d)(1)(B)” for “1671b(d)(1)”. 


1988—Subsec. (b)(4)(A). Pub. L. 100–418, §1333(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “If the finding of the administering authority under subsection (a)(2) of this section is affirmative, then the final determination of the Commission shall include findings as to whether—

(i) there is material injury which will be difficult to repair, and

(ii) the material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.”

Subsec. (e). Pub. L. 100–418, §1333(a), added subsec. (e).

1984—Subsec. (a)(1). Pub. L. 98–573, §606, inserted provision that when an investigation under this part is initiated simultaneously with an investigation under part II of this subtitle, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under part II of this subtitle.

Subsec. (a)(2). Pub. L. 98–573, §605(a)(1), inserted provision after subpar. (B) that such findings may be affirmative even though the preliminary determination under section 1671b(e)(1) of this title was negative.

Subsec. (b)(1). Pub. L. 98–573, §602(a)(2), inserted “; or (sales or the likelihood of sales for importation, in provision after subpar. (B).


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1333(a) of Pub. L. 100–418 effective Aug. 23, 1988, and amendment by section 1324(a)(3) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, see section 1337(a), (c) of Pub. L. 100–418, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 602(a)(2) of Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, and amendment by sections 605(a) and 606 of Pub. L. 98–573 effective Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

§1671e. Assessment of duty

(a) Publication of countervailing duty order

Within 7 days after being notified by the Commission of an affirmative determination under section 1671b(b) of this title, the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net countervailable subsidy determined or estimated to exist, within 6 months after the date
§ 1671f

TITLE 19—CUSTOMS DUTIES

Page 304

on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption.

(2) includes a description of the subject merchandise, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) Imposition of duties

(1) General rule

If the Commission, in its final determination under section 1671(d) of this title, finds material injury or threat of material injury which, but for the suspension of liquidation under section 1671(d)(2) of this title, would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 1671(d)(2) of this title, shall subject to the imposition of countervailing duties under section 1671(a) of this title.

(2) Special rule

If the Commission, in its final determination under section 1671(d) of this title, finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of public notice of affirmative determination of the Commission under section 1671(d) of this title shall be subject to the imposition of countervailing duties under section 1671(a) of this title.

(c) Special rule for regional industries

(1) In general

In an investigation under this part in which the Commission makes a regional industry determination under section 1677(4)(C) of this title, the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation.

(2) Exception for new exporters and producers

After publication of the countervailing duty order, if the administering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 1675(a)(2)(B) of this title.


Amendments

1994—Subsec. (a)(1). Pub. L. 103–465, §270(a)(1)(H), substituted “countervailable subsidy” for “subsidy”. Subsec. (a)(2) to (4). Pub. L. 103–465, §§223(a)(5)(O), 265, redesignated par. (3) as (2) and substituted “subject merchandise” for “class or kind of merchandise to which it applies”. redesignated par. (4) as (3), and struck out former par. (2) which read as follows:

“(2) shall presumptively apply to all merchandise of such class or kind exported from the country investigated, except that if—

“(A) the administering authority determines there is a significant differential between companies receiving subsidy benefits, or

“(B) a State-owned enterprise is involved, the order may provide for differing countervailing duties.’’


1986—Subsec. (a)(2). Pub. L. 99–514 realigned the margins in provisions following subpar. (B), which realignment had been editorially supplied, thereby requiring no change in text.

1984—Subsec. (a)(2) to (4). Pub. L. 98–573 added par. (2) and redesignated pars. (2) and (3) as (3) and (4), respectively.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Effective Date of 1984 Amendment


Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (§§1101–1147 and 1171–1177) or title XVIII (§§1801–1899A) of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1671f. Treatment of difference between deposit of estimated countervailing duty and final assessed duty under countervailing duty orders

(a) Deposit of estimated countervailing duty under section 1671b(d)(1)(B) of this title

If the amount of a cash deposit, or the amount of any bond or other security, required as secu-
rity for an estimated countervailing duty under section 1671b(d)(1)(B) of this title is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 1671e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 1671d(b) of this title is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) Deposit of estimated countervailing duty under section 1671e(a)(3) of this title

If the amount of an estimated countervailing duty deposited under section 1671e(a)(3) of this title is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 1671e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 1671d(b) of this title is published shall be—

(1) collected, to the extent that the deposit under section 1671e(a)(3) of this title is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 1671e(a)(3) of this title is higher than the duty determined under the order,

together with interest as provided by section 1677g of this title.


AMENDMENTS


Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (§§1101–1147 and 1171–1177) or title XVIII (§§1801–1899A) of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§1671h. Conditional payment of countervailing duties

(a) In general

For all entries, or withdrawals from warehouse, for consumption of merchandise subject to a countervailing duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class of kind to the person by whom or for whose account it was imported unless that person complies with the requirements of subsection (b) of this section and deposits with the appropriate customs officer an estimated countervailing duty in an amount determined by the administering authority.

(b) Importer requirements

In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for ascertaining any countervailing duty to be imposed under this part, and

(2) maintain and furnish to the customs officer such records concerning such merchandise as the administering authority requires, and

(3) pay, or agree to pay on demand, to the customs officer the amount of countervailing duty imposed under this part on that merchandise.


Effective Date

Section effective Oct. 30, 1984, see section 626(a) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.
PART II—IMPOSITION OF ANTIDUMPING DUTIES

Imposition of antidumping duties

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise. For purposes of this section and section 1673d(b)(1) of this title, a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.


Amendments

1984—Pub. L. 98–573 substituted “normal value exceeds the export price (or the constructed export price)” for “foreign market value exceeds the United States price” in concluding provisions.

1984—Pub. L. 96–39 inserted “or by reason of sales (or the likelihood of sales) of that merchandise for importation” after “by reason of imports of that merchandise” in par. (2), and inserted sentence at end providing that for purposes of this section and section 1673d(b)(1) of this title, a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 96–393 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1981, see section 726(b)(1) of Pub. L. 96–393, as amended, set out as a note under section 1671 of this title.

§ 1673a. Procedures for initiating an antidumping duty investigation

(a) Initiation by administering authority

(1) In general

An antidumping duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 1673 of this title exist.

(2) Cases involving persistent dumping

(A) Monitoring

The administering authority may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year if—

(i) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(ii) in the judgment of the administering authority there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and

(iii) in the judgment of the administering authority this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(B) Initiation of investigation

If during the period of monitoring referred to in subparagraph (A), the administering authority determines that there is sufficient information to initiate a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately initiate such an investigation.

(C) Definition

For purposes of this paragraph, the term “additional supplier country” means a country regarding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by subparagraph (A).

(D) Expeditious action

The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this part undertaken as a result of a formal investigation initiated under subparagraph (B).

(b) Initiation by petition

(1) Petition requirements

An antidumping proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of sec-
tion 1677(9) of this title files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 1673 of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission

The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) Action with respect to petitions

(A) Notification of governments

Upon receipt of a petition filed under paragraph (1), the administering authority shall notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country.

(B) Acceptance of communications

The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 1677(9)(C), (D), (E), (F), or (G) of this title before the administering authority makes its decision whether to initiate an investigation, except as provided in subsection (c)(4)(D) of this section, and except for inquiries regarding the status of the administering authority’s consideration of the petition.

(C) Nondisclosure of certain information

The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).

(c) Petition determination

(1) In general

(A) Time for initial determination

Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

(i) after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 1673 of this title and contains information reasonably available to the petitioner supporting the allegations, and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) Extension of time

In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circum-

stances, apply subparagraph (A) by substituting “a maximum of 40 days” for “20 days”.

(C) Time limits where petition involves same merchandise as an order that has been revoked

If a petition is filed under this section with respect to merchandise that was the subject merchandise of—

(i) an antidumping duty order or finding that was revoked under section 1675(d) of this title in the 24 months preceding the date the petition is filed, or

(ii) a suspended investigation that was terminated under section 1675(d) of this title in the 24 months preceding the date the petition is filed,

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) Affirmative determinations

If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(3) Negative determinations

If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) Determination of industry support

(A) General rule

For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) Certain positions disregarded

(i) Producers related to foreign producers

In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 1677(4)(B)(ii) of this title, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping duty order.

(ii) Producers who are importers

The administering authority may disregard the position of domestic producers
of a domestic like product who are importers of the subject merchandise.

(C) Special rule for regional industries

If the petition alleges the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) Comments by interested parties

Before the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) "Domestic producers or workers" defined

For purposes of this subsection, the term "domestic producers or workers" means those interested parties who are eligible to file a petition under subsection (b)(1) of this section.

(d) Notification to Commission of determination

The administering authority shall—

1. notify the Commission immediately of any determination it makes under subsection (a) or (c) of this section, and

2. if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Information regarding critical circumstances

If, at any time after the initiation of an investigation under this part, the administering authority finds a reasonable basis to suspect that

1. there is a history of dumping in the United States or elsewhere of the subject merchandise, or

2. the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value,

the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 1673(d)(a) of this title, the investigation is terminated, or the administering authority withdraws the request.


AMENDMENTS


Subsec. (e)(1). Pub. L. 104–295, §20(b)(8), substituted "the" for "the the" before "subject merchandise".


Subsec. (b)(3). Pub. L. 103–465, §211(b), added par. (3).

Subsec. (c). Pub. L. 103–465, §212(a)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "Within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

"(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 1673 of this title and contains information reasonably available to the petitioner supporting the allegations;

"(2) if the determination is affirmative, commence an investigation to determine whether the class or kind of merchandise described in the petition is being, or is likely to be, sold in the United States at less than its fair value, and provide for the publication of notice of the determination in the Federal Register;

"(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register;"

Subsec. (e). Pub. L. 103–465, §233(a)(5)(R), in concluding provisions, substituted "subject merchandise" for "class or kind of merchandise that is the subject of the investigation" in two places.

Subsec. (e)(1). Pub. L. 103–465, §233(a)(5)(P), substituted "subject merchandise" for "class or kind
of the merchandise which is the subject of the investigation”.

Subsec. (e)(2). Pub. L. 103–465, §233(a)(5)(Q), sub-
stituted “subject merchandise” for “merchandise which is the subject of the investigation”.  
1988—Subsec. (b)(1). Pub. L. 100–418, §1326(d)(1), sub-
stituted “(F), or (G)” for “or (F)”.
1984—Subsec. (a). Pub. L. 98–573 redesignated existing provisions as par. (1) and added par. (2).

**Effective Date of 1994 Amendment**
Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investiga-
tions, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

**Effective Date of 1988 Amendment**
Amendment by section 1324(b)(1) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and amendment by section 1325(d)(1) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and to reviews initiated under section 1673(c) or 1675 of this title after Aug. 23, 1988, see section 1337(b), (c) of Pub. L. 100–418, set out as a note under section 1671 of this title.

**Effective Date of 1984 Amendment**
Amendment by Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the admin-
istering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

**Transfer of Functions**
For transfer of functions, personnel, assets, and li-
abilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**Plan Amendments Not Required Until January 1, 1989**
For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§1673b. Preliminary determinations

(a) Determination by Commission of reasonable indication of injury

(1) General rule

Except in the case of a petition dismissed by the admini-
stering authority under section 1673a(c)(3) of this title, the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded, by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible or otherwise makes a negative determination under this paragraph, the investi-
gation shall be terminated.

(2) Time for Commission determination

The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 1673a(b) of this title—

(i) within 45 days after the date on which the petition is filed, or

(ii) if the time has been extended pursuant to section 1673a(c)(1)(B) of this title, within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 1673a(a) of this title, within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b) Preliminary determination by administering authority

(1) Period of antidumping duty investigation

(A) In general

Except as provided in subparagraph (B), within 140 days after the date on which the admini-
stering authority initiates an investiga-
tion under section 1673a(c) of this title, or an investigation is initiated under section 1673a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the admin-
istering authority shall make a deter-
mination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold, at less than fair value.

(B) If certain short life cycle merchandise involved

If a petition filed under section 1673a(b) of this title, or an investigation initiated under section 1673a(a) of this title, concerns short life cycle merchandise that is included in a product category established under section 1673a(a) of this title, subparagraph (A) shall be applied—

(i) by substituting “100 days” for “140 days” if manufacturers that are second of-
fenders account for a significant propor-
tion of the merchandise under investiga-
tion, and
(ii) by substituting “80 days” for “140 days” if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation.

(C) Definitions of offenders

For purposes of subparagraph (B)—

(i) The term “second offender” means a manufacturer that is specified in 2 affirmative dumping determinations (within the meaning of section 1673h of this title) as the manufacturer of short life cycle merchandise that is—

(I) specified in both such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(ii) The term “multiple offender” means a manufacturer that is specified in 3 or more affirmative dumping determinations (within the meaning of section 1673h of this title) as the manufacturer of short life cycle merchandise that is—

(I) specified in each of such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(2) Preliminary determination under waiver of verification

Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 1677i of this title. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677i(9) of this title to whom such disclosure was made may furnish to the administering authority—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered, and

(II) the novelty of the issues presented, or

(iii) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination, then the administering authority may postpone making the preliminary determination under subsection (b)(1) of this section until not later than the 190th day after the date on which the administering authority initiates an investigation under section 1673a(c) of this title, or an investigation is initiated under section 1673a(a) of this title. No extension of a determination date may be made under this paragraph for any investigation in which a determination date provided for in subsection (b)(1)(B) of this section applies unless the petitioner submits written notice to the administering authority of its consent to the extension.

(3) De minimis dumping margin

In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis. For purposes of the preceding sentence, a weighted average dumping margin is de minimis if the administering authority determines that it is less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(c) Extension of period in extraordinarily complicated cases

(1) In general

If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1) of this section, or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered, (II) the novelty of the issues presented, or (III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination, then the administering authority may postpone making the preliminary determination under subsection (b)(1) of this section until not later than the 190th day after the date on which the administering authority initiates an investigation under section 1673a(c) of this title, or an investigation is initiated under section 1673a(a) of this title. No extension of a determination date may be made under this paragraph for any investigation in which a determination date provided for in subsection (b)(1)(B) of this section applies unless the petitioner submits written notice to the administering authority of its consent to the extension.

(2) Notice of postponement

The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1) of this section, if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) Effect of determination by the administering authority

If the preliminary determination of the administering authority under subsection (b) of this section is affirmative, the administering authority—

(1)(A) shall—

(i) determine an estimated weighted average dumping margin for each exporter and producer individually investigated, and
The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months, except that the period to not more than 6 months of exports of the subject merchandise, for consumption on or after the later of—

(A) the date on which notice of the determination is published in the Federal Register, or

(B) the date that is 60 days after the date on which notice of the determination to initiate the investigation is published in the Federal Register, and

(3) shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months, except that the administering authority may, at the request of exporters representing a significant proportion of exports of the subject merchandise, extend the 4-month period to not more than 6 months.

(e) Critical circumstances determinations

(1) In general

If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this part) determine, on the basis of the information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

The administering authority shall be treated as having made an affirmative determination under subparagraph (A) in any investigation to which subsection (b)(1)(B) of this section is applied.

(2) Suspension of liquidation

If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(2) of this section shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.

(f) Notice of determination

Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2) of this section, the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.


AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465, § 212(b)(2)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "Except in the case of a petition dismissed by the administering authority under section 1673(a)(3) of this title, the Commission, within 45 days after the date on which a petition is filed under section 1673(a) of this title or on which it receives notice from the administering authority of an investigation commenced under section 1673(a) of this title, shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated."

Subsec. (b)(1)(A). Pub. L. 103–465, § 219(a)(2), struck out at end "If the determination of the administering
authority under this subsection is affirmative, the deter-
mination shall include the estimated average amount by which the foreign market value exceeds the United States price.

tuted “140 days after the date on which the admin-
istering authority initiates an investigation under sec-
tion 1673a(c) of this title” for “160 days after the date on which a petition is filed under section 1673a(b) of this title”, “initiated” for “commenced”, and “information” for “best information”.

tuted “initiated” for “commenced”, in cl. (i), substi-
tuted “100” for “120” and “140” for “160”, and in cl. (ii), substituted “90” for “100” and “140” for “160”.

Subsec. (b)(2). Pub. L. 103–465, §§233(a)(6)(A)(ix), (B), substi-
tuted “initiation” for “commencement” after “90 days after the” and “initiated” for “commenced”.

Subsec. (c)(1). Pub. L. 103–465, §§212(b)(2)(D), 233(a)(6)(A)(x), in concluding provisions, substi-
tuted “201th day after the date on which a petition is filed under section 1673a(b) of this title” for “200th day after the date on which the administering authority initiates an investigation under section 1673a(c) of this title” for “210th day after the date on which a petition is filed under section 1673a(b) of this title” and “initiated” for “commenced”.

Subsec. (d). Pub. L. 103–465, 215(b)(1)(B), inserted conclud-
ing provisions.


Subsec. (e)(1). Pub. L. 103–465, 215(b)(1)(A), substituted “warehouse, for consumption on or after the later of—” and subpars. (A) and (B) for “warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register.”.

Subsec. (d)(2). Pub. L. 103–465, 219(a)(1)(A)–(C), redesign-
ated par. (1) as (2), inserted “and” at end, and struck out former par. (2) which read as follows: “shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated average amount by which the foreign market value exceeds the United States price, and”.

Subsec. (e)(2). Pub. L. 103–465, 221(b)(1), in introduc-
tory provision substituted “best information” for “best in-
formation” and amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

“(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

“(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

“(B) there have been massive imports of the class or kind of merchandise which is the subject of the investiga-
tion over a relatively short period.”

Subsec. (e)(3). Pub. L. 103–465, §§215(b)(2), 219(c)(1), substi-
tuted “subsection (d)(1)” for “subsection (d)(1)” and “warehouse, for consumption on or after the later of—” and subpars. (A) and (B) for “warehouse, for con-
sumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.”

Subsec. (f). Pub. L. 103–465, 212(b)(2)(E), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: “Whenever the Commis-
sion or the administering authority makes a deter-
mination under this section, it shall notify the peti-
tioner, other parties to the investigation, and the other agency of its determination and of the facts and con-
clusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.”.

1986—Subsec. (b)(1). Pub. L. 100–418, 1323(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Within 160 days after the date on which a petition is filed under section 1673a(b) of this title, or an investigation is commenced under section 1673a(a) of this title, but not before an affirmative deter-
nmination by the Commissioner under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the determination of the admin-
istering authority under this subsection is affirmative, the deter-
nmination shall include the estimated average amount by which the foreign market value exceeds the United States price.”

Subsec. (b)(2). Pub. L. 100–418, §1326(d)(1), substituted “(F), or (G)” for “(or (F)” in two places.


Subsec. (e)(1). Pub. L. 100–418, §1324(b)(2), inserted “(at any time after the initiation of the investigation under this part)” after “promptly” in introductory pro-
visions.

Pub. L. 100–418, 1323(b)(3), inserted sentence at end relating to investigations in which subsec. (b)(1)(B) is applied.

1986—Subsec. (b)(2). Pub. L. 99–514 inserted reference to subpar. (F) of section 1677(b) of this title in two places.

EFFECTIVE DATE OF 1994 AMENDMENT
Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to inves-
tigations, reviews, and inquiries initiated and peti-
tions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT
Amendment by section 1323(b) of Pub. L. 100–418 effective Aug. 23, 1988, amendment by section 1324(b)(2) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and amendment by section 1326(d)(1) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and to re-
views initiated under section 1673c(e) or 1675 of this title after Aug. 23, 1988, see section 1149 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§1673c. Termination or suspension of investiga-
tion

(a) Termination of investigation upon with-
drawal of petition

(1) In general

(A) Withdrawal of petition

Except as provided in paragraphs (2) and
(3), an investigation under this part may be ter-
minalated by either the administering au-
thority or the Commission, after notice to all parties to the investiga-
tion, upon with-
drawal of the petition by the petitioner or
by the administering authority if the investigation was initiated under section 1673a(a) of this title.

(B) Refiling of petition
If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) Special rules for quantitative restriction agreements

(A) In general
Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors
In making a decision under subparagraph (A) regarding the public interest the administering authority shall take into account—

(i) whether, based on the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties; 
(ii) the relative impact on the international economic interests of the United States; and
(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations
Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and
(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission
The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 1673b(b) of this title.

(b) Agreements to eliminate completely sales at less than fair value or to cease exports of merchandise
The administering authority may suspend an investigation if the exporters of the subject merchandise who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or
(2) to revise their prices to eliminate completely any amount by which the normal value of the merchandise which is the subject of the agreement exceeds the export price (or the constructed export price) of that merchandise.

(c) Agreements eliminating injurious effect

(1) General rule
If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the subject merchandise who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and
(B) for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(2) “Extraordinary circumstances” defined

(A) Extraordinary circumstances
For purposes of this subsection, the term “extraordinary circumstances” means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and
(ii) the investigation is complex.

(B) “Complex” defined
For purposes of this paragraph, the term “complex” means—

(i) there are a large number of transactions to be investigated or adjustments to be considered,
(ii) the issues raised are novel, or
(iii) the number of firms involved is large.

(d) Additional rules and conditions
The administering authority may not accept an agreement under subsection (b) or (c) of this section unless—

(1) it is satisfied that suspension of the investigation is in the public interest, and
(2) effective monitoring of the agreement by the United States is practicable.
§ 1673c

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon.

(e) Suspension of investigation procedure

Before an investigation may be suspended under subsection (b) or (c) of this section the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d) of this section, and

(3) permit all interested parties described in section 1677(9) of this title to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A) of this section.

(f) Effects of suspension of investigation

(1) In general

If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c) of this section, then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 1673b(b) of this title with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) Liquidation of entries

(A) Cessation of exports; complete elimination of dumping margin

If the agreement accepted by the administering authority is an agreement described in subsection (b) of this section, then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of subject merchandise shall not be suspended under section 1673b(d)(2) of this title,

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 1673b(d)(1)(B) of this title.

(B) Other agreements

If the agreement accepted by the administering authority is an agreement described in subsection (c) of this section, the liquidation of entries of the subject merchandise shall be suspended under section 1673b(d)(2) of this title, or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3) of this section, but the security required under section 1673b(d)(1)(B) of this title may be adjusted to reflect the effect of the agreement.

(g) Investigation to be continued upon request

If, pursuant to subsection (g) of this section, the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c) of this section, then—

(A) if the final determination by the administering authority or the Commission under section 1673d of this title is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d), or (c) and (d) of this section, and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(h) Review of suspension

(1) In general

Within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the subject merchandise, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.
(2) Commission investigation

Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which it is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission’s determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 1673b(b) of this title had been made on that date.

(3) Suspension of liquidation to continue during review period

The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 1673b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1673b(d)(1)(B) of this title.

(i) Violation of agreement

(1) In general

If the administering authority determines that an agreement accepted under subsection (b) or (c) of this section is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c) of this section, of elimination of injury) and subsection (d) of this section, then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 1673b(d)(2) of this title of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d), or (c) and (d) of this section, was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g) of this section, issue an antidumping duty order under section 1673e(a) of this title effective with respect to entries of merchandise liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) Intentional violation to be punished by civil penalty

Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) of this section shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a fraudulent violation of section 1592(a) of this title.

(j) Determination not to take agreement into account

In making a final determination under section 1673d of this title, or in conducting a review under section 1675 of this title, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1) of this section, or continued an investigation under subsection (g) of this section, the Commission and the administering authority shall consider all of the subject merchandise without regard to the effect of any agreement under subsection (b) or (c) of this section.

(k) Termination of investigation initiated by administering authority

The administering authority may terminate any investigation initiated by the administering authority under section 1673a(a) of this title after providing notice of such termination to all parties to the investigation.

(l) Special rule for nonmarket economy countries

(1) In general

The administering authority may suspend an investigation under this part upon acceptance of an agreement with a nonmarket economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that—

(A) such agreement satisfies the requirements of subsection (d) of this section, and

(B) will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of agreements

If the administering authority determines that an agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (i) of this section shall apply.
(m) Special rule for regional industry investigations

(1) Suspension agreements

If the Commission makes a regional industry determination under section 1677(f)(C) of this title, the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b), (c), or (l) of this section.

(2) Requirements for suspension agreements

Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b), (c), or (l) of this section, except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 1673(b) of this title but not in the preliminary affirmative determination under section 1673(a) of this title, any agreement described in paragraph (1) may be accepted within 60 days after the antidumping order is published under section 1673e of this title.

(3) Effect of suspension agreement on antidumping duty order

If an agreement described in paragraph (1) is accepted after the antidumping duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 1673(b)(1)(B) of this title, and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to antidumping duties.

(Amendments)

1994—Subsec. (a). Pub. L. 103–465, §219(c)(4), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

1988—Subsec. (a). Pub. L. 100–418, §1325(d)(2), substituted “subject merchandise” for “subject merchandise which is the subject of the investigation”.

1984—Subsec. (a). Pub. L. 98–573, §604(b)(1), amended subsec. (a) generally, which prior to amendment read as follows: “An investigation under this part may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 1673(b) of this title.”

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and
to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, see section 1337(b) of Pub. L. 100–418, set out as a note under section 1671 of this title.

Effective Date of 1984 Amendment
Amendment by section 604(b) of Pub. L. 98–573 effective Oct. 30, 1984, and amendment by section 612(b)(2) of Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1673d. Final determinations

(a) Final determination by administering authority

(1) General rule
Within 75 days after the date of its preliminary determination under section 1673b(b) of this title, the administering authority shall make a final determination of whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(2) Extension of period for determination
The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 1673b(b) of this title if a request in writing for such a postponement is made by—

(A) exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by the administering authority under section 1673b(b) of this title was affirmative, or

(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 1673b(b) of this title was negative.

(3) Critical circumstances determinations
If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 1673b(e) of this title, shall also contain a finding of whether—

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 1673b(e)(1) of this title was negative.

(4) De minimis dumping margin
In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis as defined in section 1673b(b)(3) of this title.

(b) Final determination by Commission

(1) In general
The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded.

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1) of this section. If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.

(2) Period for injury determination following affirmative preliminary determination by administering authority
If the preliminary determination by the administering authority under section 1673b(b) of this title is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 1673b(b) of this title, or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a) of this section.

(3) Period for injury determination following negative preliminary determination by administering authority
If the preliminary determination by the administering authority under section 1673b(b) of this title was negative, and its final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) Certain additional findings
(A) Commission standard for retroactive application.—

(i) In general.—If the finding of the administering authority under subsection
(a)(3) of this section is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(3) of this section are likely to undermine seriously the remedial effect of the antidumping duty order to be issued under section 1673e of this title.

(ii) FACTORS TO CONSIDER.—In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

(I) the timing and the volume of the imports,

(II) a rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section would have been found but for any suspension of liquidation of entries of the merchandise.

c) Effect of final determinations

(1) Effect of affirmative determination by the administering authority

If the determination of the administering authority under subsection (a) of this section is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority,

(B)(i) the administering authority shall—

(I) determine the weighted average dumping margin for each exporter and producer individually investigated, and

(II) determine, in accordance with paragraph (5), the estimated all-others rate for all exporters and producers not individually investigated, and

(ii) the administering authority shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was negative, the administering authority shall order the suspension of liquidation under section 1673b(d)(2) of this title.

(2) Issuance of order; effect of negative determination

If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) of this section are affirmative, the administering authority shall issue an antidumping duty order under section 1673e(a) of this title. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 1673b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1673b(d)(1)(B) of this title.

(3) Effect of negative determinations under subsections (a)(3) and (b)(4)(A) of this section

If the determination of the administering authority or the Commission under subsection (a)(3) of this section, respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 1673b(e)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit required, under section 1673b(d)(1)(B) of this title with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 1673b(e)(2) of this title.

(4) Effect of affirmative determination under subsection (a)(3) of this section

If the determination of the administering authority under subsection (a)(3) of this section is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 1673b(b) and 1673b(e)(1) of this title were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 1673b(e)(2) of this title;

(B) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was affirmative, but the preliminary determination under section 1673b(e)(1) of this title was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 1673b(d) of this title to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was negative, shall apply any suspension of liquida-
tion and security requirement ordered under subsection (c)(1)(B) of this section to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(5) Method for determining estimated all-others rate

(A) General rule

For purposes of this subsection and section 1673b(d) of this title, the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 1677e of this title.

(B) Exception

If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 1677e of this title, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.

(d) Publication of notice of determinations

Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) Correction of ministerial errors

The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.


AMENDMENTS


1994—Subsec. (a)(1). Pub. L. 103–465, §233(a)(5)(V), substituted "subject merchandise" for "merchandise which was the subject of the investigation".

Subsec. (a)(3)(A)(i). Pub. L. 103–465, §214(b)(2)(A)(i), substituted "subject merchandise at less than its fair value and that there would be material injury by reason of dumping imports" for "subject merchandise which is the subject of the investigation at less than its fair value".

Subsec. (a)(3)(B). Pub. L. 103–465, §214(b)(2)(A)(iii), substituted "subject merchandise" for "merchandise which is the subject of the investigation".


Subsec. (b)(1). Pub. L. 103–465, §212(b)(2)(B), inserted at end of concluding provisions "If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated."

Subsec. (b)(4)(A). Pub. L. 103–465, §214(b)(2)(B), amended subpar. (A) generally, substituting present provisions for provisions requiring, in the case of an affirmative critical circumstances determination, a further finding as to whether retroactive imposition of antidumping duties on the subject merchandise would be necessary to prevent recurrence of material injury caused by massive imports of the merchandise over a relatively short period of time.

Subsec. (c)(1). Pub. L. 103–465, §219(b)(1), struck out "and" at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C) and substituted "the suspension of liquidation under section 1673b(d)(2) of this title for "under paragraphs (1) and (2) of section 1673b(d) of this title the suspension of liquidation and the posting of a cash deposit, bond, or other security".

Subsec. (c)(2)(A). Pub. L. 103–465, §219(c)(6), substituted "1673b(d)(2)" for "1671b(d)(1)".


1988—Subsec. (b)(4)(A). Pub. L. 100–418, §1322(b)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "If the finding of the administering authority under subsection (a)(2) of this section is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) of this section to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 1673 of this title retroactively on those imports."

Subsec. (e). Pub. L. 100–418, §1232(a), added subsec. (e).

1984—Subsec. (a)(3). Pub. L. 98–573, §605(b)(1), inserted provision that such findings may be affirmative even though the preliminary determination under section 1673(b)(1) of this title was negative.

Subsec. (b)(1). Pub. L. 98–573, §602(c), inserted "or, sales (or the likelihood of sales) for importation," in provisions after subpar. (B).


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United
§ 1673e  TITLE 19—CUSTOMS DUTIES
Page 320

States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Effective Date of 1988 Amendment
Amendment by section 1333(a) of Pub. L. 100–418 effective Aug. 23, 1988, and amendment by section 1324(b)(3) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, see section 1337(a), (c) of Pub. L. 100–418, set out as a note under section 1671 of this title.

Effective Date of 1984 Amendment
Amendment by section 622(c) of Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, and amendment by section 628(b) of Pub. L. 98–573 effective Oct. 30, 1984, see section 629(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

§ 1673e. Assessment of duty
(a) Publication of antidumping duty order
Within 7 days after being notified by the Commission of an affirmative determination under section 1673d(b) of this title, the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than—

(A) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption, or

(B) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in the United States to a person who is not the exporter of that merchandise,

(2) includes a description of the subject merchandise, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) Imposition of duty
(1) General rule
If the Commission, in its final determination under section 1673d(b) of this title, finds material injury or threat of material injury which, but for the suspension of liquidation under section 1673b(d)(2) of this title would have led to a finding of material injury, then entries of the subject merchandise, the liquidation of which has been suspended under section 1673b(d)(2) of this title, shall be subject to the imposition of antidumping duties under section 1673 of this title.

(2) Special rule
If the Commission, in its final determination under section 1673d(b) of this title, finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then subject merchandise which is entered, or withdrawn from warehouse, for consumption or on or after the date of publication of notice of an affirmative determination of the Commission under section 1673d(b) of this title shall be subject to the assessment of antidumping duties under section 1673 of this title, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) Security in lieu of estimated duty pending early determination of duty
(1) Conditions for waiver of deposit of estimated duties
The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a) of this section, the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) of this section if—

(A) the investigation has not been designated as extraordinarily complicated by reason of—

(i) the number and complexity of the transactions to be investigated or adjustments to be considered,

(ii) the novelty of the issues presented, or

(iii) the number of firms whose activities must be investigated,

(B) the final determination in the investigation has not been postponed under section 1673d(a)(2)(A) of this title; or

(C) on the basis of information presented to the administering authority by any manufacturer, producer, or exporter in such form and within such time as the administering authority may require, the administering authority is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a) of this section, of the normal value and the export price (or the constructed export price) for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(i) an affirmative preliminary determination by the administering authority under section 1673b(b) of this title, or

(ii) if its determination under section 1673b(b) of this title was negative, an affirmative final determination by the administering authority under section 1673d(a) of this title,
and before the date of publication of the affirmative final determination by the Commission under section 1673(d)(b) of this title;

(D) the party described in subparagraph (C) provides credible evidence that the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise is significantly less than the amount of such excess specified in the antidumping duty order published under subsection (a) of this section; and

(E) the data concerning the normal value and the export price (or the constructed export price) apply to sales in the usual commercial quantities and in the ordinary course of trade and the number of such sales are sufficient to form an adequate basis for comparison.

(2) Notice; hearing

If the administering authority permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 1677c of this title before determining the normal value and the export price (or the constructed export price) of the merchandise.

(3) Determinations to be basis of antidumping duty

The administering authority shall publish notice in the Federal Register of the results of its determination of normal value and export price (or the constructed export price), and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchants of manufactured, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) of this section applies.

(4) Provision of business proprietary information; written comments

Before determining whether to permit the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties, the administering authority shall—

(A) make all business proprietary information supplied to the administering authority under paragraph (1) available under a protective order in accordance with section 1677(f)(c) of this title to all interested parties described in subparagraph (C), (D), (E), (F), or (G) of section 1677(f)(9) of this title, and

(B) afford all interested parties an opportunity to file written comments on whether the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties should be permitted.

(d) Special rule for regional industries

(1) In general

In an investigation in which the Commission makes a regional industry determination under section 1677(4)(C) of this title, the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation.

(2) Exception for new exporters and producers

After publication of the antidumping duty order, if the administering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 1675(a)(2)(B) of this title.
§ 1673f. Treatment of difference between deposit of estimated antidumping duty and final assessed duty under antidumping duty order

(a) Deposit of estimated antidumping duty under section 1673b(d)(1)(B) of this title

If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated antidumping duty under section 1673b(d)(1)(B) of this title is different from the amount of the antidumping duty determined under an antidumping duty order published under section 1673e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 1673d(b) of this title is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) Deposit of estimated antidumping duty under section 1673e(a)(3) of this title

If the amount of an estimated antidumping duty deposited under section 1673e(a)(3) of this title is different from the amount of the antidumping duty determined under an antidumping duty order published under section 1673e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 1673d(b) of this title is published shall be—

(1) disregarded, to the extent that the deposit under section 1673e(a)(3) of this title is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 1673e(a)(3) of this title is higher than the duty determined under the order.

§ 1673g. Conditional payment of antidumping duty

(a) General rule

For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirements of subsection (b) of this section and deposits with the appropriate customs officer an estimated antidumping duty in an amount determined by the administering authority.

(b) Importer requirements

In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for determining the export price (or the constructed export price) of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this subtitle;

(2) maintain and furnish to the customs officer such records concerning the sale of the merchandise as the administering authority, by regulation, requires;

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the time of entry the constructed export price of the merchandise to the customs officer if it is then known, or, if not, so declare within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 1673 of this title on that merchandise.

AMENDMENTS


1989—Pub. L. 101–449, § 40(2), substituted “that the cash deposit, bond, or other security” for “the cash deposit collected”.

1994—Subsec. (a). Pub. L. 103–465 substituted “refunded or released, to the extent that the cash deposit, bond, or other security” for “refunded, to the extent that the cash deposit”.

1994—Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

1994—Subsec. (a)(2). Pub. L. 103–465, § 40(3), substituted “refunded or released, to the extent that the cash deposit, bond, or other security” for “refunded, to the extent that the cash deposit”. © 2020 Henry C. Hansmann, All Rights Reserved.
§ 1673h. Establishment of product categories for short life cycle merchandise

(a) Establishment of product categories

(1) Petitions

(A) In general

An eligible domestic entity may file a petition with the Commission requesting that a product category be established with respect to short life cycle merchandise at any time after the merchandise becomes the subject of 2 or more affirmative dumping determinations.

(B) Contents

A petition filed under subparagraph (A) shall—

(i) identify the short life cycle merchandise that is the subject of the affirmative dumping determinations,

(ii) specify the short life cycle merchandise that the petitioner seeks to have included in the same product category as the merchandise that is subject to the affirmative dumping determinations,

(iii) specify any short life cycle merchandise the petitioner particularly seeks to have excluded from the product category,

(iv) provide reasons for the inclusions and exclusions specified under clauses (ii) and (iii), and

(v) identify such merchandise in terms of the designations used in the Harmonized Tariff Schedule of the United States.

(2) Determinations on sufficiency of petition

Upon receiving a petition under paragraph (1), the Commission shall—

(A) request the administering authority to confirm promptly the affirmative determinations on which the petition is based, and

(B) upon receipt of such confirmation, determine whether the merchandise covered by the confirmed affirmative determinations is short life cycle merchandise and whether the petitioner is an eligible domestic entity.

(3) Notice; hearings

If the determinations under paragraph (2)(B) are affirmative, the Commission shall—

(A) publish notice in the Federal Register that the petition has been received, and

(B) provide opportunity for the presentation of views regarding the establishment of the requested product category, including a public hearing if requested by any interested person.

(4) Determinations

(A) In general

By no later than the date that is 90 days after the date on which a petition is filed under paragraph (1), the Commission shall determine the scope of the product category into which the short life cycle merchandise that is the subject of the affirmative dumping determinations identified in such petition shall be classified for purposes of this section.

(B) Modifications not requested by petition

(i) In general

The Commission may, on its own initiative, make a determination modifying the scope of any product category established under subparagraph (A) at any time.

(ii) Notice and hearing

Determinations may be made under clause (i) only after the Commission has—

(I) published in the Federal Register notice of the proposed modification, and

(II) provided interested parties an opportunity for a hearing, and a period for the submission of written comments, on the classification of merchandise into the product categories to be affected by such determination.

(C) Basis of determinations

In making determinations under subparagraph (A) or (B), the Commission shall ensure that each product category consists of similar short life cycle merchandise which is produced by similar processes under similar circumstances and has similar uses.

(b) Definitions

For purposes of this section—

(1) Eligible domestic entity

The term “eligible domestic entity” means a manufacturer or producer in the United States, or a certified union or recognized union or group of workers which is representative of an industry in the United States, that manufactures or produces short life cycle merchandise that is—

(A) like or directly competitive with other merchandise that is the subject of 2 or more affirmative dumping determinations, or

(B) is similar enough to such other merchandise as to be considered for inclusion with such merchandise in a product monitoring category established under this section.

(2) Affirmative dumping determination

The term “affirmative dumping determination” means—

(A) any affirmative final determination made by the administering authority under section 1673d(a) of this title during the 8-year period preceding the filing of the petition under this section that results in the issuance of an antidumping duty order under section 1673e of this title which requires the deposit of estimated antidumping duties at a rate of not less than 15 percent ad valorem, or

Subsec. (b)(3). Pub. L. 103–465, §233(a)(2)(B), substituted “constructed export price” for “exporter’s sales price”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.
(B) any affirmative preliminary determination that—
   (i) is made by the administering authority under section 1673(b) of this title during the 8-year period preceding the filing of the petition under this section in the course of an investigation for which no final determination is made under section 1673d of this title by reason of a suspension of the investigation under section 1673c of this title, and
   (ii) includes a determination that the estimated average amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise is not less than 15 percent ad valorem.

(3) Subject of affirmative dumping determination

(A) In general

Short life cycle merchandise of a manufacturer shall be treated as being the subject of an affirmative dumping determination only if the administering authority—

(i) makes a separate determination of the amount by which the normal value of such merchandise of the manufacturer exceeds the export price (or the constructed export price) of such merchandise of the manufacturer, and

(ii) specifically identifies the manufacturer by name with such amount in the affirmative dumping determination or in an antidumping duty order issued as a result of the affirmative dumping determination.

(B) Exclusion

Short life cycle merchandise of a manufacturer shall not be treated as being the subject of an affirmative dumping determination if—

(i) such merchandise of the manufacturer is part of a group of merchandise to which the administering authority assigns (in lieu of making separate determinations described in subparagraph (A)(i)) an amount determined to be the amount by which the normal value of the merchandise in such group exceeds the export price (or the constructed export price) of the merchandise in such group, and

(ii) the merchandise and the manufacturer are not specified by name in the affirmative dumping determination or in any antidumping duty order issued as a result of such affirmative dumping determination.

(4) Short life cycle merchandise

The term "short life cycle merchandise" means any product that the Commission determines is likely to become outdated within 4 years, by reason of technological advances, after the product is commercially available. For purposes of this paragraph, the term "outmoded" refers to a kind of style that is no longer state-of-the-art.

(c) Transitional rules

(1) For purposes of this section and section 1673b(b)(1)(B) and (C) of this title, all affirmative dumping determinations described in subsection (b)(2)(A) of this section that were made after December 31, 1980, and before August 23, 1988, and all affirmative dumping determinations described in subsection (b)(2)(B) of this section that were made after December 31, 1984, and before August 23, 1988, with respect to each category of short life cycle merchandise of the same manufacturer shall be treated as one affirmative dumping determination with respect to that category for that manufacturer which was made on the date on which the latest of such determinations was made.

(2) No affirmative dumping determination that—

(A) is described in subsection (b)(2)(A) of this section and was made before January 1, 1981, or

(B) is described in subsection (b)(2)(B) of this section and was made before January 1, 1985,

may be taken into account under this section or section 1673b(b)(1)(B) and (C) of this title.

JUNE 17, 1930 CH. 497 TIT. VII § 740 81850 108 STAT. 1195

AMENDMENTS

1994—Subsec. (b)(2)(B)(ii), (3)(A)(i), (B)(i). Pub. L. 103–465 substituted "normal value" for "foreign market value" and "export price (or the constructed export price)" for "United States price".


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1994), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.


AMENDMENTS

1994—Subsec. (b)(2)(B)(ii), (3)(A)(i), (B)(i). Pub. L. 103–465 substituted "normal value" for "foreign market value" and "export price (or the constructed export price)" for "United States price".


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1994), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.


Section, act June 17, 1930, ch. 497, title VII, § 740, as added July 26, 1979, Pub. L. 96–39, title I, § 101, 93 Stat. 175, provided that the antidumping duty imposed by section 1673 of this title was to be treated as a normal customs duty for drawback purposes. See section 1677h of this title.
PART III—REVIEWS; OTHER ACTIONS REGARDING AGREEMENTS

CODIFICATION

The designation “PART III” was in the original “Subtitle C” and was editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

SUBPART A—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

§ 1675. Administrative review of determinations

(a) Periodic review of amount of duty

(1) In general

At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this subtitle or under section 1303 of this title, an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net countervailable subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net countervailable subsidy or dumping margin involved in the agreement,

and shall publish in the Federal Register the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed.

(2) Determination of antidumping duties

(A) In general

For the purpose of paragraph (1)(B), the administering authority shall determine—

(i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and

(ii) the dumping margin for each such entry.

(B) Determination of antidumping or countervailing duties for new exporters and producers

(i) In general

If the administering authority receives a request from an exporter or producer of the subject merchandise establishing that—

(I) such exporter or producer did not export the merchandise that was the subject of an antidumping duty or countervailing duty order to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation, and

(II) such exporter or producer is not affiliated (within the meaning of section 1677(33) of this title) with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during that period,

the administering authority shall conduct a review under this subsection to establish an individual weighted average dumping margin or an individual countervailing duty rate (as the case may be) for such exporter or producer.

(ii) Time for review under clause (i)

The administering authority shall commence a review under clause (i) in the calendar month beginning after—

(I) the end of the 6-month period beginning on the date of the countervailing duty or antidumping duty order under review, or

(II) the end of any 6-month period occurring thereafter.

if the request for the review is made during that 6-month period.

(iii) Posting bond or security

The administering authority shall, at the time a review under this subparagraph is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

(iv) Time limits

The administering authority shall make a preliminary determination in a review conducted under this subparagraph within 180 days after the date on which the review is initiated, and a final determination within 90 days after the date the preliminary determination is issued, except that if the administering authority concludes that the case is extraordinarily complicated, it may extend the 180-day period to 300 days and may extend the 90-day period to 150 days.

(C) Results of determinations

The determination under this paragraph shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(3) Time limits

(A) Preliminary and final determinations

The administering authority shall make a preliminary determination under subparagraph (A), (B), or (C) of paragraph (1) within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under

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1 See References in Text note below.
paragraph (1) is requested, and a final determination under paragraph (1) within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245-day period to 365 days and may extend that 120-day period to 180 days. The administering authority may extend the time for making a final determination without extending the time for making a preliminary determination, if such final determination is made not later than 300 days after the date on which the preliminary determination is published.

(B) Liquidation of entries

If the administering authority orders any liquidation of entries pursuant to a review under paragraph (1), such liquidation shall be made promptly and, to the greatest extent practicable, within 90 days after the instructions to Customs are issued. In any case in which liquidation has not occurred within that 90-day period, the Secretary of the Treasury shall, upon the request of the affected party, provide an explanation thereof.

(C) Effect of pending review under section 1516a

In a case in which a final determination under paragraph (1) is under review under section 1516a of this title and a liquidation of entries covered by the determination is enjoined under section 1516a(c)(2) of this title or suspended under section 1516a(g)(5)(C) of this title, the administering authority shall, within 10 days after the final disposition of the review under section 1516a of this title, transmit to the Federal Register for publication the final disposition and issue instructions to the Customs Service with respect to the liquidation of entries pursuant to the review. In such a case, the 90-day period referred to in subparagraph (A) shall begin on the day on which the administering authority issues such instructions.

(4) Absorption of antidumping duties

During any review under this subsection initiated 2 years or 4 years after the publication of an antidumping duty order under section 1673(e)(a) of this title, the administering authority, if requested, shall determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. The administering authority shall notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a review under subsection (c) of this section.

(b) Reviews based on changed circumstances

(1) In general

Whenever the administering authority or the Commission receives information concerning, or a request from an interested party for a review of—

(A) a final affirmative determination that resulted in an antidumping duty order under this subtitle or a finding under the Anti-dumping Act, 1921, or in a countervailing duty order under this subtitle or section 1303 of this title,

(B) a suspension agreement accepted under section 1671c or 1673c of this title, or

(C) a final affirmative determination resulting from an investigation continued pursuant to section 1671c(g) or 1673c(g) of this title, which shows changed circumstances sufficient to warrant a review of such determination or agreement, the administering authority or the Commission (as the case may be) shall conduct a review of the determination or agreement after publishing notice of the review in the Federal Register.

(2) Commission review

In conducting a review under this subsection, the Commission shall—

(A) in the case of a countervailing duty order or antidumping duty order or finding, determine whether revocation of the order or finding is likely to lead to continuation or recurrence of material injury,

(B) in the case of a determination made pursuant to section 1671c(h)(2) or 1673c(h)(2) of this title, determine whether the suspension agreement continues to eliminate completely the injurious effects of imports of the subject merchandise, and

(C) in the case of an affirmative determination resulting from an investigation continued under section 1671c(g) or 1673c(g) of this title, determine whether termination of the suspended investigation is likely to lead to continuation or recurrence of material injury.

(3) Burden of persuasion

During a review conducted by the Commission under this subsection—

(A) the party seeking revocation of an order or finding described in paragraph (1)(A) shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such revocation, and

(B) the party seeking termination of a suspended investigation or a suspension agreement shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such termination.

(4) Limitation on period for review

In the absence of good cause shown—

(A) the Commission may not review a determination made under section 1671d(b) or 1673d(b) of this title, or an investigation suspended under section 1671c or 1673c of this title, and

(B) the administering authority may not review a determination made under section 1671d(a) or 1673d(a) of this title, or an investigation suspended under section 1671c or 1673c of this title, less than 24 months after the date of publication of notice of that determination or suspension.
(c) Five-year review

(1) In general

Notwithstanding subsection (b) of this section and except in the case of a transition order defined in paragraph (6), 5 years after the date of publication of—

(A) a countervailing duty order (other than a countervailing duty order to which subparagraph (B) applies or which was issued without an affirmative determination of injury by the Commission under section 1303 of this title), an antidumping duty order, or a notice of suspension of an investigation, described in subsection (a)(1) of this section,

(B) a notice of injury determination under section 1675b of this title with respect to a countervailing duty order, or

(C) a determination under this section to continue an order or suspension agreement, the administering authority and the Commission shall conduct a review to determine, in accordance with section 1675a of this title, whether revocation of the countervailing or antidumping duty order or termination of the investigation suspended under section 1671c or 1673c of this title would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

(2) Notice of initiation of review

Not later than 30 days before the fifth anniversary of the date described in paragraph (1), the administering authority shall publish in the Federal Register a notice of initiation of a review under this subsection and request that interested parties submit—

(A) a statement expressing their willingness to participate in the review by providing information requested by the administering authority and the Commission,

(B) a statement regarding the likely effects of revocation of the order or termination of the suspended investigation, and

(C) such other information or industry data as the administering authority or the Commission may specify.

(3) Responses to notice of initiation

(A) No response

If no interested party responds to the notice of initiation under this subsection, the administering authority shall issue a final determination, within 90 days after the initiation of a review, revoking the order or terminating the suspended investigation to which such notice relates. For purposes of this paragraph, an interested party means a party described in section 1677(9)(C), (D), (E), (F), or (G) of this title.

(B) Inadequate response

If interested parties provide inadequate responses to a notice of initiation, the administering authority, within 120 days after the initiation of the review, or the Commission, within 150 days after such initiation, may issue, without further investigation, a final determination based on the facts available, in accordance with section 1677e of this title.

(4) Waiver of participation by certain interested parties

(A) In general

An interested party described in section 1677(9)(A) or (B) of this title may elect not to participate in a review conducted by the administering authority under this subsection and to participate only in the review conducted by the Commission under this subsection.

(B) Effect of waiver

In a review in which an interested party waives its participation pursuant to this paragraph, the administering authority shall conclude that revocation of the order or termination of the investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) with respect to that interested party.

(5) Conduct of review

(A) Time limits for completion of review

Unless the review has been completed pursuant to paragraph (3) or paragraph (4) applies, the administering authority shall make its final determination pursuant to section 1675a(b) or (c) of this title within 240 days after the date on which a review is initiated under this subsection. If the administering authority makes a final affirmative determination, the Commission shall make its final determination pursuant to section 1675a(a) of this title within 360 days after the date on which a review is initiated under this subsection.

(B) Extension of time limit

The administering authority or the Commission (as the case may be) may extend the period of time for making their respective determinations under this subsection by not more than 90 days, if the administering authority or the Commission (as the case may be) determines that the review is extraordinarily complicated. In a review in which the administering authority extends the time for making a final determination, but the Commission does not extend the time for making a determination, the Commission’s determination shall be made not later than 120 days after the date on which the final determination of the administering authority is published.

(C) Extraordinarily complicated

For purposes of this subsection, the administering authority or the Commission (as the case may be) may treat a review as extraordinarily complicated if—

(i) there is a large number of issues,

(ii) the issues to be considered are complex,

(iii) there is a large number of firms involved,

(iv) the orders or suspended investigations have been grouped as described in subparagraph (D), or

(v) it is a review of a transition order.

(D) Grouped reviews

The Commission, in consultation with the administering authority, may group orders
or suspended investigations for review if it considers that such grouping is appropriate and will promote administrative efficiency. Where orders or suspended investigations have been grouped, the Commission shall, subject to subparagraph (B), make its final determination under this subsection not later than 120 days after the date that the administering authority publishes notice of its final determination with respect to the last order or agreement in the group.

(6) Special transition rules

(A) Schedule for reviews of transition orders

(i) Initiation

The administering authority shall begin its review of transition orders in the 42d calendar month after the date such orders are issued. A review of all transition orders shall be initiated not later than the 5th anniversary after the date such orders are issued.

(ii) Completion

A review of a transition order shall be completed not later than 18 months after the date such review is initiated. Reviews of all transition orders shall be completed not later than 18 months after the 5th anniversary of the date such orders are issued.

(iii) Subsequent reviews

The time limits set forth in clauses (i) and (ii) shall be applied to all subsequent 5-year reviews of transition orders by substituting “date of the determination to continue such orders” for “date such orders are issued”.

(iv) Revocation and termination

No transition order may be revoked under this subsection before the date that is 5 years after the date the WTO Agreement enters into force with respect to the United States.

(B) Sequence of transition reviews

The administering authority, in consultation with the Commission, shall determine such sequence of review of transition orders as it deems appropriate to promote administrative efficiency. To the extent practicable, older orders shall be reviewed first.

(C) “Transition order” defined

For purposes of this section, the term “transition order” means—

(i) a countervailing duty order under this subtitle or under section 1303 2 of this title,

(ii) an antidumping duty order under this subtitle or a finding under the Anti-dumping Act, 1921, or

(iii) a suspension of an investigation under section 1671c or 1673c of this title,

which is in effect on the date the WTO Agreement enters into force with respect to the United States.

(D) Issue date for transition orders

For purposes of this subsection, a transition order shall be treated as issued on the date the WTO Agreement enters into force with respect to the United States, if such order is based on an investigation conducted by both the administering authority and the Commission.

(7) Exclusions from computations

(A) In general

Subject to subparagraph (B), there shall be excluded from the computation of the 5-year period described in paragraph (1) and the periods described in paragraph (6) any period during which the importation of the subject merchandise is prohibited on account of the imposition, under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.] or other provision of law, of sanctions by the United States against the country in which the subject merchandise originates.

(B) Application of exclusion

Subparagraph (A) shall apply only with respect to subject merchandise which originates in a country that is not a WTO member.

(d) Revocation of order or finding; termination of suspended investigation

(1) In general

The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, after review under subsection (a) or (b) of this section. The administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation after review under subsection (a) or (b) of this section. The administering authority shall not revoke, in whole or in part, a countervailing duty order or finding, or terminate a suspended investigation, unless—

(A) the administering authority makes a determination that dumping or a countervailable subsidy, as the case may be, would be likely to continue or recur, and

(B) the Commission makes a determination that material injury would be likely to continue or recur as described in section 1675a(a) of this title.

(2) Five-year reviews

In the case of a review conducted under subsection (c) of this section, the administering authority shall revoke a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, unless—

(A) the administering authority makes a determination that dumping or a countervailable subsidy, as the case may be, would be likely to continue or recur, and

(B) the Commission makes a determination that material injury would be likely to continue or recur as described in section 1675a(a) of this title.

(3) Application of revocation or termination

A determination under this section to revoke an order or finding or terminate a suspended investigation shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.

(e) Hearings

Whenever the administering authority or the Commission conducts a review under this sec-

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2 See References in Text note below.
tion, it shall, upon the request of an interested party, hold a hearing in accordance with section 1677c(b) of this title in connection with that review.

(f) Determination that basis for suspension no longer exists

If the determination of the Commission under subsection (b)(2)(B) of this section is negative, the suspension agreement shall be treated as if the suspension agreement had been violated on that date, except that no duty under title, as if the suspension agreement had been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

(g) Reviews to implement results of subsidies enforcement proceeding

(1) Violations of article 8 of the subsidies agreement

If—

(A) the administering authority receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement,

(B) the administering authority has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement, and

(C) no review pursuant to subsection (a)(1) of this section is in progress,

the administering authority shall conduct a review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement. If the administering authority determines that the subsidy program is benefiting from the subsidy or subsidy program, it shall make appropriate adjustments in the estimated duty to be deposited or appropriate revisions to the terms of the suspension agreement.

(2) Withdrawal of subsidy or imposition of countermeasures

If the Trade Representative notifies the administering authority that, pursuant to Article 4 or Article 7 of the Subsidies Agreement—

(A)(i) the United States has imposed countermeasures, and

(ii) such countermeasures are based on the effects in the United States of imports of merchandise that is the subject of a countervailing duty order, or

(B) a WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order,

the administering authority shall conduct a review to determine if the amount of the estimated duty to be deposited should be adjusted or the order should be revoked.

(3) Expedited review

The administering authority shall conduct reviews under this subsection on an expedited basis, and shall publish the results of such reviews in the Federal Register.

(h) Correction of ministerial errors

The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term “ministerial error” includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copies or the like, and any other type of unintentional error which the administering authority considers ministerial.

References in Text

Section 1303 of this title, referred to in subsecs. (a)(1), (b)(1)(A), and (c)(1)(A); (6)(C)(1), is defined in section 1677(26) of this title to mean section 130 of Title 31 as in effect on the day before Jan. 1, 1996.

The Antidumping Act, 1921, referred to in subsecs. (a)(1), (b)(1)(A), and (c)(1)(A); (6)(C)(1), is act May 27, 1921, ch. 14, title II, 42 Stat. 11, as amended, which was classified generally to sections 160 to 171 of this title, and was repealed by Pub. L. 96–39, title I, § 106(a), July 26, 1979, 93 Stat. 193.


Amendments

1995—Subsec. (c)(7). Pub. L. 104–36, § 220(a), amended section generally, substituting present provisions for provisions relating to administrative review of determinations, which provided for periodic review of amount of duty in subsec. (a), review upon information or request in subsec. (b), revocation of countervailing duty order or antidumping duty order in subsec. (c), hearings in subsec. (d), determination that basis for suspension no longer existed in subsec. (e), and correction of ministerial errors in subsec. (f).


1984—Subsec. (a)(1). Pub. L. 98–573, § 611(a)(2)(A), inserted “if a request for such a review has been received and” in provisions preceding subpar. (A).

Subsec. (b)(1). Pub. L. 98–573, § 611(a)(2)(B), substituted “1671c of this title (other than a quantitative restriction agreement described in subsection (a)(2) or (c)(3)
or 1673c of this title (other than a quantitative restriction agreement described in subsection (a)(2))’’ for ‘‘1671c or 1673c of this title’’, inserted reference to section 1675(a)(1) or 1675a(a)(2) of this title, and inserted provision that during an investigation by the Commission, the party seeking revocation of an antidumping order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the antidumping order.

Subsec. (c). Pub. L. 98–573, § 611(a)(3), inserted provision that the administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

Effective Date of 1994 Amendment
Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Effective Date of 1984 Amendment
Amendment by Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

Effective Date

Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 542 of Title 6.

Suspension of the Availability of Bonds to New Shippers

Uruguay Round Agreements: Entry into Force
The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

Plan Amendments Not Required Until January 1, 1989
For provisions directing that any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1197 and 1171–1177] or title XVIII [§§ 1801–1899a] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

1675a. Special rules for section 1675(b) and 1675(c) reviews

(a) Determination of likelihood of continuation or recurrence of material injury

(1) In general

In a review conducted under section 1675(b) or (c) of this title, the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account—

(A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,

(B) whether any improvement in the state of the industry is related to the order or the suspension agreement,

(C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and

(D) in an antidumping proceeding under section 1675(c) of this title, the findings of the administering authority regarding duty absorption under section 1675(a)(4) of this title.

(2) Volume

In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including—

(A) any likely increase in production capacity or existing unused production capacity in the exporting country,

(B) existing inventories of the subject merchandise, or likely increases in inventories,

(C) the existence of barriers to the importation of such merchandise into countries other than the United States, and

(D) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.

(3) Price

In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether—

(A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and
The presence or absence of any factor which the Commission is required to consider under this subsection shall not necessarily give decisive guidance with respect to the Commission’s determination of whether material injury is likely to continue or recur within a reasonably foreseeable time if the order is revoked or the suspended investigation is terminated. In making that determination, the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.

(6) Magnitude of margin of dumping and net countervailable subsidy; nature of countervailable subsidy

In making a determination under section 1675(b) or (c) of this title, the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.

(7) Cumulation

For purposes of this subsection, the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day. If such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.

(8) Special rule for regional industries

In a review under section 1675(b) or (c) of this title involving a regional industry, the Commission may base its determination on the regional industry defined in the original investigation under this subtitle, another region that satisfies the criteria established in section 1677(4)(C) of this title, or the United States as a whole. In determining if a regional industry analysis is appropriate for the determination in the review, the Commission shall consider whether the criteria established in section 1677(4)(C) of this title are likely to be satisfied if the order is revoked or the suspended investigation is terminated.

(b) Determination of likelihood of continuation or recurrence of a countervailable subsidy

(1) In general

In a review conducted under section 1675(c) of this title, the administering authority shall determine whether revocation of a countervailing duty order or termination of a suspended investigation under section 1671c of this title would be likely to lead to continuation or recurrence of a countervailable subsidy. The administering authority shall consider—

(A) the net countervailable subsidy determined in the investigation and subsequent reviews, and

(B) whether any change in the program which gave rise to the net countervailable subsidy described in subparagraph (A) has occurred that is likely to affect that net countervailable subsidy.

(2) Consideration of other factors

If good cause is shown, the administering authority shall also consider—

(A) programs determined to provide countervailable subsidies in other investigations or reviews under this subtitle, but only to the extent that such programs—

(i) can potentially be used by the exporters or producers subject to the review under section 1675(c) of this title, and

(ii) did not exist at the time that the countervailing duty order was issued or the suspension agreement was accepted, and

(B) programs newly alleged to provide countervailable subsidies but only to the extent that the administering authority makes an affirmative countervailing duty determination with respect to such programs and with respect to the exporters or producers subject to the review.

(3) Net countervailable subsidy

The administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The administering authority shall normally choose a net countervailable subsidy that was determined under section 1671d of
§ 1675b

(c) Determination of likelihood of continuation or recurrence of dumping

(1) In general

In a review conducted under section 1675(c) of this title, the administering authority shall determine whether revocation of an antidumping duty order or termination of a suspended investigation under section 1673c of this title would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value. The administering authority shall consider—

(A) the weighted average dumping margins determined in the investigation and subsequent reviews, and

(B) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order or acceptance of the suspension agreement.

(2) Consideration of other factors

If good cause is shown, the administering authority shall also consider such other price, cost, market, or economic factors as it deems relevant.

(3) Magnitude of the margin of dumping

The administering authority shall provide to the Commission the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation is terminated. The administering authority shall normally choose a margin that was determined under section 1673d of this title or under subsection (a) or (b)(1) of section 1675 of this title.

(4) Special rule

(A) Treatment of zero and de minimis margins

A dumping margin described in paragraph (1)(A) that is zero or de minimis shall not by itself require the administering authority to determine that revocation of an antidumping duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of sales at less than fair value.

(B) Application of de minimis standards

For purposes of this paragraph, the administering authority shall apply the de minimis standards applicable to reviews conducted under subsections (a) and (b)(1) of section 1675 of this title.

(4) Special rule

(A) Treatment of zero and de minimis margins

A net countervailable subsidy described in paragraph (1)(A) that is zero or de minimis shall not by itself require the administering authority to determine that revocation of a countervailing duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy.

(B) Application of de minimis standards

For purposes of this paragraph, the administering authority shall apply the de minimis standards applicable to reviews conducted under subsections (a) and (b) of section 1675 of this title.

(june 17, 1930, ch. 497, title vii, § 752, as added pub. l. 103–465, title ii, § 221(a), dec. 8, 1994, 108 stat. 4865.)

Effective date

Section effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of pub. l. 103–465, set out as an effective date of 1994 Amendment note under section 1671 of this title.

§ 1675b. Special rules for injury investigations for certain section 1303 or section 1671(c) countervailing duty orders and investigations

(a) In general

(1) Investigation by the commission upon request

In the case of a countervailing duty order described in paragraph (2), which—

(A) applies to merchandise that is the product of a Subsidies Agreement country, and

(B)(i) is in effect on the date on which such country becomes a Subsidies Agreement country, or

(ii) is issued on a date that is after the date described in clause (i) pursuant to a court order in an action brought under section 1516a of this title,

the Commission, upon receipt of a request from an interested party described in section 1677(9)(C), (D), (E), (F), or (G) of this title for an injury investigation with respect to such order, shall initiate an investigation and shall determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked.

(2) Description of countervailing duty orders

A countervailing duty order described in this paragraph is an order issued under section 1303 1 of this title or section 1671(c) of this title with respect to which the requirement of an affirmative determination of material injury was not applicable at the time such order was issued.

(3) Requirements of request for investigation

A request for an investigation under this subsection shall be submitted—

(A) in the case of an order described in paragraph (1)(B)(i), within 6 months after the date on which the country described in paragraph (1)(A) becomes a Subsidies Agreement country, or

(B) in the case of an order described in paragraph (1)(B)(ii), within 6 months after the date the order is issued.

(4) Suspension of liquidation

With respect to entries of subject merchandise made on or after—

1 See References in Text note below.
(A) in the case of an order described in paragraph (1)(B)(i), the date on which the country described in paragraph (1)(A) becomes a Subsidies Agreement country, or
(B) in the case of an order described in paragraph (1)(B)(ii), the date on which the order is issued.

liquidation shall be suspended at the cash deposit rate in effect on the date described in subparagraph (A) or (B) (whichever is applicable).

(b) Investigation procedure and schedule
(1) Commission procedure
(A) In general
Except as otherwise provided in this section, the provisions of this subtitle regarding evidence in and procedures for investigations conducted under part I of this subtitle shall apply to investigations conducted by the Commission under this section.
(B) Time for Commission determination
Except as otherwise provided in subparagraph (C), the Commission shall issue its determination under subsection (a)(1) of this section, to the extent possible, not later than 1 year after the date on which the investigation was initiated under this section.
(C) Special rule to permit administrative flexibility
In the case of requests for investigations received under this section within 1 year after the date on which the WTO Agreement enters into force with respect to the United States, the Commission may, after consulting with the administering authority, initiate its investigations in a manner that results in determinations being made in all such investigations during the 4-year period beginning on such date.

(2) Net countervailable subsidy; nature of subsidy
(A) Net countervailable subsidy
The administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order which is the subject of the investigation is revoked. The administering authority normally shall choose a net countervailable subsidy that was determined under section 1671d of this title or subsection (a) or (b)(1) of section 1675 of this title. If the Commission considers the magnitude of the net countervailable subsidy in making its determination under this section, the Commission shall use the net countervailable subsidy provided by the administering authority.

(B) Nature of subsidy
The administering authority shall inform the Commission of, and the Commission, in making its determination under this section, shall consider, the nature of the countervailable subsidy and whether the countervailable subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

(3) Effect of Commission determination
(A) Affirmative determination
Upon being notified by the Commission that it has made an affirmative determination under subsection (a)(1) of this section—
(i) the administering authority shall order the termination of the suspension of liquidation required pursuant to subsection (a)(4) of this section, and
(ii) the countervailing duty order shall remain in effect until revoked, in whole or in part, under section 1675(d) of this title.

For purposes of section 1675(c) of this title, a countervailing duty order described in this section shall be treated as issued on the date of publication of the Commission’s determination under this subsection.

(B) Negative determination
(i) In general
Upon being notified by the Commission that it has made a negative determination under subsection (a)(1) of this section, the administering authority shall revoke the countervailing duty order, and shall refund, with interest, any estimated countervailing duties collected during the period liquidation was suspended pursuant to subsection (a)(4) of this section.

(ii) Limitation on negative determination
A determination by the Commission that revocation of the order is not likely to result in material injury to an industry by reason of imports of the subject merchandise shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of the subject merchandise to the United States that were specifically intended to offset the countervailable subsidy received.

(4) Countervailing duty orders with respect to which no request for injury investigation is made
If, with respect to a countervailing duty order described in subsection (a) of this section, a request for an investigation is not made within the time required by subsection (a)(3) of this section, the Commission shall notify the administering authority that a negative determination has been made under subsection (a) of this section and the provisions of paragraph (3)(B) shall apply with respect to the order.

(c) Pending and suspended countervailing duty investigations
If, on the date on which a country becomes a Subsidies Agreement country, there is a countervailing duty investigation in progress or suspended under section 1303 of this title or section 1671(c) of this title that applies to merchandise which is a product of that country and with respect to which the requirement of an affirmative determination of material injury was not applicable at the time the investigation was initiated, the Commission shall—
(1) in the case of an investigation in progress, make a final determination under

\(^2\)See References in Text note below.
section 1671d(b) of this title within 75 days after the date of an affirmative final determination, if any, by the administering authority.

(2) in the case of a suspended investigation to which section 1671c(i)(1)(B) of this title applies, make a final determination under section 1671d(b) of this title within 120 days after receiving notice from the administering authority of the resumption of the investigation pursuant to section 1671c(i) of this title, or within 45 days after the date of an affirmative final determination, if any, by the administering authority, whichever is later, or

(3) in the case of a suspended investigation to which section 1671c(i)(1)(C) of this title applies, treat the countervailing duty order issued pursuant to such section as if it were—

(A) an order issued under subsection (a)(1)(B)(i) of this section for purposes of subsection (a)(3) of this section; and

(B) an order issued under subsection (a)(1)(B)(i) of this section for purposes of subsection (a)(4) of this section.

(d) Publication in Federal Register

The administering authority or the Commission, as the case may be, shall publish in the Federal Register a notice of the initiation of any investigation, and a notice of any determination or revocation, made pursuant to this section.

(e) Request for simultaneous expedited review under section 1675(c)

(1) General rule

(A) Requests for reviews

Notwithstanding section 1675c(6)(A) of this title and except as provided in subparagraph (B), an interested party may request a review of an order under section 1675(c) of this title at the same time the party requests an investigation under subsection (a) of this section, if the order involves the same or comparable subject merchandise. Upon receipt of such request, the administering authority, after consulting with the Commission, shall initiate a review of the order under section 1675(c) of this title. The Commission shall combine such review with the investigation under this section.

(B) Exception

If the administering authority determines that the interested party who requested an investigation under this section is a related party or an importer within the meaning of section 1677(4)(B) of this title, the administering authority may decline a request by such party to initiate a review of an order under section 1675(c) of this title which involves the same or comparable subject merchandise.

(2) Cumulation

If a review under section 1675(c) of this title is initiated under paragraph (1), such review shall be treated as having been initiated on the same day as the investigation under this section, and the Commission may, in accordance with section 1677(7)(G) of this title, cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which such investigations are treated as initiated on the same day.

(3) Time and procedure for Commission determination

The Commission shall render its determination in the investigation conducted under this section at the same time as the Commission’s determination is made in the review under section 1675(c) of this title that is initiated pursuant to this subsection. The Commission shall in all other respects apply the procedures and standards set forth in section 1675(c) of this title to such section 1675(c) of this title reviews.


Section 1675c, act June 17, 1930, ch. 497, title VII, § 754, as added Pub. L. 106–387, § 1(a) [title X, § 1003(a)], Oct. 28, 2000, 114 Stat. 1549, 1549A–73, related to the continued dumping and subsidy offset.

Effective Date of Repeal

Pub. L. 109–171, title VII, § 7601(a), Feb. 8, 2006, 120 Stat. 154, provided that the repeal made by section 7601(a) is effective Feb. 8, 2006.

Prohibition on Collection of Certain Payments Made Under the Continued Dumping and Subsidy Offset Act of 2000


“(a) IN GENERAL.—Notwithstanding any other provision of law, neither the Secretary of Homeland Security nor any other person may—

“(1) require repayment of, or attempt in any other way to recoup, any payments described in subsection (b); or
“(2) offset any past, current, or future distributions of antidumping or countervailing duties assessed with respect to imports from countries that are not parties to the North American Free Trade Agreement in an attempt to recoup any payments described in subsection (b).

(b) Payments Described.—Payments described in this subsection are payments of antidumping or countervailing duties made pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (section 754 of the Tariff Act of 1930 (19 U.S.C. 1675c); repealed by subtitle F of title VII of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 154)) that were—

(1) assessed and paid on imports of goods from countries that are parties to the North American Free Trade Agreement; and

(2) distributed on or after January 1, 2001, and before January 1, 2006.

(c) Payment of Funds Collected or Withheld.—Not later than the date that is 60 days after the date of the enactment of this Act [Feb. 17, 2009], the Secretary of Homeland Security shall—

(1) refund any repayments, or any other recoupment, of payments described in subsection (b); and

(2) fully distribute any antidumping or countervailing duties that the U.S. Customs and Border Protection is withholding as an offset as described in subsection (a)(2).

(d) Limitation.—Nothing in this section shall be construed to prevent the Secretary of Homeland Security, or any other person, from requiring repayment of, or attempting to otherwise recoup, any payments described in subsection (b) as a result of—

(1) a finding of false statements or other misconduct by a recipient of such a payment; or

(2) the reliquidation of an entry with respect to which such a payment was made.’’

DISTRIBUTIONS ON CERTAIN ENTRIES

Pub. L. 111–291, title VIII, §822, Dec. 8, 2010, 124 Stat. 3163, as amended by Pub. L. 111–312, title V, §504(a), Dec. 17, 2010, 124 Stat. 3308, provided that: “Notwithstanding section 1701(b) [probably means 7601(b)] of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 154 (19 U.S.C. 1675c note) [set out below]) or any other provision of law, no payments shall be distributed under section 754 of the Tariff Act of 1930 [this section], as in effect on the day before the date of the enactment of such section 1701 [probably means 7601, which was approved Feb. 8, 2006], with respect to the entries of any goods that are, on the date of the enactment of this Act [Dec. 8, 2010]—

(1) unliquidated; and

(2) not in litigation; and

(b) not under an order of liquidation from the Department of Commerce.’’


Pub. L. 110–171, title VII, §7601(b), Feb. 8, 2006, 120 Stat. 154, provided that: “All duties on entries of goods made and filed before October 1, 2007, that would, but for subsection (a) of this section [repealing this section], be distributed under section 754 of the Tariff Act of 1930 [this section], shall be distributed as if section 754 of the Tariff Act of 1930 had not been repealed by subsection (a).’’

SUBPART B—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

§1676a. Required consultations

(a) Agreements in response to countervailable subsidies

Within 90 days after the administering authority accepts a quantitative restriction agreement under section 1671c(a)(2) or (c)(3) of this title, the President shall enter into consultations with the government that is party to the agreement for purposes of—

(1) eliminating the countervailable subsidy completely, or

(2) reducing the net countervailable subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(b) Modification of agreements on basis of consultations

At the direction of the President, the administering authority shall modify a quantitative restriction agreement as a result of consultations entered into under subsection (a) of this section.

(c) Special rule under section 1671c(c)(3) of this title

This chapter shall cease to apply to a quantitative restriction agreement described in section 1671c(c)(3) of this title at such time as that agreement ceases to have force and effect under section 1671c(f) of this title or violation is found under section 1671c(1) of this title.


AMENDMENTS


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

EFFECTIVE DATE

Section applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

§1676a. Required determinations

(a) In general

Before the expiration date, if any, of a quantitative restriction agreement accepted under section 1671c(a)(2) or 1671c(c)(3) of this title (if suspension of the related investigation is still in effect)—

(1) the administering authority shall, at the direction of the President, initiate a proceeding to determine whether any countervailable subsidy is being provided with respect to the subject merchandise and, if being so provided, the net countervailable subsidy; and

(2) if the administering authority initiates a proceeding under paragraph (1), the Commis-
sion shall determine whether imports of the merchandise of the kind subject to the agreement will, upon termination of the agreement, materially injure, or threaten with material injury, an industry in the United States or materially retard the establishment of such an industry.

(b) Determinations

The determinations required to be made by the administering authority and the Commission under subsection (a) of this section shall be made under such procedures as the administering authority and the Commission, respectively, shall by regulation prescribe, and shall be treated as final determinations made under section 1671d of this title for purposes of judicial review under section 1516a of this title. If the determinations by each are affirmative, the administering authority shall—

(1) issue a countervailing duty order under section 1671e of this title effective with respect to merchandise entered on and after the date on which the agreement terminates; and

(2) order the suspension of liquidation of all entries of subject merchandise which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of the order in the Federal Register.

(c) Hearings

The determination proceedings required to be prescribed under subsection (b) of this section shall provide that the administering authority and the Commission must, upon the request of any interested party, hold a hearing in accordance with section 1677c of this title on the issues involved.


AMENDMENTS


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

EFFECTIVE DATE

Section applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, or reviews begun under section 1575 of this title, on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

PART IV—GENERAL PROVISIONS

CODIFICATION

The designation “PART IV” was in the original “Subtitle D” and was editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

§1677. Definitions; special rules

For purposes of this subtitle—

(1) Administering authority

The term “administering authority” means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this subtitle are transferred by law.

(2) Commission

The term “Commission” means the United States International Trade Commission.

(3) Country

The term “country” means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) Industry

(A) In general

The term “industry” means the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.

(B) Related parties

(I) If a producer of a domestic like product and an exporter or importer of the subject merchandise are related parties, or if a producer of the domestic like product is also an importer of the subject merchandise, the producer may, in appropriate circumstances, be excluded from the industry.

(ii) For purposes of clause (i), a producer and an exporter or importer shall be considered to be related parties, if—

(I) the producer directly or indirectly controls the exporter or importer,

(II) the exporter or importer directly or indirectly controls the producer,

(III) a third party directly or indirectly controls the producer and the exporter or importer, or

(IV) the producer and the exporter or importer directly or indirectly control a third party and there is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

For purposes of this subparagraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.
(C) Regional industries

In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—

(i) the producers within such market sell all or almost all of their production of the domestic like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of dumped imports or imports of merchandise benefiting from a countervailable subsidy into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the dumped imports or imports of merchandise benefiting from a countervailable subsidy. The term “regional industry” means the domestic producers within a region who are treated as a separate industry under this subparagraph.

(D) Product lines

The effect of dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed in relation to the United States production of a domestic like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer’s profits. If the domestic production of the domestic like product has no separate identity in terms of such criteria, then the effect of the dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed from a countervailable subsidy into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the dumped imports or imports of merchandise benefiting from a countervailable subsidy. The term “regional industry” means the domestic producers within a region who are treated as a separate industry under this subparagraph.

(E) Industry producing processed agricultural products

(i) In general

Subject to clause (v), in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if—

(I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

(II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(ii) Processing

For purposes of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if—

(I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(II) the processed agricultural product is produced substantially or completely from the raw product.

(iii) Relevant economic factors

For purposes of clause (i)(II), in addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall—

(I) if price is taken into account, consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and

(II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(iv) Raw agricultural product

For purposes of this subparagraph, the term “raw agricultural product” means any farm or fishery product.

(v) Termination of this subparagraph

This subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(5) Countervailable subsidy

(A) In general

Except as provided in paragraph (5B), a countervailable subsidy is a subsidy described in this paragraph which is specific as described in paragraph (5A).

(B) Subsidy described

A subsidy is described in this paragraph in the case in which an authority—

(i) provides a financial contribution,

(ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994, or

(iii) makes a payment to a funding mechanism to provide a financial con-
tribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, to a person and a benefit is thereby conferred. For purposes of this paragraph and paragraphs (5A) and (5B), the term "authority" means a government of a country or any public entity within the territory of the country.

(C) Other factors
The determination of whether a subsidy exists shall be made without regard to whether the recipient of the subsidy is publicly or privately owned and without regard to whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise. The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists under this paragraph.

(D) Financial contribution
The term "financial contribution" means—

(i) the direct transfer of funds, such as grants, loans, and equity infusions, or the potential direct transfer of funds or liabilities, such as loan guarantees,
(ii) foregoing or not collecting revenue that is otherwise due, such as granting tax credits or deductions from taxable income,
(iii) providing goods or services, other than general infrastructure, or
(iv) purchasing goods.

(E) Benefit conferred
A benefit shall normally be treated as conferred where there is a benefit to the recipient, including—

(i) in the case of an equity infusion, if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made,
(ii) in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,
(iii) in the case of a loan guarantee, if there is a difference, after adjusting for any difference in guarantee fees, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the authority, and
(iv) in the case where goods or services are provided for less than adequate remuneration, and in the case where goods are purchased for more than adequate remuneration.

For purposes of clause (iv), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

(F) Change in ownership
A change in ownership of all or part of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

(5A) Specificity
(A) In general
A subsidy is specific if it is an export subsidy described in subparagraph (B) or an import substitution subsidy described in subparagraph (C), or if it is determined to be specific pursuant to subparagraph (D).

(B) Export subsidy
An export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions.

(C) Import substitution subsidy
An import substitution subsidy is a subsidy that is contingent upon the use of domestic goods over imported goods, alone or as 1 of 2 or more conditions.

(D) Domestic subsidy
In determining whether a subsidy (other than a subsidy described in subparagraph (B) or (C)) is a specific subsidy, in law or in fact, to an enterprise or industry within the jurisdiction of the authority providing the subsidy, the following guidelines shall apply:

(i) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law.
(ii) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, the subsidy is not specific as a matter of law, if—
(I) eligibility is automatic,
(II) the criteria or conditions for eligibility are strictly followed, and
(III) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification.

For purposes of this clause, the term "objective criteria or conditions" means criteria or conditions that are neutral and that do not favor one enterprise or industry over another.

(iii) Where there are reasons to believe that a subsidy may be specific as a matter
of fact, the subsidy is specific if one or more of the following factors exist:

(I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In evaluating the factors set forth in subclauses (I), (II), (III), and (IV), the administering authority shall take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy, and the length of time during which the subsidy program has been in operation.

(iv) Where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific.

For purposes of this paragraph and paragraph (5B), any reference to an enterprise or industry is a reference to a foreign enterprise or foreign industry and includes a group of such enterprises or industries.

(5B) Categories of noncountervailable subsidies

(A) In general

Notwithstanding the provisions of paragraphs (5) and (5A), in the case of merchandise imported from a Subsidies Agreement country, a subsidy shall be treated as noncountervailable if the administering authority determines in an investigation under part I of this subtitle or a review under part III of this subtitle that the subsidy meets all of the criteria described in subparagraph (B), (C), or (D), as the case may be, or the provisions of subparagraph (E)(i) apply.

(B) Research subsidy

(i) In general

Except for a subsidy provided on the manufacture, production, or export of civil aircraft, a subsidy for research activities conducted by a person, or by a higher education or research establishment on a contract basis with a person, shall be treated as noncountervailable if the subsidy covers not more than 50 percent of the costs of industrial research or not more than 75 percent of the costs of precompetitive development activity, and such subsidy is limited exclusively to—

(I) the costs of researchers, technicians, and other supporting staff employed exclusively in the research activity.

(ii) Definitions

For purposes of this subparagraph—

(I) Industrial research

The term “industrial research” means planned search or critical investigation aimed at the discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes, or services, and in bringing about a significant improvement to existing products, processes, or services.

(II) Precompetitive development activity

The term “precompetitive development activity” means the translation of industrial research findings into a plan, blueprint, or design for new, modified, or improved products, processes, or services, whether intended for sale or use, including the creation of a first prototype that would not be capable of commercial use. The term also may include the conceptual formulation and design of products, processes, or services alternatives and initial demonstration or pilot projects, if these same projects cannot be converted or used for industrial application or commercial exploitation. The term does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, or other ongoing operations even if those alterations may represent improvements.

(iii) Calculation rules

(I) In general

In the case of a research activity that spans both industrial research and precompetitive development activity, the allowable level of the noncountervailable subsidy shall not exceed 62.5 percent of the costs set forth in subclauses (I), (II), (III), (IV), and (V) of clause (i).

(II) Total eligible costs

The allowable level of a noncountervailable subsidy described in clause (i) shall be based on the total eligible costs incurred over the duration of a particular project.

(C) Subsidy to disadvantaged regions

(i) In general

A subsidy provided, pursuant to a general framework of regional development,
§ 1677

I. General framework of regional development

(1) General rule

If a subsidy is provided pursuant to a program that has been notified in accordance with Article 8.3 of the Subsidies Agreement, the subsidy shall be treated as noncountervailable and shall not be subject to investigation or review under this subtitle.

(2) Exception

Notwithstanding clause (1), a subsidy shall be treated as countervailable if—

(I) the Trade Representative notifies the administering authority that a determination has been made pursuant to Article 8.4 or 8.5 of the Subsidies Agreement that the subsidy, or the program pursuant to which the subsidy was provided, does not satisfy the conditions and criteria of Article 8.2 of the Subsidies Agreement; and

(II) the subsidy is specific within the meaning of paragraph (5A).

II. Neutral and objective criteria

The term “neutral and objective criteria” means criteria that do not favor certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy.

F. Certain subsidies on agricultural products

Domestic support measures that are provided with respect to products listed in

points having no or virtually no influence on the development of a region.

E. Notified subsidy program

(i) General rule

If a subsidy is provided pursuant to a program that has been notified in accordance with Article 8.3 of the Subsidies Agreement, the subsidy shall be treated as noncountervailable and shall not be subject to investigation or review under this subtitle.

(ii) Exception

Notwithstanding clause (i), a subsidy shall be treated as countervailable if—

(I) the Trade Representative notifies the administering authority that a determination has been made pursuant to Article 8.4 or 8.5 of the Subsidies Agreement that the subsidy, or the program pursuant to which the subsidy was provided, does not satisfy the conditions and criteria of Article 8.2 of the Subsidies Agreement; and

(II) the subsidy is specific within the meaning of paragraph (5A).

D. Subsidy for adaptation of existing facilities to new environmental requirements

(i) In general

A subsidy that is provided to promote the adaptation of existing facilities to new environmental requirements that are imposed by statute or by regulation, and that result in greater constraints and financial burdens on the recipient of the subsidy, shall be treated as noncountervailable, if the subsidy—

(I) is a one-time nonrecurring measure,

(II) is limited to 20 percent of the cost of adaptation,

(III) does not cover the cost of replacing and operating the subsidized investment, a cost that must be fully borne by the recipient,

(IV) is directly linked and proportionate to the recipient’s planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings that may be achieved, and

(V) is available to all persons that can adopt the new equipment or production processes.

(ii) Existing facilities

For purposes of this subparagraph, the term “existing facilities” means facilities that have been in operation for at least 2 years before the date on which the new environmental requirements are imposed.
Annex 1 to the Agreement on Agriculture, and that the administering authority determines conform fully to the provisions of Annex 2 to that Agreement, shall be treated as noncountervailable. Upon request by the administering authority, the Trade Representative shall provide advice regarding the interpretation and application of Annex 2.

(G) Provisional application

(i) Subparagraphs (B), (C), (D), and (E) shall not apply on or after the first day of the month that is 66 months after the WTO Agreement enters into force, unless the provisions of such subparagraphs are extended pursuant to section 3572(c) of this title.

(ii) Subparagraph (F) shall not apply to imports from a WTO member country at the end of the 9-year period beginning on January 1, 1995. The Trade Representative shall determine the precise termination date for each WTO member country in accordance with paragraph (i) of Article 1 of the Agreement on Agriculture and such date shall be notified to the administering authority.

(6) Net countervailable subsidy

For the purpose of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of—

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,

(B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

(7) Material injury

(A) In general

The term “material injury” means harm which is not inconsequential, immaterial, or unimportant.

(B) Volume and consequent impact

In making determinations under sections 1671b(a), 1671d(b), 1673b(a), and 1673d(b) of this title, the Commission, in each case—

(i) shall consider—

(I) the volume of imports of the subject merchandise,

(II) the effect of imports of that merchandise on prices in the United States for domestic like products, and

(III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

In the notification required under section 1671d(d) or 1673d(d) of this title, as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) Evaluation of relevant factors

For purposes of subparagraph factors—

(i) Volume

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) Price

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) Impact on affected domestic industry

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices,

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment,

(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(V) in a proceeding under part II of this subtitle, the magnitude of the margin of dumping.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

(iv) Captive production

If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that—
(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product.

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

(D) Special rules for agricultural products

(i) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) Special rules

For purposes of this paragraph—

(i) Nature of countervailable subsidy

In determining whether there is a threat of material injury, the Commission shall consider information provided to it by the administering authority regarding the nature of the countervailable subsidy granted by a foreign country (particularly whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and the effects likely to be caused by the countervailable subsidy.

(ii) Standard for determination

The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(F) Threat of material injury

(i) In general

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors—

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(B)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 1671d(b)(1) or 1673d(b)(1) of this title with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

(ii) Basis for determination

The Commission shall consider the factors set forth in clause (i) as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this subtitle. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.
(iii) Effect of dumping in third-country markets

(I) In general

In investigations under part II of this subtitle, the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign manufacturer, exporter, or United States importer concerning this issue.

(II) WTO member market

For purposes of this clause, the term “WTO member market” means the market of any country which is a WTO member.

(III) European Communities

For purposes of this clause, the European Communities shall be treated as a foreign country.

(G) Cumulation for determining material injury

(i) In general

For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii), the Commission shall cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which—

(I) petitions were filed under section 1671a(b) or 1673a(b) of this title on the same day,

(II) investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day, or

(III) petitions were filed under section 1671a(b) or 1673a(b) of this title and investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day,

if such imports compete with each other and with domestic like products in the United States market.

(ii) Exceptions

The Commission shall not cumulatively assess the volume and effect of imports under clause (i)—

(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination with respect to those imports before the Commission’s final determination is made;

(II) from any country with respect to which the investigation has been terminated;

(III) from any country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) for purposes of making a determination with respect to that country, except that the volume and effect of imports of the subject merchandise from such country may be cumulatively assessed with imports of the subject merchandise from any other country designated as such a beneficiary country to the extent permitted by clause (i); or

(IV) from any country that is a party to an agreement with the United States establishing a free trade area, which entered into force and effect before January 1, 1987, unless the Commission determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country.

(iii) Records in final investigations

In each final determination in which it cumulatively assesses the volume and effect of imports under clause (i), the Commission shall make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority’s final determination, and shall include such comments and the administering authority’s final determination in the record for the subsequent investigation.

(iv) Regional industry determinations

In an investigation which involves a regional industry, and in which the Commission decides that the volume and effect of imports should be cumulatively assessed under this subparagraph, such assessment shall be based upon the volume and effect of imports into the region or regions determined by the Commission. The provisions of clause (iii) shall apply to such investigations.

(H) Cumulation for determining threat of material injury

To the extent practicable and subject to subparagraph (G)(ii), for purposes of clause (i)(III) and (IV) of subparagraph (F), the Commission may cumulatively assess the volume and price effects of imports of the subject merchandise from all countries with respect to which—

(I) petitions were filed under section 1671a(b) or 1673a(b) of this title on the same day,

(II) investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day, or

(III) petitions were filed under section 1671a(b) or 1673a(b) of this title and investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day,
if such imports compete with each other and with domestic like products in the United States market.

(I) Consideration of post-petition information

The Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation under part I or II of this subtitle is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

(8) Subsidies Agreement; Agreement on Agriculture

(A) Subsidies Agreement

The term “Subsidies Agreement” means the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of this title.

(B) Agreement on Agriculture

The term “Agreement on Agriculture” means the Agreement on Agriculture referred to in section 3511(d)(2) of this title.

(9) Interested party

The term “interested party” means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) a manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (G), (D), or (E) with respect to a domestic like product, and

(G) in any investigation under this subtitle involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either—

(i) processors,

(ii) processors and producers, or

(iii) processors and growers,

but this subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(10) Domestic like product

The term “domestic like product” means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.

(11) Affirmative determinations by divided Commission

If the Commissioners voting on a determination by the Commission, including a determination under section 1675 of this title, are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

(12) Attribution of merchandise to country of manufacture or production

For purposes of part I of this subtitle, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is imported directly from that country and without regard to whether it is imported in the same condition as when exported from that country or in a changed condition by reason of re-manufacture or otherwise.


(14) Sold or, in the absence of sales, offered for sale

The term “sold or, in the absence of sales, offered for sale” means sold or, in the absence of sales, offered—

(A) to all purchasers in commercial quantities, or

(B) in the ordinary course of trade to one or more selected purchasers in commercial quantities at a price which fairly reflects the market value of the merchandise, without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(15) Ordinary course of trade

The term “ordinary course of trade” means the conditions and practices which, for a reasonable time prior to the exportation of the
subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

(A) Sales disregarded under section 1677b(b)(1) of this title.
(B) Transactions disregarded under section 1677b(f)(2) of this title.

(16) Foreign like product

The term “foreign like product” means merchandise in the first of the following categories in respect of which a determination for the purposes of part II of this subtitle can be made satisfactorily made:

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise;

(B) Merchandise—

(i) produced in the same country and by the same person as the subject merchandise;

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and of the same general class or kind as the subject merchandise,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) Usual commercial quantities

The term “usual commercial quantities”, in any case in which the subject merchandise is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

(18) Nonmarket economy country

(A) In general

The term “nonmarket economy country” means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.

(B) Factors to be considered

In making determinations under subparagraph (A) the administering authority shall take into account—

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries;

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

(iv) the extent of government ownership or control of the means of production,

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

(vi) such other factors as the administering authority considers appropriate.

(C) Determination in effect

(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

(D) Determinations not in issue

Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under part II of this subtitle.

(E) Collection of information

Upon request by the administering authority, the Commissioner of Customs shall provide the administering authority a copy of all public and proprietary information submitted to, or obtained by, the Commissioner of Customs that the administering authority considers relevant to proceedings involving merchandise from nonmarket economy countries. The administering authority shall protect proprietary information obtained under this section from public disclosure in accordance with section 1677ff of this title.

(19) Equivalency of leases to sales

In determining whether a lease is equivalent to a sale purposes of this subtitle, the administering authority shall consider—

(A) the terms of the lease,

(B) commercial practice within the industry,

(C) the circumstances of the transaction,

(D) whether the product subject to the lease is integrated into the operations of the lessee or importer,

(E) whether in practice there is a likelihood that the lease will be continued or renewed for a significant period of time, and

(F) other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

(20) Application to governmental importations

(A) In general

Except as otherwise provided by this paragraph, merchandise imported by, or for the use of, a department or agency of the United States Government (including merchandise 1So in original. The semicolon probably should be a comma.
provided for under chapter 98 of the Harmonized Tariff Schedule of the United States) is subject to the imposition of countervailing duties or antidumping duties under this subtitle or section 1303 of this title.

(B) Exceptions
Merchandise imported by, or for the use of, the Department of Defense shall not be subject to the imposition of countervailing or antidumping duties under this subtitle if—

(i) the merchandise is acquired by, or for use of, such Department from a country with which such Department had a Memorandum of Understanding which was in effect on January 1, 1988, and has continued to have a comparable agreement (including renewals) or superceding agreements, and

(ii) in accordance with terms of the Memorandum of Understanding in effect at the time of importation, or

(ii) the merchandise has no substantial nonmilitary use.

(21) United States-Canada Agreement
The term “United States-Canada Agreement” means the United States-Canada Free-Trade Agreement.

(22) NAFTA
The term “NAFTA” means the North American Free Trade Agreement.

(23) Entry
The term “entry” includes, in appropriate circumstances as determined by the administering authority, a reconciliation entry created under a reconciliation process, defined in section 1401(s) of this title, that is initiated by an importer. The liability of an importer under an antidumping or countervailing duty proceeding for entries of merchandise subject to the proceeding will attach to the corresponding reconciliation entry or entries. Suspension of liquidation of the reconciliation entry or entries, for the purpose of enforcing this subtitle, is equivalent to the suspension of liquidation of the corresponding individual entries; but the suspension of liquidation of the reconciliation entry or entries for such purpose does not preclude liquidation for any other purpose.

(24) Negligible imports
(A) In general

(i) Less than 3 percent

Except as provided in clauses (ii) and (iv), imports from a country of merchandise corresponding to a domestic like product identified by the Commission are “negligible” if such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes—

(I) the filing of the petition under section 1671a(b) or 1673a(b) of this title, or

(II) the initiation of the investigation, if the investigation was initiated under section 1671a(a) or 1673a(a) of this title.

(ii) Exception
Imports that would otherwise be negligible under clause (i) shall not be negligible if the aggregate volume of imports of the merchandise from all countries described in clause (i) with respect to which investigations were initiated on the same day exceeds 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period.

(iii) Determination of aggregate volume
In determining aggregate volume under clause (ii) or (iv), the Commission shall not consider imports from any country specified in paragraph (7)(G)(ii).

(iv) Negligibility in threat analysis
Notwithstanding clauses (i) and (ii), the Commission shall not treat imports as negligible if it determines that there is a potential that imports from a country described in clause (i) will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, or that the aggregate volumes of imports from all countries described in clause (ii) will imminently exceed 7 percent of the volume of all such merchandise imported into the United States. The Commission shall consider such imports only for purposes of determining threat of material injury.

(B) Negligibility for certain countries in countervailing duty investigations
In the case of an investigation under section 1671 of this title, subparagraph (A) shall be applied to imports of subject merchandise from developing countries by substituting “4 percent” for “3 percent” in subparagraph (A)(i) and by substituting “9 percent” for “7 percent” in subparagraph (A)(ii).

(C) Computation of import volumes
In computing import volumes for purposes of subparagraphs (A) and (B), the Commission may make reasonable estimates on the basis of available statistics.

(D) Regional industries
In an investigation in which the Commission makes a regional industry determination under paragraph (4)(C), the Commission’s examination under subparagraphs (A) and (B) shall be based upon the volume of subject merchandise exported for sale in the regional market in lieu of the volume of all subject merchandise imported into the United States.

(25) Subject merchandise
The term “subject merchandise” means the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this subtitle or section 1303 of this title, or a finding under the Antidumping Act, 1921.

(26) Section 1303
The terms “section 1303” and “1303” mean section 1303 of this title as in effect on the day...
before the effective date of title II of the Uruguayan Round Agreements Act.

(27) Suspension agreement
The term ‘‘suspension agreement’’ means an agreement described in section 1671c(b), 1671c(c), 1673c(b), 1673c(c), or 1673c(l) of this title.

(28) Exporter or producer
The term ‘‘exporter or producer’’ means the exporter of the subject merchandise, the producer of the subject merchandise, or both where appropriate. For purposes of section 1677b of this title, the term ‘‘exporter or producer’’ includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise.

(29) WTO Agreement
The term ‘‘WTO Agreement’’ means the Agreement defined in section 3501(9) of this title.

(30) WTO member and WTO member country
The terms ‘‘WTO member’’ and ‘‘WTO member country’’ mean a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

(31) GATT 1994
The term ‘‘GATT 1994’’ means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

(32) Trade representative
The term ‘‘Trade Representative’’ means the United States Trade Representative.

(33) Affiliated persons
The following persons shall be considered to be ‘‘affiliated’’ or ‘‘affiliated persons’’:
(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
(B) Any officer or director of an organization and such organization.
(C) Partners.
(D) Employer and employee.
(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
(G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

(34) Dumped; dumping
The terms ‘‘dumped’’ and ‘‘dumping’’ refer to the sale or likely sale of goods at less than fair value.

(35) Dumping margin; weighted average dumping margin
(A) Dumping margin
The term ‘‘dumping margin’’ means the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.

(B) Weighted average dumping margin
The term ‘‘weighted average dumping margin’’ is the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.

(C) Magnitude of the margin of dumping
The magnitude of the margin of dumping used by the Commission shall be—
(i) in making a preliminary determination under section 1673b(a) of this title in an investigation (including any investigation in which the Commission cumulatively assesses the volume and effect of imports under paragraph (7)(G)(i)), the dumping margin or margins published by the administering authority in its notice of initiation of the investigation;
(ii) in making a final determination under section 1673(b) of this title, the dumping margin or margins most recently published by the administering authority prior to the closing of the Commission’s administrative record;
(iii) in a review under section 1675(b)(2) of this title, the most recent dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title, if any, or under section 1673(b) or 1673(a) of this title; and
(iv) in a review under section 1675(c) of this title, the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.

(36) Developing and least developed country
(A) Developing country
The term ‘‘developing country’’ means a country designated as a developing country by the Trade Representative.

(B) Least developed country
The term ‘‘least developed country’’ means a country which the Trade Representative determines is—
(i) a country referred to as a least developed country within the meaning of paragraph (a) of Annex VII to the Subsidies Agreement, or
(ii) any other country listed in Annex VII to the Subsidies Agreement, but only if the country has a per capita gross national product of less than $1,000 per annum as measured by the most recent data available from the World Bank.

(C) Publication of list
The Trade Representative shall publish in the Federal Register, and update as necessary, a list of—
(i) developing countries that have eliminated their export subsidies on an expe-
dited basis within the meaning of Article 27.11 of the Subsidies Agreement, and
(ii) countries determined by the Trade Representative to be least developed or
developing countries.

(D) Factors to consider

In determining whether a country is a developing country under subparagraph (A), the
Trade Representative shall consider such economic, trade, and other factors which the
Trade Representative considers appropriate, including the level of economic development
of such country (the assessment of which shall include a review of the country’s per
capita gross national product) and the country’s share of world trade.

(E) Limitation on designation

A determination that a country is a developing or least developed country pursuant to
this paragraph shall be for purposes of this subtitle only and shall not affect the deter-
mination of a country’s status as a developing or least developed country with respect to
any other law.

(June 17, 1930, ch. 497, title VII, § 771, as added

REFERENCES IN TEXT

The Caribbean Basin Economic Recovery Act, referred to in
par. (7)(G)(i)(III), is title II of Pub. L. 96–67, Aug. 5, 1980, 97 Stat. 384, as amended, which is classified principally to sections 2601 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.


Section 1303 of this title, referred to in pars. (20)(A), (25), and (26), was repealed effective Jan. 1, 1995, by Pub. L. 103–465, title II, § 261(a), Dec. 8, 1994, 108 Stat. 4908. For savings provisions and treatment of references to section 1303 in other laws, see section 261(b), (d)(1)(C) of Pub. L. 103–465, set out as notes under section 1303 of this title.

The Antidumping Act, 1921, referred to in par. (25), is act May 27, 1921, ch. 14, title II, 42 Stat. 11, as amended, which was classified generally to sections 160 to 171 of this title, and was repealed by Pub. L. 96–39, title I, § 106(a), July 26, 1979, 93 Stat. 193.

For the effective date of title II of the Uruguay Round Agreement Act, referred to in par. (26), as Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title.

AMENDMENTS

directed substitution of “subject merchandise” for “merchandise which is the subject of the investigation” in subpar. (B)(i), was executed by making the substitution in subpar. (C)(i) to reflect the probable intent of Congress.

Par. (30). Pub. L. 104–295, § 20(b)(14), substituted “Agreement” for “agreement” after “applies the WCO”.

1994—Par. (1). Pub. L. 103–465, § 233(b)(2), substituted “Secretary of Commerce” for “Secretary of the Treasury”.

heading and text of subpar. (A) generally. Prior to amend-
ment, text read as follows: ‘‘The term ‘industry’ means the
domestic producers as a whole of a like product, or those
producers whose collective output of the like product constitutes a major proportion of the total
domestic production of that product; except that in the
case of wine and grape products subject to investiga-
tion under this subtitle, the term also means the do-
mestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those
producers allege material injury, or threat of material
injury, as a result of imports of such wine and grape
products.’’

heading and text of subpar. (B) generally. Prior to amend-
ment, text read as follows: ‘‘When some producers are related to the exporters or importers, or are themselves
importers of the allegedly subsidized or dumped mer-
chandise, the term ‘industry’ may be applied in appro-
propriate circumstances by excluding such producers from those included in that industry.’’

provisions, substituted “dumped imports or imports of
merchandise benefiting from a countervailable sub-
sidy” for “subsidized or dumped imports” in two
places.

“domestic like product” for “like product” in cl. (i) and
concluding provisions, and inserted at end of con-
cluding provisions “The term ‘regional industry’ means
the domestic producers within a region who are treated
as a separate industry under this subparagraph.”

Par. (4)(D). Pub. L. 103–465, §§ 233(a)(3)(A)(i), 270(c)(2), substituted “domestic like product” for “like product” wherever appearing and “dumped imports or imports of
merchandise benefiting from a countervailable sub-
sidy” for “subsidized or dumped imports” in two
places.

Pars. (5) to (5B). Pub. L. 103–465, § 251(a), added pars.
(5) to (5B), and struck out former par. (5) which defined
“subsidy”.

Par. (6). Pub. L. 103–465, § 251(b), inserted “counter-
vailable” before “subsidy” wherever appearing in
heading and text.

tuted “subject merchandise” for “merchandise
which is the subject of the investigation”.

Par. (7)(B)(i)(II), (III), (C)(iii)(I). Pub. L. 103–465, § 233(a)(3)(BB), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.


and struck out former cl. (iv) which directed that Commission cumulatively assess volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of domestic industry in United States market, with an exception for imports
which are products of country designated as beneficiary country under Caribbean Basin Economic Recovery Act.

Par. (7)(C)(v). Pub. L. 103–465, §222(d)(1), struck out heading and text of cl. (v). Prior to amendment, text read as follows: “The Commission is not required to apply clause (iv) or subparagraph (F)(iv) in any case in which the Commission determines that imports of the merchandise subject to investigation are negligible and have no discernable adverse impact on the domestic industry.

Par. (7)(E)(i). Pub. L. 103–465, §226, amended heading and text of cl. (i) generally. Prior to amendment, text read as follows: “In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.”

Par. (7)(F)(i), (ii). Pub. L. 103–465, §222(c), amended clis. (i) and (ii) generally, substituting present provisions for provisions which listed factors in determining as well as basis for determining that an industry is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise.

Par. (7)(F)(ii)(I). Pub. L. 103–465, §222(b)(1)(A), in subcl. (I), substituted “WTO member” for “GATT member”, and in subcl. (II), substituted “WTO member” for “GATT member” in heading and text before “market”, and “WTO member” for “GATT member” for “termary to The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).”

Par. (7)(F)(iv). Pub. L. 103–465, §222(a)(1), struck out heading and text of cl. (iv). Prior to amendment, text read as follows: “To the extent practicable and subject to subparagraph (C)(iv)(II) and (v), for purposes of clause (I)(III) and (IV) the Commission may cumulatively assess the volume and price effects of imports from two or more countries if such imports—

(I) compete with each other, and with like products of the domestic industry, in the United States market, and

(II) are subject to any investigation under section 1303, 1671, or 1673 of this title.”

Par. (7)(G), (H). Pub. L. 103–465, §222(e)(2), added subpars. (G) and (H).


Par. (7)(J). Pub. L. 103–465, §222(f), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: “The terms ‘Agreement on Subsidies and Countervailing Measures’ and ‘Agreement’ mean the Agreement on Implementation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures) approved under section 2503(a) of this title.”

Par. (9)(A). Pub. L. 103–465, §§222(g)(1), 233(a)(5)(CC), substituted “subject merchandise” for “merchandise which is the subject of an investigation under this subtitle” and inserted “producers, exporters, or” before “importers”.

Par. (9)(B). Pub. L. 103–465, §222(g)(2), inserted “or from which such merchandise is exported” after “manufactured”.


Par. (11). Pub. L. 103–465, §221(b), inserted “, including a determination under section 1675 of this title,” after “determination by the Commission” in introductory provisions.

Par. (13). Pub. L. 103–465, §222(f)(2), struck out heading and text of par. (13). Text read as follows: “For the purpose of determining United States price, the term ‘exporter’ includes the person by whom or for whose account the merchandise is imported into the United States if—

(A) such person is the agent or principal of the exporter, manufacturer, or producer;

(B) such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

(C) the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business carried on by such person; or

(D) any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer, or producer.”

Par. (15). Pub. L. 103–465, §222(h), substituted “subject merchandise” for “merchandise which is the subject of an investigation” and inserted at end “The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

(A) Sales disregarded under section 1677b(b)(1) of this title.

(B) Transactions disregarded under section 1677ba(f)(2) of this title.”

Par. (16). Pub. L. 103–465, §233(a)(4), substituted “Foreign like product” for “Such or similar merchandise” as heading and “foreign like product” for “such or similar merchandise” in introductory provisions.

Par. (16)(A). Pub. L. 103–465, §233(a)(5)(DD), substituted “subject merchandise” for “merchandise which is the subject of an investigation”.

Par. (16)(B)(i). Pub. L. 103–465, §233(a)(5)(EE), which directed the substitution of “subject merchandise” for “merchandise which is the subject of an investigation”, was executed by making the substitution for text which contained the words “the investigation” rather than “an investigation”, to reflect the probable intent of Congress.

Par. (17). Pub. L. 103–465, §233(a)(5)(FF), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.


1990—Par. (7)(C)(iv). Pub. L. 101–382, §224(a), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: “For purposes of clauses (i) and (ii), the Com-
mission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market."

Par. (7)(F)(iv). Pub. L. 101–382, § 224(b), substituted "(C)(iv)(II) and (v)" for "(C)(v)".


Par. (5). Pub. L. 100–418, § 1312, amended par. (5) generally. Prior to amendment, par. (5) read as follows: "The term ‘subsidy’ has the same meaning as the term ‘bounty or grant’ as that term is used in section 1303 of this title, and includes, but is not limited to, the following:

(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

(ii) The provision of goods or services at preferential rates.

(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(iv) The assumption of any costs or expenses of manufacture, production, or distribution.

Par. (7)(B). Pub. L. 100–418, § 1328(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "In making its determinations under sections 1671(a), 1671(b), 1673(a), and 1673d(b) of this title, the Commission shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation,

(ii) the effect of imports of that merchandise on prices in the United States for like products, and

(iii) the impact of imports of such merchandise on domestic producers of like products.

Par. (7)(C). Pub. L. 100–418, § 1328(2), in heading substituted "relevant factors" for "volume and of price effects", in cl. (ii)(I) substituted "underselling" for "undercutting", and in cl. (iii) inserted "domestic" in heading and amended text generally. Prior to amendment, text of cl. (iii) read as follows: "In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices, and

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.


Par. (7)(F)(i)(ix). Pub. L. 100–418, § 1326(b), which directed that par. (7)(F) be amended by adding subcl. (ix) to par. (7)(F)(i) to reflect the probable intent of Congress.


Par. (9)(G). Pub. L. 100–418, § 1326(c), added subpar. (G).


Par. (19). Pub. L. 100–647 redesignated par. (19), relating to application to governmental importations, as (20).


Par. (20). Pub. L. 100–418, § 1327, added par. (19) relating to equivalency of leases to sales.

Par. (20). Pub. L. 100–647 redesignated par. (19), relating to application to governmental importations, as (20).


Par. (7)(F)(iv). Pub. L. 98–573, § 612(a)(1), inserted provision that in the case of wine and grape products subject to investigation under this subtitle, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material injury, or threat of material injury, as a result of imports of such wine and grape products.


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 412(b) of Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516(a)(1)(B) or (2)(B)(i), (ii), or (iii) of this title, notice of which is published in the Federal Register before such date, or to any determination described in section 1516(a)(2)(B)(vi) of this title, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 224(c) of Pub. L. 101–382 provided that: ‘The amendments made by subsections (a) and (b) [amending this section] apply with respect to investigations (including investigations regarding products of Canadian origin) initiated under section 702 or 732 of the Tariff Act of 1930 [19 U.S.C. 1671a, 1673a] on or after the date of the enactment of this Act [Aug. 20, 1990].’

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as a note under section 58c of this title.

Amendment by Pub. L. 100–449 effective on date United States-Canada Free-Trade Agreement enters
into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–148, set out in a note under section 2112 of this title.

Amendment by sections 1312, 1316(b), 1326(a)(c), and 1237–1239 of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and to reviews initiated under section 1675(c) of this title after Aug. 23, 1988, see section 1337(b) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 1671 of this title.

Amendment by section 1330 of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, see section 1337(c) of Pub. L. 100–418.

Amendment by section 1335 of Pub. L. 100–418 applicable with respect to entries, and withdrawals from warehouse for consumption, that are liquidated on or after Aug. 23, 1988, see section 1337(e) of Pub. L. 100–418.

§ 1677–1. Upstream subsidies

(a) “Upstream subsidy” defined

The term “upstream subsidy” means any countervailable subsidy, other than an export subsidy, that—

(1) is paid or bestowed by an authority (as defined in section 1677(5) of this title) with respect to a product (hereafter in this section referred to as an “input product”) that is used in the same country as the authority in the manufacture or production of merchandise which is the subject of a countervailing duty proceeding; and

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country if the countervailable subsidy is provided by the customs union.

(b) Determination of competitive benefit

(1) In general

Except as provided in paragraph (2), the administering authority shall decide that a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1) of this section for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

(2) Adjustments

If the administering authority has determined in a previous proceeding that a countervailable subsidy is paid or bestowed on the input product that is used for comparison under paragraph (1), the administering authority may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the countervailable subsidy, or (B) select in lieu of that price a price from another source.

(c) Inclusion of amount of countervailable subsidy

If the administering authority decides, during the course of a countervailing duty proceeding that an upstream countervailable subsidy is
being or has been paid or bestowed regarding the subject merchandise, the administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit referred to in subparagraph (1)(B), except that in no event shall the amount be greater than the amount of the countervailable subsidy determined with respect to the upstream product.


**AMENDMENTS**


1994—Subsec. (a). Pub. L. 103-465, §268, inserted introductory provisions and struck out former introductory provisions which read as follows: “The term ‘upstream subsidy’ means any subsidy described in section 1677a(b)(1), (ii), (iii), or (iv) of this title by the government of a country—”, and in concluding provisions, inserted “countervailable” before “subsidy”.

Subsec. (a)(1). Pub. L. 103-465, §268(1), added par. (1) and struck out former par. (1) which read as follows: “is paid or bestowed by that government with respect to a product (hereafter referred to as an ‘input product’) that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding.”


Pub. L. 103-465, §270(a)(1)(L), (c)(3), inserted “countervailable” after “upstream” and substituted “the countervailable subsidy determined” for “subsidization determined”.

Pub. L. 103-465, §233(a)(5)(GG), substituted “subject merchandise” for “merchandise under investigation”.

1986—Subsec. (a). Pub. L. 99-514 substituted “(ii), (iii), or (iv)” for “(ii), or (iii)” in introductory provisions.

**Effective Date of 1994 Amendment**

Amendment by Pub. L. 103-465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103-465, set out as a note under section 1671 of this title.

**Effective Date of 1988 Amendment**

Amendment by Pub. L. 100-418 effective as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendments note under section 38c of this title.

### §1677a. Export price and constructed export price

#### (a) Export price

The term “export price” means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c) of this section.

#### (b) Constructed export price

The term “constructed export price” means the price at which the subject merchandise is...
first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d) of this section.

(c) Adjustments for export price and constructed export price

The price used to establish export price and constructed export price shall be—

(1) increased by—

(A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States,

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and

(C) the amount of any countervailing duty imposed on the subject merchandise under part I of this subtitle to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 1677(6)(C) of this title.

(d) Additional adjustments to constructed export price

For purposes of this section, the price used to establish constructed export price shall also be reduced by—

(1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)—

(A) commissions for selling the subject merchandise in the United States;

(B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;

(C) any selling expenses that the seller pays on behalf of the purchaser; and

(D) any selling expenses not deducted under subparagraph (A), (B), or (C);

(2) the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e) of this section; and

(3) the profit allocated to the expenses described in paragraphs (1) and (2).

(e) Special rule for merchandise with value added after importation

Where the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by using one of the following prices if there is a sufficient quantity of sales to provide a reasonable basis for comparison and the administering authority determines that the use of such sales is appropriate:

(1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person.

(2) The price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis.

(f) Special rule for determining profit

(1) In general

For purposes of subsection (d)(3) of this section, profit shall be an amount determined by multiplying the total actual profit by the applicable percentage.

(2) Definitions

For purposes of this subsection:

(A) Applicable percentage

The term “applicable percentage” means the percentage determined by dividing the total United States expenses by the total expenses.

(B) Total United States expenses

The term “total United States expenses” means the total expenses described in subsection (d)(1) and (2) of this section.

(C) Total expenses

The term “total expenses” means all expenses in the first of the following categories which applies and which are incurred by or on behalf of the foreign producer and foreign exporter of the subject merchandise and by or on behalf of the United States seller affiliated with the producer or exporter with respect to the production and sale of such merchandise:

(i) The expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.

(ii) The expenses incurred with respect to the narrowest category of merchandise sold in the United States and the export-
Subsection (a) Determination

In determining under this subtitle whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value. In order to achieve a fair comparison with the export price or constructed export price, normal value shall be determined as follows:

(1) Determination of normal value

(A) In general

The normal value of the subject merchandise shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price under section 1677(a)(1) or (b) of this title.

(B) Price

The price referred to in subparagraph (A) is—

(i) the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price, or

(ii) in a case to which subparagraph (C) applies, the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States, if—

(I) such price is representative;

(II) the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity (or value) of the subject merchandise sold in the United States or for export to the United States, and

(iii) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price or constructed export price.

(C) Third country sales

This subparagraph applies when—

(i) the foreign like product is not sold (or offered for sale) for consumption in the exporting country as described in subparagraph (B)(i),

(ii) the administering authority determines that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States, or

(iii) the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price.

For purposes of clause (ii), the aggregate quantity (or value) of the foreign like product sold in the exporting country shall normally be considered to be insufficient if such quantity (or value) is less than 5 percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

(2) Fictitious markets

No pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account in determining normal value. The occurrence of different movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for sale) in the exporting country after the issuance of an antidumping duty order may be considered by the administering authority as evidence of the establishment of a fictitious market for the foreign like product if the movement in such prices appears to reduce the amount by which the normal value exceeds the export price (or the constructed export price) of the subject merchandise.

(3) Exportation from an intermediate country

Where the subject merchandise is exported to the United States from an intermediate
country, normal value shall be determined in the intermediate country, except that normal value may be determined in the country of origin of the subject merchandise if—

(A) the producer knew at the time of the sale that the subject merchandise was destined for exportation;
(B) the subject merchandise is merely transshipped through the intermediate country;
(C) sales of the foreign like product in the intermediate country do not satisfy the conditions of paragraph (1)(B); or
(D) the foreign like product is not produced in the intermediate country.

(4) Use of constructed value

If the administering authority determines that the normal value of the subject merchandise cannot be determined under paragraph (1)(B)(i), then, notwithstanding paragraph (1)(B)(ii), the normal value of the subject merchandise may be the constructed value of that merchandise, as determined under subsection (e) of this section.

(5) Indirect sales or offers for sale

If the foreign like product is sold or, in the absence of sales, offered for sale through an affiliated party, the prices at which the foreign like product is sold (or offered for sale) by such affiliated party may be used in determining normal value.

(6) Adjustments

The price described in paragraph (1)(B) shall be—

(A) increased by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States;
(B) reduced by—
(i) when included in the price described in paragraph (1)(B), the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the foreign like product in condition packed ready for shipment to the place of delivery to the purchaser,
(ii) the amount, if any, included in the price described in paragraph (1)(B), attributable to any additional costs, charges, and expenses incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchaser, and
(iii) the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product, and
(C) increased or decreased by the amount of any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—
(i) the fact that the quantities in which the subject merchandise is sold or agreed to be sold to the United States are greater than or less than the quantities in which the foreign like product is sold, agreed to be sold, or offered for sale,
(ii) the fact that merchandise described in subparagraph (B) or (C) of section 1677(16) of this title is used in determining normal value, or
(iii) other differences in the circumstances of sale.

(7) Additional adjustments

(A) Level of trade

The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price or constructed export price and normal value, if the difference in level of trade—
(i) involves the performance of different selling activities; and
(ii) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

(B) Constructed export price offset

When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 1677a(d)(1)(D) of this title.

(8) Adjustments to constructed value

Constructed value as determined under subsection (e) of this section, may be adjusted, as appropriate, pursuant to this subsection.

(b) Sales at less than cost of production

(1) Determination; sales disregarded

Whenever the administering authority has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product,
§ 1677b

the administering authority shall determine whether, in fact, such sales were made at less than the cost of production. If the administering authority determines that sales made at less than the cost of production—

(A) have been made within an extended period of time in substantial quantities, and

(B) were not at prices which permit recovery of all costs within a reasonable period of time,

such sales may be disregarded in the determination of normal value. Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise.

(2) Definitions and special rules

For purposes of this subsection—

(A) Reasonable grounds to believe or suspect

There are reasonable grounds to believe or suspect that sales of the foreign like product were made at prices that are less than the cost of production of the product, if—

(i) in an investigation initiated under section 1677a of this title or a review conducted under section 1675 of this title, an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title provides information, based upon observed prices or constructed prices or costs, that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of the product; or

(ii) in a review conducted under section 1675 of this title involving a specific exporter, the administering authority disregarded some or all of the exporter’s sales pursuant to paragraph (1) in the investigation or if a review has been completed, in the most recently completed review.

(B) Extended period of time

The term “extended period of time” means a period that is normally 1 year, but not less than 6 months.

(C) Substantial quantities

Sales made at prices below the cost of production have been made in substantial quantities if—

(i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or

(ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.

(D) Recovery of costs

If prices which are below the per unit cost of production at the time of sale are above the weighted average per unit cost of production for the period of investigation or review, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

(3) Calculation of cost of production

For purposes of this part, the cost of production shall be an amount equal to the sum of—

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment.

For purposes of subparagraph (A), if the normal value is based on the price of the foreign like product sold for consumption in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation.

(c) Nonmarket economy countries

(1) In general

If—

(A) the subject merchandise is exported from a nonmarket economy country, and

(B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined under subsection (a) of this section,

the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

(2) Exception

If the administering authority finds that the available information is inadequate for purposes of determining the normal value of subject merchandise under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which merchandise that is—

(A) comparable to the subject merchandise, and

(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, is sold in other countries, including the United States.
(3) Factors of production
For purposes of paragraph (1), the factors of production utilized in producing merchandise include, but are not limited to—
(A) hours of labor required,
(B) quantities of raw materials employed,
(C) amounts of energy and other utilities consumed, and
(D) representative capital cost, including depreciation.

(4) Valuation of factors of production
The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—
(A) at a level of economic development comparable to that of the nonmarket economy country, and
(B) significant producers of comparable merchandise.

(d) Special rule for certain multinational corporations
Whenever, in the course of an investigation under this subtitle, the administering authority determines that—
(1) subject merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of the foreign like product which are located in another country or countries,
(2) subsection (a)(1)(C) of this section applies, and
(3) the normal value of the foreign like product produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like product produced in the facilities located in the exporting country,
it shall determine the normal value of the subject merchandise by reference to the normal value at which the foreign like product is sold in substantial quantities from one or more facilities outside the exporting country. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the cost of production (including taxes, labor, materials, and overhead) of the foreign like product produced in facilities outside the exporting country and costs of production of the foreign like product produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction. For purposes of this subsection, in determining the normal value of the foreign like product produced in a country outside of the exporting country, the administering authority shall determine its price at the time of exportation from the exporting country and shall make any adjustments required by subsection (a) of this section for the cost of all containers and coverings and all other costs, charges, and expenses incidental to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the exporting country.

(e) Constructed value
For purposes of this subtitle, the constructed value of imported merchandise shall be an amount equal to the sum of—
(1) the cost of materials and fabrication or other processing of any kind employed in producing the merchandise, during a period which would ordinarily permit the production of the merchandise in the ordinary course of business;
(2)(A) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or
(B) if actual data are not available with respect to the amounts described in subparagraph (A), then—
(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or
(ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or
(iii) the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise; and
(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the subject merchandise in condition packed ready for shipment to the United States.

For purposes of paragraph (1), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials.

(f) Special rules for calculation of cost of production and for calculation of constructed value
For purposes of subsections (b) and (e) of this section.—
§ 1677b

(1) Costs

(A) In general

Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

(B) Nonrecurring costs

Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

(C) Startup costs

(i) In general

Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation or review are affected by startup operations.

(ii) Startup operations

Adjustments shall be made for startup operations only where—

(I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and

(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.

(iii) Adjustment for startup operations

The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the merchandise at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation or review under this subtitle, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation or review. For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production that is characteristic of the merchandise, producer, or industry concerned is achieved.

(2) Transactions disregarded

A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

(3) Major input rule

If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).


AMENDMENTS

1994—Pub. L. 103–465 amended section generally, substituting present provisions for provisions relating to foreign market value, which provided for determination of value in subsec. (a), sales at less than cost of production in subsec. (b), treatment of merchandise from nonmarket economy countries in subsec. (c), special rule for certain multinational corporations in subsec. (d), determination of constructed value in subsec. (e), and exportation from an intermediate country in subsec. (f).


Subsec. (c). Pub. L. 100–418, § 1318, amended subsec. (c) generally, substituting provisions relating to nonmarket economy countries, for provisions relating to State-controlled economies.

Subsec. (e)(2) to (4). Pub. L. 100–418, § 1318, substituted “(4)” for “(3)” wherever appearing in par. (2), added par. (3), and redesignated former par. (3) as (4) and in introductory provisions substituted “paragraphs (2) and (3)” for “paragraph (2)”.


1984—Subsec. (a)(1). Pub. L. 98–573, § 615(1), substituted “time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subsection (e)(3) of this section with respect to such person” for “time of exportation of such merchandise to the United States” in provisions before subpar. (a), redesignated former subpars. (a)(1), (a)(2), and (a)(3) as (a)(2), (a)(3), and (a)(4), respectively, and substituted “(4)” for “(3)” wherever appearing in par. (2), added par. (3), and in introductory provisions substituted “paragraphs (2) and (3)” for “paragraph (2)”.

1983—Pub. L. 98–573, §§ 615–617, redesignated former subpara. (a)(1), (a)(2), and (a)(3) as (a)(2), (a)(3), and (a)(4), respectively, and substituted “(4)” for “(3)” wherever appearing in par. (2), added par. (3), and in introductory provisions substituted “paragraphs (2) and (3)” for “paragraph (2)”.

1981—Subsec. (a). Pub. L. 97–307, § 116(a), substituted “(4)” for “(3)” wherever appearing in par. (2), added par. (3), redesignated former par. (3) as (4) and in introductory provisions substituted “paragraphs (2) and (3)” for “paragraph (2)”.


AMENDMENTS

1994—Pub. L. 103–465 amended section generally, substituting present provisions for provisions relating to foreign market value, which provided for determination of value in subsec. (a), sales at less than cost of production in subsec. (b), treatment of merchandise from nonmarket economy countries in subsec. (c), special rule for certain multinational corporations in subsec. (d), determination of constructed value in subsec. (e), and exportation from an intermediate country in subsec. (f).


Subsec. (c). Pub. L. 100–418, § 1318, amended subsec. (c) generally, substituting provisions relating to nonmarket economy countries, for provisions relating to State-controlled economies.

Subsec. (e)(2) to (4). Pub. L. 100–418, § 1318, substituted “(4)” for “(3)” wherever appearing in par. (2), added par. (3), and redesignated former par. (3) as (4) and in introductory provisions substituted “paragraphs (2) and (3)” for “paragraph (2)”.


1984—Subsec. (a)(1). Pub. L. 98–573, § 615(1), substituted “time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subsection (e)(3) of this section with respect to such person” for “time of exportation of such merchandise to the United States” in provisions before subpar. (a), redesignated former subpars. (a)(1), (a)(2), and (a)(3) as (a)(2), (a)(3), and (a)(4), respectively, and substituted “(4)” for “(3)” wherever appearing in par. (2), added par. (3), and in introductory provisions substituted “paragraphs (2) and (3)” for “paragraph (2)”.

1983—Pub. L. 97–307, § 116(a), substituted “(4)” for “(3)” wherever appearing in par. (2), added par. (3), redesignated former par. (3) as (4) and in introductory provisions substituted “paragraphs (2) and (3)” for “paragraph (2)”.

Subsec. (f), Pub. L. 98–573, § 620(b), struck out subsec. (f) which related to the authority to use sampling techniques and to disregard insignificant adjustments.

Subsec. (g), Pub. L. 98–573, § 619(3), added subsec. (g).

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Effective Date of 1988 Amendment

Amendment by sections 1316(a) and 1318 of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, and amendment by section 1319 of Pub. L. 100–418 applicable with respect to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, and to reviews initiated under such sections which are pending on Aug. 23, 1988, and in which a request for revocation is pending on Aug. 23, 1988, see section 1337(b), (f) of Pub. L. 100–418, set out as a note under section 1671 of this title.

Effective Date of 1984 Amendment

Amendment by section 615 of Pub. L. 98–573 effective Oct. 30, 1984, and amendment by section 620(b) of Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1677d. Countervailable subsidy practices discovered during a proceeding

If, in the course of a proceeding under this subtitle, the administering authority discovers (June 17, 1930, ch. 497, title VII, § 773A, as added Pub. L. 103–465, title II, § 225(a), Dec. 8, 1994, 108 Stat. 4886.)

Effective Date

Section effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 1671 of this title.

§ 1677e. Hearings

(a) Investigation hearings

(1) In general

Except as provided in paragraph (2), the administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 1671d or 1673d of this title.

(2) Exception

If investigations are initiated under part I and part II of this subtitle regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with paragraph (1) for both investigations, unless the Commission considers that special circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

(b) Procedures

Any hearing required or permitted under this subtitle shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, or to section 702 of such title.


Amendments

1984—Subsec. (a). Pub. L. 98–573 designated existing provisions as par. (1), inserted "Except as provided in paragraph (2)," and added par. (2).

Effective Date of 1984 Amendment


§ 1677b–1. Currency conversion

(a) In general

In an antidumping proceeding under this subtitle, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise, except that, if it is established that a currency transaction on forward markets is directly linked to an export sale under consideration, the exchange rate specified with respect to such currency in the forward sale agreement shall be used to convert the foreign currency. Fluctuations in exchange rates shall be ignored.

(b) Sustained movement in foreign currency value

In an investigation under part II of this subtitle, if there is a sustained movement in the value of the foreign currency relative to the United States dollar, the administering authority shall allow exporters at least 60 days to adjust their export prices to reflect such sustained movement.
a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition, or if the administering authority receives notice from the Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, then the administering authority—

(1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding, or

(2) shall transfer the information (other than confidential information) concerning the practice, subsidy, or subsidy program to the library maintained under section 1677f(a)(1) of this title, if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to any other merchandise.


AMENDMENTS
1994—Pub. L. 103–465 substituted “Countervailable subsidy” for “Subsidy” in section catchline and amended text generally. Prior to amendment, text read as follows: “If, in the course of a proceeding under this subtitle, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

“(1) shall include the practice in the proceeding if it appears to be a subsidy with respect to the merchandise which is the subject of the proceeding, or

“(2) shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 1677f(a)(1) of this title, if the practice appears to be a subsidy with respect to any other merchandise.”


EFFECTIVE DATE OF 1994 AMENDMENT
Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigatory, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989
For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (§§1101–1147 and 1171–1177) or title XVIII (§§1180–1189A) of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1677e. Determinations on basis of facts available

(a) In general

If—

(1) necessary information is not available on the record, or

(2) an interested party or any other person—

(A) withholds information that has been requested by the administering authority or the Commission under this subtitle,

(B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 1677m of this title,

(C) significantly impedes a proceeding under this subtitle, or

(D) provides such information but the information cannot be verified as provided in section 1677m(i) of this title,

the administering authority and the Commission shall, subject to section 1677m(d) of this title, use the facts otherwise available in reaching the applicable determination under this subtitle.

(b) Adverse inferences

If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

(1) the petition,

(2) a final determination in the investigation under this subtitle,

(3) any previous review under section 1675 of this title or determination under section 1675b of this title, or

(4) any other information placed on the record.

(c) Corroboration of secondary information

When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corrobate that information from independent sources that are reasonably at their disposal.


AMENDMENTS
1994—Pub. L. 103–465 amended section generally, substituting present provisions for provisions relating to
verification of information, certification of submissions, and determinations required to be made on best information available.


Subsec. (b). Pub. L. 100–418, § 1331(1), (2), redesignated former subsec. (a) as (b) and in heading substituted “Verification” for “General rule”.

Subsec. (b)(3)(A). Pub. L. 100–418, § 1326(d)(1), which directed the amendment of this subtitle by substituting “paragraph (C), (D), (E), or (F), of section 1677(9) of this title” for “paragraph (C), (D), (E), or (F), of section 1677(9) of this title” was executed to subsec. (b)(3)(A) of this section by substituting “section 1677(9)(C), (D), (E), (F), or (G) of this title” for “section 1677(9)(C), (D), (E), or (F) of this title” to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 100–418, § 1331(1), redesignated former subsec. (b) as (c).

1984—Subsec. (a). Pub. L. 98–573 amended subsec. (a) generally, which prior to amendment read as follows: “Except with respect to information the verification of which is waived under section 1673(b)(2) of this title, the administering authority shall verify all information relied upon in making a final determination in an investigation. In publishing such a determination, the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its determination, which may include the information submitted in support of the petition.”

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and to reviews initiated under section 1673c(c) or 1675 of this title after Aug. 23, 1988, see section 1337(b) of Pub. L. 100–418, set out as a note under section 1671 of this title.

Effective Date of 1984 Amendment


§ 1677f. Access to information

(a) Information generally made available

(1) Public information function

There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) Progress of investigation reports

The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) Ex parte meetings

The administering authority and the Commission shall maintain a record of any ex parte meeting between—

(A) interested parties or other persons providing factual information in connection with a proceeding, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding.

If information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) Summaries; non-proprietary submissions

The administering authority and the Commission shall disclose—

(A) any proprietary information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

(b) Proprietary information

(1) Proprietary status maintained

(A) In general

Except as provided in subsection (a)(4)(A) of this section and subsection (c) of this section, information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—

(i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted or any review under this subtitle covering the same subject merchandise, or

(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this subtitle.

(B) Additional requirements

The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

(i) either—

(I) a non-proprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(II) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(ii) either—

(I) a statement which permits the administering authority or the Commis-
sion to release under administrative protective order, in accordance with subsection (c) of this section, the information submitted in confidence, or

(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

(2) Unwarranted designation

If the administering authority of the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

(3) Section 1675 reviews

Notwithstanding the provisions of paragraph (1), information submitted to the administering authority or the Commission in connection with a review under section 1675(b) or 1675(c) of this title which is designated as proprietary by the person submitting the information may, if the review results in the revocation of an order or finding (or termination of a suspended investigation) under section 1675(d) of this title, be used by the agency to which the information was originally submitted in any investigation initiated within 2 years after the date of the revocation or termination pursuant to a petition covering the same subject merchandise.

(c) Limited disclosure of certain proprietary information under protective order

(1) Disclosure by administering authority or Commission

(A) In general

Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during a proceeding.

Customer names obtained during any investigation which requires a determination under section 1671d(b) or 1673d(b) of this title may not be disclosed by the administering authority under protective order until either an order is published under section 1671e(a) or 1673e(a) of this title as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under section 1677c of this title.

(B) Protective order

The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(C) Time limitation on determinations

The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph—

(i) not later than 14 days (7 days if the submission pertains to a proceeding under section 1671b(a) or 1673b(a) of this title) after the date on which the information is submitted, or

(ii) if—

(I) the person that submitted the information raises objection to its release, or

(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 1671b(a) or 1673b(a) of this title) after the date on which the information is submitted.

(D) Availability after determination

If the determination under subparagraph (C) is affirmative, then—

(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date; and

(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d) of this section.

(E) Failure to disclose

If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.
(2) Disclosure under court order

If the administering authority denies a request for information under paragraph (1), then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1) of this section,

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

(d) Service

Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order; however, a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.


(f) Disclosure of proprietary information under protective orders issued pursuant to the North American Free Trade Agreement or the United States-Canada Agreement

(1) Issuance of protective orders

(A) In general

If binational panel review of a determination under this subtitle is requested pursuant to article 1904 of the NAFTA or the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the NAFTA or the United States-Canada Agreement, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material in the administrative record made during the proceeding in question. If the administering authority or the Commission claims a privilege as to a document or portion of a document in the administrative record of the proceeding in question and a binational panel or extraordinary challenge committee finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, the administering authority or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel or committee as requiring access and may require such persons to obtain access under a protective order described in paragraph (2).

(B) Authorized persons

For purposes of this subsection, the term “authorized persons” means—

(i) the members of, and the appropriate staff of, the binational panel or the extraordinary challenge committee, as the case may be, and the Secretariat,

(ii) counsel for parties to such panel or committee proceeding, and employees, and persons under the direction and control, of such counsel,

(iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement, and

(iv) any officer or employee of the Government of a free trade area country (as defined in section 1516a(f)(10) of this title) designated by an authorized agency of such country to whom disclosure is necessary in order to make decisions regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement.

(C) Review

A decision concerning the disclosure or nondisclosure of material under protective order by the administering authority or the Commission shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such decision on any question of law or fact by an action in the nature of mandamus or otherwise.

(2) Contents of protective order

Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall ensure that
§ 1677f

Title 19—Customs Duties

(1) Prohibited acts

It is unlawful for any person to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of a protective order issued under this subsection or to violate protective orders, the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of an undertaking entered into with an authorized agency of a free trade area country (as defined in section 1516a(10) of this title) to protect proprietary material during binational panel or extraordinary challenge committee review pursuant to article 1904 of the NAFTA or the United States-Canada Agreement.

(2) Sanctions for violation of protective orders

Any person, except a judge appointed to a binational panel or an extraordinary challenge committee under section 3432(b) of this title, who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with section 554 of title 5 to have committed an act prohibited by paragraph (3) shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering authority or the Commission determines to be appropriate. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by simultaneously sending a copy of such notice by certified mail to the administering authority or the Commission, as appropriate. The administering authority or the Commission shall promptly file in such court a certified copy of the record upon which such violation was found or such sanction imposed, as provided in section 2112 of title 28. The findings and order of the administering authority or the Commission shall be set aside by the court only if the court finds that such findings and order are not supported by substantial evidence, as provided in section 706(2) of title 5.

(3) Enforcement of sanctions

If any person fails to pay an assessment of a civil penalty or to comply with other administrative sanctions after the order imposing such sanctions becomes a final and unappealable order, or after the United States Court of International Trade has entered final judgment in favor of the administering authority or the Commission, an action may be filed in such court to enforce the sanctions. In such action, the validity and appropriateness of the final order imposing the sanctions shall not be subject to review.

(4) Testimony and production of papers

(A) Authority to obtain information

For the purpose of conducting any hearing and carrying out other functions and duties under this subsection, the administering authority and the Commission, or their duly authorized agents—

(i) shall have access to and the right to copy any pertinent document, paper, or record in the possession of any individual, partnership, corporation, association, organization, or other entity,

(ii) may summon witnesses, take testimony, and administer oaths,

(iii) and may require any individual or entity to produce pertinent documents, books, or records.

Any member of the Commission, and any person so designated by the administering authority, may sign subpoenas, and members and agents of the administering authority and the Commission, when authorized by the administering authority or the Commission, as appropriate, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(B) Witnesses and evidence

The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subparagraph (A) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena issued under subparagraph (A), an action may be filed in any district or territorial court of the United States to require the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity, issue any order requiring such individual or entity to appear before the administering authority or the Commission, or to produce documentary evidence if so ordered or to give evidence.
concerning the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(C) Mandamus
Any court referred to in subparagraph (B) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this subsection or any order of the administering authority or the Commission made in pursuance thereof.

(D) Depositions
For purposes of carrying out any functions or duties under this subsection, the administering authority or the Commission may order testimony to be taken by deposition. Such deposition may be taken before any person designated by the administering authority or Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the administering authority or Commission, as provided in this paragraph.

(E) Fees and mileage of witnesses
Witnesses summoned before the administering authority or the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(g) Information relating to violations of protective orders and sanctions
The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c) or (d) of this section, and such information shall be treated as information described in section 552(b)(3) of title 5.

(h) Opportunity for comment by consumers and industrial users
The administering authority and the Commission shall provide an opportunity for industrial users of the subject merchandise and, if the merchandise is sold at the retail level, for representative consumer organizations, to submit relevant information to the administering authority concerning dumping or a countervailable subsidy, and to the Commission concerning material injury by reason of dumped or subsidized imports.

(i) Publication of determinations; requirements for final determinations
(1) In general
Whenever the administering authority makes a determination under section 1671a or 1673a of this title whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 1671b or 1673b of this title, a final determination under section 1671d of this title or section 1673d of this title, a preliminary or final determination in a review under section 1675 of this title, a determination to suspend an investigation under this subtitle, or a determination under section 1675b of this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

(2) Contents of notice or determination
The notice or determination published under paragraph (1) shall include, to the extent applicable—
(A) in the case of a determination of the administering authority—
(i) the names of the exporters or producers of the subject merchandise or, when providing such names is impracticable, the countries exporting the subject merchandise to the United States,
(ii) a description of the subject merchandise that is sufficient to identify the subject merchandise,
(iii) with respect to a determination in an investigation under part I of this subtitle or section 1675b of this title or in a review of a countervailing duty order, the amount of the countervailable subsidy established and a full explanation of the methodology used in establishing the amount, and
(II) with respect to a determination in an investigation under part II of this subtitle or in a review of an antidumping duty order, the weighted average dumping margin established and a full explanation of the methodology used in establishing such margins, and
(iv) the primary reasons for the determination; and
(B) in the case of a determination of the Commission—
(i) considerations relevant to the determination of injury and
(ii) the primary reasons for the determination.

(3) Additional requirements for final determinations
In addition to the requirements set forth in paragraph (2)—
(A) the administering authority shall include in a final determination described in paragraph (1) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation or review (as the case may be), concerning the establishment of dumping or a countervailable subsidy, or the suspension of the investigation, with respect to which the determination is made; and
(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that address-
es relevant arguments that are made by interested parties who are parties to the investigation or review (as the case may be) concerning volume, price effects, and impact on the industry of imports of the subject merchandise.


AMENDMENTS


Subsec. (b)(1). Pub. L. 103–465, §226(a)(1), amended par. (1) generally, designating first sentence as subpar. (A), (i), rearranging provisions for clarity, and inserting provisions in cl. (i) relating to reviews under this subchapter covering same subject merchandise, and designating second sentence as subpar. (B) with corresponding redesignations of former subpars. as cl. and cls. as subcls. and subpars.

Subsec. (b)(2). Pub. L. 103–465, §226(b), inserted at end “In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.”

Subsec. (b)(3). Pub. L. 103–465, §226(a)(2), added par. (5). Subsec. (e). Pub. L. 103–465, §231(d)(1), struck out heading and text of subsec. (e). Text read as follows: “Information shall be submitted to the administering authority or the Commission during the course of a proceeding on a timely basis and shall be subject to protection as specified in section 1516a(a)(10) of this title”.

Subsec. (f)(1). Pub. L. 103–465, §231(c)(1), redesignated subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “...among other necessary information, a statement identifying the information.”

Subsec. (g). Pub. L. 101–382, §134(a)(4)(D), inserted “‘or knowingly to receive information the receipt of which constitutes a violation of,’” after “...after the violation of,” in two places.

Subsec. (h). Pub. L. 103–465, §§227, 228, added subsec. (h) and (i).


Subsec. (f)(1)(A). Pub. L. 103–182, §412(c)(2), (3), inserted “the NAFTA or” before “...the United States-Canada Agreement” in two places, in second sentence inserted “or extraordinary challenge committees” after “...bilateral panels,” and substituted “identified by the panel or committee” for “identified by the panel.”

Subsec. (f)(1)(B). Pub. L. 103–182, §412(c)(4), in cl. (iii), inserted “the NAFTA or” before “the Agreement” and in cl. (iv), inserted “the NAFTA or” before “the Agreement” and substituted “Government of a free trade area country (as defined in section 1516a(f)(10) of this title)” designated by an authorized agency of such country for “Government of Canada designated by an authorized agency of Canada”.

Subsec. (f)(2). Pub. L. 103–182, §412(c)(5), inserted “...including any extraordinary challenge,” after “...bilateral panels,” and substituted “agency of a free trade area country (as defined in section 1516a(f)(10) of this title)” for “agency of Canada” and inserted “or extraordinary challenge committee” after “binational panel” and “the NAFTA or” before “the United States-Canada Agreement”.

Subsec. (f)(3). Pub. L. 103–182, §412(c)(6), (7), substituted “agency of a free trade area country (as defined in section 1516a(f)(10) of this title)” for “agency of Canada.”

Subsec. (f)(4). Pub. L. 103–182, §412(c)(7), (8), inserted “..., except a judge appointed to a binational panel or an extraordinary challenge committee under section 1672(a)(b) or 1673(b), a judge may not disclose the information to the administering authority under protective order unless either an order is published under section 1671(a) or 1673(a) of this title as a result of the investigation or the investigation is terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under this chapter.”

Subsec. (g). Pub. L. 101–382, §134(a)(4), added subsec. (g), relating to disclosure of proprietary information, etc., as (f).


Subsec. (f)(1)(A). Pub. L. 101–382, §134(a)(4)(A), struck out “(but not privileged material as defined by the rules of procedure referred to in article 1904(14) of the United States-Canada Agreement)” after “all proprietary material” and inserted at end “If the administering authority or the Commission claims a privilege as to a document or portion of a document in the administrative record of the proceeding in question and a binational panel finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, the administering authority or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel as requiring access and may require such persons to obtain access under a protective order described in paragraph (2), or terminate the privilege provided under this chapter.”

Subsec. (f)(1)(B)(ii) to (iv). Pub. L. 101–382, §134(a)(4)(B), inserted “...the direction and control,” after “employees” in cl. (ii), substituted “make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the Agreement, and for ‘‘implement the United States-Canada Agreement with respect to such proceeding,’’ in cl. (iii), and added cl. (iv).

Subsec. (f)(3). Pub. L. 101–382, §134(a)(4)(C), struck out “...and persons under the direction and control,” after “employees” in cl. (ii), substituted “make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the Agreement, and for ‘‘implement the United States-Canada Agreement with respect to such proceeding,’’ in cl. (iii), and added cl. (iv).

Subsec. (f)(4). Pub. L. 101–382, §134(a)(4)(D), inserted provisions relating to receipt of information with reason to know the information was disclosed in violation.


Subsec. (c)(1)(A). Pub. L. 100–418, §1323(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “Upon receipt of an application, (before or after receipt of the information requested) which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make proprietary information submitted by any other party to the investigation available under a protective order described in subparagraph (B).”

Subsec. (c)(1)(C) to (E). Pub. L. 100–418, §1323(2)(B), added subpars. (C) to (E).
Subsec. (c)(2). Pub. L. 100–418, §1332(3), struck out “or the Commission denies a request for proprietary information submitted by the petitioner or an interested party in support of the petition concerning the domestic price or cost of production of the like product,” after “information under paragraph (1).”.

Subsec. (d). Pub. L. 100–449 added subsec. (d) relating to disclosure of proprietary information, etc.

Pub. L. 100–418, §1332(4), added subsec. (d) relating to service.


For purposes of determining the export price (or constructed export price) under section 1677f–1 of this title or the normal value under section 1677b of this title, and in carrying out reviews under section 1675 of this title, the administering authority may—

(1) use averaging and statistically valid samples, if there is a significant volume of sales of the subject merchandise or a significant number or types of products, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) Selection of averages and samples

The authority to select averages and statistically valid samples shall rest exclusively with
the administering authority. The administering authority shall, to the greatest extent possible, consult with the exporters and producers regarding the method to be used to select exporters, producers, or types of products under this section.

(c) Determination of dumping margin

(1) General rule

In determining weighted average dumping margins under section 1673(b)(d), 1673(d)(c), or 1675(a) of this title, the administering authority shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise.

(2) Exception

If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to—

(A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or

(B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

(d) Determination of less than fair value

(1) Investigations

(A) In general

In an investigation under part II of this subtilte, the administering authority shall determine whether the subject merchandise is being sold in the United States at less than fair value—

(i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or

(ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(B) Exception

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if—

(i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and

(ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

(2) Reviews

In a review under section 1675 of this title, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

(e) Determination of countervailable subsidy rate

(1) General rule

In determining countervailable subsidy rates under section 1671b(d), 1671d(c), or 1675(a) of this title, the administering authority shall determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.

(2) Exception

If the administering authority determines that it is not practicable to determine individual countervailable subsidy rates under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may—

(A) determine individual countervailable subsidy rates for a reasonable number of exporters or producers by limiting its examination to—

(i) a sample of exporters or producers that the administering authority determines is statistically valid based on the information available to the administering authority at the time of selection, or

(ii) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined; or

(B) determine a single country-wide subsidy rate to be applied to all exporters and producers.

The individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 1671d(c)(5) of this title.


AMENDMENTS


Pub. L. 103–465, §269(a), added subsec. (e).

Pub. L. 103–465, §1229(a), amended section generally, substituting present provisions for provisions authorizing use of averaging or generally recognized sampling techniques for purposes of determining United States price or foreign market value and for purposes of annual reviews under section 1675 of this title, and providing for selection of samples and averages by administering authority.
Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Effective Date

Section applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

§1677g. Interest on certain overpayments and underpayments

(a) General rule

Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after—

(1) the date of publication of a countervailing or antidumping duty order under this subtitle or section 1303 of this title, or

(2) the date of a finding under the Antidumping Act, 1921.

(b) Rate

The rate of interest payable under subsection (a) of this section for any period of time is the rate of interest established under section 6621 of title 26 for such period.

(June 17, 1930, ch. 497, title VII, §778, as added Pub. L. 96–39, title I, §101, July 26, 1979, 93 Stat. 188; amended, which was classified generally to sections 160 to 171 of this title, and was repealed by Pub. L. 96–39, title I, §106(a), July 26, 1979, 93 Stat. 193.

References in Text

Section 1303 of this title, referred to in subsec. (a)(1), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

The Antidumping Act, 1921, referred to in subsec. (b)(2), is act May 27, 1921, ch. 14, title II, 42 Stat. 11, as amended, which was classified generally to sections 160 to 171 of this title, and was repealed by Pub. L. 96–39, title I, §106(a), July 26, 1979, 93 Stat. 193.

Amendments


generally, substituting provisions making interest payable on and after the date of publication of a countervailing or antidumping duty order under this subtitle or section 1303 of this title or the date of a finding under the Antidumping Act, 1921 for provisions making interest payable on and after the date on which notice of an affirmative determination by the Commission under section 1677d(b) or 1673d(b) of this title with respect to such merchandise was published.

Subsec. (b). Pub. L. 98–573 amended subsec. (b) generally, substituting provisions that the rate of interest payable under subsec. (a) for any period of time is the rate of interest established under section 6621 of title 26 for such period for provision that the rate at which such interest was payable would be 8 percent per annum or, if higher, the rate in effect under section 6621 of title 26 on the date on which the rate or amount of the duty was finally determined.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–573 applicable with respect to merchandise that is unliquidated on or after Nov. 4, 1984, see section 626(b)(4) of Pub. L. 98–573, set out as a note under section 1671 of this title.

§1677h. Drawback treatment

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this subtitle shall not be treated as being regular customs duties.


Amendments

1988—Pub. L. 100–418 substituted “Drawback treatment” for “‘Drawbacks’ in section catchline and ‘not be treated as being regular’ for ‘‘be treated as any other’” in text.

Effective Date of 1986 Amendment

Amendment by Pub. L. 100–418 applicable with respect to articles entered, or withdrawn from warehouse, for consumption, on or after Aug. 23, 1988, see section 1337(d) of Pub. L. 100–418, set out as a note under section 1671 of this title.

Effective Date

Section effective Oct. 30, 1984, see section 626(a) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

§1677i. Downstream product monitoring

(a) Petition requesting monitoring

(1) In general

A domestic producer of an article that is like a component part or a downstream product may petition the administering authority to designate a downstream product for monitoring under subsection (b) of this section. The petition shall specify—

(A) the downstream product,

(B) the component product incorporated into such downstream product, and

(C) the reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of such downstream product.

(2) Determination regarding petition

Within 14 days after receiving a petition submitted under paragraph (1), the administering authority shall determine—

(A) whether there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with respect to the component part, and

(B) whether—

(i) the component part is already subject to monitoring to aid in the enforcement of

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1 See References in Text note below.
§ 1677i  TITLE 19—CUSTOMS DUTIES  Page 370

a bilateral arrangement (within the meaning of section 804 of the Trade and Tariff Act of 1984),
(ii) merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of investigations suspended under section 1671c or 1673c of this title or countervailing or antidumping duty orders issued under this subtitle or section 1303 1 of this title, or
(iii) merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least 2 investigations suspended under section 1671c or 1673c of this title or countervailing or antidumping duty orders issued under this subtitle or section 1303 1 of this title.

(3) Factors to take into account
In making a determination under paragraph (2)(A), the administering authority may, if appropriate, take into account such factors as—
(A) the value of the component part in relation to the value of the downstream product,
(B) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product, and
(C) the relationship between the producers of component parts and producers of downstream products.

(4) Publication of determination
The administering authority shall publish in the Federal Register notice of each determination made under paragraph (2) and, if the determination made under paragraph (2)(B) are affirmative, shall transmit a copy of such determinations and the petition to the Commission.

(5) Determinations not subject to judicial review
Notwithstanding any other provision of law, any determination made by the administering authority under paragraph (2) shall not be subject to judicial review.

(b) Monitoring by Commission
(1) In general
If the determination made under subsection (a)(2)(A) of this section and a determination made under any clause of subsection (a)(2)(B) of this section with respect to a petition are affirmative, the Commission shall immediately commence monitoring of trade in the downstream product that is the subject of the determination made under subsection (a)(2)(A) of this section. If the Commission finds that imports of a downstream product being monitored increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission shall analyze that increase in the context of overall economic conditions in the product sector.

(2) Reports
The Commission shall make quarterly reports to the administering authority regarding the monitoring and analyses conducted under paragraph (1). The Commission shall make the reports available to the public.

(c) Action on basis of monitoring reports
The administering authority shall review the information in the reports submitted by the Commission under subsection (b)(2) of this section and shall—
(1) consider the information in determining whether to initiate an investigation under section 1671a(a) or 1673a(a) of this title regarding any downstream product, and
(2) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

(d) Definitions
For purposes of this section—
(1) the term “component part” means any imported article that—
(A) during the 5-year period ending on the date on which the petition is filed under subsection (a) of this section, has been subject to—
(i) a countervailing or antidumping duty order issued under this subtitle or section 1303 1 of this title that requires the deposit of estimated countervailing or antidumping duties imposed at a rate of at least 15 percent ad valorem, or
(ii) an agreement entered into under section 1671c, 1673c, or 1303 1 of this title after a preliminary affirmative determination under section 1671b(b), 1673b(b)(1), or 1303 1 of this title was made by the administering authority which included a determination that the estimated net countervailing subsidy was at least 15 percent ad valorem or that the estimated average amount by which the normal value exceeded the export price (or the constructed export price) was at least 15 percent ad valorem, and
(B) because of its inherent characteristics, is routinely used as a major part, component, assembly, subassembly, or material in a downstream product,
(2) the term “downstream product” means any manufactured article—
(A) which is imported into the United States, and
(B) into which is incorporated any component part.

References in Text

1 See References in Text note below.
98–573, which is set out as a note under section 2253 of this title.

Section 1303 of this title, referred to in subsecs. (a)(2)(B)(ii), (iii) and (d)(1)(A)(ii)(I), (ii), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–465, §261(d)(1)(B)(iv), substituted ‘‘or 1673(a)(a)’’ for ‘‘, 1673(a), or 1303’’.


Pub. L. 103–465, §253(a)(1)(E), (2)(A)(vi), substituted ‘‘normal value’’ for ‘‘foreign market value’’ and ‘‘export price (or the constructed export price)’’ for ‘‘United States price’’.

subsection (c)(1) is effective on the effective date of title II of Pub. L. 103–465, Jan. 1, 1995, and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 251 of Pub. L. 103–465, set out as a note under section 1671 of this title.


§1677j. Prevention of circumvention of antidumping and countervailing duty orders

(a) Merchandise completed or assembled in United States

(1) In general

If—

(A) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

(1) an antidumping duty order issued under section 1673e of this title,

(2) a finding issued under the Antidumping Act, 1921, or

(3) a countervailing duty order issued under section 1671e of this title or section 1303 of this title,

(B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the United States is minor or insignificant, and

(D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise,

the administering authority, after taking into account any advice provided by the Commission under subsection (e) of this section, may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

1 See References in Text note below.

(2) Determination of whether process is minor or insignificant

In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—

(A) the level of investment in the United States,

(B) the level of research and development in the United States,

(C) the nature of the production process in the United States,

(D) the extent of production facilities in the United States, and

(E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

(3) Factors to consider

In determining whether to include parts or components in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade, including sourcing patterns,

(B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in paragraph (1) applies, and

(C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(b) Merchandise completed or assembled in other foreign countries

(1) In general

If—

(A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of—

(i) an antidumping duty order issued under section 1673e of this title,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 1671e of this title or section 1303 of this title,

(B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(i) is subject to such order or finding, or

(ii) is produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant,

(D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant
portion of the total value of the merchandise exported to the United States, and
(E) the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding.

the administering authority, after taking into account any advice provided by the Commission under subsection (e) of this section, may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

(2) Determination of whether process is minor or insignificant

In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—
(A) the level of investment in the foreign country,
(B) the level of research and development in the foreign country,
(C) the nature of the production process in the foreign country,
(D) the extent of production facilities in the foreign country, and
(E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

(3) Factors to consider

In determining whether to include merchandise assembled or completed in a foreign country in a countervailing duty order or an antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—
(A) the pattern of trade, including sourcing patterns,
(B) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B) is affiliated with the person who uses the merchandise described in paragraph (1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and
(C) whether imports into the foreign country of the merchandise described in paragraph (1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(c) Minor alterations of merchandise

(1) In general

The class or kind of merchandise subject to—
(A) an investigation under this subtitle,
(B) an antidumping duty order issued under section 1673a of this title,
(C) a finding issued under the antidumping Act, 1921,
(D) a countervailing duty order issued under section 1671e of this title or section 1303 of this title, and
(E) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) Exception

Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

(d) Later-developed merchandise

(1) In general

For purposes of determining whether merchandise developed after an investigation is initiated under this subtitle or section 1303 of this title (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an outstanding antidumping or countervailing duty order issued under this subtitle or section 1303 of this title as a result of such investigation, the administering authority shall consider whether—
(A) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier product").
(B) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product.
(C) the ultimate use of the earlier product and the later-developed merchandise are the same.
(D) the later-developed merchandise is sold through the same channels of trade as the earlier product, and
(E) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

The administering authority shall take into account any advice provided by the Commission under subsection (e) of this section before making a determination under this subparagraph.

(2) Exclusion from orders

The administering authority may not exclude a later-developed merchandise from a countervailing or antidumping duty order merely because the merchandise—
(A) is classified under a tariff classification other than that identified in the petition or the administering authority’s prior notices during the proceeding, or
(B) permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise.

(e) Commission advice

(1) Notification to Commission of proposed action

Before making a determination—
(A) under subsection (a) of this section with respect to merchandise completed or
assembled in the United States (other than minor completion or assembly),

(B) under subsection (b) of this section with respect to merchandise completed or assembled in other foreign countries, or

(C) under subsection (d) of this section with respect to any later-developed merchandise which incorporates a significant technological advance or significant alteration of an earlier product,

with respect to an antidumping or countervailing duty order or finding as to which the Commission has made an affirmative injury determination, the administering authority shall notify the Commission of the proposed inclusion of such merchandise in such countervailing or antidumping order or finding. Notwithstanding any other provision of law, a decision by the administering authority regarding whether any merchandise is within a category for which notice is required under this paragraph is not subject to judicial review.

(2) Request for consultation

After receiving notice under paragraph (1), the Commission may request consultations with the administering authority regarding the inclusion. Upon the request of the Commission, the administering authority shall consult with the Commission and any such consultation shall be completed within 15 days after the date of the request.

(3) Commission advice

If the Commission believes, after consultation under paragraph (2), that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the administering authority as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order or finding is based. If the Commission decides to provide such written advice, it shall promptly notify the administering authority of its intention to do so, and must provide such advice within 60 days after the date of notification under paragraph (1). For purposes of formulating its advice, the Commission may provide written advice to the administering authority as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order or finding is based. If the Commission decides to provide such such advice, it shall promptly notify the administering authority of its intention to do so, and must provide such advice within 60 days after the date of notification under paragraph (1). For purposes of formulating its advice, the Commission may provide written advice to the administering authority as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order or finding is based.

(f) Time limits for administering authority determinations

The administering authority shall, to the maximum extent practicable, make the determinations under this section within 300 days from the date of the initiation of a countervailing duty or antidumping circumvention inquiry under this section.


Section 1303 of this title, referred to in subsecs. (a)(1)(A)(ii), (b)(1)(A)(ii), (c)(1)(D), and (d)(1), is defined in section 1677(b) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

AMENDMENTS

1994—Subsecs. (a), (b), Pub. L. 103-465, §230(a), amended subsecs. (a) and (b) generally, to include provisions relating to whether process of assembly or completion of merchandise in United States or foreign countries is minor or insignificant.

Subsec. (f), Pub. L. 103-465, §230(b), added subsec. (f).

Effective Date of 1994 Amendment

Amendment by Pub. L. 103-465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 251 of Pub. L. 103-465, set out as a note under section 1671 of this title.

§ 1677k. Third-country dumping

(a) Definitions

For purposes of this section:

(1)(A) The term “Agreement” means the Agreement on Implementation of Article VI of the GATT 1994 (relating to antidumping measures).

(B) The term “GATT 1994” has the meaning given that term in section 3501(1)(B) of this title.

(2) The term “Agreement country” means a foreign country that has accepted the Agreement.

(3) The term “Trade Representative” means the United States Trade Representative.

(b) Petition by domestic industry

(1) A domestic industry that produces a product that is like or directly competitive with merchandise produced by a foreign country (whether or not an Agreement country) may, if it has reason to believe that—

(A) such merchandise is being dumped in an Agreement country; and

(B) such domestic industry is being materially injured, or threatened with material injury, by reason of such dumping;

submit a petition to the Trade Representative that alleges the elements referred to in subparagraphs (A) and (B) and requests the Trade Representative to take action under subsection (c) of this section on behalf of the domestic industry.

(2) A petition submitted under paragraph (1) shall contain such detailed information as the Trade Representative may require in support of the allegations in the petition.

(c) Application for antidumping action on behalf of domestic industry

(1) If the Trade Representative, on the basis of the information contained in a petition submit-
§ 1677f. Antidumping and countervailing duty collections

The Commissioner of Customs shall before the 60th day of each fiscal year after fiscal year 1994 submit to Congress a report regarding the collection during the preceding fiscal year of duties imposed under the antidumping and countervailing duty laws.


Codification

Section was enacted as part of the North American Free Trade Agreement Implementation Act, and not as part of the Tariff Act of 1930 which comprises this chapter.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as amended, set out as a note under section 542 of Title 6.

§ 1677m. Conduct of investigations and administrative reviews

(a) Treatment of voluntary responses in countervailing or antidumping duty investigations and reviews

In any investigation under part I or II of this subtitle or a review under section 1675(a) of this title in which the administering authority has, under section 1677f-1(c)(2) of this title or section 1677f-1(e)(2)(A) of this title (whichever is applicable), limited the number of exporters or producers examined, or determined a single country-wide rate, the administering authority shall establish an individual countervailable subsidy rate or an individual weighted average dumping margin for any exporter or producer not initially selected for individual examination under such sections who submits to the administering authority the information requested from exporters or producers selected for examination, if—

(1) such information is so submitted by the date specified—

(A) for exporters and producers that were initially selected for examination, or

(B) for the foreign government, in a countervailing duty case where the administering authority has determined a single country-wide rate; and

(2) the number of exporters or producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation.

(b) Certification of submissions

Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this subtitle on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person’s knowledge.

(c) Difficulties in meeting requirements

(1) Notification by interested party

If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering au-
authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

(2) Assistance to interested parties

The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations and reviews under this subtitle, and shall provide to such interested parties any assistance that is practicable in supplying such information.

(d) Deficient submissions

If the administering authority or the Commission determines that a response to a request for information under this subtitle does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this subtitle. If that person submits further information in response to such deficiency and either—

(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (e) of this section, disregard all or part of the original and subsequent responses.

(e) Use of certain information

In reaching a determination under section 1671d, 1673d, 1675, or 1675b of this title the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission, if—

(1) the information is submitted by the deadline established for its submission,

(2) the information can be verified,

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and

(5) the information can be used without undue difficulties.

(f) Nonacceptance of submissions

If the administering authority or the Commission declines to accept into the record any information submitted in an investigation or review under this subtitle, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

(g) Public comment on information

Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this subtitle shall be subject to comment by other parties to the proceeding within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 1671d, 1673d, 1675, or 1675b of this title shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

(h) Termination of investigation or revocation of order for lack of interest

The administering authority may—

(1) terminate an investigation under part I or II of this subtitle with respect to a domestic like product if, prior to publication of an order under section 1671e or 1673e of this title, the administering authority determines that producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in issuance of an order; and

(2) revoke an order issued under section 1671e or 1673e of this title with respect to a domestic like product, or terminate an investigation suspended under section 1671e or 1673e of this title with respect to a domestic like product, if, prior to publication of an order for lack of interest

(a) the administration or the Commission with respect to a domestic like product,

(b) the administration or the Commission under section 1671e or 1673e of this title with respect to a domestic

(c) the administration or the Commission during the course of a proceeding under this subtitle, and

(d) the administration or the Commission provided with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

(i) Verification

The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation,

(2) a revocation under section 1675(d) of this title, and

(3) a final determination in a review under section 1675(a) of this title, if—

(A) verification is timely requested by an interested party as defined in section 1677(9)(C), (D), (E), (F), or (G) of this title, and

(B) no verification was made under this subparagraph during the 2 immediately preceding reviews and determinations under section 1675(a) of this title of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

§ 1677n. Antidumping petitions by third countries

(a) Filing of petition

The government of a WTO member may file with the Trade Representative a petition requesting that an investigation be conducted to determine if—

(1) imports from another country are being sold in the United States at less than fair value, and

(2) an industry in the petitioning country is materially injured by reason of those imports.

(b) Initiation

The Trade Representative, after consultation with the administering authority and the Commission and obtaining the approval of the WTO Council for Trade in Goods, shall determine whether to initiate an investigation described in subsection (a) of this section.

(c) Determinations

Upon initiation of an investigation under this section, the Trade Representative shall request the following determinations be made according to substantive and procedural requirements specified by the Trade Representative, notwithstanding any other provision of this subtitle:

(1) The administering authority shall determine whether imports into the United States of the subject merchandise are being sold at less than fair value.

(2) The Commission shall determine whether an industry in the petitioning country is materially injured by reason of imports of the subject merchandise into the United States.

(d) Public comment

An opportunity for public comment shall be provided, as appropriate—

(1) by the Trade Representative, in making the determination required by subsection (b) of this section, and

(2) by the administering authority and the Commission, in making the determination required by subsection (c) of this section.

(e) Issuance of order

If the administering authority makes an affirmative determination under paragraph (1) of subsection (c) of this section, and the Commission makes an affirmative determination under paragraph (2) of subsection (c) of this section, the administering authority shall issue an antidumping duty order in accordance with section 1673e of this title and take such other actions as are required by section 1673e of this title.

(f) Reviews of determinations

For purposes of review under section 1516a of this title or review under section 1675 of this title, if an order is issued under subsection (e) of this section, the final determinations of the administering authority and the Commission under this section shall be treated as final determinations made under section 1673d of this title.

(g) Access to information

Section 1677f of this title shall apply to investigations under this section, to the extent specified by the Trade Representative, after consultation with the administering authority and the Commission.

(3) Delivery sale

The term “delivery sale” means any sale of cigarettes or a smokeless tobacco product to a consumer if—

(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(B) the cigarettes or smokeless tobacco product is delivered by use of a common carrier, private delivery service, or the mail, or the seller is not in the physical presence of
§ 1681a. Requirements for entry of certain cigarettes and smokeless tobacco products

(a) General rule

Except as provided in subsection (b) of this section, cigarettes or smokeless tobacco products may be imported into the United States only if—

(1) the original manufacturer of those cigarettes or smokeless tobacco products has timely submitted, or has certified that it will timely submit, to the Secretary of Health and Human Services the lists of the ingredients added to the tobacco in the manufacture of such cigarettes or smokeless tobacco products as described in section 1333a of title 15 or section 4402 of title 15, as the case may be;

(2) the precise warning statements in the precise format specified in section 1333 of title 15 or section 4402 of title 15, as the case may be, are permanently imprinted on both—

(A) the primary packaging of all those cigarettes or smokeless tobacco products; and

(B) any other pack, box, carton, or container of any kind in which those cigarettes or smokeless tobacco products are to be offered for sale or otherwise distributed to consumers;

(3) the manufacturer or importer of those cigarettes or smokeless tobacco products is in compliance with respect to those cigarettes or smokeless tobacco products being imported into the United States with a rotation plan approved by the Federal Trade Commission pursuant to section 1333(c) of title 15 or section 4402(d) of title 15, as the case may be;

(4) if such cigarettes or smokeless tobacco products bear a United States trademark registered for such cigarettes or smokeless tobacco products, the owner of such United States trademark registration for cigarettes or smokeless tobacco products (or a person authorized to act on behalf of such owner) has consented to the importation of such cigarettes or smokeless tobacco products into the United States; and

(5) the importer has submitted at the time of entry all of the certificates described in subsection (c) of this section.

(b) Exemptions

Cigarettes or smokeless tobacco products satisfying the conditions of any of the following paragraphs shall not be subject to the requirements of subsection (a) of this section:

(1) Personal-use cigarettes or smokeless tobacco products

Cigarettes or smokeless tobacco products that are imported into the United States in personal use quantities that are allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. The preceding sentence shall not apply to any cigarettes or smokeless tobacco products sold in connection with a delivery sale.

(2) Cigarettes or smokeless tobacco products imported into the United States for analysis

Cigarettes or smokeless tobacco products that are imported into the United States solely for the purpose of analysis in quantities suitable for such purpose, but only if the importer submits at the time of entry a certificate signed, under penalties of perjury, by the consignee (or a person authorized by such consignee) providing such facts as may be required by the Secretary to establish that such consignee is a manufacturer of cigarettes or smokeless tobacco products, a Federal or State government agency, a university, or is otherwise engaged in bona fide research and stating that such cigarettes or smokeless tobacco products will be used solely for analysis and will not be sold in domestic commerce in the United States.

(3) Cigarettes or smokeless tobacco products intended for noncommercial use, reexport, or repackaging

Cigarettes or smokeless tobacco products—

(A) for which the owner of such United States trademark registration for cigarettes or smokeless tobacco products (or a person authorized to act on behalf of such owner) has consented to the importation of such cigarettes or smokeless tobacco products into the United States; and

(B) for which the importer submits a certificate signed by the manufacturer or export warehouse (or a person authorized by such manufacturer or export warehouse) to which such cigarettes or smokeless tobacco products are to be delivered (as provided in subparagraph (A)) stating, under penalties of perjury, with respect to those cigarettes or smokeless tobacco products, that it will not distribute those cigarettes or smokeless tobacco products into domestic commerce unless prior to such distribution all steps have been taken to comply with paragraphs (1),

1 See References in Text note below.
§ 1681a
TITLE 19—CUSTOMS DUTIES
Page 378

(2), and (3) of subsection (a) of this section, and, to the extent applicable, section 5753(a)(1)(B) and (C) of title 26.

For purposes of this section, a trademark is registered in the United States if it is registered in the United States Patent and Trademark Office under the provisions of title I of the Act of July 5, 1946 [15 U.S.C. 1051 et seq. (popularly known as the "Trademark Act of 1946")], and a copy of the certificate of registration of such trademark is filed with the Secretary. The Secretary shall make available to interested parties a current list of the marks so filed.

(c) Customs certifications required for cigarette or smokeless tobacco product imports

The certificates that must be submitted by the importer of cigarettes or smokeless tobacco products at the time of entry in order to comply with subsection (a)(5) of this section are—

(1) a certificate signed by the manufacturer of such cigarettes or smokeless tobacco products or an authorized official of such manufacturer stating under penalties of perjury, with respect to those cigarettes or smokeless tobacco products, that such manufacturer has timely submitted, and will continue to submit timely, to the Secretary of Health and Human Services the ingredient reporting information required by section 1335a of title 15 or section 4403 of title 15, as the case may be;

(2) a certificate signed by such importer or an authorized official of such importer stating under penalties of perjury that—

(A) the precise warning statements in the precise format required by section 1333 of title 15 or section 4402 of title 15, as the case may be, are permanently imprinted on both—

(i) the primary packaging of all those cigarettes or smokeless tobacco products; and

(ii) any other pack, box, carton, or container of any kind in which those cigarettes or smokeless tobacco products are to be offered for sale or otherwise distributed to consumers; and

(B) with respect to those cigarettes or smokeless tobacco products being imported into the United States, such importer has complied, and will continue to comply, with a rotation plan approved by the Federal Trade Commission pursuant to section 1333(c) of title 15 or section 4402(d) of title 15, as the case may be; and

(3)(A) if such cigarettes or smokeless tobacco products bear a United States trademark registered for cigarettes or smokeless tobacco products, a certificate signed by the owner of such United States trademark registration for cigarettes or smokeless tobacco products (or a person authorized to act on behalf of such owner) stating under penalties of perjury that such owner (or authorized person) consents to the importation of such cigarettes or smokeless tobacco products into the United States; and

(B) a certificate signed by the importer or an authorized official of such importer stating under penalties of perjury that the consent referred to in subparagraph (A) is accurate, remains in effect, and has not been withdrawn.

The Secretary may provide by regulation for the submission of certifications under this section in electronic form if, prior to the entry of any cigarettes or smokeless tobacco products into the United States, the person required to provide such certification submits to the Secretary a written statement, signed under penalties of perjury, verifying the accuracy and completeness of all information contained in such electronic submissions.

(d) State access to customs certifications

A State, through its Attorney General, shall be entitled to obtain copies of any certification required under subsection (c) directly—

(1) upon request to the agency of the United States responsible for collecting such certification; or

(2) upon request to the importer, manufacturer, or authorized official of such importer or manufacturer.


REFERENCES IN TEXT

The Trademark Act of 1946, referred to in subsec. (b), is act July 5, 1946, ch. 540, 60 Stat. 427, as amended, also popularly known as the Lanham Act. Title I of the Act is classified generally to subchapter I (§ 1051 et seq.) of chapter 22 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of Title 15 and Tables.

Sections 1333 and 4402 of title 15, referred to in subsecs. (a)(3) and (c)(2)(B), were amended by Pub. L. 111–31, div. A, title II, §§ 201(a), 202(b), 204(a), 205(a), 206, June 22, 2009, 123 Stat. 1842, 1845, 1846, 1848, 1849, and, as so amended, sections 1333(c) and 4402(d) no longer relate to the Federal Trade Commission’s approval of a rotation plan.

CODIFICATION
Another section 802 of act June 17, 1930, is classified to section 1683 of this title.

AMENDMENTS


Subsec. (a)(1). Pub. L. 109–432, § 401(e)(2)(A)(I), inserted “or section 4403 of title 15, as the case may be” after “section 1333(a) of title 15.”

Pub. L. 109–432, § 401(e)(1), inserted “or smokeless tobacco products” after “cigarettes” in two places.

Subsec. (a)(2). Pub. L. 109–432, § 401(e)(2)(A)(II), inserted “or section 4402 of title 15, as the case may be,” after “section 1333(a) of title 15” in introductory provisions.

Pub. L. 109–432, § 401(e)(1), inserted “or smokeless tobacco products” after “cigarettes” in subpars. (A) and (B).

Subsec. (a)(3). Pub. L. 109–432, § 401(e)(2)(A)(III), inserted “or section 4402(d) of title 15, as the case may be” after “section 1333(c) of title 15.”
Any person who violates a provision of section 1681a of this title shall, in addition to the tax and any other penalty provided by law, be liable for a civil penalty for each violation equal to the greater of $1,000 or 5 times the amount of the tax imposed by chapter 52 of the Internal Revenue Code of 1986 on all cigarettes or smokeless tobacco products that are the subject of such violation.

(b) Forfeitures

Any tobacco product, cigarette papers, or tube, or any smokeless tobacco product, that was imported into the United States or is sought to be imported into the United States in violation of, or without meeting the requirements of, section 1681a of this title shall be forfeited to the United States, or to any State in which such tobacco product, cigarette papers, or tube is found. Notwithstanding any other provision of law, any product forfeited to the United States, or to any State, pursuant to this subtitle shall be destroyed.


References in Text

Chapter 52 of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 5701 et seq. of Title 26, Internal Revenue Code.

Confinement

Another section 803 of act June 17, 1930, is classified to section 1683a of this title.

Amendments

2006—Subsec. (a). Pub. L. 109–432, §401(e)(1), inserted ‘‘or smokeless tobacco products’’ after ‘‘cigarettes’’.

Subsec. (b). Pub. L. 109–432, §401(d), (e)(1), in first sentence, inserted ‘‘, or any smokeless tobacco product’’, before ‘‘that was imported’’ and ‘‘, or to any State in which such tobacco product, cigarette papers, or tube is found’’ before period at end and, in second sentence, inserted ‘‘, or to any State,’’ after ‘‘United States’’, amended Pub. L. 109–432, div. C, title IV, §401(d), (e)(1), (3), Dec. 20, 2006, 120 Stat. 3049, 3049.)

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–432 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 20, 2006, see section 401(g) of Pub. L. 109–432, set out as a note under section 1681 of this title.

Subsection VI—Softwood lumber

Confinement

Subtitle is comprised of title VIII of act June 17, 1930, as added by Pub. L. 110–246, title III, §3301(a), June 18, 2008, 122 Stat. 144. Another title VIII of act June 17, 1930, was added by Pub. L. 106–476, title IV, §4004(a), Nov. 9, 2000, 114 Stat. 2178, and is classified to subtitle V (§1681 et seq.) of this chapter.

§1683. Definitions

In this subtitle:

1. Appropriat congressional committees

The term ‘‘appropriate congressional committees’’ means the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

2. Country of export

The term ‘‘country of export’’ means the country (including any political subdivision of the country) from which softwood lumber or a softwood lumber product is exported before entering the United States.

3. Customs laws of the United States

The term ‘‘customs laws of the United States’’ means any law or regulation enforced or administered by U.S. Customs and Border Protection.

4. Export charges

The term ‘‘export charges’’ means any tax, charge, or other fee collected by the country...
§ 1683

(5) Export price

(A) In general

The term "export price" means one of the following:

(i) In the case of softwood lumber or a softwood lumber product that has undergone only primary processing, the value that would be determined F.O.B. at the facility where the product underwent the last primary processing before export.

(ii)(I) In the case of softwood lumber or a softwood lumber product described in subclause (II), the value that would be determined F.O.B. at the facility where the lumber or product underwent the last primary processing.

(II) Softwood lumber or a softwood lumber product described in this subclause is lumber or a product that underwent the last remanufacturing before export by a manufacturer who—

(aa) does not hold tenure rights provided by the country of export;

(bb) did not acquire standing timber directly from the country of export; and

(cc) is not related to the person who holds tenure rights or acquired standing timber directly from the country of export.

(iii) In the case of softwood lumber or a softwood lumber product described in subclause (II), the value that would be determined F.O.B. at the facility where the product underwent the last processing before export.

(II) Softwood lumber or a softwood lumber product described in this subclause is lumber or a product that underwent the last remanufacturing before export by a manufacturer who—

(aa) holds tenure rights provided by the country of export;

(bb) acquired standing timber directly from the country of export; or

(cc) is related to a person who holds tenure rights or acquired standing timber directly from the country of export.

(B) Related persons

For purposes of this paragraph, a person is related to another person if—

(i) the person bears a relationship to such other person described in section 152(a) of title 26;

(ii) the person bears a relationship to such other person described in section 267(b) of such title, except that "5 percent" shall be substituted for "50 percent" each place it appears;

(iii) the person and such other person are part of a controlled group of corporations, as that term is defined in section 1563(a) of such title, except that "5 percent" shall be substituted for "80 percent" each place it appears;

(iv) the person is an officer or director of such other person; or

(v) the person is the employer of such other person.

(C) Tenure rights

For purposes of this paragraph, the term "tenure rights" means rights to harvest timber from public land granted by the country of export.

(D) Export price where F.O.B. value cannot be determined

(i) In general

In the case of softwood lumber or a softwood lumber product described in clause (i), (ii), or (iii) of subparagraph (A) for which an F.O.B. value cannot be determined, the export price shall be the market price for the identical lumber or product sold in an arm's-length transaction in the country of export at approximately the same time as the exported lumber or product. The market price shall be determined in the following order of preference:

(I) The market price for the lumber or a product sold at substantially the same level of trade as the exported lumber or product but in different quantities.

(II) The market price for the lumber or a product sold at a different level of trade than the exported lumber or product but in similar quantities.

(III) The market price for the lumber or product sold at a different level of trade than the exported lumber or product and in different quantities.

(ii) Level of trade

For purposes of clause (i), "level of trade" shall be determined in the same manner as provided under section 351.412(c) of title 19, Code of Federal Regulations (as in effect on January 1, 2008).

(6) F.O.B.

The term "F.O.B." means a value consisting of all charges payable by a purchaser, including those charges incurred in the placement of merchandise on board of a conveyance for shipment, but does not include the actual shipping charges or any applicable export charges.

(7) HTS

The term "HTS" means the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) (as in effect on January 1, 2008).

(8) Person

The term "person" includes any individual, partnership, corporation, association, organization, business trust, government entity, or other entity subject to the jurisdiction of the United States.

(9) United States

The term "United States" means the customs territory of the United States, as defined in General Note 2 of the HTS.

REFERENCES IN TEXT
The Harmonized Tariff Schedule of the United States, referred to in par. (7), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1922 of this title.

CODIFICATION
Another section 802 of act June 17, 1930, is classified to section 1681a of this title.

EFFECTIVE DATE
Pub. L. 110–246, title III, § 3301(b), June 18, 2008, 122 Stat. 1853, provided that: “The amendments made by this section ...” shall take effect on the date that is 60 days after the date of the enactment of this section [enacting this subtitle] shall take effect on the date that is 60 days after the date of the enactment of this Act [June 18, 2008].”

§ 1683a. Establishment of softwood lumber importer declaration program
(a) Establishment of program
(1) In general
The President shall establish and maintain an importer declaration program with respect to the importation of softwood lumber and softwood lumber products described in section 1683(b) of this title. The importer declaration program shall require importers of softwood lumber and softwood lumber products described in section 1683(a) of this title to provide the information required under subsection (b) and declare the information required by subsection (c), and require that such information accompany the entry summary documentation.

(2) Electronic record
The President shall establish an electronic record that includes the importer information required under subsection (b) and the declarations required under subsection (c).

(b) Required information
The President shall require the following information to be submitted by any person seeking to import softwood lumber or softwood lumber products described in section 1683(b) of this title:

(1) The export price for each shipment of softwood lumber or softwood lumber products.

(2) The estimated export charge, if any, applicable to each shipment of softwood lumber or softwood lumber products as calculated by applying the percentage determined and published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 1683c(b) of this title to the export price provided in subsection (b)(1).

(c) Importer declarations
Pursuant to procedures prescribed by the President, any person seeking to import softwood lumber or softwood lumber products described in section 1683(a) of this title shall declare that—

(1) the person has made appropriate inquiry, including seeking appropriate documentation from the exporter and consulting the determinations published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 1683(c)(b) of this title; and

(2) to the best of the person’s knowledge and belief—

(A) the export price provided pursuant to subsection (b)(1) is determined in accordance with the definition provided in section 1683(5) of this title;

(B) the export price provided pursuant to subsection (b)(1) is consistent with the export price provided on the export permit, if any, granted by the country of export; and

(C) the exporter has paid, or committed to pay, all export charges due—

(1) in accordance with the volume, export price, and export charge rate or rates, if any, as calculated under an international agreement entered into by the country of export and the United States; and

(2) consistent with the export charge determinations published by the Under Secretary for International Trade pursuant to section 1683c(b) of this title.


REFERENCES IN TEXT
Section 1683 of this title, referred to in subsec. (c)(2)(A), was in the original section “802”, and was translated as meaning the section 802 of act June 17, 1930, as added by section 3301(a) of Pub. L. 110–246, to reflect the probable intent of Congress.

CODIFICATION
Another section 803 of act June 17, 1930, is classified to section 1681b of this title.

§ 1683b. Scope of softwood lumber importer declaration program
(a) Products included in program
The following products shall be subject to the importer declaration program established under section 1683a of this title:

(1) In general
All softwood lumber and softwood lumber products classified under subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 of the HTS, including the following softwood lumber, flooring, and siding:

(A) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded, or finger-jointed, of a thickness exceeding 6 millimeters.

(B) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed.

(C) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed.

(D) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along
any of its edges or faces, whether or not planed, sanded, or finger-jointed.

(E) Coniferous drilled and notched lumber and angle cut lumber.

(2) Products continually shaped

Any product classified under subheading 4409.10.05 of the HTS that is continually shaped along its end or side edges.

(3) Other lumber products

Except as otherwise provided in subsection (b) or (c), softwood lumber products that are stringers; radius-cut box-spring frame components, fence pickets, truss components, pallet components, and door and window frame parts classified under subheading 4418.90.46, 95, 4421.90.70.40, or 4421.90.97.40 of the HTS.

(b) Products excluded from program

The following products shall be excluded from the importer declaration program established under section 1683a of this title:

(1) Stringers

(a) in general

Stringers (pallet components used for runners), if the stringers—

(A) have at least 2 notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades; and

(B) are properly classified under subheading 4421.90.97.40 of the HTS.

(2) Box-spring frame kits

(A) In general

Box-spring frame kits, if—

(i) the kits contain—

(I) 2 wooden side rails; and

(II) 2 wooden end (or top) rails; and

(III) varying numbers of wooden slats; and

(ii) the side rails and the end rails are radius-cut at both ends.

(B) Packaging

Any kit described in subparagraph (A) shall be individually packaged, and contain the exact number of wooden components needed to make the box-spring frame described on the entry documents, with no further processing required. None of the components contained in the package may exceed 1 inch in actual thickness or 83 inches in length.

(3) Radius-cut box-spring frame components

Radius-cut box-spring frame components, not exceeding 1 inch in actual thickness or 83 inches in length, ready for assembly without further processing, if radius cuts are present on both ends of the boards and are substantial cuts so as to completely round 1 corner.

(4) Fence pickets

Fence pickets requiring no further processing and properly classified under subheading 4421.90.70 of the HTS, 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards shall be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 7⁄4 of an inch or more.

(5) United States-origin lumber

Lumber originating in the United States that is exported to another country for minor processing and imported into the United States if—

(A) the processing occurring in another country is limited to kiln drying, planing to create smooth-to-size board, and sanding; and

(B) the importer establishes to the satisfaction of U.S. Customs and Border Protection upon entry that the lumber originated in the United States.

(6) Softwood lumber

Any softwood lumber or softwood lumber product that originated in the United States, if the importer, exporter, foreign processor, or original United States producer establishes to the satisfaction of U.S. Customs and Border Protection upon entry that the softwood lumber entered and documented as originating in the United States was first produced in the United States.

(7) Home packages or kits

(A) In general

Softwood lumber or softwood lumber products contained in a single family home package or kit, regardless of the classification under the HTS, if the importer declares that the following requirements have been met:

(i) The package or kit constitutes a full package of the number of wooden pieces specified in the plan, design, or blueprint.

(ii) The package or kit contains—

(I) all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, and connectors; and

(II) if included in the purchase contract, the decking, trim, drywall, and
roof shingles specified in the plan, design, or blueprint.

(iii) Prior to importation, the package or kit is sold to a United States retailer that sells complete home packages or kits pursuant to a valid purchase contract referencing the particular home design, plan, or blueprint, and the contract is signed by a customer not affiliated with the importer.

(iv) Softwood lumber products entered as part of the package or kit, whether in a single entry or multiple entries on multiple days, are to be used solely for the construction of the single family home specified by the home design, plan, or blueprint matching the U.S. Customs and Border Protection import entry.

(B) Additional documentation required for home packages and kits

In the case of each entry of products described in clauses (i) through (iv) of subparagraph (A) the following documentation shall be retained by the importer and made available to U.S. Customs and Border Protection upon request:

(i) A copy of the appropriate home design, plan, or blueprint matching the customs entry in the United States.

(ii) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer.

(iii) A listing of all parts in the package or kit being entered into the United States that conforms to the home design, plan, or blueprint for which such parts are being imported.

(iv) If a single contract involves multiple entries, an identification of all the items required to be listed under clause (iii) that are included in each individual shipment.

(d) Products covered

For purposes of determining if a product is covered by the importer declaration program, the President shall be guided by the article descriptions provided in this section.


§ 1683d. Reconciliation

The Secretary of the Treasury shall conduct reconciliations to ensure the proper implementation and operation of international agreements entered into between a country of export of softwood lumber or softwood lumber products described in section 1683b(a) of this title and the United States. The Secretary of Treasury shall reconcile the following:

(1) The export price declared by a United States importer pursuant to section 1683a(b)(1) of this title with the export price reported to the United States by the country of export, if any.

(2) The export price declared by a United States importer pursuant to section 1683a(b)(1) of this title with the revised export price reported to the United States by the country of export, if any.


REFERENCES IN TEXT

Section 1683a of the title, referred to in pars. (1) and (2), was in the original section “803”, and was translated as meaning the section 803 of act June 17, 1930, as added by section 3301(a) of Pub. L. 110–246, to reflect the probable intent of Congress.

§ 1683e. Verification

(a) In general

The Secretary of Treasury shall periodically verify the declarations made by a United States importer pursuant to section 1683a(c) of this title, including by determining whether:

(1) the export price declared by a United States importer pursuant to section 1683a(b)(1) of this title is the same as the export price provided on the export permit, if any, issued by the country of export; and

(2) the estimated export charge declared by a United States importer pursuant to section 1683a(b)(2) of this title is consistent with the determination published by the Under Secretary for International Trade pursuant to section 1683c(b) of this title.

(b) Examination of books and records

(1) In general

Any record relating to the importer declaration program required under section 1683a of this title shall be treated as a record required to be maintained and produced under title V of this Act.1

(2) Examination of records

The Secretary of the Treasury is authorized to take such action, and examine such records,

1 See References in Text note below.
§ 1683f Penalties

(a) In general

It shall be unlawful for any person to import into the United States softwood lumber or softwood lumber products in knowing violation of this subtitle.

(b) Civil penalties

Any person who commits an unlawful act as set forth in subsection (a) shall be liable for a civil penalty not to exceed $10,000 for each knowing violation.

(c) Other penalties

In addition to the penalties provided for in subsection (b), any violation of this subtitle that violates any other customs law of the United States shall be subject to any applicable civil and criminal penalty, including seizure and forfeiture, that may be imposed under such custom law or title 18, with respect to the importation of softwood lumber and softwood lumber products described in section 1683a(a) of this title.

(d) Factors to consider in assessing penalties

In determining the amount of civil penalties to be assessed under this section, consideration shall be given to any history of prior violations of this subtitle by the person, the ability of the person to pay the penalty, the seriousness of the violation, and such other matters as fairness may require.

(e) Notice

No penalty may be assessed under this section against a person for violating a provision of this subtitle unless the person is given notice and opportunity to make statements, both oral and written, with respect to such violation.

(f) Exception

Notwithstanding any other provision of this subtitle, and without limitation, an importer shall not be found to have violated subsection 1683a(c) of this title if—

(1) the importer made an appropriate inquiry in accordance with section 1683a(c)(1) of this title with respect to the declaration;

(2) the importer produces records maintained pursuant to section 1683e(b) of this title that substantiate the declaration; and

(3) there is not substantial evidence indicating that the importer knew that the fact to which the importer made the declaration was false.

References in Text

Section 1683a of this title, referred to in subsection (b), was in the original section “803”, and was translated as meaning the section 803 of act June 17, 1930, as added by section 3301(a) of Pub. L. 110–246, to reflect the probable intent of Congress.

This Act, referred to in subsec. (h)(1), is act June 17, 1930, ch. 497, 46 Stat. 590, known as the Tariff Act of 1930, which is classified generally to this chapter. The Act does not contain a title V. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

§ 1683g. Reports

(a) Semiannual reports

Not later than 180 days after the effective date of this subtitle, and every 180 days thereafter, the President shall submit to the appropriate congressional committees a report—

(1) describing the reconciliations conducted under section 1683d of this title, and the verifications conducted under section 1683e of this title;

(2) identifying the manner in which the United States importers subject to reconciliations conducted under section 1683d of this title and verifications conducted under section 1683e of this title were chosen;

(3) identifying any penalties imposed under section 1683f of this title;

(4) identifying any patterns of noncompliance with this subtitle; and

(5) identifying any problems or obstacles encountered in the implementation and enforcement of this subtitle.

(b) Subsidies reports

Not later than 180 days after June 18, 2008, and every 180 days thereafter, the Secretary of Commerce shall provide to the appropriate congressional committees a report on any subsidies on softwood lumber or softwood lumber products, including stumpage subsidies, provided by countries of export.

(c) GAO reports

The Comptroller General of the United States shall submit the following reports to the appropriate congressional committees:

(1) Not later than 18 months after June 18, 2008, a report on the effectiveness of the reconciliations conducted under section 1683d of this title, and verifications conducted under section 1683e of this title;

(2) Not later than 12 months after June 18, 2008, a report on whether countries that export softwood lumber or softwood lumber products to the United States are complying with any international agreements entered into by those countries and the United States.

References in Text

Section 1683a of this title, referred to in subsec. (a), is section 3301(b) of Pub. L. 110–246, set out under section 1509 of this title, as the Secretary determines necessary to verify the declarations made pursuant to section 1683a(c) of this title are true and accurate.


References in Text

Section 1683a, referred to in text, was in the original section “803”, and was translated as meaning the section 803 of act June 17, 1930, as added by section 3301(a) of Pub. L. 110–246, to reflect the probable intent of Congress.

This Act, referred to in subsec. (b)(1), is act June 17, 1930, ch. 497, 46 Stat. 590, known as the Tariff Act of 1930, which is classified generally to this chapter. The Act does not contain a title V. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

1 So in original. Probably should be “section”.

1 So in original. Comma probably should not appear.
as an Effective Date note under section 1683 of this title.

CHAPTER 5—SMUGGLING

Sec.
1701. Customs-enforcement area.
1702. Repealed.
1703. Seizure and forfeiture of vessels.
1704. Refusal or revocation of registry, enrollment, license or number on evidence that vessel engaging in smuggling; appeal; immunity from liability.
1705. Destruction of forfeited vessel or vehicle.
1706. Importation in vessels under thirty tons and aircraft; licenses; labels as prima facie evidence of foreign origin of merchandise.
1706a. Civil penalties for trading without required certificate of documentation.
1707, 1708. Repealed.
1709. Definitions
1710. Separability.
1711. Citation of chapter.

§ 1701. Customs-enforcement area

(a) Establishment; extent and duration; enforcement of laws applicable to waters adjacent to customs waters

Whenever the President finds and declares that at any place or within any area on the high seas adjacent to but outside customs waters any vessel or vessels hover or are being kept off the coast of the United States and that, by virtue of the presence of any such vessel or vessels at such place or within such area, the unlawful introduction or removal into or from the United States of any merchandise or person is being or may be occasioned, promoted, or threatened, the place or area so found and declared shall constitute a customs-enforcement area for the purposes of this Act. Only such waters on the high seas shall be within a customs-enforcement area as the President finds and declares are in such proximity to such vessel or vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessel or vessels. No customs-enforcement area shall include any waters more than one hundred nautical miles from the place or immediate area where the President declares such vessel or vessels are hovering or are being kept and, notwithstanding the foregoing provision, shall not include any waters more than fifty nautical miles outwards from the outer limit of customs waters. Whenever the President finds that, within any customs-enforcement area, the circumstances no longer exist which gave rise to the declaration of such area as a customs-enforcement area, he shall so declare, and thereafter, and until a further finding and declaration is made under this subsection with respect to waters within such area, no waters within such area shall constitute a part of such customs-enforcement area. The provisions of law applying to the high seas adjacent to customs waters of the United States shall be enforced in a customs-enforcement area upon any vessel, merchandise, or person found therein.

(b) Boarding vessels; arrest and seizure; compliance with treaty provisions; authority of Secretary of Commerce unaffected

At any place within a customs-enforcement area the several officers of the customs may go on board of any vessel and examine the vessel and any merchandise or person on board, and bring the same into port, and, subject to regulations of the Secretary of the Treasury, it shall be their duty to pursue and seize or arrest and otherwise enforce upon such vessel, merchandise, or person, the provisions of law which are made effective thereto in pursuance of subsection (a) of this section in the same manner as such officers are or may be authorized or required to do in like case at any place in the United States by virtue of any law respecting the revenue: Provided, That nothing contained in this section or in any other provision of law respecting the revenue shall be construed to authorize or to require any officer of the United States to enforce any law thereof upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government: Provided further. That none of the provisions of this Act shall be construed to relieve the Secretary of Commerce of any authority, responsibility, or jurisdiction now vested in or imposed on that officer.

(Aug. 5, 1935, ch. 438, title I, § 1, 49 Stat. 517.)

REFERENCES IN TEXT

This Act, referred to in text, means act Aug. 5, 1935, which enacted this chapter and sections 1432a and 1601a of this title and amended sections 70, 483, 1401, 1434, 1436, 1441, 1581, 1584, 1585, 1586, 1587, 1591, 1592, 1615, 1619, 1621 of this title, sections 60, 106, and 288 of former Title 16, Shipping, and sections 91, 277, 319, 326 of former Title 46, Shipping, and sections 91, 277, 319, 326 of former Title 46, Appendix. For complete classification of this Act to the Code, see Tables.

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Treasury of authority vested in President by this section, see Ex. Ord. No. 10289, §1(b), Sept. 17, 1951, 16 F.R. 9409, set out as a note under section 301 of Title 3, The President.


§1703. Seizure and forfeiture of vessels

(a) Vessels subject to seizure and forfeiture

Whenever any vessel which shall have been built, purchased, fitted out in whole or in part, or held, in the United States or elsewhere, for the purpose of being employed to defraud the revenue or to smuggle any merchandise into the United States, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever any vessel which shall be found, or discovered to have been employed, or attempted to be employed, within the United
States for any such purpose, or in anywise in assistance thereof, or whenever any vessel of the United States which shall be found, or discovered to have been, employed, or attempted to be employed at any place, for any such purpose, or is in anywise in assistance thereof, if not subsequently forfeited to the United States or to a foreign government, is found at any place at which any such vessel may be examined by an officer of the customs in the enforcement of any law respecting the revenue, the said vessel and its cargo shall be seized and forfeited.

(b) "Vessels of the United States" defined

Every vessel which is documented, owned, or controlled in the United States, and every vessel of foreign registry which is, directly or indirectly, substantially owned or controlled by any citizen of, or corporation incorporated, owned, or controlled in, the United States, shall, for the purposes of this section, be deemed a vessel of the United States.

(c) Acts constituting prima facie evidence vessel engaged in smuggling

For the purposes of this section, the fact that a vessel has become subject to pursuit as provided in section 1581 of this title, or is a hovering vessel, or that a vessel falls, at any place within the customs waters of the United States or within a customs-enforcement area, to display lights as required by law, shall be prima facie evidence that such vessel is being, or has been, or is attempted to be employed to defraud the revenue of the United States.


§ 1704. Refusal or revocation of registry, enrollment, license or number on evidence that vessel engaging in smuggling; appeal; immunity from liability

Subject to appeal to the Secretary of the Treasury and under such regulations as he may prescribe, when the Secretary of Transportation is shown upon evidence which he deems sufficient that such vessel is being, or is intended to be, employed to smuggle, transport, or otherwise assist in the unlawful introduction or importation into the United States of any merchandise or person, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if such foreign government in violation of the laws there in force, if such foreign government shall require the Secretary of Transportation to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out as a note under section 1 of this title.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26, of 1950, §1, 2, eff. July 31, 1950, 15 F.R. 9393, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Under the Plan, collectors of customs and Commandant of Coast Guard were officers of Department of the Treasury, but, in case of Coast Guard, and Commandant thereof, the Plan provided that, notwithstanding transfer of functions, Coast Guard should continue to operate as a part of Navy, subject to orders of Secretary of the Navy, in time of war or when President directed, as provided in sections 1 and 3 of Title 14, Coast Guard.

"Secretary of the Treasury" substituted in text for "Secretary of Commerce" and functions under this section relating to the numbering of vessels vested in Commandant of Coast Guard instead of collectors of customs on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

§ 1705. Destruction of forfeited vessel or vehicle

Any vessel or vehicle forfeited to the United States, whether summarily or by a decree of any
court, for violation of any law respecting the revenue, may, in the discretion of the Secretary of the Treasury, if he deems it necessary to protect the revenue of the United States, be destroyed in lieu of the sale thereof under existing law.


§ 1706. Importation in vessels under thirty tons and aircraft; licenses; labels as prima facie evidence of foreign origin of merchandise

Except into the districts adjoining to the Dominion of Canada, or into the districts adjacent to Mexico, no merchandise of foreign growth or manufacture subject to the payment of duties shall be brought into the United States from any foreign port or place, or from any hovering vessel, in any vessel of less than thirty net tons burden without special license granted by the Secretary of the Treasury under such conditions as he may prescribe, nor in any other manner than by sea, except by aircraft duly licensed in accordance with law, or landed or unladen at any other port than is directed by law, under the penalty of seizure and forfeiture of all such unlicensed vessels or aircraft and of the merchandise imported therein, landed or unladen in any manner. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found upon any such vessel or aircraft, shall be prima facie evidence of the foreign origin of such merchandise.


§ 1706a. Civil penalties for trading without required certificate of documentation

Whenever a vessel, entitled to be documented and not so documented, is employed in a trade for which certificates of documentation are issued under the vessel documentation laws, other than a trade covered by a registry, the vessel is liable to a civil penalty of $500 for each port at which it arrives without the proper certificate of documentation, and if it has on board any merchandise of foreign growth or manufacture (sea stores excepted), or any taxable domestic spirits, wines, or other alcoholic liquors, on which the duties or taxes have not been paid or secured to be paid, the vessel, together with its equipment and cargo, is liable to seizure and forfeiture. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found on board such vessel, shall be prima facie evidence of the foreign origin of such merchandise.


CODIFICATION

Section was not enacted as part of act Aug. 5, 1935, ch. 438, which comprises this chapter.

Section was classified to section 319 of the former Appendix to Title 46,.Shipping, prior to the completion of the enactment of Title 46 by Pub. L. 109-304, Oct. 6, 2006, 120 Stat. 1485.

AMENDMENTS

1980—Pub. L. 96-594 substituted provisions relating to violations and penalties for employment in a trade of a vessel entitled to be documented but not so documented for provisions relating to fines and penalties for trading without a license by a vessel twenty tons or upward, and struck out provisions respecting expiration of a license while a vessel is at sea.

1935—Act Aug. 5, 1935, provided for forfeiture, to deem marks, etc., prima facie evidence of foreign origin of merchandise, and to substitute "said fine or forfeiture" for "said fine of $30" in last sentence.

EFFECTIVE DATE OF 1980 AMENDMENT


Section, act Aug. 5, 1935, ch. 438, title I, §7, 49 Stat. 520, required certificate for importation of alcoholic liquors in small vessels, provided for issuance of bond where liquor was destined for foreign port, and authorized penalties for failure to carry certificate unless lost, mislaid without fraud, defaced by accident, or incorrect by reason of clerical error or other mistake.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104-285, set out as an Effective Date of 1996 Amendment note under section 1231 of this title.


§ 1709. Definitions

When used in this Act:

(a) The term "United States", when used in a geographical sense, includes all Territories and possessions of the United States, except the Virgin Islands, the Canal Zone, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(b) The term "officer of the customs" means any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a collector, to perform the duties of an officer of the Customs Service.

(c) The term "customs waters" means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

(d) The term "hovering vessel" means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the
§1710  TITLE 19—CUSTOMS DUTIES  Page 388

introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.


REFERENCES IN TEXT

This Act, referred to in text, means act Aug. 5, 1935, which enacted this chapter and sections 1432a and 1601a of this title and amended sections 70, 483, 1401, 1434, 1436, 1441, 1581, 1584, 1585, 1586, 1587, 1591, 1592, 1615, 1619, 1621 of this title, sections 60, 106, and 288 of former Title 46, Shipping, and sections 91, 277, 319, 325 of former Title 46, Appendix. For complete classification of this Act to the Code, see Tables.

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Words “the Philippine Islands” in subsec. (a) were omitted from authority of Proc. No. 2805, which is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse, and in which the President proclaimed the independence of the Philippines.

AMENDMENTS


1938—Subsec. (a). Act June 25, 1938, inserted “Wake Island, Midway Islands, Kingman Reef” before “and the island of Guam.”

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see note set out under section 1401 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 57 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation and functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other offices and officers of Department of the Treasury transferred to Secretary of Transportation by section 6(b)(1) of Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 932. Section 6(b)(2), however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 190(b) of Title 49, Transportation.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out as a note under section 1 of this title.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 1, 1956, 15 F.R. 4905, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Under the Plan, collectors of customs and Commandant of Coast Guard were officers of Department of the Treasury, but, in case of Coast Guard and Commandant thereof, the Plan provided that, notwithstanding transfer of functions, Coast Guard should continue to operate as a part of Navy, subject to orders of Secretary of the Navy, in time of war or when President directed, as provided in sections 1 and 3 of Title 14, Coast Guard.

§1710. Separability

If any clause, sentence, paragraph, or part of this Act, or the application thereof to any person, or circumstances, is held invalid, the application thereof to other persons, or circumstances, and the remainder of the Act, shall not be affected thereby.


REFERENCES IN TEXT

This Act, referred to in text, means act Aug. 5, 1935, which enacted this chapter and sections 1432a and 1601a of this title and amended sections 70, 483, 1401, 1434, 1436, 1441, 1581, 1584, 1585, 1586, 1587, 1591, 1592, 1615, 1619, 1621 of this title, sections 60, 106, and 288 of former Title 46, Shipping, and sections 91, 277, 319, 325 of former Title 46, Appendix. For complete classification of this Act to the Code, see Tables.

§1711. Citation of chapter

This Act may be cited as the “Anti-Smuggling Act”.


REFERENCES IN TEXT

This Act, referred to in text, means act Aug. 5, 1935, which enacted this chapter and sections 1432a and 1601a of this title and amended sections 70, 483, 1401, 1434, 1436, 1441, 1581, 1584, 1585, 1586, 1587, 1591, 1592, 1615, 1619, 1621 of this title, sections 60, 106, and 288 of former Title 46, Shipping, and sections 91, 277, 319, 325 of former Title 46, Appendix. For complete classification of this Act to the Code, see Tables.

CHAPTER 6—TRADE FAIR PROGRAM

Sec.

1751. Designation of fairs.

1752. Entry of articles for fairs.

1753. Disposition of articles entered for fairs.

1754. Marking, packaging, and labeling requirements.

1755. Responsibilities of fair operator.

1756. Regulations.

§1751. Designation of fairs

(a) Notice to Secretary of the Treasury

When the Secretary of Commerce is satisfied that the public interest in promoting trade will
be served by allowance of the privileges provided for in this chapter to any fair to be held in the United States, he shall so advise the Secretary of the Treasury, designating (1) the name of the fair, (2) the place where the fair will be held, (3) the date when the fair will open and the date when it will close, and (4) the name of the operator of the fair.

(b) Definitions

For purposes of this chapter—

(1) The term “fair” means any fair, exhibition, or exposition designated by the Secretary of Commerce pursuant to this section.

(2) The term “closing date” in the case of any fair means the date designated pursuant to subsection (a)(3) of this section as the date when the fair will close, or (if earlier) the date on which such fair actually closes.

(c) Regulations

The Secretary of Commerce may prescribe such regulations as he deems necessary or appropriate to carry out the provisions of this section.

(Pub. L. 86–14, § 2, Apr. 22, 1959, 73 Stat. 18.)

\[ \text{SHORT TITLE} \]

Section 1 of Pub. L. 86–14 provided: “This Act [enacting this chapter] may be cited as the ‘Trade Fair Act of 1959’.”

§ 1752. Entry of articles for fairs

Any article imported or brought into the United States—

(1) which is in continuous customs custody, covered by a customs exhibition bond, or in a foreign trade zone, and

(2) on which no duty or internal-revenue tax has been paid,

may, without payment of any duty or internal-revenue tax, be entered under bond under this section for the purpose of exhibition at a fair, or for use in constructing, installing, or maintaining foreign exhibits at a fair.

(Pub. L. 86–14, § 3, Apr. 22, 1959, 73 Stat. 18.)

\[ \text{IMMUNITY FROM SEIZURE UNDER JUDICIAL PROCESS OF CULTURAL OBJECTS IMPORTED FOR TEMPORARY EXHIBITION OR DISPLAY} \]

Presidential determination of cultural significance of objects and exhibition or display thereof in the national interest, see section 2459 of Title 22, Foreign Relations and Intercourse.

§ 1753. Disposition of articles entered for fairs

(a) Disposition upon payment of duties and taxes

At any time before, or within 3 months after, the closing date of any fair, any article entered for such fair under section 1752 of this title may be sold or otherwise disposed of within, or may be removed from, the area of such fair. This subsection shall apply only if, before such disposition or removal—

(1) the article, after the entry for such fair under section 1752 of this title, has been entered under any provision of the customs laws, and

(2) any applicable duties and internal-revenue taxes are paid on such article in its condition and quantity, and at the rate in effect, at the time of such entry as if such article were imported or brought into the United States at the time of such entry.

(b) Disposition without payment of duties or taxes

At any time before, or within 3 months after, the closing date of any fair, any article entered for such fair under section 1752 of this title may, without the payment of any duties or internal-revenue taxes, be—

(1) exported,

(2) transferred from such fair to other customs custody status or to a foreign-trade zone,

(3) destroyed, or

(4) abandoned to the Government.

(c) Mandatory abandonment to Government

If any article entered under section 1752 of this title is still in customs custody, under such entry, at the expiration of 3 months after the closing date of the fair for which it was entered, such article shall thereupon be regarded as an article abandoned to the Government and shall be subject to sale or destruction of the article and disposition of the proceeds of sale in the manner provided for in sections 1491, 1492, and 1493 of this title. For purposes of this subsection, any duties or internal-revenue taxes on the article shall be computed on the basis of its condition and quantity at the time it becomes subject to sale.

(d) Period for performance of certain acts

Whenever any article entered under section 1752 of this title is transferred pursuant to subsection (b)(2) of this section or entered under subsection (a) of this section, the period prescribed for the performance of any act required by the provision governing the status to which the article is transferred, or under which the article is entered, shall run from the date of such transfer or entry.


§ 1754. Marking, packaging, and labeling requirements

(a) Marking requirements of the customs laws

Articles entered under section 1752 of this title shall not be subject to any marking requirements of the customs laws, except that when any such article is entered for consumption under section 1753 of this title it shall not be released from customs custody until the marking requirements of the customs laws have been complied with.

(b) Packaging, marking, or labeling requirements of the internal-revenue laws or the Federal Alcohol Administration Act

Articles entered under section 1752 of this title shall not be subject to the packaging, marking, or labeling requirements of the internal-revenue laws or of the Federal Alcohol Administration Act [27 U.S.C. 201 et seq.], except that any such article failing to comply with such requirements—

(1) shall be conspicuously marked prior to exhibition “Not labeled or packaged as required by law—not for sale”, and
(2) when entered for consumption under section 1753 of this title, shall not be released from customs custody until such packaging, marking, and labeling requirements have been complied with.

The application of the permit requirements of the Federal Alcohol Administration Act and the occupational taxes prescribed by chapter 51 of the Internal Revenue Code of 1986 shall be determined without regard to this chapter.


§ 1755. Responsibilities of fair operator

(a) Sole consignee and importer

Each fair operator designated by the Secretary of Commerce pursuant to section 1751 of this title shall be deemed the sole consignee and importer of all articles entered under section 1752 of this title for the fair for which such operator has been designated.

(b) Reimbursement of customs charges and expenses

The actual and necessary customs charges for labor, services, and other expenses in connection with the entry, examination, appraisement, custody, abandonment, destruction, or release of articles entered under section 1752 of this title, together with the necessary charges for salaries of customs officers and employees in connection with the accounting for, custody of, and supervision over, such articles, shall be reimbursed to the United States by the operator of the fair for which they are entered. Receipts from such reimbursements shall be deposited as refunds to the appropriation from which paid, in the manner provided for in section 1524 of this title.


§ 1756. Regulations

The Secretary of the Treasury may prescribe such regulations as may be necessary or appropriate to carry out the provisions of this chapter (other than section 1751 thereof).


CHAPTER 7—TRADE EXPANSION PROGRAM

SUBCHAPTER I—GENERAL PROVISIONS

Sec. 1801. Statement of purposes.
1802 to 1805. Repealed.
1806. Definitions.
(1) to stimulate the economic growth of the United States and maintain and enlarge foreign markets for the products of United States agriculture, industry, mining, and commerce; (2) to strengthen economic relations with foreign countries through the development of open and nondiscriminatory trading in the free world; and (3) to prevent Communist economic penetration.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 87–794, which is classified principally to this chapter. For complete classification of Pub. L. 87–794 to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 101 of Pub. L. 87–794 provided that: "This Act [enacting this chapter and section 1323 of this title, amending sections 1351 and 1352 of this title, and sections 172, 6501, and 6511 of Title 26, Internal Revenue Code, repealing sections 1322a and 1362 to 1365 of this title, enacting provisions set out as notes under section 1352 and former sections 1352a, 1362, and 1364 of this title, and under section 172 of Title 26, and amending provisions of the Tariff Classification Act of 1962, set out as a note preceding section 1292 of this title] may be cited as the "Trade Expansion Act of 1962.""

ABOLITION OF OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

The legal authority for the establishment and operation of the Office of the Special Representative for Trade Negotiations in the Executive Office of the President was changed by section 141 of the Trade Act of 1974, which is classified principally to this chapter. For complete classification of Pub. L. 87–794 to the Code, see Short Title note below and Tables.

PRESIDENT'S EXPORT COUNCIL

For provisions relating to establishment of President's Export Council and the Council's functions concerning export expansion, see Ex. Ord. No. 12131, May 4, 1979, 44 F.R. 38841, set out as a note under section 2401 of Title 50, Appendix, War and National Defense.

EXECUTIVE ORDER NO. 11075


§ 1806. Definitions

For purposes of this chapter—


(2) The term "duty or other import restriction" includes (A) the rate and form of an import duty, and (B) a limitation, prohibition, charge, and excision other than duty, imposed on importation or imposed for the regulation of imports.


(6) The term "modification", as applied to any duty or other import restriction, includes the elimination of any duty.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 87–794, which is classified principally to this chapter. For complete classification of Pub. L. 87–794 to the Code, see Short Title note below and Tables.

AMENDMENTS

1975—Pub. L. 93–618 repealed pars. (1), (3), (4), and (5), which defined "agency", "firm", "directly competitive with", and "product of a country", respectively. See section 2401 of this title.

SUBCHAPTER II—TRADE AGREEMENTS

PART I—GENERAL AUTHORITY

§ 1821. Basic authority for trade agreements

(a) Determination by President; trade agreements; modification or continuance of existing duties

Whenever the president determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that any of the purposes stated in section 1801 of this title will be promoted thereby, the President may—

(1) after June 30, 1962, and before July 1, 1967, enter into trade agreements with foreign countries or instrumentalities thereof; and

(2) proclaim such modification or continuance of any existing duty or other import restriction, such continuance of existing duty-free or excise treatment, or such additional import restrictions, as he determines to be required or appropriate to carry out any such trade agreement.

(b) Restrictions on decrease or increase in rate of duty

Except as otherwise provided in this subchapter, no proclamation pursuant to subsection (a) of this section shall be made—
§ 1822 TITLE 19—CUSTOMS DUTIES Page 392


Section 1844, Pub. L. 93–794, title II, § 224, Oct. 11, 1962, 76 Stat. 875, set out prerequisites for offers for modification or continuance of duties or other import restrictions, or continuance of duty-free or excise treatment. See section 2154 of this title.


PART IV—NATIONAL SECURITY


Section 1844, Pub. L. 93–794, title II, § 224, Oct. 11, 1962, 76 Stat. 875, set out prerequisites for offers for modification or continuance of duties or other import restrictions, or continuance of duty-free or excise treatment. See section 2154 of this title.


§ 1862. Safeguarding national security

(a) Prohibition on decrease or elimination of duties or other import restrictions if such reduction or elimination would threaten to impair national security

No action shall be taken pursuant to section 1821(a) of this title or pursuant to section 1331 of this title to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) Investigations by Secretary of Commerce to determine effects on national security of imports of articles; consultation with Secretary of Defense and other officials; assessment of defense requirements; report to President; publication in Federal Register; promulgation of regulations

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

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

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

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

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

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

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

(3)(A) By no later than the date that is 270 days after the date on which an investigation is initiated under paragraph (1) with respect to any article, the Secretary shall submit to the President a report on the findings of such investigation with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, the recommendations of the Secretary for action or inaction under this section. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary shall so advise the President in such report.

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

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

(c) Adjustment of imports; determination by President; report to Congress; additional actions; publication in Federal Register

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

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

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

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

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

(3)(A) If—

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

(ii) either—

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

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

the President shall take such other actions as the President deems necessary to adjust the imports of such article so that such imports will not threaten to impair the national security. The President shall publish in the Federal Register notice of any additional actions being taken under this section by reason of this subparagraph.

(B) If—

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

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

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

(d) 1 Domestic production for national defense; impact of foreign competition on economic welfare of domestic industries

For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of

1So in original. There are two subsecs. designated (d). Second subsec. (d) probably should be designated (e).
such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

(d) Report by Secretary of Commerce

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

(2) Omitted.

(f) Congressional disapproval of Presidential adjustment of imports of petroleum or petroleum products; disapproval resolution

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

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

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

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

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

(C)(i) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Finance. (ii) No disapproval resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this clause shall be in order in either House nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this clause by unanimous consent.

(201) Report by Secretary of Commerce

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

(102) Omitted.

(f) Congressional disapproval of Presidential adjustment of imports of petroleum or petroleum products; disapproval resolution

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

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

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

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

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

(C)(i) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Finance. (ii) No disapproval resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this clause shall be in order in either House nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this clause by unanimous consent.


REFERENCES IN TEXT

Section 232 of the Trade Expansion Act of 1962, referred to in subsec. (f)(2)(B), is classified to this section.

CODIFICATION

Subsection (d)(2), which required the President to submit an annual report to Congress on the operation of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 28 of House Document No. 103–7.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–418, § 1501(a)(3), in adding subsec. (b) and striking out former subsec. (b) relating to similar subject matter, changed structure of subsec. (b) from a single unnumbered par. to one consisting of pars. (1) to (4).

Subsec. (c). Pub. L. 100–418, § 1501(a), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 100–418, § 1501(b)(1), redesignated subsec. (e), as redesignated by section 1501(a)(2) of Pub. L. 100–418, as subsec. (d) and amended it generally. Prior to amendment, subsec. (d) read as follows: "A report shall be made and published upon the disposition of each request, application, or motion under subsection (b) of this section. The Secretary shall publish procedural regulations to give effect to the authority conferred on him by subsection (b) of this section."

Pub. L. 100–418, § 1501(a)(2), redesignated subsec. (c), relating to domestic production for national defense and the impact of foreign competition on economic welfare of domestic industries, as (d). Former subsec. (d), relating to reports on investigations by Secretary of Commerce, redesignated (e).

Subsec. (e). Pub. L. 100–418, § 1501(b)(1), redesignated subsec. (e), as redesignated by section 1501(a)(2) of Pub. L. 100–418, as subsec. (d) and amended it generally.

Pub. L. 100–418, § 1501(a)(2), redesignated subsec. (d), relating to reports on investigations by Secretary of Commerce, as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 100–418, § 1501(a)(1), (2), redesignated subsec. (e) as (f), and substituted reference to subsec. (c) of this section for reference to subsec. (b) of the section in paras. (1) and (2) of this subsection.


1975—Subsec. (b). Pub. L. 93–618, § 127(d)(1)–(3), substituted "Secretary of the Treasury (hereinafter referred to as the 'Secretary')" for "Director of the Office of Emergency Planning (hereinafter in this section referred to as the 'Director')", substituted "advice from" for "advice to" and "advice from other appropriate departments and agencies", inserted provision for public hearings by the Secretary as part of his—
investigation, inserted requirement that the Secretary report to the President when he recommends inaction in the same way that a report to the President is required when he recommends action under this section, and placed a 1-year time limit on the Secretary's investigation before making his recommendation to the President.

Effective Date of 1988 Amendment
Section 1501(d) of Pub. L. 100–148 provided that:

“(1) Except as otherwise provided under this subsection, the amendments made by this section [amending this section and repealing section 1863 of this title] shall apply with respect to investigations initiated under section 232(b) of the Trade Expansion Act of 1962 [19 U.S.C. 1862(b)] on or after the date of enactment of this Act [Aug. 23, 1988].

“(2) The provisions of subsection (c) of section 232 of the Trade Expansion Act of 1962, as amended by this section, shall apply with respect to any report submitted by the Secretary of Commerce to the President under section 232(b) of such Act after the date of enactment of this Act.

“(3) By no later than the date that is 90 days after the date of enactment of this Act, the President shall make the determination described in section 232(c)(1)(A) of the Trade Expansion Act of 1962, as amended by this section, with respect to any report—

“(A) which was submitted by the Secretary of Commerce to the President under section 232(b) of such Act before the date of enactment of this Act, and

“(B) with respect to which no action has been taken by the President before the date of enactment of this Act.”

Petroleum Import Adjustment Program: Oil Import Fee

Pub. L. 96–264, § 2, June 6, 1980, 94 Stat. 439, provided that: “Notwithstanding any other provision of law, the action taken by the President under section 232(b) of the Trade Expansion Act of 1962 (19 U.S.C. 1862(b)) with respect to petroleum imports under Proclamation 4744, dated April 2, 1980, as amended [formerly set out below], shall cease to have force and effect upon the date of enactment of this Act [June 6, 1980].”

Proclamation No. 5141

Pro. No. 5141, Dec. 22, 1983, 48 F.R. 56929, provided: “The Secretary of Energy has advised me that no purpose is currently served by the existing system of licensing of imports of petroleum and petroleum products. The Secretary of Energy also recommends that I retain the current prohibition on imports of Libyan crude oil into the United States, its territories and possessions, which was adopted in Proclamation No. 4907 [amending Proc. No. 3279, formerly set out above], on the ground that such imports would be inimical to the United States national security. The Secretary further recommends that he continue to monitor imports of petroleum and petroleum products in order to be able to advise me as to the need for further action, as appropriate, under Section 232 of the Trade Expansion Act of 1962, as amended [this section].

I agree with the recommendations of the Secretary of Energy.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, including Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), do hereby proclaim that:

SECTION 1. Proclamation No. 3279, as amended, is revoked.

Sect. 2. The Secretary of Energy shall continue to monitor imports of petroleum and petroleum products and shall, from time to time, in consultation with the Secretary of State, the Secretary of Commerce, and such other federal agencies as he deems appropriate, review the status of such imports with respect to the national security. The Secretary shall inform the President of any circumstances which in his opinion might indicate the need for further action by the President under Section 232 of the Trade Expansion Act [this section].

Sect. 3. (a) No crude oil produced in Libya may be imported into the United States, its territories or possessions.

(b) The Secretary of the Treasury may issue such regulations and interpretations as he deems necessary to implement this section.

Sect. 4. The Secretary of Energy may continue to consider requests for refund of fees paid under Proclamation No. 3279, as amended, if such requests were filed with the Secretary prior to the effective date of this Proclamation [Dec. 22, 1963]. Any such requests shall be considered in accordance with the previously applicable provisions of Proclamation No. 3279, as amended, and implementing regulations thereunder.

Sect. 5. The revocation of Proclamation No. 3279, as amended, shall not affect the authority of any federal department or agency to institute and conduct any ad-
ministrative, civil or criminal audit, investigation or proceeding based on any act committed or liability incurred while that Proclamation was in effect.

SEC. 6. The revocation of Proclamation No. 3279, as amended, shall not affect the presently applicable tariff rates for imports of petroleum and petroleum products, as reflected in the Tariff Schedules of the United States which is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1304 of this title.)

[The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States which is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1302 of this title.]

Ex. Ord. No. 11703, Assigning Policy Development and Duties with Respect to Oil Import Control Program


By virtue of the authority vested in me by the Constitution and statutes of the United States, including section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. The Oil Policy Committee, as reconstituted by this order, is hereby continued.

SEC. 2. The Chairman of the Oil Policy Committee shall maintain a constant surveillance of imports of petroleum and its primary derivatives in respect to the national security and, after consultation with the Oil Policy Committee, he shall inform the President of any circumstances which, in the Chairman’s opinion might indicate the need for further Presidential action under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), as amended. In the event prices of crude oil or its products or derivatives should be increased after the effective date of this proclamation, such surveillance shall include a determination as to whether such increase or increases are necessary to accomplish the national security objectives which, in the Chairman’s opinion, might indicate the need for further Presidential action under section 232 of the Trade Expansion Act of 1962, as amended, and of this proclamation."

S.C. 6. So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred by sections 2 and 5 of this order from the Director of the Office of Emergency Preparedness to the Deputy Secretary of the Treasury, as Chairman of the Policy Committee, as the Director of the Office of Management and Budget shall determine, in conformity with section 202(b) of the Budget and Accounting Act of 1921 (31 U.S.C. 581c(b)), shall be transferred at such time or times as he shall direct for use in connection with the functions transferred.

EXECUTIVE ORDER NO. 11743


EXECUTIVE ORDER NO. 12538


Section, Pub. L. 93–618, title I, §127(c), Jan. 3, 1975, 88 Stat. 193, directed that reports to Congress be submitted annually and within 60 days after any action was taken under section 1862 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable with respect to investigations initiated under section 1862(b) of this title on or after Aug. 23, 1988, see section 1501(d)(1) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 1862 of this title.

§ 1864. Import sanctions for export violations

Any person who violates any national security export control imposed under section 2401 of the Appendix to title 50 or any regulation, order, or license issued under that section, may be subject to such controls on the importing of goods or technology into the United States as the President may prescribe.


AMENDMENTS

1988—Pub. L. 100–418 struck out designation “(a)” and struck out subsec. (b) which related to prerequisites to imposition of sanctions.

PART V—ADMINISTRATIVE PROVISIONS


§ 1872. Interagency trade organization

(a) Establishment; functions; membership and composition; participation of representatives of other agencies; meetings

(1) The President shall establish an interagency organization.
(2) The functions of the organization are—
   (A) to assist, and make recommendations to, the President in carrying out the functions vested in him by the trade laws and to advise the United States Trade Representative (hereinafter in this section referred to as the “Trade Representative”) in carrying out the functions set forth in section 2171 of this title;
   (B) to assist the President, and advise the Trade Representative, with respect to the development and implementation of the international trade policy objectives of the United States; and
   (C) to advise the President and the Trade Representative with respect to the relationship between the international trade policy objectives of the United States and other major policy areas which may significantly affect the overall international trade policy and trade competitiveness of the United States.

(3) The interagency organization shall be composed of the following:
   (A) The Trade Representative, who shall be chairperson.
   (B) The Secretary of Commerce.
   (C) The Secretary of State.
   (D) The Secretary of the Treasury.
   (E) The Secretary of Agriculture.
   (F) The Secretary of Labor.

The Trade Representative may invite representatives from other agencies, as appropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. It shall meet at such times and with respect to such matters as the President or the Chairman shall direct.

(b) Duties

In assisting the President, the organization shall—

(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

(2) make recommendations to the President as to what action, if any, he should take on reports submitted to him by the United States International Trade Commission under section 2251(d) of this title,

(3) advise the President of the results of hearings held pursuant to section 2412(b)(2) of this title, and recommend appropriate action with respect thereto, and

(4) perform such other functions with respect to the trade agreements program as the President may from time to time designate.

In carrying out its functions under this subsection, the organization shall take into account the advice of the congressional advisers and private sector advisory committees, as well as that of any committee or other body established to advise the department, agency, or office which a member of the organization heads.

(c) Use of resources of agencies; procedures and committees

The organization shall, to the maximum extent practicable, draw upon the resources of the agencies represented in the organization, as well as such other agencies as it may determine, including the United States International Trade Commission. In addition, the President may establish by regulation such procedures and committees as he may determine to be necessary to enable the organization to provide for the conduct of hearings pursuant to section 2412(b)(2) of this title, and for the carrying out of other functions assigned to the organization pursuant to this section.


REFERENCES IN TEXT

Section 2251 of this title, referred to in subsec. (b)(2), was amended generally by Pub. L. 100–418, title I, § 1401(a), Aug. 23, 1988, 102 Stat. 1225, and as so amended does not contain a subsec. (d). See section 2252(b) of this title.


AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418, § 1621(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The President shall establish an interagency organization to assist him in carrying out the functions vested in him by this subchapter and sections 2251, 2252, and 2253 of this title. Such organization shall, in addition to the Special Representative for Trade Negotiations, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the organization shall direct. The organization may invite the participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration."

Subsec. (b). Pub. L. 100–418, § 1621(a)(2), inserted at end: "In carrying out its functions under this subsection, the organization shall take into account the advice of the congressional advisers and private sector advisory committees, as well as that of any committee or other body established to advise the department, agency, or office which a member of the organization heads."

1979—Subsecs. (b)(3), (c). Pub. L. 96–39 substituted "section 2412(b)(2) of this title" for "section 2411(c) and (d) of this title".


Subsec. (b). Pub. L. 93–618, § 602(b)(2), (3), substituted "reports submitted to him" for "reports with respect to tariff adjustment submitted to him" and "section 2251(d) of this title" for "section 1901(e) of this title."

Subsec. (b)(3). Pub. L. 93–618, § 602(b)(4), substituted "hearings held pursuant to" for "hearings concerning foreign import restrictions held pursuant to" and "section 2411(c) and (d) of this title" for "section 1832(d) of this title."

$1873 TITLE 19—CUSTOMS DUTIES Page 398

Effective Date of 1979 Amendment

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 903 of Pub. L. 96–39, set out as an Effective Date note under section 2111 of this title.

Establishment of Interagency Group

For provisions establishing an interagency group within the interagency organization established under this section, relating to the implementation of chapter 19 of the North American Free Trade Agreement as well as the oversight of the United States Section established under section 3315 of this title, see section 3422(c)(2) of this title. For provisions establishing an interagency group within the interagency organization established under this section, relating to the implementation of chapters 18 and 19 of the United States-Canada Free-Trade Agreement, see section 605 of Pub. L. 100–449, set out in a note under section 2112 of this title.

Sense of Congress Respecting Role of Interagency Organization

Section 1621(b) of Pub. L. 100–418 provided that: ‘‘It is the sense of Congress that the interagency organization established under subsection (a) [amending this section] should be the principal interagency forum within the executive branch on international trade policy matters.’’

Transfer of Functions From East-West Foreign Trade Board

East-West Foreign Trade Board, which was established by Pub. L. 93–618, title IV, § 411, Jan. 3, 1975, 88 Stat. 2065, and classified to section 2441 of this title, established under section 3315 of this title, set out as notes under section 2171 of this title, and function of Board under subsecs. (a) and (b) of section 411 of Pub. L. 93–618 transferred to interagency organization established under this section by section 5(e) of Reorg. Plan No. 3 of 1979. See section 2441 of this title.

Trade Policy Committee

For provisions relating to Trade Policy Committee, see section 3 of Ex. Ord. No. 11846, Mar. 27, 1975, 40 F.R. 14291, set out as a note under section 2111 of this title.


Part VI—General Provisions

$1881. Normal trade relations

Except as otherwise provided in this subchapter, in section 1351 of this title, or in section 401(a) of the Tariff Classification Act of 1962, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this subchapter or section 1351 of this title shall apply to products of all foreign countries, whether imported directly or indirectly.


References in Text

Section 401(a) of the Tariff Classification Act of 1962, referred to in text, is set out as a note under section 1351 of this title.

Amendments


$1885. Termination of proclamations


(b) The President may at any time terminate, in whole or in part, any proclamation made under this subchapter.


Amendments

1975—Subsec. (a). Pub. L. 93–618 struck out subsec. (a) which provided for termination of or withdrawal from trade agreements. See section 2130 of this title.


§1887. Limitation on imports under section 624 of title 7

Nothing contained in this chapter shall be construed to affect in any way the provisions of section 624 of title 7, or to apply to any import restriction heretofore or hereafter imposed under such section.


§1888. References in other laws

All provisions of law (other than this chapter and the Trade Agreements Extension Act of 1951) in effect after June 30, 1962, referring to section 350 of the Tariff Act of 1930, to that section as amended, to the Act entitled ‘‘An Act to amend the Tariff Act of 1930’’, approved June 12, 1934, to that Act as amended, or to agreements entered into, or proclamations issued, under any of such provisions, shall be construed, unless clearly precluded by the context, to refer also to this chapter, or to agreements entered into or proclamations issued, pursuant to this chapter.


References in Text

This chapter, referred to in text, was in the original ‘‘this Act’’, meaning Pub. L. 87–794, Oct. 11, 1962, 76 Stat. 872, as amended, which is classified principally to this chapter. For complete classification of Pub. L. 87–794, to the Code, see Short Title note set out under section 1801 of this title and Tables.
The Trade Agreements Extension Act of 1951, referred to in text, is act June 16, 1951, ch. 141, 65 Stat. 72, as amended. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1654 of this title and Tables.

Section 350 of the Tariff Act of 1930, referred to in text, is classified to section 1351 of this title.

The Act entitled “An Act to amend the Tariff Act of 1930”, approved June 12, 1934, referred to in text, is act June 12, 1934, ch. 474, 48 Stat. 943, as amended, which is classified to sections 1351, 1352, 1353, and 1354 of this title.

SUBCHAPTER III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE

PART I—ELIGIBILITY FOR ASSISTANCE


EFFECTIVE DATE OF REPEAL

Section 602(e) of Pub. L. 93–618 provided in part that the repeals called for in section 602(e) of Pub. L. 93–618 [repealing sections 1901(a)(2), (3), (c), (d)(2), (f)(1), (3), 1902(b)(1), (2), (c) to (e), 1911 to 1915, 1917, 1931, 1941 to 1944, 1951, 1952, 1961 to 1963, and 1971 to 1978 of this title] are effective on the 90th day following Jan. 3, 1975.

The remaining parts of section 1901 [subsecs. (a)(1), (b), (d)(1), (e), (f)(2), and (g) of section 1901] and of section 1902 (subsec. (a) of section 1902) are repealed by section 602(d) of Pub. L. 93–618 without an effective date of repeal other than that of Pub. L. 93–618, which was approved on Jan. 3, 1975.

PART II—ADJUSTMENT ASSISTANCE TO FIRMS


EFFECTIVE DATE OF REPEAL

Repeal effective on 90th day following Jan. 3, 1975, see note set out under section 1901 of this title.

§ 1916. Administration of financial assistance; recording of mortgages

(a) Guarantees, agreements for deferred participation, and loans

In making and administering guarantees, agreements for deferred participation, and loans under section 1914 of this title, the Secretary of Commerce may—

(1) require security for any such guarantee, agreement, or loan, and enforce, waive, or subordinate such security;

(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees, agreements, or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees, agreements, or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by him in connection with such guarantees, agreements, or loans;

(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 1914 of this title.

(b) Mortgages

Any mortgage acquired as security under subsection (a) of this section shall be recorded under applicable State law.


REFERENCES IN TEXT

Section 1914 of this title, referred to in subsec. (a), was repealed by Pub. L. 93–618, title VI, § 602(e), Jan. 3, 1975, 88 Stat. 2072.


EFFECTIVE DATE OF REPEAL

Repeal effective on the 90th day following Jan. 3, 1975, see note set out under section 1901 of this title.

§ 1918. Protective provisions

(a) Maintenance of records by recipients of assistance

Each recipient of adjustment assistance under section 1913, 1914, or 1917 of this title, shall keep records which fully disclose the amount and disposition by such recipient of the proceeds, if any, of such adjustment assistance, and which will facilitate an effective audit.
§ 1919. Penalties

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Secretary of Commerce under this part, or for the purpose of obtaining money, property, or anything of value under this part, shall be fined not more than $5,000 or imprisoned for not more than two years, or both.


§ 1920. Suits by and against Secretary of Commerce

In providing technical and financial assistance under sections 1913 and 1914 of this title, the Secretary of Commerce may sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other process, mesne or final, shall be issued against him or his property. Nothing in this section shall be construed to except the activities pursuant to sections 1913 and 1914 of this title from the application of sections 517, 519, and 2679 of title 28.


REFERENCES IN TEXT

Sections 1913 and 1914 of this title, referred to in text, were repealed by Pub. L. 93–618, title VI, § 602(e), Jan. 3, 1975, 88 Stat. 2072.

CODIFICATION

Reference to “section 517 of title 28” substituted in text for reference to section 316 of title 5, and reference to “section 519 of title 28” substituted for reference to section 507(b) of title 28 on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

PART III—ADJUSTMENT ASSISTANCE TO WORKERS


EFFECTIVE DATE OF REPEAL

Repeal effective on 90th day following Jan. 3, 1975, see note set out under section 1901 of this title.

SUBPART A—TRADE READJUSTMENT ALLOWANCES


EFFECTIVE DATE OF REPEAL

Repeal effective on 90th day following Jan. 3, 1975, see note set out under section 1901 of this title.

*See References in Text note below.*
SUBPART B—TRAINING


SUBPART C—RELOCATION ALLOWANCES


SUBPART D—GENERAL PROVISIONS


Effective Date of Repeal.

Repeal effective on 90th day following Jan. 3, 1975, see note set out under section 1901 of this title.

PART IV—TARIFF ADJUSTMENT

§ 1981. General authority

(a) Proclamation of increase in, or imposition of, any duty or other import restriction; report to the Congress; adoption of resolution of approval; request for additional information

(1) After receiving an affirmative finding of the United States International Trade Commis-

sion under section 1901(b) of this title with respect to an industry, the President may proclaim such increase in, or imposition of, any duty or other import restriction on the article causing or threatening to cause serious injury to such industry as he determines to be necessary to prevent or remedy serious injury to such industry.

(2) If the President does not, within 60 days after the date on which he receives such affirmative finding, proclaim the increase in, or imposition of, any duty or other import restriction on such article found and reported by the United States International Trade Commission pursuant to section 1901(e) of this title—

(A) he shall immediately submit a report to the House of Representatives and to the Senate stating why he has not proclaimed such increase or imposition, and

(B) such increase or imposition shall take effect (as provided in paragraph (3)) upon the adoption by both Houses of the Congress (within the 60-day period following the date on which the report referred to in subparagraph (A) is submitted to the House of Representatives and the Senate), by the yeas and nays by the affirmative vote of a majority of the authorized membership of each House, of a concurrent resolution stating in effect that the Senate and House of Representatives approve the increase in, or imposition of, any duty or other import restriction on the article found and reported by the United States International Trade Commission.

For purposes of subparagraph (B), in the computation of the 60-day period there shall be excluded the days on which either House is not in session because of adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die. The report referred to in subparagraph (A) shall be delivered to both Houses of the Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House of Representatives is not in session and to the Secretary of the Senate if the Senate is not in session.

(3) In any case in which the contingency set forth in paragraph (2)(B) occurs, the President shall (within 15 days after the adoption of such resolution) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was found and reported by the United States International Trade Commission pursuant to section 1901(e) of this title.

(4) The President may, within 60 days after the date on which he receives an affirmative finding of the United States International Trade Commission under section 1901(b) of this title with respect to an industry, request additional information from the United States International Trade Commission. The United States International Trade Commission shall, as soon as practicable but in no event more than 120 days after the date on which it receives the President’s request, furnish additional information with respect to such industry in a supplemental report. For purposes of paragraph (2), the date on which the President receives such supple-
mental report shall be treated as the date on which the President received the affirmative finding of the United States International Trade Commission with respect to such industry.

(b) Maximum rate of increase

No proclamation pursuant to subsection (a) of this section shall be made—

(1) increasing any rate of duty to a rate more than 50 percent above the rate existing on July 1, 1934, or, if the article is dutiable but no rate existed on July 1, 1934, the rate existing at the time of the proclamation.

(2) in the case of an article not subject to duty, imposing a duty in excess of 50 percent ad valorem.

For purposes of paragraph (1), the term "existing on July 1, 1934" has the meaning assigned to such term by paragraph (5) of section 1896 of this title.

(c) Reduction, termination, or extension of increase in, or imposition of, any duty or other import restriction

(1) Any increase in, or imposition of, any duty or other import restriction proclaimed pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951—

(A) may be reduced or terminated by the President when he determines, after taking into account the advice received from the United States International Trade Commission under subsection (d)(2) of this section and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest, and

(B) unless extended under section 2253 of this title, shall terminate not later than the close of the date which is 4 years (or, in the case of any such increase or imposition proclaimed pursuant to such section, 5 years) after the effective date of the initial proclamation or October 11, 1962, whichever date is the later.


(d) Review of developments with respect to industries concerned; annual report to President; advice of probable economic effect; considerations; investigations; hearings

(1) So long as any increase in, or imposition of, any duty or other import restriction pursuant to this section or pursuant to section 7 of the Trade Agreements Extension Act of 1951 remains in effect, the United States International Trade Commission shall keep under review developments with respect to the industry concerned, and shall make annual reports to the President concerning such developments.

(2) Upon request of the President or upon its own motion, the United States International Trade Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the reduction or termination of the increase in, or imposition of, any duty or other import restriction pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951.


(4) In advising the President under this subsection as to the probable economic effect on the industry concerned, the United States International Trade Commission shall take into account all economic factors which it considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment.

(5) Advice by the United States International Trade Commission under this subsection shall be given on the basis of an investigation during the course of which the United States International Trade Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(e) Conformity of trade agreements with this section

The President, as soon as practicable, shall take such action as he determines to be necessary to bring trade agreements entered into under section 1351 of this title into conformity with the provisions of this section. No trade agreement shall be entered into under section 1821(a) of this title unless such agreement permits action in conformity with the provisions of this section.


References in Text

Section 1901 of this title, referred to in subsec. (a), was repealed by Pub. L. 93–618, title VI, § 602(d), (e), Jan. 3, 1975, 88 Stat. 2072. See section 2251 et seq. of this title.

Section 1886 of this title, referred to in subsec. (b), was repealed by Pub. L. 93–618, title VI, § 602(d), Jan. 3, 1975, 88 Stat. 2072. See section 2481 of this title.

Section 7 of the Trade Agreements Extension Act of 1951, referred to in subsecs. (c)(1) and (d)(1), (2), was classified to section 1361 of this title, and was repealed by section 257(e)(1) of Pub. L. 87–794.

Amendments


Subsec. (c)(1)(B). Pub. L. 93–618, § 602(c), substituted "unless extended under section 2253 of this title." for "unless extended under paragraph (2)."

Subsec. (c)(2). Pub. L. 93–618, § 602(d), struck out par. (2) which provided for the extension of increases in, or imposition of, duties or other import restrictions. See section 2253 of this title.

Subsec. (d)(3). Pub. L. 93–618, § 602(d), struck out par. (3) which provided for notification to the President by the Tariff Commission of the probable impact of the termination of duties or other import restrictions.

Status of Certain Changes in Tariff Schedules

Section 1(d) of Pub. L. 90–638, Oct. 24, 1968, 82 Stat. 1360, provided that: "The rates of duty in rate column numbered 1 (of item 662.18) of the Tariff Schedules of the United States (as amended by the subsections (a) and (c) shall be treated as not having the status of statutory provisions enacted by the Congress, but as having been proclaimed by the President as being required or appropriate to carry out foreign trade agreements to which the United States is a party. The rate of duty in rate column numbered 1 of item 662.20 of the Tariff Schedules of the United States (as amended by subsection (a)) shall not supersede the staged rates of duty provided for such item in Annex III to Proclama-
Section 2(d) of Pub. L. 90–638, Oct. 24, 1968, 82 Stat. 1390, provided that:

“(1) For purposes of applying sections 256(4) (section 1886(4) of this title), 256(d) (section 1886(5) of this title), and 351(b) (of the Trade Expansion Act of 1962 (subsec. (b) of this section) and section 356(c)(2)(A) of the Tariff Act of 1930 (section 1351(c)(2)(A) of this title)—

(A) the rates of duty in rate column numbered 1 of the Tariff Schedules of the United States (items 355.70, 356.30, and 359.30) (as changed by subsection (b)) shall be treated as the rates of duty existing on July 1, 1962; and

(B) the rates of duty in rate column numbered 2 of such Schedules (as changed by subsection (b)) shall be treated as the rates of duty existing on July 1, 1934.

(2) The rates of duty in rate column numbered 1 of the Tariff Schedules of the United States (as amended by subsection (b)) shall be treated as not having the status of statutory provisions enacted by the Congress, but as having been proclaimed by the President as being required or appropriate to carry out foreign trade agreements to which the United States is a party.

Section 2(c) of Pub. L. 90–634, Oct. 12, 1968, 82 Stat. 1001, provided that:

“(1) The rates of duty in rate column numbered 1 of the Tariff Schedules of the United States for item 149.48 (as added by the first section of this Act and amended by subsection (b) of this section) shall be treated as not having the status of statutory provisions enacted by the Congress, but as having been proclaimed by the President as being required or appropriate to carry out foreign trade agreements to which the United States is a party.

“(2) For purposes of section 351(b) of the Trade Expansion Act of 1962 (subsec. (b) of this section), the rate of duty in rate column numbered 2 of the Tariff Schedules of the United States for item 149.48 (as added by the first section of this Act) shall be treated as the rate of duty existing on July 1, 1934.

Section 9 of Pub. L. 89–651, Oct. 14, 1966, 80 Stat. 902, provided that: ‘‘Any duty-free treatment provided for in this Act [see Short Title note set out preceding section 1202 of this title] shall, for purposes of title III of the Act [see Short Title note set out preceding section 1202 of this title], be treated as a condition 1202 of this title
determined to an industry, the President may, in lieu of exercising the authority contained in section 351 of such Act under subsection (a), authorize to issue regulations governing the entry or withdrawal from warehouse of merchandise covered by such agreement, in order to carry out an agreement concluded under subsection (a) of this section, the President is authorized to issue regulations governing the entry or withdrawal from warehouse of the article covered by such agreement. In addition, in order to carry out a multilateral agreement concluded under subsection (a) of this section among countries accounting for a significant part of world trade in the article covered by such agreement, the President is also authorized to issue regulations governing the entry or withdrawal from warehouse of the like article which is the product of countries not parties to such agreement.


REFERENCES IN TEXT

Section 1901 of this title, referred to in subsec. (a), was repealed by Pub. L. 93–618, title VI, §602(d), (e), Jan.

1 See References in Text note below.
The purposes of this chapter are—

(1) to provide for the implementation of the Agreement Concerning Automotive Products Between the Government of the United States of America and the Government of Canada signed on January 16, 1965 (hereinafter referred to as the “Agreement”), in order to strengthen the economic relations and expand trade in automotive products between the United States and Canada; and

(2) to authorize the implementation of such other international agreements providing for the mutual reduction or elimination of duties applicable to automotive products as the Government of the United States may hereafter enter into.

motive Products, which provides that Canada shall ac-
cord duty-free treatment to imports of certain auto-
motive products of the United States and that, after
enactment of implementing legislation, the United
States shall accord duty-free treatment to certain
automotive products of Canada retroactively to the
earliest date administratively possible following the
date on which the agreement has been implemented by
Canada (art. II, 89th Cong. 1st sess., H. Rep. 537, 38);
WHEREAS the agreement of January 16, 1965, was
implemented by Canada through the granting of the re-
quise duty-free treatment to United States products on
January 18, 1965;
WHEREAS title II [sections 201 to 205 of this title]
and IV [amending section 1202 of this title] of the Auto-
motive Products Trade Act of 1965 have been enacted to
provide for modifications of the Tariff Schedules of the
United States of America the one hundred and
nineteen

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motive Products Trade Act of 1965 have been enacted to
provide for modifications of the Tariff Schedules of the
United States of America the one hundred and
nineteen
§ 2013. Effective date of proclamations

(a) Retroactive effect; authority of President

Subject to subsection (b) of this section, the President is authorized, notwithstanding section 1514 of this title or any other provision of law, to give retroactive effect to any proclamation issued pursuant to section 2011 of this title as of the earliest date after January 17, 1965, which he determines to be practicable.

(b) Filing of request with customs officer

In the case of liquidated customs entries, the retroactive effect pursuant to subsection (a) of this section of any proclamation shall apply only upon request therefor filed with the customs officer concerned on or before the 90th day after the date of such proclamation and subject to such other conditions as the President may specify.


§ 2014. Termination of proclamations

The President is authorized at any time to terminate, in whole or in part, any proclamation issued pursuant to section 2011 or 2012 of this title.


§ 2015. Special reports to Congress

(a) Report on required comprehensive review

No later than August 31, 1968, the President shall submit to the Senate and the House of Representatives a special report on the comprehensive review called for by Article IV(c) of the Agreement. In such report he shall advise the Congress of the progress made toward the achievement of the objectives of Article I of the Agreement.

(b) Report on increase on Canadian value added

Whenever the President finds that any manufacturer has entered into any undertaking, by reason of governmental action, to increase the Canadian value added of automobiles, buses, specified commercial vehicles, or original equipment parts produced by such manufacturer in Canada after August 31, 1968, he shall report such finding to the Senate and the House of Representatives. The President shall also report whether such undertaking is additional to undertakings agreed to in letters of undertaking submitted by such manufacturer before October 21, 1965.

(c) Recommendations

The reports provided for in subsections (a) and (b) of this section shall include recommendations for such further steps, including legislative action, if any, as may be necessary for the achievement of the purposes of the Agreement and this chapter.


REFERENCES IN TEXT

The Agreement, referred to in subsecs. (a) and (c), is the Agreement Concerning Automotive Products, which was entered into between the United States and Canada on January 16, 1965, see Proc. No. 3882, Oct. 21, 1965, 30 F.R. 13683 and Proc. No. 3743, Sept. 8, 1966, 31 F.R. 12003, set out as notes under section 2011 of this title.

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 89–283, Oct. 21, 1965, 79 Stat. 1016, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

SUBCHAPTER III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE

§ 2021. General authority

A petition may be filed for tariff adjustment or for a determination of eligibility to apply for adjustment assistance under title III of the Trade Expansion Act of 1962 [19 U.S.C. 1901 et seq.] as though the reduction or elimination of a duty proclaimed by the President pursuant to section 2011 or 2012 of this title were a concession granted under a trade agreement referred to in section 301 of the Trade Expansion Act of 1962 [19 U.S.C. 1901].


REFERENCES IN TEXT


Section 301 of the Trade Expansion Act of 1962, referred to in text, was classified to section 1901 of this title and was repealed by Pub. L. 93–618, title VI, §602(d), (e), Jan. 3, 1975, 88 Stat. 2072. See section 2251 et seq. of this title.

Section 2012 of this title, referred to in text, was omitted from the Code.

CODIFICATION

The words “subject to section 2022 of this title” omitted in view of the omission of section 2022 of this title, which provided special authority after Oct. 21, 1965, and before July 1, 1968, for filing of petitions for determination by the President of eligibility to apply for adjustment assistance.

§§ 2022, 2023. Omitted

CODIFICATION


Section 2023, Pub. L. 89–283, title III, §303, Oct. 21, 1965, 79 Stat. 1021, required the President, at the time he transmitted an agreement under section 2022(d)(1) of this title, to recommend legislation concerning adjustment assistance to firms and workers in light of the anticipated economic impact of the reduction of duties provided for by such agreement.
§ 2024. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary from time to time to carry out the provisions of this subchapter, which sums are authorized to be appropriated to remain available until expended.


SUBCHAPTER IV—GENERAL PROVISIONS

§ 2031. Authorities; delegation of functions; rules and regulations

The head of any agency performing functions authorized by this chapter may—
(1) authorize the head of any other agency to perform any of such functions; and
(2) prescribe such rules and regulations as may be necessary to perform such functions.


REFERENCES IN TEXT


§ 2032. Annual report to Congress

The President shall submit to the Congress an annual report on the implementation of this chapter. Such report shall include information regarding new negotiations, reductions or eliminations of duties, reciprocal concessions obtained, and other information relating to activities under this chapter. Such report shall also include information providing an evaluation of the Agreement and this chapter in relation to the total national interest, and specifically shall include, to the extent practicable, information with respect to—
(1) the production of motor vehicles and motor vehicle parts in the United States and Canada.
(2) the retail prices of motor vehicles and motor vehicle parts in the United States and Canada.
(3) employment in the motor vehicle industry and motor vehicle parts industry in the United States and Canada, and
(4) United States and Canadian trade in motor vehicles and motor vehicle parts, particularly trade between the United States and Canada.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 89–283, Oct. 21, 1965, 79 Stat. 1016, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

§ 2033. Applicability of antidumping provisions and antitrust laws

Nothing contained in this chapter shall be construed to affect or modify the provisions of subtitle B of title VII of the Tariff Act of 1930 [19 U.S.C. 1673 et seq.] or of any of the antitrust laws as designated in section 12 of title 15.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 89–283, Oct. 21, 1965, 79 Stat. 1016, as amended. For complete classification of this Act to the Code, see section 1615 of this title and Tables.

AMENDMENTS


EFFECTIVE DATE OF 1979 AMENDMENT


CHAPTER 9—VISUAL AND AUDITORY MATERIALS OF EDUCATIONAL, SCIENTIFIC, AND CULTURAL CHARACTER

§ 2051. Implementation of the Agreement; executive designation and duty of Federal agencies

The President of the United States is authorized to designate a Federal agency or agencies which shall be responsible for carrying out the provisions of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character and a related protocol of signature, opened for signature at Lake Success on July 15, 1949 (hereinafter in this chapter referred to as the “Agreement”). It shall be the duty of the Federal agency or agencies so designated to take appropriate measures for the carrying out of the provisions of the Agreement including the issuance of regulations. In carrying out this section, such Federal agency or agencies may not consider visual or auditory material to fail to qualify as being of international educational character—
(1) because it advocates a particular position or viewpoint, whether or not it presents or acknowledges opposing viewpoints;

(2) because it might lend itself to misinterpretation, or to misrepresentation of the United States or other countries, or their people or institutions;

(3) because it is not representative, authentic, or accurate or does not represent the current state of factual knowledge of a subject or aspect of a subject unless the material contains widespread and gross misstatements of fact;

(4) because it does not augment international understanding and goodwill, unless its primary purpose or effect is not to instruct or inform through the development of a subject or an aspect of a subject and its content is not such as to maintain, increase, or diffuse knowledge; or

(5) because in the opinion of the agency the material is propaganda.

Such Federal agency or agencies may not label as propaganda any material that receives a certificate of international educational character under this section and the Agreement.


AMENDMENTS

1991—Pub. L. 102–138 inserted provisions at end limiting the authority of a Federal agency or agencies to fail to qualify visual or auditory material as being of propaganda.

EX. ORD. NO. 11311. IMPLEMENTATION OF BEIRUT AGREEMENT RELATING TO AUDIO-VISUAL MATERIALS

Ex. Ord. No. 11311, Oct. 14, 1966, 31 F.R. 13413, provided:

By virtue of the authority vested in me as President of the United States, including the provisions of the Joint Resolution of October 8, 1966, Public Law 89–634 [this chapter and amendment to section 1202 of this title], and section 301 of Title 3 of the United States Code, I hereby order and proclaim that—

1. Pursuant to section 3(b) of the Joint Resolution, the amendments to the Tariff Schedules of the United States made by section 3(a) of the Joint Resolution shall apply with respect to articles entered, or withdrawn from warehouse, for consumption, on and after January 1, 1967.

2. Pursuant to the “Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character”, made at Beirut in 1948, the Joint Resolution, and headnote 1 to schedule 8, part 6 of the Tariff Schedules of the United States, the United States Information Agency is hereby designated as the agency to carry out the provisions of the Agreement and related protocol, and to make any determinations and to prescribe any regulations required by headnote 1.

LYNDON B. JOHNSON.

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

§ 2052. Assistance from other Federal agencies; facilities and personnel

Agencies of the Federal Government are authorized to furnish facilities and personnel for the purpose of assisting the agency or agencies designated by the President in carrying out the provisions of the Agreement.


CHAPTER 10—CUSTOMS SERVICE

Sec.

2071. Establishment of Service; Commissioner; appointment.

2072. Officers and employees.

2073. Transfer of personnel, etc., to Service.

2074. Establishment of revolving fund.

2075. Appropriations authorization.

2076. Advances in foreign countries.

2077. Advances for enforcement of customs provisions.

2078. Certification of reason for advance.

2079. Payments in foreign countries; claims for reimbursement.

2080. Advances from available appropriations; rules and regulations.

2081. Undercover investigative operations of Customs Service.

2082. Customs Service administration.

2083. Annual national trade and customs law violation estimates and enforcement strategy.

§ 2071. Establishment of Service; Commissioner; appointment

There shall be in the Department of the Treasury a service to be known as the United States Customs Service, and a Commissioner of Customs. The Commissioner of Customs, who shall be appointed by the President by and with the advice and consent of the Senate, shall—

(1) be at the head of the United States Customs Service;

(2) carry out the duties and powers prescribed by the Secretary of the Treasury; and

(3) report to the Secretary of the Treasury through such other officials as may be designated by the Secretary.


CODIFICATION

Provisions that fixed the compensation of the Commissioner have been omitted as the position is under the Executive Schedule, see section 5316 of Title 5, Government Organization and Employees.

Provisions that authorized appointment of the Commissioner “without regard to the civil service laws” were omitted as the appointment is subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order No. 7833, Apr. 23, 1941, issued by the President pursuant to the act of Nov. 36, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5. The position is currently excepted from the civil service rules and regulations by Schedule C, see Part 213 of Title 5 of the Code of Federal Regulations.

Section was formerly classified to section 281 of Title 5 prior to the general revision and codification of Title 5 by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 374. References to the Bureau of Prohibition and to the Commissioner of Prohibition were omitted in view of
the change of name of the Bureau of Prohibition to the Bureau of Industrial Alcohol by act May 27, 1930, and the abolition of the Bureau of Industrial Alcohol by Ex. Ord. No. 6639.

**AMENDMENTS**

1989—Pub. L. 101–207 amended second sentence generally. Prior to amendment, second sentence read as follows: “The Commissioner of Customs shall be at the head of the United States Customs Service, and the Commissioner of Customs shall be appointed by the Secretary of the Treasury.”

**CHANGE OF NAME**


**EFFECTIVE DATE**

Section 7 of act Mar. 3, 1927, provided that: “This Act shall take effect April 1, 1927.”

**TRANSFER OF FUNCTIONS**

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions vested by law in Attorney General, Department of Justice, or any other officer or agency of that Department, with respect to the inspection at regular inspection locations at ports of entry of persons, and documents of persons, entering or leaving the United States, prior to the arrival or departure of the cargo.

Effective for transmittal of information shall take into account differences among different modes of transportation, including differences in commercial practices, operational characteristics, and technological capacity to collect and transmit information electronically.

The regulations shall take into account the extent to which the technology necessary for parties to transmit and the Customs Service to receive and analyze data in a timely fashion is available.

The regulations shall protect the privacy of business proprietary and any other confidential cargo information provided to the Customs Service pursuant to such regulations, except for the manifest information collected pursuant to section 431 of the Tariff Act of 1930 [19 U.S.C. 1401 et seq.] or regulations promulgated thereunder.

The regulations shall provide interim requirements appropriate for the technology is that available at the time of promulgation.

The information collected pursuant to the regulations shall be used exclusively for ensuring cargo safety and security and preventing smuggling, and shall not be used for determining merchandise entry or for any other commercial enforcement purposes. Notwithstanding the preceding sentence, nothing in this section (enacting section 1431a of this title and this note) shall be treated as amending, repealing, or otherwise modifying title IV of the Tariff Act of 1930 [19 U.S.C. 1401 et seq.] or regulations promulgated thereunder.

The regulations shall take into account differences among different modes of transportation, as described in subparagraph (A) of this paragraph (1) under the parameters set forth in paragraph (3) shall be such information on cargo as the Secretary determines to be reasonably necessary to ensure cargo safety and security pursuant to those laws enforced and administered by the Customs Service. The Secretary shall provide to appropriate Federal departments and agencies cargo information obtained pursuant to paragraph (1).

"(3) PARAMETERS.—In developing regulations pursuant to paragraph (1), the Secretary shall adhere to the following parameters:

(A) The Secretary shall solicit comments from and consult with a broad range of parties likely to be affected by the regulations, including importers, exporters, carriers, customs brokers, and freight forwarders, among other interested parties.

(B) In general, the requirement to provide particular information shall be imposed on the party most likely to have direct knowledge of that information. Where requiring information from the party with direct knowledge of that information is not practicable, the regulations shall take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is imposed, and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party on which a requirement is imposed, the regulations shall permit that party to transmit information on the basis of what it reasonably believes to be true.

(C) The Secretary shall take into account the existence of competitive relationships among the parties on which requirements to provide particular information are imposed.

(D) Where the regulations impose requirements on carriers of cargo, they shall take into account differences among different modes of transportation, including differences in commercial practices, operational characteristics, and technological capacity to collect and transmit information electronically.

(E) The regulations shall take into account the extent to which the technology necessary for parties to transmit and the Customs Service to receive and analyze data in a timely fashion is available.

(F) The information collected pursuant to the regulations shall be used exclusively for ensuring cargo safety and security and preventing smuggling, and shall not be used for determining merchandise entry or for any other commercial enforcement purposes. Notwithstanding the preceding sentence, nothing in this section (enacting section 1431a of this title and this note) shall be treated as amending, repealing, or otherwise modifying title IV of the Tariff Act of 1930 [19 U.S.C. 1401 et seq.] or regulations promulgated thereunder.

(G) The regulations shall protect the privacy of business proprietary and any other confidential cargo information provided to the Customs Service pursuant to such regulations, except for the manifest information collected pursuant to section 431 of the Tariff Act of 1930 [19 U.S.C. 1431] and required to be available for public disclosure pursuant to section 431(c) of such Act., [sic]
with one another or that are redundant with requirements in other provisions of law.

“(J) The Secretary shall determine whether it is appropriate to provide transition periods between promulgation of the regulations and the effective date of the regulations and shall prescribe such transition periods in the regulations, as appropriate. The Secretary may determine that different transition periods are appropriate for different classes of affected parties.

“(K) With respect to requirements imposed on carriers, the Secretary, in consultation with the Postmaster General, shall determine whether it is appropriate to impose the same or similar requirements on shipments by the United States Postal Service. If the Secretary determines that such requirements are appropriate, then they shall be set forth in the regulations.

“(L) Not later than 15 days prior to publication of a final rule pursuant to this section, the Secretary shall transmit to the Committees on Finance and Commerce, Science, and Transportation of the Senate and the Committees on Ways and Means and Transportation and Infrastructure of the House of Representatives a report setting forth—

“(i) the proposed regulations;

“(ii) an explanation of how particular requirements in the proposed regulations meet the needs of cargo safety and security;

“(iii) an explanation of how the Secretary expects the proposed regulations to affect the commercial practices of affected parties;

“(iv) an explanation of how the proposed regulations address particular comments received from interested parties; and

“(v) if the Secretary determines to amend the proposed regulations after they have been transmitted to the Committees pursuant to this subparagraph, the Secretary shall transmit the amended regulations to such Committees no later than 5 days prior to the publication of the final rule.

“(4) Transmission of data.—Pursuant to paragraph (2), not later than 1 year after the date of enactment of this paragraph [Aug. 10, 2005], the Secretary of Homeland Security, after consultation with the Secretary of the Treasury, shall establish an electronic data interchange system through which the United States Customs and Border Protection shall transmit to the Internal Revenue Service information pertaining to cargoes of any taxable fuel (as defined in section 4083 of the Internal Revenue Code of 1986 [26 U.S.C. 4083]) that the United States Customs and Border Protection has obtained electronically under its regulations adopted in accordance with paragraph (1).

For this purpose, not later than 1 year after the date of enactment of this paragraph, all filers of required cargo information for such taxable fuels (as so defined) must provide such information to the United States Customs and Border Protection through such electronic data interchange system.

“(c) Secretary.—For purposes of this section [enacting section 1431a of this title and this note], the term ‘Secretary’ means the Secretary of the Treasury. If, at the time the regulations required by subsection (a)(1) are promulgated, the Customs Service is no longer located in the Department of the Treasury, then the Secretary of the Treasury shall exercise the authority under subsection (a) jointly with the Secretary of the Department in which the Customs Service is located.

[Pub. L. 105–99, title XI, §11165(b), Aug. 10, 2005, 119 Stat. 1979, provided that: ‘‘Notwithstanding any other provision of law, the United States Customs Service pilot pre-clearance program authorized to be established in Aruba shall be extended through 1994.’’]

REPORTS REGARDING EXPANSION OF CUSTOMS PRE-CLEARANCE OPERATIONS AND RECOVERY FOR DAMAGE RESULTING FROM CUSTOMS EXAMINATIONS


“(a) CUSTOMS PRECLEARANCE.—The Secretary of the Treasury, in consultation with the Attorney General, shall determine and evaluate various means by which persons whose merchandise is damaged during customs examinations may seek compensation from, or take other recourse against, the United States Customs Service regarding the damage.

“(2) No later than February 1, 1991, the Secretary of the Treasury shall submit to the Committees a report on the evaluation required under paragraph (1), together with any legislative recommendation that the Secretary considers appropriate.

“(c) MERCHANDISE DAMAGE STATISTICS.—The Commissioner of Customs shall keep accurate statistics on the incidence, nature, and extent of damage to merchandise resulting from customs examinations and shall provide an annual summary of these statistics to the Committees.”

PILOT PRECLEARANCE PROGRAM

Pub. L. 101–382, title II, §233, Aug. 20, 1990, 104 Stat. 663, required the Commissioner of Customs to carry out, during fiscal years 1991 and 1992, preclearance operations at a facility of the United States Customs Service in a country within the Caribbean Basin which the Commissioner considered appropriate for testing the extent to which the availability of preclearance operations could assist in the development of tourism and to submit to Congress, as soon as practicable after Sept. 30, 1992, a report regarding those preclearance operations.

INCUMBENT COMMISSIONER ON DECEMBER 6, 1989

Section 3(b)(2) of Pub. L. 101–207 provided that: ‘‘The individual who is serving as the Commissioner of Customs on the date before the date of the enactment of this Act [Dec. 7, 1989] may continue to serve in such capacity until a Commissioner of Customs, appointed as
provided in the amendment made by paragraph (1) [amending this section], takes office.

Advisory Committee on Commercial Operations of United States Customs Service

Pub. L. 100–203, title IX, §9503(c), Dec. 22, 1987, 101 Stat. 1330–381, provided that:

‘‘(1) The Secretary of the Treasury shall establish an advisory committee which shall be known as the ‘Advisory Committee on Commercial Operations of the United States Customs Service’ (hereafter in this subsection referred to as the ‘Advisory Committee’).

‘‘(2) The Advisory Committee shall consist of 20 members appointed by the Secretary of the Treasury.

‘‘(B) In making appointments under subparagraph (A), the Secretary of the Treasury shall ensure that—

‘‘(i) the membership of the Advisory Committee is representative of the individuals and firms affected by the commercial operations of the United States Customs Service; and

‘‘(ii) a majority of the members of the Advisory Committee do not belong to the same political party.

‘‘(c) The Advisory Committee shall—

‘‘(A) provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service; and

‘‘(B) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall—

‘‘(i) describe the operations of the Advisory Committee during the preceding year, and

‘‘(ii) set forth any recommendations of the Advisory Committee regarding the commercial operations of the United States Customs Service.

‘‘(d) The Assistant Secretary of the Treasury for Enforcement shall preside over meetings of the Advisory Committee.’’

Pub. L. 99–272, title XIII, §13033, Apr. 7, 1986, 100 Stat. 1330–381, provided that:

‘‘(1) The Secretary of the Treasury shall establish an advisory committee which shall be known as the ‘Advisory Committee on Commercial Operations of the United States Customs Service’ (hereafter in this subsection referred to as the ‘Advisory Committee’).

‘‘(2)(A) The Advisory Committee shall consist of 20 members appointed by the Secretary of the Treasury.

‘‘(B) In making appointments under subparagraph (A), the Secretary of the Treasury shall ensure that—

‘‘(i) the membership of the Advisory Committee is representative of the individuals and firms affected by the commercial operations of the United States Customs Service; and

‘‘(ii) a majority of the members of the Advisory Committee do not belong to the same political party.

‘‘(c) The Advisory Committee shall—

‘‘(A) provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service; and

‘‘(B) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall—

‘‘(i) describe the operations of the Advisory Committee during the preceding year, and

‘‘(ii) set forth any recommendations of the Advisory Committee regarding the commercial operations of the United States Customs Service.

§2072. Officers and employees

(a) Appointment by Secretary of the Treasury

The Secretary of the Treasury is authorized to appoint, in the service established by section 2071 of this title, one assistant commissioner, three deputy commissioners, one chief clerk, and such attorneys and other officers and employees as he may deem necessary. One of the deputy commissioners of the United States Customs Service shall have charge of investigations. Appointments under this subsection shall be subject to the provisions of the civil service laws, and the salaries shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(b) Absence or disability of Commissioner

The Secretary of the Treasury is authorized to designate an officer of the United States Customs Service to act as Commissioner of Customs, during the absence or disability of the Commissioner of Customs, or in the event that there is no Commissioner of Customs.

(c) Duties of personnel

The personnel of the United States Customs Service shall perform such duties as the Secretary of the Treasury may prescribe.

(d) Office of International Trade

(1) Establishment

There is established within the United States Customs and Border Protection an Office of International Trade that shall be headed by an Assistant Commissioner.

(2) Transfer of assets, functions, and personnel; elimination of offices

(A) Office of Strategic Trade

(i) In general

Not later than 90 days after October 13, 2006, the Commissioner shall transfer the assets, functions, and personnel of the Office of Strategic Trade to the Office of International Trade established pursuant to paragraph (1) and the Office of Strategic Trade shall be abolished.

(ii) Limitation on funds

No funds appropriated to the United States Customs and Border Protection may be used to transfer the assets, functions, or personnel of the Office of Strategic Trade, to an office other than the office established pursuant to paragraph (1) of this subsection.

(B) Office of regulations and rulings

(i) In general

Not later than 90 days after October 13, 2006, the Commissioner shall transfer the assets, functions, and personnel of the Office of Regulations and Rulings to the Office of International Trade established pursuant to paragraph (1) and the Office of Regulations and Rulings shall be abolished.

(ii) Limitation on funds

No funds appropriated to the United States Customs and Border Protection may be used to transfer the assets, functions, or personnel of the Office of Regulations and Rulings, to an office other than the office established pursuant to paragraph (1) of this subsection.

(C) Other transfers

The Commissioner is authorized to transfer any other assets, functions, or personnel within the United States Customs and Border Protection to the Office of International Trade established pursuant to paragraph (1). Not less than 45 days prior to each such transfer, the Commissioner shall notify the Committee on Appropriations, the Committee on Finance, and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Appropriations, the Committee on Homeland Security, and the Committee on Ways and Means of the House of Representatives of the specific assets, functions, or personnel to be transferred, and the reason for such transfer. Such notification shall also include—

(i) an explanation of how trade enforcement functions will be impacted by the reorganization;

(ii) an explanation of how the reorganization meets the requirements of section
§ 2072

(1) Establishment

The Commissioner shall establish an International Trade Committee, to be chaired by the Commissioner, and to include the Deputy Commissioner; the Assistant Commissioner in the Office of Field Operations; the Assistant Commissioner in the Office of Finance; the Assistant Commissioner in the Office of Trade Relations; and any other official determined by the Commissioner to be important to the work of the Committee.

(2) Responsibilities

The International Trade Committee shall—

(A) be responsible for advising the Commissioner with respect to the commercial customs and trade facilitation functions of the United States Customs and Border Protection;

(B) assist the Commissioner in coordinating with the Secretary regarding commercial customs and trade facilitation functions; and

(C) oversee the operation of all programs and systems that are involved in the assessment and collection of duties, bonds, and other charges or penalties associated with the entry of cargo into the United States, or the export of cargo from the United States, including the administration of duty drawback and the collection of antidumping and countervailing duties.

(3) Annual report

Not later than 30 days after the end of each fiscal year, the International Trade Committee shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. The report shall—

(A) detail the activities of the International Trade Committee during the preceding fiscal year; and

(B) identify the priorities of the International Trade Committee for the fiscal year in which the report is filed.

(f) Definition

In this section:

(1) Commissioner

The term "Commissioner" means the Commissioner responsible for the United States Customs and Border Protection in the Department of Homeland Security.

(2) Commercial Operations Advisory Committee

The term "Commercial Operations Advisory Committee" means the Advisory Committee established pursuant to section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 2071 note) or any successor committee.

REUTERS IN TEXT

Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (f)(2), is section 9503(c) of Pub. L. 100–203, which is set out as a note under section 2071 of this title.

CLASSIFICATION

Section was formerly classified to section 281a of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.
“Chapter 51 and subchapter III of chapter 53 of title 5” were substituted for “the Classification Act of 1949, as amended” on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

2006—Subsecs. (d) to (f). Pub. L. 109–347 added subsecs. (d) to (f).


CHANGE OF NAME

Bureau of Prohibition and Commissioner of Prohibition redesignated Bureau of Industrial Alcohol and Commissioner of Industrial Alcohol, respectively, by act May 27, 1930.

“United States Customs Service” substituted for “Bureau of Customs” in subsecs. (a) to (c) pursuant to Treasury Department Order 165–23, Apr. 4, 1973, eff. Aug. 1, 1973, 38 F.R. 13037. See, also, section 308 of Title 31, Money and Finance.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 635.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

Bureau of Industrial Alcohol and office of Commissioner of Industrial Alcohol abolished and Commissioner’s functions transferred to Commissioner of Internal Revenue by Ex. Ord. No. 6639.

DEPUTY COMMISSIONER OF CUSTOMS

Act June 17, 1930, authorized the appointment of an additional deputy commissioner in the Bureau of Customs in addition to the two deputy commissioners then authorized by law.

§ 2074. Establishment of revolving fund

There is established a revolving fund of $300,000 which shall be available, without fiscal year limitation exclusively for transfer to the appropriation for collecting the revenue from customs to cover obligations of the United States Customs Service arising from authorized reimbursable services, pending reimbursement from parties in interest: Provided, That amounts so transferred shall be returned to the revolving fund not later than six months after the close of the fiscal year in which transferred.

(June 30, 1949, ch. 286, title I, 63 Stat. 360.)

CODIFICATION

Section was formerly classified to section 261g of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, §1, 80 Stat. 376.

CHANGE OF NAME


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2073. Transfer of personnel, etc., to Service


(b) The records, property (including office equipment), and personnel of the Division of Customs are transferred to the United States Customs Service.


CODIFICATION

Section was formerly classified to section 281b of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, §1, 80 Stat. 378.

Subsection (c) of section 3 of act March 3, 1927, abolished the Division of Customs and offices of directors and assistant directors of customs and Special Agency Service of the Customs.

AMENDMENTS

1954—Subsec. (a). Act Sept. 3, 1954, repealed subsec. (a) which related to the delegation of duty to Commissioner of Customs by Secretary of the Treasury.

CHANGE OF NAME

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Org. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950; 13 F.R. 4865, 64 Stat. 1290, 1291, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2075. Appropriations authorization
(a) In general
(1) For the fiscal year beginning October 1, 1979, and each fiscal year thereafter, there are authorized to be appropriated to the Department of the Treasury for the United States Customs Service only such sums as may hereafter be authorized by law.
(2) The authorization of the appropriations for the United States Customs Service for each fiscal year after fiscal year 1987 shall specify—
   (A) the amount authorized for the fiscal year for the salaries and expenses of the Service in conducting commercial operations; and
   (B) the amount authorized for the fiscal year for the salaries and expenses of the Service for other than commercial operations.
(3) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the operations of the Customs Service as provided for in subsection (b) of this section.
(b) Authorization of appropriations
(1) For noncommercial operations
   There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in noncommercial operations not to exceed the following:
   (A) $1,365,456,000 for fiscal year 2003.
   (B) $1,399,592,400 for fiscal year 2004.
(2) For commercial operations
   (A) There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in commercial operations not less than the following:
      (i) $1,642,002,000 for fiscal year 2003.
      (ii) $1,683,667,050 for fiscal year 2004.
   (B) The monies authorized to be appropriated under subparagraph (A) for any fiscal year, except for such sums as may be necessary for the salaries and expenses of the Customs Service that are incurred in connection with the processing of merchandise that is exempt from the fees imposed under sections 58c(a)(9) and (10) of this title, shall be appropriated from the Customs User Fee Account.
(3) For air interdiction
   There are authorized to be appropriated for the operation (including salaries and expenses) and maintenance of the air interdiction program of the Customs Service not to exceed the following:
   (A) $170,829,000 for fiscal year 2003.
   (B) $175,099,725 for fiscal year 2004.
(c) Mandatory 10-day deferment
   No part of any sum that is appropriated under the authority of subsection (b) of this section may be used to implement any procedure relating to the time of collection of estimated duties that shortens the maximum 10-day deferment procedure in effect on January 1, 1981.
(d) Overtime pay limitations; waiver
   No part of any sum that is appropriated under subsection (b) of this section for fiscal years after September 30, 1984, may be used for administrative expenses to pay any employee of the United States Customs Service overtime pay in an amount exceeding $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Service.
(e) Pay comparability authorization
   For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Department of the Treasury for salaries of the United States Customs Service such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970.
(f) Use of savings resulting from administrative consolidations
   If savings in salaries and expenses result from the consolidation of administrative functions within the Customs Service, the Commissioner of Customs shall apply those savings, to the extent they are not needed to meet emergency requirements of the Service, to strengthening the commercial operations of the Service and for the consolidation of administrative functions, the number of inspector, import specialist, patrol officer, and other line operational positions.
(g) Allocation of resources; notice to congressional committees
   (1) The Commissioner of Customs shall ensure that existing levels of commercial services, including inspection and control, classification, and value, shall continue to be provided by Customs personnel assigned to the headquarters office of any Customs district designated by statute before April 7, 1986. The number of such personnel assigned to any such district headquarters shall not be reduced through attrition or otherwise, and such personnel shall be afforded the opportunity to maintain their proficiency through training and workshops to the same extent provided to Customs personnel in any other district. Automation and other modernization equipment shall be made available, as needed on a timely basis, to such headquarters to the same extent as such equipment is made available to any other district headquarters.
   (2) The Commissioner of Customs shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days prior to taking any action which would—
      (A) result in any significant reduction in force of employees other than by means of attrition;
(B) result in any significant reduction in hours of operation or services rendered at any office of the United States Customs Service or any port of entry;

(C) eliminate or relocate any office of the United States Customs Service;

(D) eliminate any port of entry; or

(E) significantly reduce the number of employees assigned to any office of the United States Customs Service or any port of entry.

(3) The total number of employees of the United States Customs Service shall be equivalent to at least 17,174 full-time employees.

(h) Resource Allocation Model

(1) Resource Allocation Model

Not later than June 30, 2007, and every 2 years thereafter, the Commissioner shall prepare and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a Resource Allocation Model to determine the optimal staffing levels required to carry out the commercial operations of United States Customs and Border Protection, including commercial inspection and release of cargo and the revenue functions described in section 212(b)(2) of title 6. The Model shall comply with the requirements of section 212(b)(1) of such title and shall take into account previous staffing models, historic and projected trade volumes, and trends. The Resource Allocation Model shall apply both risk-based and random sampling approaches for determining adequate staffing needs for priority trade functions, including—

(A) performing revenue functions;

(B) enforcing antidumping and countervailing duty laws;

(C) enforcing intellectual property rights;

(D) enforcing provisions of law relating to trade in textiles and apparel;

(E) conducting agricultural inspections;

(F) enforcing fines, penalties, and forfeitures; and

(G) facilitating trade.

(2) Personnel

(A) In general

Not later than September 30, 2007, the Commissioner shall ensure that the requirements of section 212(b) of title 6 are fully satisfied and shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the implementation of this subparagraph.

(B) Customs and Border Protection Officers

The initial Resource Allocation Model required pursuant to paragraph (1) shall provide for the hiring of a minimum of 200 additional Customs and Border Protection Officers per year for each of the fiscal years 2008 through 2012. The Commissioner shall hire such additional Officers subject to the appropriation of funds to pay for the salaries and expenses of such Officers. In assigning the 1,000 additional Officers authorized by this subparagraph, the Commissioner shall—

(i) consider the volume of trade and the incidence of nonvoluntarily disclosed customs and trade law violations in addition to security priorities among United States ports of entry; and

(ii) before October 1, 2010, assign at least 10 additional Officers among each service port and the ports of entry serviced by such service port, except as provided in subparagraph (C).

(C) Assignment

In assigning such Officers pursuant to subparagraph (B), the Commissioner shall consult with the port directors of each service port and the other ports of entry serviced by such service port. The Commissioner shall not assign an Officer to a port of entry pursuant to subparagraph (B)(ii) if the port director of the service port that services such port of entry certifies to the Commissioner that an additional Officer is not needed at such port of entry.

(D) Report

Not later than 60 days after the beginning of each of the fiscal years 2008 through 2012, the Commissioner shall submit a report to the Committee on Finance of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Ways and Means of the House of Representatives, that describes how the additional Officers authorized under subparagraph (B) will be allocated among the ports of entry in the United States in accordance with subparagraph (C).

(3) Authorization of appropriations

In addition to any monies hereafter appropriated to United States Customs and Border Protection in the Department of Homeland Security, there are authorized to be appropriated for the purpose of meeting the requirements of paragraph (2)(B), to remain available until expended—

(A) $36,000,000 for fiscal year 2008;

(B) $75,000,000 for fiscal year 2009;

(C) $118,000,000 for fiscal year 2010;

(D) $165,000,000 for fiscal year 2011; and

(E) $217,000,000 for fiscal year 2012.

(4) Report

Not later than 30 days after the end of each fiscal year, the Commissioner shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the resources directed to commercial and trade facilitation functions within the Office of Field Operations for the preceding fiscal year. Such information shall be reported for each category of personnel within the Office of Field Operations.

(5) Regulations to implement trade agreements

Not later than 30 days after October 13, 2006, the Commissioner shall designate and maintain not less than 5 attorneys within the Office of International Trade established pursuant to section 2072 of this title, with responsibility for the prompt development and promulgation of regulations necessary to implement any trade agreement entered into by the
United States, in addition to any other responsibilities assigned by the Commissioner.

(6) Definition

In this subsection, the term "Commissioner" means the Commissioner responsible for United States Customs and Border Protection in the Department of Homeland Security.


REFERENCES IN TEXT

The Federal Pay Comparability Act of 1970, referred to in subsec. (e), is Pub. L. 91–956, Jan. 8, 1971, §4, 84 Stat. 1946, as amended, which enacted sections 5305 to 5308 and 5947 of Title 5, Government Organization and Employees, amended sections 5108, 5301, and 5942 of Title 5 and section 410 of Title 39, Postal Service, repealed section 5302 of Title 5, and enacted provisions set out as notes under sections 5303 and 5942 of Title 5, section 60a of Title 2, The Congress, and section 410 of Title 39. For complete classification of the Act to the Code see Short Title note set out under section 5301 of Title 5 and Tables.

Prior to amendment, subsec. (h)(3), probably means on and after the date of enactment of Pub. L. 109–347 which enacted subsec. (h) and was approved Oct. 13, 2006.

AMENDMENTS


Subsec. (b)(1)(B). Pub. L. 107–210, §311(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "$452,091,000 for fiscal year 1992.


Subsec. (b)(5)(A). Pub. L. 107–210, §311(c)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: "$150,199,000 for fiscal year 1992.


Subsec. (b)(2). Pub. L. 101–207, §3(a)(1), (3), substituted "1990" for "1989" and "$656,468,000" for "$615,247,000".

Subsec. (b)(3). Pub. L. 101–207, §3(a)(1), (4), substituted "1990" for "1989" and "$132,128,000" for "$122,262,000".

Subsec. (b)(4). Pub. L. 101–207, §3(a)(5), struck out par. (4) which read as follows: "There are authorized to be appropriated to the Secretary of the Treasury for fiscal year 1989, $1,600,000 for payment to the Customs Cooperation Council.

1988—Subsec. (b)(1). Pub. L. 100–690, §7361(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "There are authorized to be appropriated for fiscal year 1988, $951,000,000 for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations, of which $171,857,06 shall be available only for concluding Contract TC–82–54 that was awarded before opemtment and testing of an automatic license plate reader.


Subsec. (g)(3). Pub. L. 100–690, §7361(b), added par. (3).

1987—Subsec. (b). Pub. L. 100–203, §8003(a), amended subsec. (b) generally, revising and restating as pars. (1) to (3) provisions of former pars. (1) and (2).

Subsec. (f). Pub. L. 100–203, §8003(b)(1), struck out heading which is now editorially supplied.

Subsec. (g). Pub. L. 100–203, §8003(b)(2), (3), struck out heading which is now editorially supplied, designated existing provisions as par. (1), and added par. (2).


Subsec. (b). Pub. L. 99–570, title III, §3141(a), Oct. 27, 1986, 100 Stat. 3207–62, which directed an amendment to subsec. (b) of this section did not become effective pursuant to Pub. L. 99–570, title III, §3141(a), which provided that the amendment made by section 3141(a) would not be effective if H.R. 5300 was enacted with an identical amendment. H.R. 5300 was enacted Pub. L. 99–509 with an identical amendment in section 8122(2).

See below.

Pub. L. 99–509, §8102(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "(1) There are authorized to be appropriated to the Department of the Treasury not to exceed $772,141,000 for the salaries and expenses of the United States Customs Service for fiscal year 1986; of which—

(A) $27,900,000 is for the addition of 500 inspectors, 150 import specialists, 100 customs patrol officers, and 50 special agents;

(B) $3,500,000 is for the operation and maintenance of the air interdiction program of the Service; and

(C) not to exceed $34,000,000 is for the implementation of the ‘Operation EXODUS’ program and any related program designed to enforce or monitor export controls under the Export Administration Act of 1979 (50 App. U.S.C. §2401 et seq.)."

(2) No part of any sum that is appropriated under section 3101(b) or section 3101(c) may be used for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations.

(3) [Amended by Pub. L. 99–509, §8102(3).]

(4) Not more than $1,500,000 in customs revenues were assessed.

(5) [Amended by Pub. L. 99–509, §8102(5).]
research and development or acquisition of F-15 avionics for the P-3 aircraft and related equipment until 60 days after the Committee on Ways and Means and the Committee on Finance have received from the Secretary of the Treasury a written comparative assessment of the suitability of the P-3, E-2, or other appropriate aircraft for use by the Customs Service in its air drug interdiction program. Such assessment, which the Secretary may not submit to the Committees until the General Accounting Office study required under paragraph (7) is completed, shall include life cycle costs.

Acquisition of additional aircraft for use by the Customs Service for its air drug interdiction program after completion of the assessment required under subparagraph (A) shall be subject to competitive bidding through the use of the normal 'request for proposal' process.

(4) No part of any sum that is appropriated under the authority of paragraph (1) may be used to consolidate the drawback liquidation centers within the Customs Service to less than 4 such centers. If a consolidation is undertaken, the Commissioner of Customs shall select the location of the centers after taking into account the drawback volume at, and the geographic dispersion of, the respective centers being considered for consolidation.

(5) In addition to any sum authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Department of the Treasury for fiscal year 1986 not to exceed $8,000,000 from the Customs Forfeiture Fund for the making of payments under section 1613b of this title, of which not to exceed $5,000,000 may be used for the modification of aircraft (whether or not aircraft described in subsection (a)(6) of that section for drug interdiction.

(6) In addition to any other amounts authorized to be appropriated for the Customs Service for fiscal years 1987 and 1988, there are authorized to be appropriated $72,500,000 for each of such fiscal years to fund the additional personnel referred to in paragraph (1)(A).

(7) As soon as possible after April 7, 1986, but not later than 12 months after April 7, 1986, the General Accounting Office shall complete, and submit to the Committee on Ways and Means and the Committee on Finance, a study that evaluates the air detection and interdiction capability of the Customs Service, including assets, geographic dispersal, costs of operation, procurement practices, and the services and equipment provided by other Federal agencies. Within 6 months after commencing the study, the General Accounting Office shall consult with the Committees on the progress of the study.


Prior to amendment, subsec. (b) read as follows: "There are authorized to be appropriated to the Department of the Treasury not to exceed $686,399,000 for the salaries and expenses of the United States Customs Service for fiscal year 1986; of which (A) $28,070,000 is for the operation and maintenance of the air interdiction program of the Service, and (B) not to exceed $31,464,000 is for salary and expenses for the salaries and expenses of the United States Customs Service of the Department of the Treasury, including functions of the

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of this title on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2303(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Automated Commercial Environment Computer System


(1) The Department of Homeland Security, and for treatment of the respective centers being considered for consolidation.


"(3) Report.—Not later than 90 days after the date of the enactment of this Act [Aug. 6, 2002], not later than the end of each subsequent 90-day period, the Commissioner of Customs shall prepare and submit to the Committee on Ways and Means and the House of Representatives and the Committee on Finance of the Senate a report demonstrating that the development and establishment of the Automated Commercial Environment computer system is being carried out in a cost-effective manner and meets the modernization requirements of title VI of the North American Free Trade Agreement Implementation Act [Pub. L. 103–182, see Tables for classification]."

§2076. Advances in foreign countries

Section 3324(a) and (b) of title 31 shall not apply to payments made for the United States Customs Service in foreign countries.

(May 6, 1939, ch. 115, title I, §1, 53 Stat. 660.)

Codification

“Section 3324(a) and (b) of title 31” substituted in text for “Section 3648 of the Revised Statutes [31 U.S.C. 529]” on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1087, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 529b of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97–258, §1, Sept. 13, 1982, 96 Stat. 977.

Section is from Treasury Department Appropriation Act, 1940, act May 6, 1939. Similar provisions were contained in the following prior appropriation acts:


Change of Name


Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the
Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury, with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2077. Advances for enforcement of customs provisions

The Commissioner of Customs, with the approval of the Secretary of the Treasury, is authorized to direct the advance of funds by the Fiscal Service, Treasury Department, in connection with the enforcement of the customs laws.


CODIFICATION

Section was formerly classified to section 529c of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97-258, §1, Sept. 13, 1982, 96 Stat. 877.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury, with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2078. Certification of reason for advance

A certificate by the Commissioner of Customs stating the amount of an expenditure made from funds advanced and certifying that the confidential nature of the transaction involved renders it inadvisable to specify the details thereof or impracticable to furnish the payee’s receipt shall be a sufficient voucher for the sum expressed to have been expended.


CODIFICATION

Section was formerly classified to section 529d of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97-258, §1, Sept. 13, 1982, 96 Stat. 877.

AMENDMENTS


EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on first day of seventh calendar month that begins after the day immediately preceding the effective date of enactment of Pub. L. 91-513, which was approved on Oct. 27, 1970, see section 1105(a) of Pub. L. 91-513, set out as an Effective Date note under section 961 of Title 21, Food and Drugs.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a note under section 171 of Title 21, Food and Drugs.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury, with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

§ 2079. Payments in foreign countries; claims for reimbursement

The provisions of this Act shall not affect payments made for the United States Customs Service in foreign countries, nor the right of any customs officer or employee to claim reimbursement for personal funds expended in connection with the enforcement of the customs laws.


REFERENCES IN TEXT

This Act, referred to in text, is act Mar. 28, 1928, ch. 266, 45 Stat. 374, as amended, which enacted sections 2077 to 2080 of this title and sections 529a and 529g of former Title 31, Money and Finance, Sections 529a and 529g of former Title 31, were repealed by sections 1101(a)(3) and 1101(a)(6), respectively, of Pub. L. 91-513, title III, Oct. 27, 1970, 84 Stat. 1291, 1292.

The customs laws, referred to in text, are classified generally to this title.

CODIFICATION

Section was formerly classified to section 529e of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97-258, §1, Sept. 13, 1982, 96 Stat. 877.

AMENDMENTS


CHANGE OF NAME

“United States Customs Service” substituted in text for “Bureau of Customs” pursuant to Treasury Depart-

Effective Date of 1970 Amendment
Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after the day immediately preceding the date of enactment of Pub. L. 91–513, which was approved on Oct. 27, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

Savings Provision
Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

Transfer of Functions

§ 2080. Advances from available appropriations; rules and regulations

§ 2080. Advances from available appropriations; rules and regulations

Advances pursuant to this Act, in connection with the enforcement of the customs laws may be made, notwithstanding the provisions of section 3324(a) and (b) of title 31, from the appropriations available for the enforcement of such laws. The Secretary of the Treasury is authorized to prescribe such rules and regulations concerning advances made pursuant to this Act as are necessary or appropriate for the protection of the interests of the United States.


References in Text
This Act, referred to in text, is act Mar. 28, 1928, ch. 266, 45 Stat. 974, which enacted sections 3077 to 3080 of this title and sections 529a and 529g of former Title 31, Money and Finance.

Sections 529a and 529g of former Title 31 were repealed by sections 1101(a) and 1101(a)(6), respectively, of Pub. L. 91–513, title III, Oct. 27, 1970, 84 Stat. 1291, 1292.

Classification
“Section 3324(a) and (b) of title 31” substituted in text for “section 3646 of the Revised Statutes of the United States (U.S.C., title 31, sec. 529)” on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1967, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 528f of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97–258, §1, Sept. 13, 1982, 96 Stat. 877.

Amendments

Effective Date of 1970 Amendment
Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after the day immediately preceding the date of enactment of Pub. L. 91–513, which was approved on Oct. 27, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

Savings Provision
Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§ 2081. Undercover investigative operations of Customs Service

(a) Certification required for exemption of undercover operations from certain laws

With respect to any undercover investigative operation of the United States Customs Service (hereinafter in this section referred to as the “Service”) which is necessary for the detection and prosecution of offenses against the United States which are within the jurisdiction of the Secretary of the Treasury—

(1) sums authorized to be appropriated for the Service may be used—

(A) to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—

(i) sections 1341 and 3324 of title 31,

(ii) sections 6301(a) and (b)(1) to (3) and 6306 of title 41,

(iii) chapter 45 of title 41,

(iv) section 8141 of title 40, and

(v) section 3361 of title 41, and

(B) to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31;

(2) sums authorized to be appropriated for the Service and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18 and section 3302 of title 31; and

(3) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31; only upon the written certification of the Commissioner of Customs (or, if designated by the Commissioner the Deputy or an Assistant Commissioner of Customs) that any action authorized by paragraph (1), (2), or (3) of this subsection is necessary for the conduct of such undercover operation.
(b) Liquidation of corporations and business entities

If a corporation or business entity established or acquired as part of an undercover operation under paragraph (1)(B) of subsection (a) of this section with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his designee determines is practicable, shall report the circumstances to the Secretary of the Treasury. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(c) Deposit of proceeds

As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under paragraphs (2) and (3) of subsection (a) of this section are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(d) Audits

(1) The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year, and

(A) submit the results of the audit in writing to the Secretary of the Treasury; and

(B) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(2) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations—

(A) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(B) the number, by programs, of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted; and

(C) the number, by programs, of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto.

(e) Definitions

For purposes of subsection (d) of this section—

(1) The term “closed” refers to the earliest point in time at which—

(A) all criminal proceedings (other than appeals) are concluded, or

(B) covert activities are concluded, whichever occurs later.

(2) The term “employees” means employees, as defined in section 2105 of title 5, of the Service.

(3) The terms “undercover investigative operation” and “undercover operation” mean any undercover investigative operation of the Service—

(A) in which—

(i) the gross receipts (excluding interest earned) exceed $50,000, or

(ii) expenditures (other than expenditures for salaries of employees) exceed $150,000; and

(B) which is exempt from section 3302 or 9102 of title 31;

except that subparagraphs (A) and (B) shall not apply with respect to the report required under paragraph (2) of subsection (d) of this section.


Codification

In subsec. (a)(1)(A)(ii), “sections 6301(a) and (b)(1) to (3) and 6306 of title 41,” substituted for “sections 3722(a) and 3741 of the Revised Statutes of the United States (41 U.S.C. 11(a) and 22),” on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.


Amendments


Subsec. (b). Pub. L. 104–316 struck out “and the Comptroller General” after “the Secretary of the Treasury”.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

§ 2082. Customs Service administration

(a) In general

The Commissioner of Customs shall—

(1) develop and implement accounting systems that accurately determine and report the allocations made of Customs Service personnel and other resources among the various operational functions of the Service, such as passenger processing, merchandise processing and drug enforcement; and

(2) develop and implement periodic labor distribution surveys of major workforce activities (such as inspectors, import specialists, fines, penalties, and forfeiture officers, special agents, data transcribers, and Customs aides)
to determine the costs of different types of passenger and merchandise processing transactions, such as informal and formal entries, and automated and manual entries.

(b) Survey reports

The Commissioner of Customs shall no later than January 31, 1991, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of the first survey implemented under subsection (a)(2) of this section.


AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508, §10001(d)(1)–(3), inserted “and” after semicolon at end of par. (1), substituted a period for semicolon at end of par. (2), and struck out pars. (3) to (5) which read as follows:

“(3) as soon as practicable after the enactment of appropriations for the Customs Service for each fiscal year, but not later than the 15th day after the beginning of such year, estimate, based on the amounts appropriated, the amount of the fee that would, if imposed on the processing of merchandise, offset the salaries and expenses subject to reimbursement from the fee that will likely be incurred by the Service in conducting commercial operations during that year;

“(4) develop annually a detailed derivation of the commercial services cost base and the methodology used for computing the merchandise processing fee under paragraph (3); and

“(5) report within 45 days of the beginning of any fiscal year to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of each fee estimate made under paragraph (3) and each cost base and user fee methodology derivation made under paragraph (4).”

Subsec. (b), Pub. L. 101–508, §10001(d)(4), substituted “Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate” for “Committees referred to in subsection (a)(5) of this section”.

§ 2083. Annual national trade and customs law violation estimates and enforcement strategy

(a) Violation estimates

Not later than 30 days before the beginning of each fiscal year after fiscal year 1991, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (hereafter in this section referred to as the “Committees”) a report that contains estimates of—

(1) the number and extent of violations of the trade, customs, and illegal drug control laws listed under subsection (b) of this section that will likely occur during the fiscal year; and

(2) the relative incidence of the violations estimated under paragraph (1) among the various ports of entry and customs regions within the customs territory.

(b) Applicable statutory provisions

The Commissioner of Customs, after consultation with the Committees—

(1) shall, within 60 days after August 20, 1990, prepare a list of those provisions of the trade, customs, and illegal drug control laws of the United States for which the United States Customs Service has enforcement responsibility and in which the reports required under subsection (a) of this section will apply; and

(2) may from time-to-time amend the listing developed under paragraph (1).

(c) Enforcement strategy

Within 90 days after submitting a report under subsection (a) of this section for any fiscal year, the Commissioner of Customs shall—

(1) develop a nationally uniform enforcement strategy for dealing during that year with the violations estimated in the report; and

(2) submit to the Committees a report setting forth the details of the strategy.

(d) Compliance program

The Commissioner of Customs shall—
(1) devise and implement a methodology for estimating the level of compliance with the laws administered by the Customs Service; and

(2) include as an additional part of the report required to be submitted under subsection (a) of this section for each of fiscal years 1994, 1995, and 1996, an evaluation of the extent to which such compliance was obtained during the 12-month period preceding the 60th day before each such fiscal year.

(e) Confidentiality
The contents of any report submitted to the Committees under subsection (a) or (c)(2) of this section and confidential and disclosure of all or part of the contents is restricted to—

(1) officers and employees of the United States designated by the Commissioner of Customs;

(2) the chairman of each of the Committees; and

(3) those members of each of the Committees and staff persons of each of the Committees who are authorized by the chairman thereof to have access to the contents.


AMENDMENTS
1993—Subsecs. (d), (e). Pub. L. 103–182 added subsec. (d) and redesignated former subsec. (d) as (e).

TRANSFER OF FUNCTIONS
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of references to former publications in the Code, see sections 203(1), 551(d), 552(d), and 577 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

(§ 2091) List of stone carvings and wall art; promulgation and revision; criteria for classification.

Sec.

2091. List of stone carvings and wall art; promulgation and revision; criteria for classification.

2092. Export certification requirement.

2093. Forfeiture of unlawful imports.

2094. Rules and regulations.

2095. Definitions.

.§ 2091. List of stone carvings and wall art; promulgation and revision; criteria for classification.

The Secretary, after consultation with the Secretary of State, by regulation shall promulgate, and thereafter when appropriate shall revise, a list of stone carvings and wall art which are pre-Columbian monumental or architectural sculpture or murals within the meaning of paragraph (3) of section 2095 of this title. Such stone carvings and wall art may be listed by type or other classification deemed appropriate by the Secretary.


§ 2092. Export certification requirement

(a) Issuance by country of export

No pre-Columbian monumental or architectural sculpture or mural which is exported (whether or not such exportation is to the United States) from the country of origin after the effective date of the regulation listing such sculpture or mural pursuant to section 2091 of this title may be imported into the United States unless the government of the country of origin of such sculpture or mural issues a certificate, in a form acceptable to the Secretary, which certifies that such exportation was not in violation of the laws of that country.

(b) Procedure when certificate lacking

If the consignee of any pre-Columbian monumental or architectural sculpture or mural is unable to present to the customs officer concerned at the time of making entry of such sculpture or mural—

(1) the certificate of the government of the country of origin required under subsection (a) of this section;

(2) satisfactory evidence that such sculpture or mural was exported from the country of origin on or before the effective date of the regulation listing such sculpture or mural pursuant to section 2091 of this title; or

(3) satisfactory evidence that such sculpture or mural is not covered by the list promulgated under section 2091 of this title;

the customs officer concerned shall take the sculpture or mural into customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until such certificate or evidence is filed with such officer. If such certificate or evidence is not presented within the 90-day period after the date on which such sculpture or mural is taken into customs custody, or such longer period as may be allowed by the Secretary for good cause shown, the importation of such sculpture or mural into the United States is in violation of this chapter.


CODIFICATION
References to section 202 of Pub. L. 92–587 in the original were translated as section 2091 of this title in the classification of Pub. L. 92–587 as the probable intent of Congress.

.§ 2093. Forfeiture of unlawful imports

(a) Seizure

Any pre-Columbian monumental or architectural sculpture or mural imported into the United States in violation of this chapter shall be seized and subject to forfeiture under the customs laws.

(b) Disposition of articles

Any pre-Columbian monumental or architectural sculpture or mural which is forfeited to the United States shall—

(1) first be offered for return to the country of origin and shall be returned if that country bears all expenses incurred incident to such return and complies with such other require-
ments relating to the return as the Secretary shall prescribe; or
(2) if not returned to the country of origin, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.


§2094. Rules and regulations
The Secretary shall prescribe such rules and regulations as are necessary and appropriate to carry out the provisions of this chapter.


§2095. Definitions
For the purposes of this chapter—
(1) The term “Secretary” means the Secretary of the Treasury.
(2) The term “United States” includes the several States, the District of Columbia, and the Commonwealth of Puerto Rico.
(3) The term “pre-Columbian monumental or architectural sculpture or mural” means—
(i) any stone carving or wall art which—
(A) any stone carving or wall art which—
(ii) was an immobile monument or architectural structure or was a part of, or affixed to, any such monument or structure; and
(iii) is subject to export control by the country of origin; or
(B) any fragment or part of any stone carving or wall art described in subparagraph (A) of this paragraph.
(4) The term “country of origin”, as applied to any pre-Columbian monumental or architectural sculpture or mural, means the country where such sculpture or mural was first discovered.


CHAPTER 12—TRADE ACT OF 1974

Sec. 2101. Short title.
2102. Congressional statement of purpose.

SUBCHAPTER I—NEGOTIATING AND OTHER AUTHORITY

Part I—RATES OF DUTY AND OTHER TRADE BARRIERS

2111. Basic authority for trade agreements.
2112. Barriers to and other distortions of trade.
2113. Overall negotiating objective.
2114. Sector negotiating objectives.
2114a. Negotiating objectives with respect to trade in services, foreign direct investment, and high technology products.
2114b. Provisions relating to international trade in services.
2114c. Trade in services: development, coordination, and implementation of Federal policies; staff support and other assistance; specific service sector authorities unaffected; executive functions.
2114d. Foreign export requirements; consultations and negotiations for reduction and elimination; restrictions on and exclusion from entry of products or services; savings provision; compensation authority applicable.

Sec. 2114e. Negotiation of agreements concerning high technology industries.
2115. Bilateral trade agreements.
2116. Agreements with developing countries.
2117. International safeguard procedures.
2118. Access to supplies.
2119. Staging requirements and rounding authority.

Part 2—OTHER AUTHORITY

2133. Compensation authority.
2134. Two-year residual authority to negotiate duties.
2135. Termination and withdrawal authority.
2137. Reservation of articles for national security or other reasons.
2138. Omitted.

Part 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

2151. Advice from International Trade Commission.
2152. Advice from executive departments and other sources.
2153. Public hearings.
2154. Prerequisites for offers.
2155. Information and advice from private and public sectors.

Part 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2171. Structure, functions, powers, and personnel.

Part 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

2191. Bills implementing trade agreements on non-tariff barriers and resolutions approving commercial agreements with Communist countries.
2192. Resolutions disapproving certain actions.
2193. Resolutions related to extension of waiver authority under section 422 of the Trade Act of 1974.
2194. Special rules relating to Congressional procedures.

Part 6—CONGRESSIONAL LIAISON AND REPORTS

2211. Congressional advisers for trade policy and negotiations.
2212. Transmission of agreements to Congress.
2213. Reports.

Part 7—UNITED STATES INTERNATIONAL TRADE COMMISSION

2231. Change of name.
2232. Independent budget and authorization of appropriations.

Part 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS

2241. Estimates of barriers to market access.
2242. Identification of countries that deny adequate protection, or market access, for intellectual property rights.

SUBCHAPTER II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

Part 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

2251. Action to facilitate positive adjustment to import competition.
2252. Investigations, determinations, and recommendations by Commission.
Title 19—Customs Duties

Part 2—Adjustment Assistance for Workers

Subpart A—Petitions and Determinations

2271. Petitions.
2272. Group eligibility requirements; agricultural workers; oil and natural gas industry.
2273. Determinations by Secretary of Labor. Study and notifications regarding certain affirmative determinations; industry notification of assistance.
2274. Benefit information for workers.

Subpart B—Program Benefits

Division I—Trade Adjustment Allowances

2291. Qualifying requirements for workers.
2292. Weekly amounts of readjustment allowance.
2293. Limitations on trade readjustment allowance.
2294. Application of State laws.

Division II—Training, Other Employment Services, and Allowances

2295. Employment and case management services.
2296. Training.
2297. Job search allowances.
2298. Relocation allowances.

Subpart C—General Provisions

2311. Agreements with States.
2312. Administration absent State agreement.
2313. Payments to States.
2314. Liabilities of certifying and disbursing officers.
2315. Fraud and recovery of overpayments.
2316. Penalties.
2317. Authorization of appropriations.
2318. Reemployment trade adjustment assistance program.
2319. Definitions.
2320. Regulations.
2321. Subpoena power.
2322. Office of Trade Adjustment Assistance.
2323. Collection and publication of data and reports; information to workers.

Subpart D—NAFTA Transitional Adjustment Assistance Program

2331. Repealed.

Part 3—Adjustment Assistance for Firms

2341. Petitions and determinations.
2342. Approval of adjustment proposals.
2343. Technical assistance.
2344. Oversight and administration.
2345. Authorization of appropriations.
2349. Penalties.
2350. Civil actions.
2351. "Firm" defined.
2352. Regulations.
2353. Repealed.
2354. Study by Secretary of Commerce when International Trade Commission begins investigation.
2355. Assistance to industry; authorization of appropriations.
2356. Annual report on trade adjustment assistance for firms.

Part 4—Trade Adjustment Assistance for Communities

Subpart A—Trade Adjustment Assistance for Communities

2371. Definitions.

Sec.
2253. Action by President after determination of import injury.
2254. Monitoring, modification, and termination of action.
2291a. Employment and case management services.
2291b. Training.
2291c. Job search allowances.
2291d. Relocation allowances.
2291e. Benefit information for workers.
2292. Weekly amounts of readjustment allowance.
2293. Limitations on trade readjustment allowance.
2294. Application of State laws.
2295. Employment and case management services.
2296. Training.
2297. Job search allowances.
2298. Relocation allowances.
2311. Agreements with States.
2312. Administration absent State agreement.
2313. Payments to States.
2314. Liabilities of certifying and disbursing officers.
2315. Fraud and recovery of overpayments.
2316. Penalties.
2317. Authorization of appropriations.
2318. Reemployment trade adjustment assistance program.
2319. Definitions.
2320. Regulations.
2321. Subpoena power.
2322. Office of Trade Adjustment Assistance.
2323. Collection and publication of data and reports; information to workers.
2331. Repealed.
2341. Petitions and determinations.
2342. Approval of adjustment proposals.
2343. Technical assistance.
2344. Oversight and administration.
2345. Authorization of appropriations.
2349. Penalties.
2350. Civil actions.
2351. "Firm" defined.
2352. Regulations.
2353. Repealed.
2354. Study by Secretary of Commerce when International Trade Commission begins investigation.
2355. Assistance to industry; authorization of appropriations.
2356. Annual report on trade adjustment assistance for firms.

Part 5—Miscellaneous Provisions

2371a. Establishment of trade adjustment assistance for communities program.
2371b. Eligibility; notification.
2371c. Technical assistance.
2371d. Grants for eligible communities.
2371e. Strategic plans.
2371f. General provisions.

Subpart B—Community College and Career Training Grant Program

2372. Community College and Career Training Grant Program.
2372a. Authorization of appropriations.

Subpart C—Industry or Sector Partnership Grant Program for Communities Impacted by Trade

2373. Industry or Sector Partnership Grant program for communities impacted by trade.
2373a. Authorization of appropriations.

Subpart D—General Provisions

2374. Rule of construction.

Part 6—Adjustment Assistance for Farmers

2381. Definitions.
2381a. Petitions; group eligibility.
2381b. Determinations by Secretary of Agriculture.
2381c. Study by Secretary of Agriculture when International Trade Commission begins investigation.
2381d. Benefit information to agricultural commodity producers.
2381e. Qualifying requirements and benefits for agricultural commodity producers.
2381f. Fraud and recovery of overpayments.
2381g. Authorization of appropriations.

Subchapter III—Enforcement of United States Rights Under Trade Agreements and Response to Certain Foreign Trade Practices

2391. GAO study and report.
2392. Adjustment Assistance Coordinating Committee.
2393. Trade monitoring and data collection.
2394. Firms relocating in foreign countries.
2395. Judicial review.
2396. 2397. Omitted.
2397a. Sense of Congress.

Subchapter IV—Trade Relations With Countries Not Receiving Nondiscriminatory Treatment

2401. Definitions.
2401a. Petitions; group eligibility.
2401b. Determinations by Secretary of Agriculture.
2401c. Study by Secretary of Agriculture when International Trade Commission begins investigation.
2401d. Benefit information to agricultural commodity producers.
2401e. Qualifying requirements and benefits for agricultural commodity producers.
2401f. Fraud and recovery of overpayments.
2401g. Authorization of appropriations.

Subchapter V—Trade Relations With Certain Countries
This chapter may be cited as the "Trade Act of 1974".


REFERENCES IN TEXT


REFERENCES TO OTHER LAWS DERIVED REFERENCES TO TRADE ACT OF 1974

Section 602(f) of Pub. L. 93–618, as amended by Pub. L. 96–39, title XI, §1106(h)(3), July 26, 1979, 93 Stat. 313, provided that: "All provisions of law (other than this Act [this chapter], the Trade Expansion Act of 1962 (chapter 7 of this title), and the Trade Agreements Extension Act of 1951 (see Short Title of 1951 Amendment note set out under section 1654 of this title)), in effect after the date of enactment of this Act (Jan. 3, 1975), referring to section 350 of the Tariff Act of 1930 (section 1351 of this title), to that section as amended, to the Act entitled 'An Act to amend the Tariff Act of 1930,' approved June 12, 1930 (enacting sections 1352, 1353, and 1354 and amending section 1351 of this title), to that Act as amended or to the Trade Expansion Act of 1962, or to agreements entered into, or proclamations issued, or actions taken under any of such provisions, shall be construed, unless clearly precluded by the context, to refer also to this Act, or to agreements entered into or proclamations or orders issued pursuant to this Act.'"

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–344, §1(a), Dec. 29, 2010, 124 Stat. 3611, provided that: "This Act [amending sections 58c, 2296, 2317, 2318, 2345, 2371d to 2371f, 2372, 2373, 2373a, 2405, 2406, 2407, 2408, 2409, 2432, 2333, and 2360 of this title, sections 35, 4980B, 7527, and 9801 of Title 26, Internal Revenue Code, sections 1162, 1181, and 2918 of Title 29, Labor, and sections 300bb–2 and 300gg of Title 42, The Public Health and Welfare, enacting provisions set out as a note preceding section 2271 of this title and notes under sections 35, 4980B, 6655, 7527, and 9801 of Title 26, and amending provisions set out as notes preceding section 2271 of this title] may be cited as the 'Omnibus Trade Act of 2010'.'"

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1800, Feb. 17, 2009, 123 Stat. 367, provided that: "This subtitle [subtitle I (§§1800–1899L) of title I of div. B of Pub. L. 111–5, enacting part 4 (§2371 et seq.) of subchapter II of this chapter and sections 2296a, 2296, 2297, 2297a, 2298, 2311, 2315 to 2317, 2341, 2343, 2348 to 2352, 2354, 2355, 2386, 2390, 2401 to 2406, and 2410 to 2415 of this title, amending sections 2271 to 2275, 2291 to 2295, 2296 to 2298, 2311, 2315 to 2321, 2341, 2343, 2348 to 2352, 2354, 2355, 2386, 2390, 2401 to 2406, and 2410 to 2415 of this title, sections 4980B, 7527, and 9801 of Title 26, Internal Revenue Code, section 1581 of Title 28, Judiciary and Judicial Procedure, sections 1162, 1181, 2918, and 2919 of Title 29, Labor, and sections 300bb–2 and 300gg of Title 42, The Public Health and Welfare, repealing former sections 2296a to 2347 of this title, enacting provisions set out as notes preceding section 2271 and under sections 2271, 2295a, 2296, 2297, 2297a, 2298, 2315 to 2321, 2341, 2343, 2348 to 2352, 2354, 2355, 2386, 2390, 2401 to 2406, and 2410 to 2415 of this title, sections 35, 4980B, 7527, and 9801 of Title 26, and amending provisions set out as a note preceding section 2271 of this title] may be cited as the 'Trade and Globalization Adjustment Assistance Act of 2009.'"

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–210, div. A, §401, Aug. 6, 2002, 116 Stat. 935, provided that: "This division [enacting part 6 of subchapter II of this chapter, sections 1311a, 1313, and 2318 of this title, and amending sections 58c, 482, 1339, 1390, 1411, 1500, 1506, 2075, 2171, 2271 to 2273, 2275, 2281, 2293, 2295 to 2296, 2317, 2399, and 2405 of this title, sections 4980B, 6101, 6724, and 7213A of Title 26, sections 1165, 2862, 2918, and 2919 of Title 29, Labor, section 1324

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of Title 31, Money and Finance, and section 300bb-5 of Title 42, renumbering section 35 of Title 26 as section 36 of Title 26, repealing sections 2191, 2322, and 2331 of this title, enacting provisions set out as notes preceding section 2271 and under sections 58c, 482, 1583, 1625, 1654, 2071, 2075, 2082, 2251, 2271, 2331, and 2401 of this title, sections 35 and 6050T of Title 26, and section 2918 of Title 20, and amending provisions set out as a note preceding section 2271 of this title] may be cited as the ‘Trade Adjustment Assistance Reform Act of 2002’.”

**Short Title of 1996 Amendment**

Pub. L. 104-188, title I, §1951, Aug. 20, 1996, 110 Stat. 1917, provided that: “This subtitle [subtitle J (§§1951-1954) of title I of Pub. L. 104-188, enacting sections 2461 to 2467 of this title, amending sections 2702, 3011, 3262, 3331, and 3551 of this title, section 1444-2 of Title 7, Agriculture, section 4711 of Title 15, Commerce and Trade, sections 262p-1p and 2191a of Title 22, Foreign Relations and Intercourse, and section 871 of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 2461 of this title] may be cited as the ‘GISP Renewal Act of 1996’.”

**Short Title of 1993 Amendment**


**Short Title of 1990 Amendment**


**Short Title of 1989 Amendment**

Pub. L. 101-221, §1, Dec. 8, 1989, 103 Stat. 1886, provided that: “This Act [amending section 4611 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 2253 and 2703 of this title and section 4611 of Title 26, and amending provisions set out as a note under section 2291 of this title and Tables.] may be cited as the ‘Steel Trade Liberalization Program Implementation Act’.”

**Short Title of 1986 Amendment**


**Short Title of 1984 Amendment**

Pub. L. 98-573, title III, §301(b), Oct. 30, 1984, 98 Stat. 3000, provided that: “This title [amending sections 214a to 214g, 214i, 214k, 214l, 214m, 214n, 214p, and 214q of this title, and enacting sections 2112, 2114, 2155, 2171, and 2411 to 2415 of this title and sections 3101 to 3104 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under section 2102 of this title and section 3101 of Title 22] may be cited as the ‘International Trade and Investment Act’.”


**Separability**

Section 605 of Pub. L. 93-618 provided that: “If any provision of this Act [see References in Text note above], or the application of any provision to any circumstances or persons shall be held invalid, the validity of the remainder of this Act, and of the application of such provision to other circumstances or persons, shall not be affected thereby.”

### § 2102. Congressional statement of purpose

The purposes of this chapter are, through trade agreements affording mutual benefits—

1. to foster the economic growth of and full employment in the United States and to strengthen economic relations between the United States and foreign countries through open and nondiscriminatory world trade;
2. to harmonize, reduce, and eliminate barriers to trade on a basis which assures substantially equivalent competitive opportunities for the commerce of the United States;
3. to establish fairness and equity in international trade relations, including reform of the General Agreement on Tariffs and Trade;
4. to provide adequate procedures to safeguard American industry and labor against unfair or injurious import competition, and to assist industries, firms, workers, and communities to adjust to changes in international trade flows;
5. to open up market opportunities for United States commerce in nonmarket economies; and
6. to provide fair and reasonable access to products of less developed countries in the United States market.


**References in Text**

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

**Statement of Purposes of 1984 Amendment**


(1) to foster the economic growth of, and full employment in, the United States by expanding competitive United States exports through the achievement of commercial opportunities in foreign markets substantially equivalent to those accorded by the United States;
(2) to improve the ability of the President—
(A) to identify and to analyze barriers to (and restrictions on) United States trade and investment, and
(B) to achieve the elimination of such barriers and restrictions;
(3) to encourage the expansion of—
(A) international trade in services through the negotiation of agreements (both bilateral and multilateral) which reduce or eliminate barriers to international trade in services as invalid, the validity of the remainder of this Act, and of the application of such provision to other circumstances or persons, shall not be affected thereby.”

(1) to foster the economic growth of, and full employment in, the United States by expanding competitive United States exports through the achievement of commercial opportunities in foreign markets substantially equivalent to those accorded by the United States;

1 So in original.
§ 2111. Basic authority for trade agreements

(a) Presidential authority to enter into agreement; modification or continuance of existing duties

Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes of this chapter will be promoted thereby, the President—

(1) during the 5-year period beginning on January 3, 1975, may enter into trade agreements with foreign countries or instrumentalities thereof; and

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

(b) Limitation on authority to decrease duty

(1) Except as provided in paragraph (2), no proclamation pursuant to subsection (a)(2) of this section shall be made decreasing a rate of duty to a rate below 40 percent of the rate existing on January 1, 1975.

(2) Paragraph (1) shall not apply in the case of any article for which the rate of duty existing on January 1, 1975, is not more than 5 percent ad valorem.

(c) Limitation on authority to increase duty

No proclamation shall be made pursuant to subsection (a)(2) of this section increasing any rate of duty to, or imposing a rate above, the higher of:

(1) the rate which is 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States as in effect on January 1, 1975, or

(2) the rate which is 20 percent ad valorem above the rate existing on January 1, 1975.


References in Text

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 1201 of this title and Tables.

The Tariff Schedules of the United States, referred to in subsec. (c)(1), to be treated as a reference to the Harmonized Tariff Schedule pursuant to section 3022 of this title. The Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

Change of Name

The Office of the Special Representative for Trade Negotiations was redesignated the Office of the United States Trade Representative, and Special Representative for Trade Negotiations was redesignated the United States Trade Representative by Reorg. Plan No. 1 of 1978, §1(a), (b)(1), 44 F.R. 96927, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. See, also, section 2171 of this title as amended by Pub. L. 97–456.

Restructuring and Restructuring of International Trade Functions of the United States Government

Pub. L. 96–39, title XI, §1108, July 26, 1979, 93 Stat. 314, provided that the President submit to the Congress, not later than July 10, 1979, a proposal to restructure the international trade functions of the Executive Branch of the United States Government, and directed, in order to ensure that the 96th Congress takes final action on a comprehensive reorganization of trade functions as soon as possible, that the appropriate committee of each House of the Congress give the proposal by the President immediate consideration and make its best efforts to take final committee action to reorganize and restructure the international trade functions of the United States Government by Nov. 10, 1979.

Study of Export Trade Policy

Pub. L. 96–39, title XI, §1110, July 26, 1979, 93 Stat. 314, directed the President to review all export promotion functions of the executive branch and potential pro- grammatic and regulatory disincentives to exports, and to submit to the Congress a report of that review not later than July 15, 1980, and not later than July 15, 1980, to submit to the Congress a study of the factors bearing on the competitive posture of United States producers and the policies and programs required to strengthen the relative competitive position of the United States in world markets.


1. Pursuant to Section 101(a) of the Trade Act of 1974 (19 U.S.C. 2111(a)), I determined that certain existing duties and other import restrictions of the United States and of foreign countries were unduly burdening and restricting the foreign trade of the United States and that one or more of the purposes stated in Section 2 of the Trade Act of 1974 (19 U.S.C. 2112) would be promoted by entering into the trade agreements identified in the third and fourth recitals of this proclamation.

2. Sections 131, 132, 133, 134, 135, and 161(b) of the Trade Act of 1974 (19 U.S.C. 2151, 2152, 2153, 2154, 2155, and 2151(b)) and Section 4(c) of Executive Order No. 11846 of March 27, 1975, (3 CFR 1971–1975 Comp. 974) [set out below], have been complied with.

3. Pursuant to Section 101(a)(1) of the Trade Act of 1974 (19 U.S.C. 2111(a)(1)), I, through my duly empowered representative, (1) on July 11, 1979, entered into a trade agreement with other contracting parties to the General Agreement on Tariffs and Trade (61 Stat. (pts. 5 and 6)), as amended (the General Agreement), with countries seeking to accede to the General Agreement, and the European Economic Community, which agreement consists of the Geneva (1979) Protocol to the General Agreement, including a schedule of United States concessions annexed thereto (hereinafter referred to as
\textsection 2111

\textit{Title 19—Customs Duties}  
Page 428

...
U.S.C. 2481(4)) in accordance with Section 4(e) of Executive Order No. 11846 of March 27, 1975, (3 CFR 1971–1975 Comp. 1975) [set out below], and at my direction, the ad valorem equivalent of the specific or compound rate, on the basis of the value of imports of the article concerned during a period determined by it to be representative, utilizing, to the extent practicable, the standards of valuation contained in Sections 402 and 402a of the Tariff Act of 1930 (19 U.S.C. 1401a and 1402) applicable to the article during such representative period.

4. Pursuant to the Trade Act of 1974 [this chapter] and the Trade Agreements Act of 1979 [see 19 U.S.C. 2501], I determine that the modification or continuance of existing duties or other import restrictions or the continuance of existing duty-free or excise treatment hereinafter proclaimed is required or appropriate to carry out the trade agreements identified in the third recital of this proclamation or one or more of the trade agreements identified in Section 2(c) of the Trade Agreements Act of 1979 (93 Stat. 148) [19 U.S.C. 2503(c)].

5. Following unsatisfactory negotiations with the European Economic Community under Articles XXIV:6 and XXVIII of the General Agreement regarding the maintenance by the European Economic Community of unreasonable import restrictions upon imports of poultry, I determine, under the United States law (including but not limited to provisions as provided for in TSUS item 622.02) [see Publication of Tariff Schedules note under section 1202 of this title]) is required to carry out the General Agreement. NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes, including but not limited to Title I and Section 604 of the Trade Act of 1974 [this subchapter and 19 U.S.C. 2485], Section 2 (19 U.S.C. 2505), and Titles V, VI, and VIII of the Trade Agreements Act of 1979 (Pub. L. 96–39, July 26, 1979) Section 255 of the Trade Expansion Act of 1962 (19 U.S.C. 1885), and Section 301 of Title 3 of the United States Code, do proclaim that:

(1) At the close of December 31, 1979, the suspension of tariff concessions contained in Proclamation 3564 (except those applicable to automobile trucks valued at $1,000 or more [provided for in TSUS item 692.02] [see Publication of Tariff Schedules note under section 1202 of this title]) will terminate.

(2) The amendment to Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) provided for in Section 601(a)(3) of the Trade Agreements Act of 1979 (93 Stat. 268) shall be effective with respect to imports made under Section 466 of this Act after the date designated by the President under paragraph (5)(b) of this proclamation.

(3) The rate of duty applicable to each item as to which the determination has been made in recital 5(d) is the rate of duty appearing in rate column numbered 1 on January 1, 1979, for the comparable item, or for imports for consumption on and after the date designated by the President when he determines that the requirements of Section 2(b) of the Trade Agreements Act of 1979 (93 Stat. 147) (19 U.S.C. 2503(b)) have been met with respect to the Agreement on Trade in Civil Aircraft;

(4) To this end—

(a) Except as provided for in subparagraph (b), the modifications to the TSUS made by Annex II, Section A of Annex III, and Sections B(1) through (4) of Annex IV of this proclamation [see note below] shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after the effective dates specified in those annexes;

(b) The modifications provided for in Section A of Annex II to this proclamation [see note below] which are authorized by Section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 147) (19 U.S.C. 2503(b)) have been met with respect to the Agreement on Trade in Civil Aircraft;

(c) The Special Representative [now Trade Representative] shall make any determinations relevant to the effective date with respect to each of the modifications made by these sections; such modifications shall apply to articles entered, or withdrawn from warehouse, for consumption on and after such effective date;

(d) The modifications to the TSUS made by Section C of Annex IV to this proclamation, [see note below] relating to special treatment for the least developed developing countries (LDDC's), shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after the effective dates as provided for in Section B of Annex IV [see note below]; whenever the rate of duty specified in the column numbered 1 for any TSUS item is reduced to the same level as the corresponding rate of duty specified in the column entitled “LDDC” for such item, the rate of duty in the column entitled “LDDC” shall be deleted from the TSUS, and when the duty rates for all such items in Annex IV [see note below] have been deleted, the modifications to the TSUS made by Section C of Annex IV to this proclamation [see note below] shall be deleted;

(e) Section A of Annex IV [see note below] shall become effective on January 1, 1980.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of December, in the year of our Lord nineteen hundred and seventy-nine, and of the Independence of the United States of America the two hundred and fourth.

JIMMY CARTER.

ANNEX I

TEXTS OF AGREEMENTS IDENTIFIED IN THE THIRD AND FOURTH RECITALS OF THIS PROCLAMATION 1

1 Not printed in the Federal Register. The text of the Geneva (1979) Protocol to the General Agreement in part 1 of Annex I has been printed by the Contracting Parties to the General Agreement on Tariffs and Trade in four volumes entitled Geneva (1979) Protocol to the General Agreement on Tariffs and Trade: The Agreement with the Hungarian People’s Republic in part 6 of Annex I has been printed in House Document 96–153, vol. 1, p. 703. The general provisions of all the agreements in parts 1 to 6 of annex 1, but not schedules of concessions by other parties, will be printed in the Customs Bulletin. The texts of all these agreements will be printed in Treaties and Other International Agreements to this Series, and in the bound volumes of United States Treaties and Other International Agreements.
Part 1  Geneva (1979) Protocol to the General Agreement on Tariffs and Trade (including Schedules of Concessions)

Part 2  Trade Agreement with the People’s Republic of Hungary Entered Into on November 18, 1979

Part 3  Trade Agreement with the United Mexican States Entered Into on October 31, 1979

Part 4  Trade Agreement with the Socialist Republic of Romania Entered Into on March 2, 1979

Part 5  Trade Agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs Entered Into on October 24, 1979

Part 6  Agreement with the Hungarian People’s Republic Entered Into on June 13, 1979

ANNEXES II TO IV

Annexes II to IV of Proclamation 3707, which amended the Trade Act of 1974 (19 U.S.C. 2111(b)), are set out under this section because the Tariff Schedules were not set out in the Code. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States which is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PROC. NO. 4768  CARRYING OUT THE AGREEMENT ON IMPLEMENTATION OF ARTICLES VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND FOR OTHER PURPOSE


1. Pursuant to Section 204(a)(2) of the Trade Agreements Act of 1979 (93 Stat. 203) [19 U.S.C. 1401a note] in order to implement, beginning on July 1, 1980, the new customs valuation standards as provided in Title II of that Act [Pub. L. 96–39, July 26, 1979, 93 Stat. 194], and for other purposes, I make the following determinations, and do proclaim as hereinafter set forth.

2. Section 225 of the Trade Agreements Act of 1979 (93 Stat. 235) [Pub. L. 96–39, July 26, 1979, 93 Stat. 194], and for other purposes, I determine the following:

3. Pursuant to Section 101(a) of the Trade Act of 1974 (19 U.S.C. 2111(a)) and having made the determinations required by that section with regard to the following trade agreements, I, through my duly empowered representative, (1) on July 11, 1979, entered into a trade agreement with other contracting parties to the General Agreement on Tariffs and Trade (61 Stat. (pts. 5 and 6)), as amended (the General Agreement), with countries seeking to accede to the General Agreement, and the European Communities, which agreement consists of the Geneva (1979) Protocol to the General Agreement, including a schedule of United States concessions annexed thereto (hereinafter referred to as “Schedule XX (Geneva–1979)”), (2) on December 18, 1979, entered into a trade agreement with Switzerland, which agreement consists of an exchange of letters, a copy of which is annexed to this proclamation as Part 2 of Annex I, and (3) on December 21 and 27, 1979, and on January 2, 1980, entered into trade agreements with the European Communities, which agreements consists of joint memoranda, copies of which are annexed to this proclamation as Part 3 of Annex I, and (4) on January 2, 1980, entered into a trade agreement with the Dominican Republic, which agreement consists of an exchange of letters, a copy of which is annexed to this proclamation as Part 4 of Annex I, and (5) on December 29, 1979, entered into a trade agreement with Indonesia, which agreement consists of a memorandum and an exchange of letters, copies of which are annexed to this proclamation as Part 5 of Annex I.

4. After having complied with Section 102 of the Trade Act of 1974 (19 U.S.C. 2112), and having made the required determinations, I, through my duly empowered representative, has entered into the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (a copy of which is annexed to this proclamation as Part 1 of Annex I), and approving the agreement and the proposed administrative action, has been enacted into law (Section 2(a) of the Trade Agreements Act of 1979 (93 Stat. 147) (19 U.S.C. 2503(a))).

5. (a) Pursuant to Section 2(b)(3) of the Trade Agreements Act of 1979 (93 Stat. 147) (19 U.S.C. 2503(b)(3)), I determine (1) that each major industrial country, as defined therein, with the exception of Canada, is accepting the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, (2) that the acceptance of this Agreement by Canada is not essential to the effective operation of the Agreement, (3) that a significant portion of United States trade will benefit from the Agreement, notwithstanding such non-acceptance, and (4) that it is in the national interest of the United States to accept the Agreement (and have so reported to the Congress);

(b) Pursuant to Section 204(a)(2)(A) and (B) of the Trade Agreements Act of 1979 (93 Stat. 203) (19 U.S.C. 1401a note), I determine that the European Communities (including the European Economic Community) have accepted the obligations of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade with respect to the United States and each of the member states of the European Communities has implemented the Agreement under its laws (effective July 1, 1980);

(c) Pursuant to Section 503(a)(1) of the Trade Agreements Act of 1979 (93 Stat. 251) [Pub. L. 96–39, July 26, 1979], I determine, after interested parties were provided an opportunity to comment, that the articles classifiable in the following new items of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1222) [see Publication of Tariff Schedules note set out under section 1202 of this title], added thereto by Annex II to this proclamation, were not imported into the United States before January 1, 1978, and were not produced in the United States before May 1, 1978:

(Table of new items deleted)

(d) Pursuant to Section 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251), I determine, after providing interested parties an opportunity to comment, that each article identified in Annex IV to this proclamation is not import sensitive.

6. Each modification of existing duty proclaimed herein which provides with respect to an article for a decrease in duty below the limitation specified in Sections 101(b)(1) or 106(a) of the Trade Act of 1974 (19 U.S.C. 2111(b)(1) or 2119(a)), and each modification of any other import restriction or tariff provision so proclaimed is authorized by one or more of the following provisions or statutes:

(a) Section 101(b)(2) of the Trade Act of 1974 (19 U.S.C. 2111(b)(2)), by virtue of the fact that the rate of duty existing on January 1, 1975, applicable to the article was not more than 5 percent ad valorem (or ad valorem equivalent);

(b) Section 109(b) of the Trade Act of 1974 (19 U.S.C. 2119(b)), by virtue of the fact that I have determined, pursuant to that section, that the decrease authorized by that section will simplify the computation of the amount of duty imposed with respect to the article;

(c) The Trade Agreements Act of 1979 (93 Stat. 144 et seq.) (see 19 U.S.C. 2501) including, but not limited to, Sections 503(a)(1), (2A) and (6) (93 Stat. 251 and 252) [Pub. L. 96–39, July 26, 1979] by virtue of the fact
that they permit departures from the staging provi-
sions of Section 10(a) of the Trade Act of 1974 (19
U.S.C. 2119(a)).
7. In the case of each decrease in duty, including
those of the type specific in clause (a) or (b) of the sixth
recital of this proclamation, which involves the deter-
mination of the ad valorem equivalent of a specified or
compound rate of duty, and in the case of each modi-
fication in the form of an import duty, the United
States International Trade Commission has deter-
mined, pursuant to Section 601(h) of the Trade Act of
1974 (19 U.S.C. 2481(h)), in accordance with Section 9(e)
of Executive Order No. 11846 of March 27, 1975 (3 CFR
1971–1975 Comp. 1975) [set out below], and at my direc-
tion, the ad valorem equivalent of the specific or com-
 pound rate, on the basis of the value of imports of the
article concerned during a period determined by it to be
representative, utilizing, to the extent practicable,
the standards of valuation contained in Sections 402
and 402a of the Tariff Act of 1930 (19 U.S.C. 1401a and
1402) applicable to the article during such represent-
ative period.
8. Pursuant to the Trade Act of 1974 [this chapter]
and the Trade Agreements Act of 1979 [see 19 U.S.C.
2501], I determine that each modification or continu-
ance of existing duties or other import restrictions and
each continuance of existing duty-free or excise treat-
ment hereinafter proclaimed is required or appropriate
to carry out the trade agreements identified in the third
recital of this proclamation or the Agreement on
Implementation of Article VII of the General Agree-
ment on Tariffs and Trade.
NOW, THEREFORE, I, JIMMY CARTER, President of
the United States of America, acting under the author-
ity vested in me by the Constitution and the statutes,
including but not limited to Title I and Section 604 of
the Trade Act of 1974 [this subchapter and 19 U.S.C.
2483], Section 2 (19 U.S.C. 2506) and Titles II and V of
26, 1979], and Section 301 of Title 3 of the United States
Code, do proclaim that:
1(a) The valuation standards amendments made by
Title II of the Trade Agreements Act of 1979 (93 Stat.
194 et seq.), to Sections 402 and 402a of the Tariff Act of
1930 (19 U.S.C. 1401a and 1402), and
(b) subject to the provisions of the General Agree-
ment, of the Geneva (1979) Protocol, of other agree-
ments supplemental to the General Agreement, of the
other agreements identified in recitals 3 and 4, and of
United States Law (including but not limited to provi-
sions for more favorable treatment),—
(i) the modification or continuance of existing du-
ties or other import restrictions, and
(ii) the continuance of existing duty-free or excise treat-
ment provided for in these agreements and in
trade agreements legislation, shall become effective on
or after July 1, 1980, as provided for herein.
(2) To this end—
(a) The amendments made by Title II of the Trade
Agreements Act of 1979 (93 Stat. 194 et seq.), except
amendments made by section 223(b) [see Effective
Date of 1979 Amendment note set out under section
1401a of this title], shall be effective with respect to
articles exported to the United States on and after
July 1, 1980;
(b) the TSUS is modified as provided in Annexes II,
III and IV of the proclamation;
(c) The modifications to the TSUS made by Sec-
tions A and C of Annex II, and Section A of Annex III,
of this proclamation shall be effective with respect to
articles exported to the United States on and after the
effective dates specified in those annexes;
(d) the modifications to the TSUS made by Sec-
tions B, D and E of Annex II, Section B of Annex III,
and Sections A and B of Annex IV, of this procla-
mation shall be effective with respect to articles en-
tered, or withdrawn from warehouse for consumption,
on and after the effective dates specified in those an-
nexes;
(e) The United States Trade Representative shall
make the necessary determinations relevant to the
designation of the effective dates of the modifications of
the TSUS made by Sections F and G of Annex II
and Section C of Annex III to this proclamation, and
shall publish in the Federal Register the effective
date with respect to each of the modifications made
by these sections; such modifications shall apply to
articles entered, or withdrawn from warehouse for
consumption, on and after such effective date;
(f) With respect to the modifications to the TSUS
made by Annex IV to this proclamation and Annex IV
to Presidential Proclamation 4707 of December 11,
1979 [see note above], relating to special treatment
for the least developed developing countries
(LDDC's), whenever the rate of duty specified in the
column numbered 1 for any TSUS item is reduced to
the same level as the corresponding rate of duty speci-
fied in the column entitled "LDDC" for such item, or
to a lower level, the rate of duty in the column enti-
tled "LDDC" shall be deleted from the TSUS;
(g) Annexes III and IV of Presidential Proclama-
tion 4707 of December 11, 1979 [see note above], are super-
seeded to the extent inconsistent with this proclama-
tion.
IN WITNESS WHEREOF, I have hereunto set my
hand this 28th day of June, in the year of our Lord
nineteen hundred and eighty, and of the Independence
of the United States of America the two hundred
and fourth.

JIMMY CARTER.
ANNEXES I TO IV
Annexes I to IV of Proclamation 4768, which amended
the Tariff Schedules of the United States, are not set
out under this section because the Tariff Schedules
were not set out in the Code. The Tariff Schedules of
the United States were replaced by the Harmonized
Tariff Schedule of the United States which is set
out in the Code. See Publication of Harmonized Tariff
Schedule note set out under section 1202 of this title.

EX. ORD. NO. 11846, ADMINISTRATION OF TRADE
AGREEMENTS PROGRAM
Ex. Ord. No. 11846, Mar. 27, 1975, 40 F.R. 14291, as
F.R. 70805, provided:
By virtue of the authority vested in me by the Trade
Act of 1974, hereinafter referred to as the Act (Public
Law 93–618, 88 Stat. 1978) [this chapter], the Trade Ex-
 pansion Act of 1962, as amended (19 U.S.C. 1801 et seq.),
the Trade Agreement Act of 1934 (19 U.S.C. 3501 et seq.), the
Trade Act of 1930, as amended (19 U.S.C. 1351), and
Section 301 of Title 3 of the United States Code, and as
President of the United States, it is hereby or-
dered as follows:
SECTION 1. The Trade Agreements Program.
The “trade agreements program” includes all activi-
ties consisting of, or related to, the negotiation or ad-
ministration of international agreements which pri-
marily concern trade and which are concluded pursuant
to the authority vested in the President by the Con-
sitution, Section 350 of the Tariff Act of 1930 [section
1351 of this title], as amended, the Trade Expansion Act
of 1962, as amended [section 1901 et seq. of the Act], the
Trade Act of 1974, as amended [section 1301 et seq. of the
Act], as amended, (19 U.S.C. 331), and the United States
Trade Representative [now United States Trade Repre-
sentative, see Change
Name note above].
SNC. 2. The Special Representative for Trade Negotiations
[now United States Trade Representative, see Change
Name note above].
(a) The Special Representative for Trade Negotia-
tions [now United States Trade Representative], here-
inafter referred to as the Special Representative [now
Trade Representative], in addition to the functions
conferred upon him by the Act [this chapter], including
Section 141 thereof [section 2171 of this title], and in ad-

dition to the functions and responsibilities set forth in this Order, shall be responsible for such other functions as the President may direct.


(c) The Special Representative [now Trade Representative] shall prepare, for the President’s transmission to Congress, the annual report on the trade agreements program required by Section 163(a) of the Act [section 2213(a) of this title]. At the request of the Special Representative [now Trade Representative], other agencies shall assist in the preparation of that report.

(d) The Special Representative [now Trade Representative], except where expressly otherwise provided or prohibited by statute, Executive order, or instructions of the President, shall be responsible for the proper administration of the trade agreements program, and may, as he deems necessary, assign to the head of any Executive agency or body the performance of his duties which are incidental to the administration of the trade agreements program.

(e) The Special Representative [now Trade Representative] shall consult with the Trade Policy Committee in connection with the performance of his functions, including those established or delegated by this Order and shall, as appropriate, consult with other Federal agencies or bodies. With respect to his functions under Title IV of the Act [section 2431 et seq. of this title], including those established or delegated by this Order, the Special Representative [now Trade Representative] shall also consult with the East-West Foreign Trade Board [abolished].

(f) The Special Representative [now Trade Representative] shall be responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program. Any such Proclamation shall be subject to all the provisions of Executive Order No. 11590, as amended [set out under section 1556 of Title 44, Public Printing and Documents] except that such Proclamation need not be submitted to the Director of the Office of Management and Budget.

(g) The Secretary of State shall advise the Special Representative [now Trade Representative], and the Committee, on the foreign policy implications of any action under the trade agreements program. The Special Representative [now Trade Representative] shall invite appropriate departments to participate in trade negotiations of particular interest to such departments, and the Department of State shall participate in such negotiations which have a direct and significant impact on foreign policy.

Snc. 3. The Trade Policy Committee.


(b) The Committee shall have the functions conferred by the Trade Expansion Act of 1962, as amended [section 1872 of this title], upon the inter-agency organization referred to in Section 2432 thereof, as amended [section 1872 of this title], the functions delegated to it by the provisions of this Order, and such other functions as the President may from time to time direct. Recommendations and advice of the Committee shall be submitted to the President by the Chairman.

(c) The Special Representative [now Trade Representative] or any other officer who is chief representative of the United States in a negotiation in connection with the trade agreements program shall keep the Committee informed with respect to the status and conduct of negotiations and shall consult with the Committee regarding the basic policy issues arising in the course of negotiations.

(d) Before making recommendations to the President under Section 242(b)(2) of the Trade Expansion Act of 1962, as amended [section 242(b)(2) of this title], the Committee shall, through the Special Representative [now Trade Representative], request the advice of the Advisory Committee to the Trade Representative, established by Section 281 of the Act [section 2392 of this title].
or to any extent not specifically authorized by the President or by the Special Representative [now Trade Representative].

(e) Reports, findings, advice, determinations, hearing transcripts, briefs, and information which, under the terms of the Act [this chapter], the International Trade Commission is required to furnish to the President shall be transmitted to the President through the Special Representative [now Trade Representative].

§ 7. Import Relief and Market Disruption.

(a) The Special Representative [now Trade Representative] is authorized to request from the International Trade Commission the information specified in Sections 2252(d) and 2253(1)(d) and (2) of the Act [sections 2252(d) and 2253(1)(d) and (2) of this title].

(b) The Secretary of the Treasury, in consultation with the Secretary of Commerce or the Secretary of Agriculture, as appropriate, is authorized to issue, under Section 203(g) of the Act [section 2253(g) of this title], regulations governing the administration of any quantitative restrictions proclaimed in order to provide import relief and is authorized to issue, under Section 208(g) of the Act or 352(b) of the Trade Expansion Act of 1962 [section 1982(b) of this title], regulations governing the entry, or withdrawal from warehouses for consumption, of articles pursuant to any orderly marketing agreement.

(c) The Secretary of Commerce shall exercise primary responsibility for monitoring imports under any orderly marketing agreement.


(a) The Special Representative [now Trade Representative], in consultation with the Secretary of State, shall be responsible for the administration of the generalized system of preferences under Title V of the Act [section 2461 et seq. of this title].

(b) The Committee, through the Special Representative [now Trade Representative], shall advise the President as to which countries should be designated as beneficiary developing countries, and as to which articles should be designated as eligible articles for the purposes of the system of generalized preferences.

(c) The Committee, through the Special Representative [now Trade Representative], shall perform the functions of the President specified in Section 503(a) of the Act [section 2463(a) of this title], with respect to publishing and furnishing to the International Trade Commission lists of articles that may be considered for designation as eligible articles for purposes of the Generalized System of Preferences.

(d) The Committee, through the Special Representative [now Trade Representative], to the extent necessary to determine the applicability of the provisions of Section 504(d) of the Act [section 2464(d) of this title] to any eligible article, shall perform the functions of the President under Section 332(g) of the Tariff Act of 1930, as amended [section 1332(g) of this title], with respect to requests for investigations by, and reports from, the International Trade Commission.


(a) Executive Order No. 11789 of June 25, 1974, and Section 6(d) of Executive Order No. 11075 of September 30, 1974, relating to the President’s Committee on East-West Trade Policy are hereby revoked.

(b) (1) Sections 5(b), 7, and 8 of Executive Order No. 11075 of January 15, 1963, are hereby revoked effective April 3, 1975; (2) the remainder of Executive Order No. 11075, and Executive Order No. 11106 of April 18, 1963 and Executive Order No. 11113 of June 13, 1963, are hereby revoked.

§ 2112. Barriers to and other distortions of trade

(a) Congressional findings; directives; disavowal of prior approval of legislation

The Congress finds that barriers to (and other distortions of) international trade are reducing the growth of foreign markets for the products of United States agriculture, industry, mining, and commerce, diminishing the intended mutual benefits of reciprocal trade concessions, adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations. The President is urged to take all appropriate and feasible steps within his power (including the full exercise of the rights of the United States under international agreements) to harmonize, reduce, or eliminate such barriers to (and other distortions of) international trade. The President is further urged to utilize the authority granted by subsection (b) of this section to negotiate trade agreements with other countries and instrumentalities providing on a basis of mutuality for the harmonization, reduction, or elimination of such barriers to (and other distortions of) international trade. Nothing in this subsection shall be construed as prior approval of any legislation which may be necessary to implement an agreement concerning such barriers to (or other distortions of) international trade.

(b) Presidential determinations prerequisite to entry into trade agreements; trade with Israel

(1) Whenever the President determines that any barriers to (or other distortions of) inter-
national trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this chapter will be promoted thereby, the President, during the 13-year period beginning on January 3, 1975, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

(2)(A) Trade agreements that provide for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) only with Israel.

(B) The negotiation of any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States shall take fully into account any product that benefits from a discriminatory preferential tariff arrangement between Israel and a third country if the tariff preference on such product has been the subject of a challenge by the United States Government under the authority of section 2411 of this title and the General Agreement on Tariffs and Trade.

(C) Notwithstanding any other provision of this section, the requirements of subsections (c) and (e)(1) of this section shall not apply to any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States.

(3) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States.

(4)(A) Notwithstanding paragraph (2), a trade agreement that provides for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) with any country other than Israel if—

(i) such country requested the negotiation of such an agreement, and

(ii) the President, at least 60 days prior to the date notice is provided under subsection (e)(1) of this section—

(I) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(II) consults with such committees regarding the negotiation of such agreement.

(B) The provisions of section 2191 of this title shall not apply to an implementing bill (within the meaning of section 2191(b) of this title) if—

(i) such implementing bill contains a provision approving of any trade agreement which—

(I) is entered into under this section with any country other than Israel, and

(II) provides for the elimination or reduction of any duty imposed by the United States, and

(ii) either—

(I) the requirements of subparagraph (A) were not met with respect to the negotiation of such agreement, or

(II) the Committee on Finance of the Senate disapproved of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under subparagraph (A)(ii)(I) with respect to the negotiation of such agreement.

(C) The 60-day period described in subparagraphs (A)(ii) and (B)(ii)(II) shall be computed without regard to—

(i) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House of Congress is not in session.

(c) Presidential consultation with Congress prior to entry into trade agreements

Before the President enters into any trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and with each committee of the House and the Senate and each joint committee of the Congress which has jurisdiction over legislation involving subject matters which would be affected by such trade agreement. Such consultation shall include all matters relating to the implementation of such trade agreement as provided in subsections (d) and (e) of this section. If it is proposed to implement such trade agreement, together with one or more other trade agreements entered into under this section, in a single implementing bill, such consultation shall include the desirability and feasibility of such proposed implementation.

(d) Submission to Congress of agreements, drafts of implementing bills, and statements of proposed administrative action

Whenever the President enters into a trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall submit such agreement, together with a draft of an implementing bill (described in section 2191(b) of this title) and a statement of any administrative action proposed to implement such agreement, to the Congress as provided in subsection (e) of this section, and such agreement shall enter into force with respect to the United States only if the provisions of subsection (e) of this section are complied with and the implementing bill submitted by the President is enacted into law.

(e) Steps prerequisite to entry into force of trade agreements

Each trade agreement submitted to the Congress under this subsection shall enter into force
with respect to the United States if (and only if)—

(1) the President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement together with—

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interests of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

(f) Obligations imposed upon foreign countries or instrumentalities receiving benefits under trade agreements

To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(g) Definitions

For purposes of this section—

(1) the term “barrier” includes—

(A) the American selling price basis of customs evaluation as defined in section 1401a or 1402 of this title, as appropriate, and

(B) any duty or other import restriction;

(2) the term “distortion” includes a subsidy; and

(3) the term “international trade” includes—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.


(2) HTS.—The term ‘HTS’ means the Harmonized Tariff Schedule of the United States.

TITLE I—TARIFF MODIFICATIONS; RULES OF ORIGIN

SEC. 101. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—The President may proclaim—

(1) such modifications or continuation of any duty;

(2) such continuation of duty-free or excise treatment; or

(3) such additional duties, as the President determines to be necessary or appropriate to carry out article 2.1 of the Agreement and the schedule of duty reductions with respect to Jordan set out in Annex 2.1 of the Agreement.

(b) OTHER TARIFF MODIFICATIONS.—The President may proclaim—

(1) such modifications or continuation of any duty;

(2) such continuation of duty-free or excise treatment; or

(3) such additional duties, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Jordan provided for by the Agreement.

SEC. 102. RULES OF ORIGIN.

(a) IN GENERAL.—

(1) ELIGIBLE ARTICLES.—

(A) In General.—The reduction or elimination of any duty imposed on any article by the United States provided for in the Agreement shall apply only if—

(i) that article is imported directly from Jordan into the customs territory of the United States; and

(ii) that article—

(I) is wholly the growth, product, or manufacture of Jordan; or

(II) is a new or different article of commerce that has been grown, produced, or manufactured in Jordan and meets the requirements of subparagraph (B).

(B) REQUIREMENTS.—

(1) GENERAL RULE.—The requirements of this subparagraph are that with respect to an article to which this paragraph applies, an amount not to exceed 15 percent of the appraised value of the materials produced in the customs territory of the United States is included in the cost or value of materials produced in Jordan, plus

(ii) the direct costs of processing operations performed in Jordan, is not less than 35 percent of the appraised value of such article at the time it is entered.

(II) MATERIALS PRODUCED IN UNITED STATES.—If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this paragraph applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in clause (i).

(2) EXCLUSIONS.—No article may be considered to meet the requirements of paragraph (1)(A) by virtue of having merely undergone—

(A) simple combining or packaging operations; or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(b) DIRECT COSTS OF PROCESSING OPERATIONS.—

(1) IN GENERAL.—As used in this section, the term ‘direct costs of processing operations’ includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

(2) EXCLUDED COSTS.—The term ‘direct costs of processing operations’ does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as—

(A) profit; and

(B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen’s salaries, commissions, or expenses.

(c) TEXTILE AND APPAREL ARTICLES.—

(1) IN GENERAL.—A textile or apparel article imported directly from Jordan into the customs territory of the United States shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) only if—

(A) the article is wholly obtained or produced in Jordan;

(B) the article is a yarn, thread, twine, cordage, rope, cable, or braiding, and—

(i) the constituent staple fibers are spun in Jordan, or

(ii) the continuous filament is extruded in Jordan.

(C) the article is a fabric, including a fabric classified under chapter 59 of the HTS, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in Jordan; or

(D) the article is any other textile or apparel article that is wholly assembled in Jordan from its component pieces.

(2) DEFINITION.—For purposes of paragraph (1), an article is ‘wholly obtained or produced in Jordan’ if it is wholly the growth, product, or manufacture of Jordan.

(3) SPECIAL RULES.—

(A) CERTAIN MADE-UP ARTICLES, TEXTILE ARTICLES IN THE PIECE, AND CERTAIN OTHER TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (C) and (D) of this paragraph, subparagraph (A), (B), or (C) of paragraph (1), as appropriate, shall determine whether a good that is classified under one of the following headings or subheadings of the HTS shall be considered to meet the requirements of paragraph (1)(A) of subsection (a): 5609, 5807, 5811, 6209.20.50, 6212, 6214, 6301, 6302, 6304, 6305, 6306, 6307.10, 6307.90, 6308, and 9409.90.

(B) CERTAIN KNIT-TO-SHAPE TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (C) and (D) of this paragraph, a textile or apparel article which is knit-to-shape in Jordan shall be considered to meet the requirements of paragraph (1)(A) of subsection (a).

(C) CERTAIN DYED AND PRINTED TEXTILES AND TEXTILE ARTICLES.—Notwithstanding paragraph (1)(D), a good classified under heading 6117.10, 6213.00, 6214.00, 6302.22, 6302.29, 6302.52, 6302.53, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85, or 9404.90.95 of the HTS, except for a good classified under any such heading as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton, shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the fabric in the good is both dyed and printed in

(continued)
Jordan, and such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

“(D) FABRICS OF SILK, COTTON, MAN-MADE FIBER OR VEGETABLE FIBER.—Notwithstanding paragraph (1)(C), a fabric classified under the HTS as of silk, cotton, man-made fiber, or vegetable fiber shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the fabric is both dyed and printed in Jordan, and such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

“(4) MULTICOUNTRY RULE.—If the origin of a textile or apparel article cannot be determined under paragraph (1) or (3), then that article shall be considered to meet the requirements of paragraph (1)(A) of subsection (a) if—

(A) the most important assembly or manufacturing process occurs in Jordan; or

(B) if the applicability of paragraph (1)(A) of subsection (a) cannot be determined under subparagraph (A), the last important assembly or manufacturing occurs in Jordan.

“(6) EXCLUSION.—A good shall not be considered to meet the requirements of paragraph (1)(A) of subsection (a) if the good—

(1) is imported into Jordan, and, at the time of importation, would be classified under heading 0905 of the HTS; and

(2) is processed in Jordan into a good classified under any of subheadings 2009.11 through 2009.30 of the HTS.

“(7) REGULATIONS.—The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this section.

“TITLE II—RELIEF FROM IMPORTS

“SUBTITLE A—GENERAL PROVISIONS

“SEC. 201. DEFINITIONS.

“AS USED IN THIS TITLE:

(1) COMMISSION.—The term ‘Commission’ means the United States International Trade Commission.

(2) JORDANIAN ARTICLE.—The term ‘Jordanian article’ means an article that qualifies for reduction or elimination of a duty under section 102.

“SUBTITLE B—RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

“SEC. 211. COMMENCING OF ACTION FOR RELIEF.

“(a) FILING OF PETITION.—

(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2222(a)).

(3) CRITICAL CIRCUMSTANCES.—Any allegation that critical circumstances exist shall be included in the petition.

(b) INVESTIGATION AND DETERMINATION.—

(1) IN GENERAL.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Jordanian article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that a Jordanian article alone constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) CAUSATION.—For purposes of this subtitle, a Jordanian article is being imported into the United States in increased quantities as a result of the reduction or elimination of a duty provided for under the Agreement if the reduction or elimination is a cause that contributes significantly to the increase in imports. Such cause need not be equal to or greater than any other cause.

(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2222) apply with respect to any investigation initiated under subsection (b):

(1) Paragraphs (1)(b) and (3) of subsection (b).

(2) Subsection (c).

(3) Subsection (d).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Jordanian article if import relief has been provided under this subtitle with respect to that article.

“SEC. 212. COMMISSION ACTION ON PETITION.

“(a) DETERMINATION.—By no later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 211(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, the Commission shall find, and recommend to the President in the report required under subsection (c), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 213(c).

(c) REPORT TO PRESIDENT.—No later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that shall include—

(1) a statement of the basis for the determination;

(2) dissenting and separate views; and

(3) any finding made under subsection (b) regarding import relief.

(d) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (c), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(e) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2222).

“SEC. 213. PROVISION OF RELIEF.

“(a) IN GENERAL.—No later than the date that is 30 days after the date on which the President receives the report of the Commission containing an affirmative determination of the Commission under section 212(a), the President shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to prevent or remedy the injury found by the Commission.
and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition, unless the President determines that the provision of such relief is not in the national economic interest of the United States or, in extraordinary circumstances, that the provision of such relief would cause serious harm to the national security of the United States.

"(b) NATIONAL ECONOMIC INTEREST.—The President may determine under subsection (a) that providing import relief is not in the national economic interest of the United States only if the President finds that taking such action would have an adverse impact on the United States economy clearly greater than the benefits of taking such action.

"(c) NATURE OF RELIEF.—The import relief (including provisional relief) that the President is authorized to provide under this subtitle with respect to imports of an article is—

"(1) the suspension of any further reduction provided for under the United States Schedule to Annex 2.1 of the Agreement in the duty imposed on that article;

"(2) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

"(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

"(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force; or

"(3) in the case of a duty applied on a seasonal basis to that article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed under the HTS on the article for the corresponding season occurring immediately before the date on which the Agreement enters into force.

"(d) PERIOD OF RELIEF.—The import relief that the President is authorized to provide under this section may not exceed 4 years.

"SEC. 210. TERMINATION OF IMPORT RELIEF.—When import relief under this subtitle is terminated with respect to an article—

"(1) the rate of duty on that article after such termination and on or before December 31 of the year in which termination occurs shall be the rate that, according to the United States Schedule to Annex 2.1 of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the initiation of the import relief action under section 211; and

"(2) the tariff treatment for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

"(A) the rate of duty conforming to the applicable rate set out in the United States Schedule to Annex 2.1; or

"(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule to Annex 2.1 for the elimination of the tariff.

"SEC. 211. TERMINATION OF RELIEF AUTHORITY.

"(a) GENERAL RULE.—Except as provided in subsection (b), no import relief may be provided under this subtitle after the date that is 15 years after the date on which the Agreement enters into force.

"(b) EXCEPTION.—Import relief may be provided under this subtitle in the case of a Jordanian article after the date on which such relief would, but for this subsection, terminate under subsection (a), but only if the Government of Jordan consents to such provision.

"SEC. 213. TERMINATION AND IMPLEMENTATION.

"(a) TERMINATION AUTHORITY.—For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), any import relief provided by the President under section 213 shall be treated as action taken under chapter 1 of title II of such Act [19 U.S.C. 2251 et seq.].

"SEC. 215. COMPENSATION AUTHORITY.

"A petition for import relief may be submitted to the Commission under—

"(1) this subtitle;

"(2) chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.]; or

"(3) under both this subtitle and such chapter 1 at the same time, in which case the Commission shall consider such petitions jointly.

"SUBTITLE C—CARES UNDER TITLE II OF THE TRADE ACT OF 1974

"SEC. 221. FINDINGS AND ACTION ON JORDANIAN IMPORTS.

"(a) EFFECT OF IMPORTS.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 332(d) of the Tariff Act of 1930 [19 U.S.C. 1333(d)]), the Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether imports of the article from Jordan are a substantial cause of serious injury or threat thereof.

"(b) PRESIDENTIAL ACTION REGARDING JORDANIAN IMPORTS.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall determine whether imports from Jordan are a substantial cause of the serious injury found by the Commission and, if such determination is in the negative, may exclude from such action imports from Jordan.

"SEC. 222. TECHNICAL AMENDMENT. [Amended section 2552 of this title.]

"TITLE III—TEMPORARY ENTRY

"SEC. 301. NONIMMIGRANT TRADERS AND INVESTORS.

"Upon the basis of reciprocity secured by the Agreement, an alien who is a national of Jordan (and any spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)), if the entry is solely for a purpose described in clause (i) or (ii) of such section and the alien is otherwise admissible to the United States as such a nonimmigrant.

"TITLE IV—GENERAL PROVISIONS

"SEC. 401. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

"(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

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

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

"(A) to amend or modify any law of the United States; or

"(B) to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.

"(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

"(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

"(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term ‘State law’ includes—
“(A) any law of a political subdivision of a State; and

“(B) any State law regulating or taxing the business of insurance.

“(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

“(1) shall have any cause of action or defense under the Agreement; or

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

“SEC. 402. AUTHORIZATION OF APPROPRIATIONS.


“(1) during the period beginning on October 1, 1992, and ending on September 30, 1993, the United States share of the expenses incurred in dispute settlement proceedings under article 17 of the Agreement shall be appropriated to the Department of Commerce not more than $100,000 for the payment of the United States share of the expenses incurred in dispute settlement proceedings under article 17 of the Agreement.

“SEC. 403. IMPLEMENTING REGULATIONS.


“(1) the President may proclaim such actions; and

“(2) other appropriate officers of the United States may issue such regulations, as may be necessary to make any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force, applicable to actions, inactions, or regulations of a State on the ground that such action or inaction is inconsistent with the Agreement.

“SEC. 404. EFFECTIVE DATES; EFFECT OF TERMINATION.

“(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force [Dec. 17, 2001].

“(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act [Sept. 28, 2001].

“(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection) and the amendments made by this Act, shall cease to be effective.


“UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION


“SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

“(a) SHORT TITLE.—This Act [enacting section 1584 of Title 28, Judiciary and Judicial Procedure, amending sections 88c, 81c, 1306, 1311, 1312, 1313, 1506, 1508, 1514, 1516a, 1562, 1677, 1677f, and 2518 of this title, sections 1509b, 1509cc, 154, 156, 624, 1582, and 2803 of Title 7, Agriculture, section 1184 of Title 8, Aliens and Nationality, section 24 of Title 12, Banks and Banking, section 132 of Title 21, Food and Drugs, sections 1581, 2201, and 2643 of Title 28, section 2201 of Title 42, The Public Health and Welfare, section 2406 of the Appendix to Title 42, War and Navy Depart—] may be cited as the ‘United States-Canada Free-Trade Agreement Implementation Act of 1988’.

“(b) TABLE OF CONTENTS.—

“SECTION 2. PURPOSES.

“The purposes of this Act are—

“(1) to approve and implement the Free-Trade Agreement between the United States and Canada negotiated under the authority of section 102 of the Trade Act of 1974 (19 U.S.C. 2112);

“(2) to strengthen and develop economic relations between the United States and Canada for their mutual benefit;

“(3) to establish a free-trade area between the two nations through the reduction and elimination of barriers to trade in goods and services and to investment;

“(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

“TITLE I—APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT AND RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW

“SEC. 101. APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.

“(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Congress approves—

“(1) the United States-Canada Free-Trade Agreement (hereinafter in this Act referred to as the ‘Agreement’) entered into on January 2, 1988, and submitted to the Congress on July 25, 1988;

“(2) the letters exchanged between the Governments of the United States and Canada—

“(A) dated January 2, 1988, relating to negotiations regarding articles 301 (Rules of Origin) and 401 (Tariff Elimination) of the Agreement; and

“(B) dated January 2, 1988, relating to negotiations regarding article 2008 (Plywood Standards) of the Agreement; and

“(3) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on July 25, 1988;

“(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Canada has taken measures necessary to comply with the obligations of the Agreement, the President is authorized to exchange notes with the Government of Canada providing for the entry into force, on or after January 1, 1989, of the Agreement with respect to the United States.

“(c) REPORT ON CANADIAN PRACTICES.—Within 60 days after the date of the enactment of this Act [Sept. 28, 1988] (but not later than December 15, 1988), the United States Trade Representative shall submit to the Congress a report identifying, to the maximum extent practicable, major current Canadian practices (and the legal authority for such practices) that, in the opinion of the United States Trade Representative—

“(1) are not in conformity with the Agreement; and

“(2) require a change of Canadian law, regulation, policy, or practice to enable Canada to conform with its international obligations under the Agreement.

“SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

“(a) UNITED STATES LAWS TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with any law of the United States shall have effect.

“(b) RELATIONSHIP OF AGREEMENT TO STATE AND LOCAL LAW.—

“(1) The provisions of the Agreement prevail over—

“(A) any conflicting State law; and

“(B) any conflicting application of any State law to any person or circumstance, to the extent of the conflict.

“(2) Upon the enactment of this Act, the President shall, in accordance with section 306(c)(2)(A) of the
Trade and Tariff Act of 1984 (19 U.S.C. 2114), initiate consultations with the State governments on the implementation of the obligations of the United States under the Agreement. Such consultations shall be held—

"(A) through the intergovernmental policy advisory committees on trade established under such section for the purpose of achieving conformity of State laws and practices with the Agreement; and

"(B) with the individual States as necessary to deal with particular questions that may arise.

The United States may bring an action challenging any provision of State law, or the application thereof to any person or circumstance, on the ground that the provision or application is inconsistent with the Agreement.

"(4) For purposes of this subsection, the term 'State law' includes—

"(A) any law of a political subdivision of a State; and

"(B) any State law regulating or taxing the business of insurance.

"(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States shall—

"(1) have any cause of action or defense under the Agreement or by virtue of congressional approval thereof, or

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

"(d) INITIAL IMPLEMENTING REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 101(a)(3) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement [Jan. 1, 1989]. In the case of any implementing action that takes effect after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

"(e) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—The provisions of section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply as if the Agreement were an agreement approved under section 2(a) of that Act [19 U.S.C. 2504(a)] whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation, finding or opinion under, the Agreement; but such provisions shall not apply to any bill to implement any such requirement, amendment, recommendation, finding, or opinion that is submitted to the Congress after the close of the 30th month after the month in which the Agreement enters into force [Jan. 1, 1988].

"SEC. 103. CONSULTATION AND LAY-OVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

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

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

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

"(B) the United States International Trade Commission;

"(2) the President has submitted a report to the Committee on Ways and Means of the House of Rep-
no such proclamation or regulation may have an effective date earlier than the date of entry into force.

"TITLE II—TARIFF MODIFICATIONS, RULES OF ORIGIN, USER FEES, DRAWBACK, ENFORCEMENT, AND OTHER CUSTOMS PROVISIONS"

"SEC. 201. TARIFF MODIFICATIONS.

"(a) Tariff Modifications Specified in the Agreement.—The President may proclaim—

(1) such modifications or continuance of any existing duty;

(2) such continuance of existing duty-free or excise treatment; or

(3) such additional duties;

as the President determines to be necessary or appropriate to carry out article 401 of the Agreement and the schedule of duty reductions with respect to Canada set forth in Annexes 401.2 and 401.7 to the Agreement, as approved under section 101(a)(1). For purposes of proclaiming necessary modifications under such Annex 401.2, any article covered under subheading 9813.00.05 (contained in the United States Schedule in such Annex) shall, unless such article is a drawback eligible good under section 204(a), be treated as being subject to any otherwise applicable customs duty if the article, or merchandise incorporating such article, is exported to Canada.

(b) Other Tariff Modifications.—Subject to the consultation and lay-over requirements of section 103(a), the President may proclaim—

(1) such modifications as the United States and Canada may agree to regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 of the Agreement;

(2) such modifications or continuance of any existing duty;

(3) such continuance of existing duty-free or excise treatment; or

(4) such additional duties;

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement.

(c) Modifications Affecting Plywood.—

(1) The Congress encourages the President to facilitate the preparation, and the implementation with Canada, of common performance standards for the use of softwood plywood and other structural panels in construction applications in the United States and Canada.

(2) The President shall report to the Congress on the incorporation of common plywood performance standards into building codes in the United States and Canada. The President shall also report on the progress towards achieving the objectives of the Parties that improves the goods in condition or advances them in value.

"SEC. 202. RULES OF ORIGIN.

(a) In General.—

(1) For purposes of implementing the tariff treatment contemplated under the Agreement, goods originate in the territory of a Party if—

(A) they are wholly obtained or produced in the territory of either Party or both Parties;

(B) they—

(i) have been transformed in the territory of either Party or both Parties so as to be subject to a change in tariff classification as described in the Annex rules or to such other requirements as the Annex rules may provide when no change in tariff classifications occurs, and

(ii) meet the other conditions set out in the Annex.

(2) A good shall not be considered to originate in the territory of a party [Party] under paragraph (1)(B) merely by virtue of having undergone—

(A) simple packaging or, except as expressly provided by the Annex rules, combining operations;

(B) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(C) any process or work in respect of which it is established, or in respect of which the facts are ascertained clearly justify the presumption, that the sole object was to circumvent the provisions of chapter 3 of the Agreement.

(3) Accessories, spare parts, or tools delivered with any piece of equipment, machinery, apparatus, or vehicle that form part of its standard equipment shall be treated as having the same origin as that equipment, machinery, apparatus, or vehicle if the quantities and values of such accessories, spare parts, or tools are customary for the equipment, machinery, apparatus, or vehicle.

(4) Transshipment.—Goods exported from the territory of one Party originate in the territory of that Party only if—

(1) the goods meet the applicable requirements of subsection (a) and are shipped to the territory of the other Party without having entered the commerce of any third country;

(2) the goods, if shipped through the territory of a third country, do not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the territory of the other Party or to preserve them in good condition; and

(3) the documents related to the exportation and shipment of the goods from the territory of a Party show the territory of the other Party as their final destination.

(c) Interpretation.—In interpreting this section, the following apply:

(1) Whenever the processing or assembly of goods in the territory of either Party or both Parties results in one of the changes in tariff classification described in the Annex rules, such goods shall be considered to have been transformed in the territory of that Party and shall be treated as goods originating in the territory of that Party if—

(A) such processing or assembly occurs entirely within the territory of either Party or both Parties; and

(B) such goods have not subsequently undergone any processing or assembly outside the territories of the Parties that improves the goods in condition or advances them in value.

(2) Whenever the assembly of goods in the territory of a Party fails to result in a change of tariff classification because either—

(A) the goods were imported into the territory of the Party in an unassembled or a disassembled form and were classified as unassembled or disassembled goods pursuant to General Rule of Interpretation 2(a) of the Harmonized System, or

(B) the tariff subheading for the goods provides for both the goods themselves and their parts;

such goods shall not be treated as goods originating in the territory of a Party.

(3) Notwithstanding paragraph (2), goods described in that paragraph shall be considered to have been transformed in the territory of a Party and be treated as goods originating in the territory of the Party if—

(A) the value of materials originating in the territory of either Party or both Parties used or consumed in the production of the goods plus the direct cost of assembling the goods in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party, and

(B) the goods have not subsequently to assembly undergone processing or further assembly in a third country and they meet the requirements of subsection (b).

(4) The provisions of paragraph (3) shall not apply to goods of chapters 61–63 of the Harmonized System.
§ 2112

In making the determination required by paragraph (3)(A) and in making the same or a similar determination when required by the Annex rules, where materials originating in the territory of either Party or both Parties and materials obtained or produced in a third country are used or consumed together in the production of goods in the territory of a Party, the value of materials originating in the territory of either Party or both Parties may be treated as such only to the extent that it is directly attributable to the goods under consideration.

In applying the Annex rules, a specific rule shall take precedence over a more general rule.

(d) ANNEX RULES.

(1) The President is authorized to proclaim, as a part of the Harmonized System, the rules set forth under the heading ‘Rules’ in Annex 301.2 of the Agreement. For purposes of carrying out this paragraph—

(A) the phrase ‘headings 2207–2209’ in paragraph 7 of section IV of such Annex 301.2 shall be treated as a reference to headings 2203–2209; and

(B) the phrase ‘any other heading’ in paragraph 11 of section XV in such Annex 301.2 shall be treated as a reference to any other heading of chapter 74 of the Harmonized System.

(2) Subject to the consultation and lay-over requirements of section 103, the President is authorized to proclaim such modifications to the rules as may from time-to-time be agreed to by the United States and Canada.

(e) AUTOMOTIVE PRODUCTS.

(1) The President is authorized to proclaim such modifications to the definition of Canadian articles (relating to the administration of the Automotive Products Trade Act of 1965 [19 U.S.C. 2001 et seq.]) in the general notes of the Harmonized System as may be necessary to conform that definition with chapter 3 of the Agreement.

(2) For purposes of administering the value requirement (as defined in section 301(c)(3)) with respect to vehicles, the Secretary of the Treasury shall prescribe regulations governing the averaging of the value content of vehicles of the same class, or of sister vehicles, assembled in the same plant as an alternative to the calculation of the value content of each vehicle.

(f) DEFINITIONS.

(1) The term ‘Annex’ means—

(A) the interpretative guidelines set forth in subsection (c); and

(B) the Annex rules.

(2) The term ‘Annex rules’ means the rules proclaimed under subsection (d).

(3) The term ‘direct cost of processing or direct cost of assembling’ means the costs directly incurred in, or that can reasonably be allocated to, the production of goods, including—

(A) the cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(B) the cost of inspecting and testing the goods;

(C) the cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of a Party;

(D) development, design, and engineering costs;

(E) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used in the production of goods; and

(F) royalty, licensing, or other like payments for the right to the goods; but not including—

(i) costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance; “(ii) brokerage charges relating to the importation and exportation of goods; “(iii) the costs for telephone, mail, and other means of communication; “(iv) packing costs for exporting the goods; “(v) royalty payments related to a licensing agreement to distribute or sell the goods; “(vi) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; or “(vii) profit on the goods.

(4) The term ‘goods wholly obtained or produced in the territory of either Party or both Parties’ means—

(A) mineral goods extracted in the territory of either Party or both Parties;

(B) goods harvested in the territory of either Party or both Parties;

(C) live animals born and raised in the territory of either Party or both Parties;

(D) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(E) goods produced on board factory ships from the goods referred to in subparagraph (D) provided such factory ships are registered or recorded with that Party and fly its flag;

(F) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that Party has rights to exploit such seabed;

(G) goods taken from space, provided they are obtained by a Party or a person of a Party and not processed in a third country;

(H) waste and scrap derived from manufacturing operations and used goods, provided they were collected in the territory of either Party or both Parties and are fit only for the recovery of raw materials; and

(I) goods produced in the territory of either Party or both Parties exclusively from goods referred to in subparagraphs (A) to (H) inclusive or from their derivatives, at any stage of production.

(5) The term ‘materials’ means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods.

(6) The term ‘Party’ means Canada or the United States.

(7) The term ‘territoiry’ means—

(A) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources; and

(B) with respect to the United States—

(i) the customs territory of the United States, which includes the fifty States, the District of Columbia and the Commonwealth of Puerto Rico,

(ii) the foreign trade zones located in the United States, and the Commonwealth of Puerto Rico, and

(iii) any area beyond the territorial seas of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(8) The term ‘third country’ means any country other than Canada or the United States or any territory not a part of the territory of either.

(9) The term ‘value of materials originating in the territory of either Party or both Parties’ means the aggregate of—

(A) the price paid by the producer of an exported good for materials originating in the territory of either Party or both Parties or for materials im-

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(continues)
Title 19—Customs Duties

SEC. 203. CUSTOMS USER FEES.

SEC. 204. DRAWBACK.

SEC. 205. ENFORCEMENT.

SEC. 206. EXEMPTION FROM LOTTERY TICKET EMBARGO

SEC. 207. PRODUCTION-BASED DUTY REMISSION PROGRAMS WITH RESPECT TO AUTOMOTIVE PRODUCTS.
§ 2112 TITLE 19—CUSTOMS DUTIES

"(B) any determination made under subsection (a)(2) and the reasons therefor.

(2) Notwithstanding the submission of the report under paragraph (1), the Trade Representative shall continue to monitor the degree of compliance with the obligations referred to in subsection (a)(1)(B).

TITLED III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

SEC. 301. AGRICULTURE.

(a) SPECIAL TARIFF PROVISIONS FOR FRESH FRUITS AND VEGETABLES.—

(1) The Secretary of Agriculture (hereafter in this section referred to as the Secretary) may recommend to the President the imposition of a temporary duty on any Canadian fresh fruit or vegetable entered into the United States if the Secretary determines that both of the following conditions exist at the time that imposition of the duty is recommended:

(A) For each of 5 consecutive working days the import price of the Canadian fresh fruit or vegetable is below 90 percent of the corresponding 5-year average monthly import price for such fruit or vegetable.

(B) The planted acreage in the United States for the like fresh fruit or vegetable is no higher than the average planted acreage over the preceding 5 years, excluding the years with the highest and lowest acreage. For the purpose of applying this subparagraph, any acreage increase attributed directly to a reduction in the acreage that was planted to wine grapes as of October 4, 1987, shall be excluded.

Whenever the Secretary makes a determination that the conditions referred to in subparagraphs (A) and (B) regarding any Canadian fresh fruit or vegetable exist, the Secretary shall immediately submit for publication in the Federal Register notice of the determination.

(2) No later than 6 days after publication in the Federal Register of the notice described in paragraph (1), the Secretary shall decide whether to recommend the imposition of a temporary duty to the President, and if the Secretary decides to make such a recommendation, the recommendation shall be forwarded immediately to the President.

(3) In determining whether to recommend the imposition of a temporary duty to the President under paragraph (1), the Secretary shall consider whether the conditions in subparagraphs (A) and (B) of such paragraph have led to a distortion in trade between the United States and Canada of the fresh fruit or vegetable concerned. If the Secretary decides to make such a recommendation, the recommendation shall be forwarded immediately to the President.

(4) Not later than 7 days after receipt of a recommendation of the Secretary under paragraph (1), the President, after taking into account the national economic interests of the United States, shall determine whether to impose a temporary duty on the Canadian fresh fruit or vegetable concerned. If the determination is affirmative, the President shall proclaim whether the imposition of the duty is appropriate, including consideration of whether it would significantly correct this distortion.

(5) A temporary duty imposed under paragraph (4) shall cease to apply with respect to articles that are entered on or after the earlier of—

(A) the day following the last of 5 consecutive working days with respect to which the Secretary determines that the point of shipment price in Canada for the Canadian fruit or vegetable concerned exceeds 90 percent of the corresponding 5-year average monthly import price; or

(B) the 180th day after the date on which the temporary duty first took effect.

(6) No temporary duty may be imposed under this subsection on a Canadian fresh fruit or vegetable during such time as import relief is provided with respect to such fresh fruit or vegetable under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(7) For purposes of this subsection:

(A) The term ‘Canadian fresh fruit or vegetable’ means any article originating in Canada (as determined in accordance with section 202) and classified within any of the following headings of the Harmonized System:

(i) 07.01 (relating to potatoes, fresh or chilled);

(ii) 07.02 (relating to tomatoes, fresh or chilled);

(iii) 07.03 (relating to onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled);

(iv) 07.04 (relating to cabbages, kohlrabi, kale and similar edible brassicas, fresh or chilled);

(v) 07.05 (relating to lettuce (lactuca sativa) and chicory (cichorium spp.), fresh or chilled);

(vi) 07.06 (relating to carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled);

(vii) 07.07 (relating to cucumbers and gherkins, fresh or chilled);

(viii) 07.08 (relating to leguminous vegetables, shelled or unshelled, fresh or chilled);

(ix) 07.09 (relating to other vegetables (excluding truffles), fresh or chilled);

(x) 08.06.10 (relating to grapes, fresh);

(xi) 08.06.20 (relating to pears and quinces, fresh);

(xii) 08.09 (relating to apricots, cherries, peaches (including nectarines), plums and sloes, fresh); and

(xiii) 08.10 (relating to other fruit (excluding cranberries and blueberries), fresh).

(B) The term ‘corresponding 5-year average monthly import price’ for a particular day means the average import price of a Canadian fresh fruit or vegetable, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(C) The term ‘import price’ has the meaning given such term in article VII of the Agreement.

(D) The rate of a temporary duty imposed under this subsection with respect to a Canadian fresh fruit or vegetable means a rate that, including the rate of any other duty in effect for such fruit or vegetable, does not exceed the lesser of—

(i) the duty that was in effect for the fresh fruit or vegetable before January 1, 1989, under column one of the Tariff Schedules of the United States for the applicable season in which the temporary duty is applied; or

(ii) the duty in effect for the fresh fruit or vegetable under column one of such Schedules, or column 1 (General) of the Harmonized System, at the time the temporary duty is applied.

(E)(A) The Secretary shall, to the extent practicable, administer the provisions of this subsection to the 8-digit level of classification under the Harmonized System.

(B) The Secretary may issue such regulations as may be necessary to implement the provisions of this subsection.

(F) For purposes of assisting the Secretary in carrying out this subsection—

(A) the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importation of Canadian fresh fruits and vegetables, and

(B) importers shall report such information relating to Canadian fresh fruits and vegetables to the Commissioner of Customs at such time and in such manner as the Commissioner requires.

(G) The authority to impose temporary duties under this subsection expires on the 20th anniversary of the date on which the Agreement enters into force.
“(b) MEAT IMPORT ACT OF 1979.—(Amended section 2 of Pub. L. 88–482, set out as a note under section 2253 of this title.)

(1) AGRICULTURAL ADJUSTMENT ACT.—[Amended section 624 of Title 7, Agriculture.]

“SEC. 302. RELIEF FROM IMPORTS.

“(a) RELIEF FROM IMPORTS OF CANADIAN ARTICLES.—

“(1) A petition requesting action under this section for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the United States International Trade Commission (hereafter in this section referred to as the ‘Commission’) by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The Commission shall transmit a copy of any petition filed under this paragraph to the United States Trade Representative.

“(2) Upon the filing of a petition under paragraph (1), the Commission shall promptly initiate an investigation to determine whether, as a result of a reduction or elimination of a duty provided for under the United States-Canada Free-Trade Agreement, an article originating in Canada is being imported into the United States in such increased quantities, in absolute terms, and under such conditions, so that imports of such Canadian article, alone, constitute a substantial cause of serious injury to the domestic industry producing an article like, or directly competitive with, the imported article.

“(B) The provisions of—

“(i) paragraphs (2), (3), (4), (6), and (7) of subsection (b), other than paragraph (2)(B), and

“(ii) subsection (c),

of section 201 of the Trade Act of 1974 (19 U.S.C. 2251), as in effect on June 1, 1988, shall apply with respect to any investigation initiated under subparagraph (A).

“(C) By no later than the date that is 120 days after the date on which an investigation is initiated under subparagraph (A), the Commission shall make a determination under subparagraph (A) with respect to such investigation.

“(D) If the determination made by the Commission under subparagraph (A) with respect to imports of an article is affirmative, the Commission shall find and recommend to the President the amount of import relief that is necessary to remedy the injury found by the Commission in such affirmative determination, which shall be limited to that set forth in paragraph (3)(C).

“(E)(1) By no later than the date that is 30 days after the date on which a determination is made under subparagraph (A) with respect to an investigation, the Commission shall submit to the President a report on the determination and the basis for the determination. The report shall include any dissenting or separate views and a transcript of the hearings and any briefs which were submitted to the Commission in the course of the investigation initiated under subparagraph (A).

“(ii) Any finding made under subparagraph (D) shall be included in the report submitted to the President under clause (i).

“(F) Upon submitting a report to the President under subparagraph (E), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

“(G) For purposes of this subsection—

“(i) The provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) shall be applied with respect to determinations and findings made under this paragraph as if such determinations and findings were made under section 201 of the Trade Act of 1974 (19 U.S.C. 2251).

“(ii) The determination of whether an article originates in Canada shall be made in accordance with section 202 (including any proclamations issued under section 202).

“(3)(A) By no later than the date that is 30 days after the date on which the President receives the report of the Commission containing an affirmative determination made by the Commission under paragraph (2)(A), the President shall provide relief from imports of the article originating in Canada that is the subject of such determination to the extent that, and for such time (not to exceed 3 years) as the President determines to be necessary to remedy the injury found by the Commission.

“(B) The President is not required to provide import relief by reason of this paragraph if the President determines that the provision of such import relief is not in the national economic interest.

“(C) The import relief that the President is authorized to provide by reason of this paragraph with respect to an article originating in Canada is limited to—

“(i) the suspension of any further reductions provided for under the Agreement in the duty imposed on such article originating in Canada,

“(ii) an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the lesser of—

“(1) the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States that is imposed by the United States on such article from any other foreign country at the time such import relief is provided, or

“(2) the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States that is imposed by the United States on such article from any other foreign country on the day before the date on which the Agreement enters into force (Jan. 1, 1989), or

“(iii) in the case of a duty applied on a seasonal basis to such article originating in Canada, an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the general subcolumn of the column 1 rate of duty set forth in the Harmonized Tariff Schedule of the United States imposed by the United States on such article originating in Canada for the corresponding season immediately prior to the date on which the Agreement enters into force.

“(4)(A) No investigation may be initiated under paragraph (2)(A) with respect to any article for which import relief has been provided under this subsection.

“(B) No import relief may be provided under this subsection after the date that is 10 years after the date on which the Agreement enters into force (Jan. 1, 1989).

“(5) For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2233), any import relief provided by the President under paragraph (3) shall be treated as action taken under chapter I [1] of title II of such Act (19 U.S.C. 2231 et seq.).

“(b) RELIEF FROM IMPORTS FROM ALL COUNTRIES.—

“(1) MEAT IMPORT ACT OF 1979.—(Amended section 2 of Pub. L. 88–482, set out as a note under section 2253 of this title.)
thereof, to the domestic industry, the Commission shall also find (and report to the President at the time such injury determination is submitted to the President), whether imports from Canada of the article that is the subject of such investigation are substantial and are contributing importantly to such injury or threat thereof.

(B)(i) In determining whether imports of an article from Canada are substantial, the Commission shall not normally consider imports from Canada in the range of 5 to 10 percent or less of total imports of such article to be substantial.

(ii) For purposes of this paragraph, the term ‘contribution importantly’ means an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports.

(B)(ii) In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974 with respect to imports from Canada, the President shall determine whether imports from Canada of such article are substantial and contributing importantly to the serious injury or threat of serious injury found by the Commission.

(B) In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall exclude from such action imports from Canada if the President has made a negative determination under subparagraph (A) regarding imports from Canada.

(C)(A) If, under paragraph (2)(B), the President excludes imports from Canada from action taken under chapter 1 of title II of the Trade Act of 1974, the President may, if the President thereafter determines that a surge in imports from Canada of the article that is the subject of the action is undermining the effectiveness of the action, take appropriate action under such chapter with respect to such imports from Canada to include such imports in such action.

(C)(i) Upon receiving a request under clause (1), the Commission shall conduct an investigation to determine whether a surge in imports from Canada of the article that is the subject of such action is being taken under such chapter may request the Commission to conduct an investigation of imports from Canada of the article that is the subject of such action.

(ii) Upon receiving a request under clause (1), the Commission shall conduct an investigation to determine whether a surge in imports from Canada of the article that is the subject of such investigation to the President by no later than the date that is 30 days after the date on which such request is received by the Commission.

(C) For purposes of this paragraph, the term ‘surge’ means a significant increase in imports over the trend for a reasonable, recent base period for which data are available.

(C) Any entity that is representative of an industry may submit a petition for relief under subsection (a), under chapter 1 of title II of the Trade Act of 1974, or under both subsection (a) and such chapter at the same time. If petitions are submitted by such an entity under subsection (a) and such chapter at the same time, the Commission shall consider such petitions jointly.

SEC. 303. ACTS IDENTIFIED IN NATIONAL TRADE ESTIMATES.

With respect to any act, policy, or practice of Canada that is identified in the annual report submitted under section 181 of the Trade Act of 1974 (19 U.S.C. 2241), the United States Trade Representative shall include—

(1) information with respect to the action taken regarding such act, policy, or practice, including but not limited to—

(2) the reasons that no action was taken regarding such act, policy, or practice.

SEC. 304. NEGOTIATIONS REGARDING CERTAIN SECTORS; BIENNIAL REPORTS.

(a) In General.—

(1) The President is authorized to enter into negotiations with the Government of Canada for the purpose of concluding an agreement (including an agreement amending the Agreement) or agreements to—

(A) liberalize trade in services in accordance with article 1405 of the Agreement;

(B) liberalize investment rules;

(C) improve the protection of intellectual property rights;

(D) increase the value requirement applied for purposes of determining whether an automotive product is treated as originating in Canada or the United States; and

(E) liberalize government procurement practices, particularly with regard to telecommunications.

(2) As an exercise of the foreign relations powers of the President under the Constitution, the President will enter into immediate consultations with the Government of Canada to obtain the exclusion from the transport rates established under Canada’s Western Grain Transportation Act of agricultural goods that originate in Canada and are shipped via east coast ports for consumption in the United States.

(b) Negotiating Objectives Regarding Services, Investment, and Intellectual Property Rights.—

(1) The objectives of the United States in negotiations conducted under subsection (a)(1) of this section to liberalize trade in services include—

(A) with respect to developing services sectors not covered in the Agreement, the elimination of those tariff, nontariff, and subsidy trade distortions that have potential to affect significant bilateral trade;

(B) the elimination or reduction of measures grandfathered by the Agreement that deny or restrict national treatment in the provision of services;

(C) the elimination of local presence requirements; and

(D) the liberalization of government procurement of services.

In conducting such negotiations, the President shall consult with the services advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155).

(2) The objectives of the United States in any negotiations conducted under subsection (a)(1)(B) of this section to liberalize investment rules include—

(A) the elimination of direct investment screening;

(B) the extension of the principles of the Agreement to energy and cultural industries, to the extent such industries are not currently covered by the Agreement;

(C) the elimination of technology transfer requirements and other performance requirements not currently barred by the Agreement; and

(D) the subjection of all investment disputes to appropriate dispute settlement procedures.

In conducting such negotiations, the President shall consult with persons representing diverse interests in the United States in investment.
“(3) The objectives of the United States in any negotiations conducted under subsection (a)(1)(C) to improve the protection of intellectual property rights include—

“(A) the recognition and adequate protection of intellectual property, including copyrights, patents, process patents, trademarks, mask works, and trade secrets; and

“(B) the establishment of dispute resolution procedures and binational enforcement of intellectual property standards.

In conducting such negotiations, the President shall consult with persons representing diverse interests in the United States in intellectual property.

“(c) Negotiating Objectives Regarding Automotive Products.—

“(1) In negotiating under subsection (a)(1)(D) regarding the value requirement for automotive products, the President shall seek to conclude an agreement by no later than January 1, 1990, to increase the value requirement from 50 percent to at least 60 percent.

“(2) The President is authorized, through January 1, 1999, to proclaim any agreed increase in the value requirement.

“(3) As used in this section, the term ‘value requirement’ means the minimum percentage of the value of an automotive product that must be accounted for by the value of the materials in the product that originated in the United States or Canada, or both, plus the direct cost of processing or assembly performed in the United States or Canada, or both, with respect to the product.

“(d) Negotiation of Limitation on Potato Trade.—

“(1) During the 5-year period beginning on the date of enactment of this Act [Sept. 28, 1988], the President is authorized to enter into negotiations with Canada for the purpose of obtaining an agreement to limit the exportation and importation of all potatoes between the United States and Canada, including seed potatoes, fresh, chilled or frozen potatoes, dried, desiccated or dehydrated potatoes, and potatoes otherwise prepared or preserved. Any agreement negotiated under this subsection shall provide for an annual limitation divided equally into each half of the year.

“(2) For the purpose of conducting negotiations under paragraph (1), the Secretary of Agriculture and the United States Trade Representative shall consult with representatives of the potato producing industry, including the Ad Hoc Potato Advisory Group and the United States/Canada Horticultural Industry Advisory Committee, to solicit their views on negotiations with Canada for reciprocal quantitative limits on the potato trade.

“(3) The President is authorized to direct the Secretary of the Treasury to—

“(A) carry out such actions as may be necessary or appropriate to ensure the attainment of the objectives of any agreement that is entered into under this section; and

“(B) enforce any quantitative limitation, restriction, and other terms contained in the agreement.

Such actions may include, but are not limited to, requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry into the United States of any article that is subject to the agreement.


“(e) Canadian Controls on Fish.—

“(1) Within 30 days of the application by Canada of export controls on unprocessed fish under statutes exempted from the Agreement pursuant to article 1203, or the application of landing requirements for fish caught in Canadian waters, the President shall take appropriate action to enforce United States rights under the General Agreement on Tariffs and Trade that are retained in article 1205 of the Agreement.

“(2) In enforcing the United States rights referred to in paragraph (1), the President has discretion to—

“(A) bring a challenge to the offending Canadian practices before the GATT;

“(B) retaliate against such offending practices;

“(C) seek resolution directly with Canada;

“(D) refer the matter for dispute resolution to the Canada-United States Trade Commission; or

“(E) take other action that the President considers appropriate to enforce such United States rights.

“(f) Biennial Report.—The President shall submit to the Congress, at the close of each biennial period occurring after the date on which the Agreement enters into force [Jan. 1, 1989], a report regarding—

“(1) the status of the negotiations regarding agreements that the President is authorized to enter into with Canada under this section;

“(2) the effectiveness and operation of any agreement entered into under section 304 that is in force with respect to the United States;

“(3) the effectiveness of operation of the Agreement generally; and

“(4) the actions taken by the United States and Canada to implement further the objectives of the Agreement.

“SEC. 305. ENERGY.

“(a) ALASKAN OIL.—[Amended section 2406 of the Appendix to Title 50, War and National Defense.]

“(b) URANIUM.—[Amended section 2230 of Title 42, The Public Health and Welfare.]

“SEC. 306. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN CANADIAN PRODUCTS.

[Amended section 2518 of this title.]

“SEC. 307. TEMPORARY ENTRY FOR BUSINESS PERSONS.

“(a) Nonimmigrant Traders and Investors.—Upon a basis of reciprocity secured by the United States-Canada Free-Trade Agreement, a citizen of Canada, and the spouse and children of any such citizen if accompanying or following to join such citizen, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in Annex 15C2.1 (United States of America), Part B—Traders and Investors, of such Agreement, but only if any such purpose shall have been specified in such Annex as of the date of entry into force of such Agreement [Jan. 1, 1989].

“(b) Nonimmigrant Professionals.—[Amended section 1184 of Title 8, Aliens and Nationality.]

“SEC. 308. AMENDMENT TO SECTION 5136 OF THE REVISED STATUTES.

[Amended section 24 of Title 12, Banks and Banking.]

“SEC. 309. STEEL PRODUCTS.

“Nothing in this Act shall preclude any discussion or negotiation between the United States and Canada in order to conclude voluntary restraint agreements or mutually agreed quantitative restrictions on the volume of steel products entering the United States from Canada.

“TITLE IV—BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES.

“SEC. 401. AMENDMENTS TO SECTION 516A OF THE TARIFF ACT OF 1930.

[Amended section 1516a of this title.]

“SEC. 402. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

“(a) Jurisdiction of Court of International Trade.—[Amended section 1581 of Title 28, Judiciary and Judicial Procedure.]
“(b) RELIEF IN COURT OF INTERNATIONAL TRADE.—
[Amended section 2643 of Title 28.]

“(c) DECLARATORY JUDGMENTS.—[Amended section 2201 of Title 28.]

“(d) ACTIONS UNDER THE AGREEMENT.—[Enacted section 1584 of Title 28.]

“SEC. 403. CONFORMING AMENDMENTS TO THE
TARIFF ACT OF 1930.
[Amended sections 1562, 1514, 1677, and 1677f of this title.]

“SEC. 404. AMENDMENTS TO ANTIDUMPING AND
COUNTERVAILING DUTY LAW.

“Any amendment enacted after the Agreement enters
into force with respect to the United States [Jan. 1, 1989] that is made to—

“(1) section 303 [19 U.S.C. 1303] or title VII of the
Tariff Act of 1930 [19 U.S.C. 1671 et seq.], or
any successor statute, or

“(2) any other statute which—

“(A) provides for judicial review of final determina-

(tions under such section, title, or statute, or

“(B) indicates the standard of review to be ap-

plied,

shall apply to Canada only to the extent specified in
such amendment.

“SEC. 405. ORGANIZATIONAL AND ADMINIS-
TRATIVE PROVISIONS REGARDING THE IMPL-
EMENTATION OF CHAPTERS 18 AND 19 OF THE
AGREEMENT.

“(a) APPOINTMENT OF INDIVIDUALS TO PANELS AND
COMMITTEES.—

“(1)(A) There is established within the interagency
organization established under section 242 of the
interagency group which shall—

“(i) be chaired by the United States Trade Rep-
resentative (hereafter in this section referred to as the ‘Trade Representative’), and

“(ii) consist of such officers (or the designees
thereof) of the Government of the United States as
the Trade Representative considers appropriate.

“(B) The interagency group established under sub-
paragraph (A) shall, in a manner consistent with
chapter 19 of the Agreement—

“(i) prepare by January 3 of each calendar year—

“(1) a list of individuals who are qualified to
serve as members of binational panels convened
under chapter 19 of the Agreement, and

“(2) a list of individuals who are qualified to
serve on extraordinary challenge committees con-
vened under such chapter,

“(ii) if the Trade Representative makes a request
under subparagraph (B)(i) with respect to a final
candidate list during any calendar year, prepare
by July 1 of such calendar year a list of those individ-
uals who are qualified to be added to that final can-
didate list,

“(iii) exercise oversight of the administration of
the United States Secretariat that is authorized to
be established under subsection (e), and

“(iv) make recommendations to the Trade Rep-
resentative regarding the convening of extraor-
dinary challenge committees under chapter 19 of
the Agreement.

“(2)(A) The Trade Representative shall select indi-
viduals from the respective lists prepared by the
interagency group under paragraph (1)(B)(i) for place-
ment on a preliminary candidate list of individuals
eligible to serve as members of binational panels
under Annex 1901.2 of the Agreement and a prelimi-
nary candidate list of individuals eligible for selec-
tion as members of extraordinary challenge commit-
tees under Annex 1904.13 of the Agreement.

“(B) The selection of individuals for—

“(i) placement on lists prepared by the inter-
agency group under clause (i) or (ii) of paragraph
(1)(B),

“(ii) placement on preliminary candidate lists
under subparagraph (A),

“(iii) placement on final candidate lists under
paragraph (3),

“(iv) placement by the Trade Representative on
the rosters described in Annex 1901.2(1) and Annex
1901.3(1) of the Agreement, and

“(v) appointment by the Trade Representative for
service on binational panels and extraordinary
challenge committees convened under chapter 19 of
the Agreement,

shall be made on the basis of the criteria provided in
Annex 1901.2(1) and Annex 1901.3(1) of the Agreement,
and shall be made without regard to political affilia-
tion.

“(C) For purposes of applying section 1001 of title
18, United States Code, the written or oral responses of
individuals to inquiries of the interagency group
established under paragraph (1) or the Trade Rep-
resentative regarding their personal and professional
qualifications, and financial and other relevant inter-
ests, that bear on their suitability for the placements
and appointments described in subparagraph (B), shall be treated as matters within the jurisdiction of
an agency of the United States.

“(3)(A) By no later than January 3 of each calendar
year, the Trade Representative shall submit to the
Committee on Finance of the Senate and the Com-
mitee on Ways and Means of the House of Represent-
atives (hereafter in this section referred to as the ‘ap-
propriate Congressional Committees’) the prelimi-
nary candidate lists of those individuals selected by
the Trade Representative under paragraph (2)(A) to
be candidates eligible to serve on binational panels or
extraordinary challenge committees convened pursuant
to chapter 19 of the Agreement during the 1-year
period beginning on April 1 of such calendar year.

“(B) Upon submission of the preliminary candidate
lists under subparagraph (A) to the appropriate Con-
mgressional Committees, the Trade Representative
shall consult with the appropriate Congressional
Committees with regard to the individuals listed on
the preliminary candidate lists.

“(C) The Trade Representative may add or delete
individuals from the preliminary candidate lists sub-
mitted under subparagraph (A) after consulting the
appropriate Congressional Committees with regard to
such addition or deletion. The Trade Representative
shall provide to the appropriate Congressional
Committees written notice of any addition or deletion of
an individual from the preliminary candidate lists.

“(4)(A) By no later than March 31 of each calendar
year, the Trade Representative shall submit to the
appropriate Congressional Committees the final can-
didate lists of those individuals selected by the Trade
Representative to be candidates eligible to serve on
binational panels and extraordinary challenge commit-
tees convened pursuant to chapter 19 of the Agree-
ment during the 1-year period beginning on April 1 of such calendar year. An individual may be
included on a final candidate list only if written noti-
cence of the addition of such individual to the prelimi-
nary candidate list was submitted to the appropriate
Congressional Committees at least 15 days before the
date on which that final candidate list is submitted
to the appropriate Congressional Committees under
this subparagraph.

“(B) Except as provided in paragraph (5), no addi-
tions may be made to the final candidate lists after
the final candidate lists are submitted to the appro-
priate Congressional Committees under subparagraph
(A).

“(5)(A) If, after the Trade Representative has sub-
mitted the final candidate lists to the appropriate
Congressional Committees under paragraph (4)(A) for
a calendar year and before July 1 of such calendar
year, the Trade Representative determines that addi-
tional individuals need to be added to a final can-
didate list, the Trade Representative shall—

“(i) request the interagency group established
under paragraph (1) or (2) to prepare a list of individ-
uals who are qualified to be added to such candidate
list,
“(i) select individuals from the list prepared by the interagency group under paragraph (1)(B)(ii) to
be included in a proposed amendment to such final candidate list, and
“(ii) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees
the proposed amendments to such final candidate list developed by the Trade Representative
under clause (ii).
“(B) Upon submission of a proposed amendment under subparagraph (A)(iii) to the appropriate
Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.
“(C) The Trade Representative may add or delete individuals from any proposed amendment submitted
under subparagraph (A)(iii) after consulting the appropriate Congressional Committees with regard to
such addition or deletion. The Trade Representative shall provide to the appropriate Congressional Committee written notice of any addition or deletion of an individual from the proposed amendment.
“(D)(i) If the Trade Representative submits under subparagraph (A)(iii) in any calendar year a proposed
amendment to a final candidate list, the Trade Representative shall, by no later than September 30 of
such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and the individuals included in the final form of such amendment shall be added to the final candidate list.
“(ii) An individual may be included in the final form of an amendment submitted under clause (i)
only if written notice of the addition of such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment was submitted under clause (i).
“(iii) Individuals added to a final candidate list under clause (i) shall be eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement, as the case may be, during the 6-month period beginning on October 1 of the calendar year in which such addition occurs.
“(iv) No additions may be made to the final form of an amendment described in clause (i) after the final form of such amendment is submitted to the appropriate Congressional Committees under clause (i).
“(6)(A) The Trade Representative is the only officer of the Government of the United States authorized to
act on behalf of the Government of the United States in making any selection or appointment of an individual to—
the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, or
“(i) the binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement, that is to be made solely or jointly by the Government of the United States under the terms of the Agreement.
“(B) Except as otherwise provided in paragraph (7)(A), the Trade Representative may—
“(i) select an individual for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement during the 1-year period beginning on April 1 of any calendar year.
“(ii) appoint an individual to serve as one of those members of any binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement during such 1-year period who, under the terms of the Agreement, are to be appointed solely by the Government of the United States, or
“(iii) act to make a joint appointment with the Government of Canada, under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee, only if such individual is on the appropriate final candidate list that was submitted to the appropriate Congressional Committees under paragraph (4)(A) during such calendar year or on such list as it may be amended under paragraph (5)(A).
“(7)(A) Except as otherwise provided in this paragraph, no individual may—
“(i) be selected by the Government of the United States for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, or
“(ii) be appointed solely or jointly by the Government of the United States to serve as a member of a binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement, during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the requirements of this subsection.
“(B)(i) Notwithstanding paragraphs (3), (4), or (6)(B) (other than paragraph (3)(A)), individual listed on the preliminary candidate lists submitted to the appropriate Congressional Committees under paragraph (3)(A) may—
“(I) be selected by the Trade Representative for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement during the 3-month period beginning on the date on which the Agreement enters into force, and
“(II) be appointed solely or jointly by the Trade Representative under the terms of the Agreement to serve as members of binational panels or extraordinary challenge committees that are convened pursuant to chapter 19 of the Agreement during such 3-month period.
“(ii) If the Agreement enters into force after January 3, 1989, the provisions of this subsection shall be applied with respect to the calendar year in which the Agreement enters into force.
“(I) by substituting ‘the date that is 30 days after the date on which the Agreement enters into force’ for ‘January 3 of each calendar year’ in paragraphs (1)(B)(i) and (3)(A), and
“(II) by substituting ‘the date that is 3 months after the date on which the Agreement enters into force’ for ‘March 31 of each calendar year’ in paragraph (4)(A).
“(b) Status of Panelists.—Notwithstanding any other provision of law, individuals appointed by the United States to serve on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist such appointed individuals, shall not be considered to be employees or special employees of, or to be otherwise affiliated with, the Government of the United States.
“(c) Immunity of Panelists.—With the exception of acts described in section 777(d)(3) [777(d)(3)] of the Tariff Act of 1930, as added by this Act [19 U.S.C. 1677(d)(3)], individuals serving on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist such appointed individuals, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.
“(d) Regulations.—The administering authority under title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], the United States International Trade Commission, and the United States Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapters 18 and 19 of the Agreement. Initial regulations to carry out such functions shall be issued prior to the date of entry into force of the Agreement [Jan. 1, 1989].
“(e) Establishment of United States Secretariat—

(1) The President is authorized to establish within any department or agency of the Federal Government a United States Secretariat which, subject to the oversight of the interagency group established under subsection (a)(1)(A), shall facilitate—

(A) the operation of chapters 18 and 19 of the Agreement, and

(B) the work of the binational panels and extraordinary challenge committees convened under chapters 18 and 19 of the Agreement.

(2) The United States Secretariat established by the President under paragraph (1) shall not be considered to be an agency for purposes of section 552 of title 5, United States Code.


(a) The Secretariat—There are authorized to be appropriated to the department or agency within which the United States Secretariat described in chapter 19 of the Agreement is established the lesser of—

(1) such sums as may be necessary, or

(2) $5,000,000, for each fiscal year succeeding fiscal year 1988 for the establishment and operations of such United States Secretariat and for the payment of the United States share of the expenses of the dispute settlement proceedings under chapter 18 of the Agreement.

(b) Panels and Committees—

(1) There are authorized to be appropriated to the Office of the United States Trade Representative for fiscal year 1990, $1,492,000 to pay during such fiscal year the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement.

(2) The United States Trade Representative is authorized to transfer to any department or agency of the United States, from sums appropriated pursuant to the authorization provided under paragraph (1) or section 141(g)(1) of the Trade Act of 1974 [19 U.S.C. 2177(g)(1)], such funds as may be necessary to facilitate the payment of the expenses described in paragraph (1).

(c) Mandamus—Any court referred to in subsection (b) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.

(d) Depositions.—The committee may order testimony to be taken by deposition at any stage of the committee review. Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization, or other entity may be compelled to appear and depose and to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

“SEC. 407. TESTIMONY AND PRODUCTION OF PAPERS IN EXTRAORDINARY CHALLENGES.

(a) Authority of Extraordinary Challenge Committee To Obtain Information.—If an extraordinary challenge committee (hereinafter referred to in this section as the ‘committee’) is convened pursuant to article 1904(13) of the Agreement, and the allegations before the committee include a matter referred to in article 1904(13)(a)(1) of the Agreement, for the purposes of carrying out its functions and duties under Annex 1904.13 of the Agreement, the committee—

(1) shall have access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration, in the possession of any individual, partnership, corporation, association, organization, or other entity,

(2) may summon witnesses, take testimony, and administer oaths,

(3) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter. Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) Witnesses and Evidence.—The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a), the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried out, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity, issue an order requiring such individual or entity to appear before the committee, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Mandamus.—Any court referred to in subsection (b) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.

(d) Depositions.—The committee may order testimony to be taken by deposition at any stage of the committee review. Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization, or other entity may be compelled to appear and depose and to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

“SEC. 408. REQUESTS FOR REVIEW OF CANADIAN ANTIDUMPING AND COUNTERVAILING DUTY DETERMINATIONS.

(a) Requests for Review by the United States.—In the case of a final antidumping or countervailing duty determination of a competent investigating authority of Canada, as defined in article 1911 of the Agreement, requests by the United States for binational panel review under article 1904 of the Agreement shall be made by the United States Secretariat, described in article 1904(4) of the Agreement.

(b) Requests for Review by a Person.—In the case of a final antidumping or countervailing duty determination of a competent investigating authority of Canada, as defined in article 1911 of the Agreement, a person, within the meaning of the article 1904(5) of the Agreement, may request a binational panel review of such determination by filing with the United States Secretary, described in article 1904(4) of the Agreement, such a request within the time limit provided for in article 1904(4) of the Agreement. The receipt of such request by the United States Secretary shall not be deemed to be a request for binational panel review within the meaning of article 1904(4) of the Agreement. Such re-
section shall contain such information and be in such form, manner, and style as the administering authority shall prescribe by regulations. The request for such panel review shall not preclude the United States, Canada, or any other person from challenging before a bi-national panel the basis for a particular request for review.

(c) SERVICE OF REQUEST FOR REVIEW.—Whenever bi-national panel review is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would otherwise be entitled to receive such notice under section 302(c) of the Trade Act of 1974 [19 U.S.C. 2155], the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and advisory committees established under section 135 of the Trade Act of 1974 [19 U.S.C. 2315] regarding the issues being considered by the working group; and

"(B) as appropriate, the objectives and strategy of the United States in the negotiations.

"(B) The objectives of the United States in negotiating an agreement under paragraph (1) include (but are not limited to)—

"(i) achievement, on an expedited basis, of increased discipline on government production and export subsidies that have a significant impact, directly or indirectly, on bilateral trade between the United States and Canada; and

"(ii) attainment of increased and more effective discipline on those Canadian Government (including provincial) subsidies having the most significant adverse impact on United States producers that compete with subsidized products of Canada in the markets of the United States and Canada.

"(B) Special emphasis should be given in negotiating an agreement under paragraph (1) to obtain discipline on Canadian subsidy programs that adversely affect United States industries which directly compete with subsidized imports.

"(3) The United States members of the working group established under article 1907 of the Agreement shall consult regularly with the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and advisory committees established under section 135 of the Trade Act of 1974 [19 U.S.C. 2155] regarding—

"(A) the issues being considered by the working group; and

"(B) as appropriate, the objectives and strategy of the United States in the negotiations.

"(B) in determining whether to initiate an investigation under section 302(c) of the Trade Act of 1974 [19 U.S.C. 2155] or any other trade law, other than title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], the Trade Representative, after consultation with the Secretary of Commerce,

"(i) shall seek the advice of the advisory committee established under section 135 of the Trade Act of 1974 [19 U.S.C. 2155];

"(ii) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

"(i) shall coordinate with the interagency committee established under section 242 of the Trade Expansion Act of 1962 [19 U.S.C. 1722]; and

"(iv) may ask the President to request advice from the United States International Trade Commission.

"(C) In the event an investigation is initiated under section 302(c) of the Trade Act of 1974 [19 U.S.C. 2155] as a result of a review under this paragraph
and the President, following such investigation (including any applicable dispute settlement proceedings under the Agreement or any other trade agreement entered into before such date, or to any binational panel review under section 301(a) of such Act (19 U.S.C. 2411(a)), the President shall give preference to actions that most directly affect the products that benefit from governmental subsidies and were the subject of the President's preliminary determination, unless there are no significant imports of such products or the President otherwise determines that application of the action to other products would be more effective.

"(5) Any decision, whether positive or negative, or any action by the Trade Representative or the Secretary of Commerce under this section shall not in any way—

"(A) prejudice the right of any industry to file a petition under any trade law,

"(B) prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Secretary of Commerce, the United States International Trade Commission, or the Trade Representative pursuant to such a petition


"Nothing in this subsection may be construed to alter in any manner the requirements in effect before the enactment of this Act (Sept. 28, 1988) for standing under any law of the United States or to add any additional requirements for standing under any law of the United States.

"SEC. 410. TERMINATION OF AGREEMENT.

"(a) IN GENERAL.—If—

"(1) no agreement is entered into between the United States and Canada on a substitute system of rules for antidumping and countervailing duties before the date that is 7 years after the date on which the Agreement enters into force [Jan. 1, 1989], and

"(2) the President decides not to exercise the rights of the United States under article 1906 of the Agreement to terminate the Agreement, the President shall submit to the Congress a report on such decision which explains why continued adherence to the Agreement is in the national economic interest of the United States. In calculating the 7-year period referred to in paragraph (1), any time during which Canada is a NAFTA country (as defined in section 2(4) of the United States-Canada Free-Trade Agreement, or the operation of the Agreement by reason of the Government of Canada to provide for the entry into force of the Agreement ceases to be in force, the provisions of this Act (other than this paragraph and section 410(b)), and the amendments made by this Act, shall cease to have effect.

"(C) SUSPENSION RESULTING FROM NAFTA.—On the date the United States and Canada agree to suspend the operation of the Agreement shall not be deemed to cause the Agreement to terminate until the date such suspension becomes effective. In the case of a determination to which section 410(c) of Pub. L. 100–449, set out above, takes effect on the date the North American Free Trade Agreement enters into force between the United States and Canada [Jan. 1, 1994], see section 108(a)(2) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3511 of this title."

"SEC. 501. EFFECTIVE DATES AND SEVERABILITY.

"(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this Act, and the amendments made by this Act, shall take effect on the date the Agreement enters into force [Jan. 1, 1989].


"(b) EXCEPTIONS.—Sections 1 and 2, title 1, section 304 (except subsection (f)), section 308, this section and section 502 shall take effect on the date of enactment of this Act [Sept. 28, 1988].

"(c) TERMINATION OR SUSPENSION OF AGREEMENT.—

"(1) TERMINATION OR AGREEMENT.—If the Agreement ceases to be in force, the provisions of this Act (other than this paragraph and section 410(b)), and the amendments made by this Act, shall cease to have effect.

"(2) EFFECT OF AGREEMENT SUSPENSION.—An agreement by the United States and Canada to suspend the operation of the Agreement shall not be deemed to cause the Agreement to terminate but shall not be affected thereby.

"SEC. 502. SEVERABILITY.

"If any provision of this Act, any amendment made by this Act, or the application of such a provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the remaining amendments made by this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.”

"For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan Number 2, as of Dec. 25, 2002, as modified, set out as a note under section 542 of Title 6.

"[Amendment by section 107 of Pub. L. 103–182 to section 501(c) of Pub. L. 100–449, set out above, effective on the date the North American Free Trade Agreement enters into force between the United States and Canada [Jan. 1, 1994], see section 108(a)(2) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3511 of this title.]

"[Section 308(b) of Pub. L. 103–182 provided that: ‘‘The amendments made by subsection (a) [amending section 301(a) of Pub. L. 100–449, set out above], take effect on the date of the enactment of this Act [Dec. 8, 1993].’’]

"[Amendment by section 413 of Pub. L. 103–182 to section 410(a) of Pub. L. 100–449, set out above, effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1515a(a)(1)(B) or (2)/(B)(i) (ii) of this title, notice of which is published in the Federal Register before such date, or to a determination described in section 1515a(a)(2)(B)(vii) of this title, notice of which is received by the Government of Canada before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or any extraordinary challenge arising out of such review,}
that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3451 of this title.)

(For provisions relating to effect of termination of NAFTA country status on the provisions of sections 401 to 416 of Pub. L. 103–182, see section 3451 of this title.)

PL 103–182

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

UNITED STATES–ISRAEL FREE TRADE AREA IMPLEMENTATION


"SECTION 1. SHORT TITLE.

"This Act may be cited as the ‘United States–Israel Free Trade Area Implementation Act of 1985’.

"SEC. 2. PURPOSES.

"The purposes of this Act are—

"(1) to approve and implement the agreement on the establishment of a free trade area between the United States of America and the Government of Israel negotiated under the authority of section 102 of the Trade Act of 1974 [19 U.S.C. 2112];

"(2) to strengthen and develop the economic relations between the United States and Israel for their mutual benefit; and

"(3) to establish free trade between the two nations through the removal of trade barriers.

"SEC. 3. APPROVAL OF A FREE TRADE AREA AGREEMENT.

"Pursuant to sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112; 2191), the Congress approves—

"(1) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (hereinafter in this Act referred to as ‘the Agreement’) entered into on April 22, 1985, and submitted to the Congress on April 29, 1985; and

"(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on April 29, 1985.

"SEC. 4. PROCLAMATION AUTHORITY.

"(a) Tariff Modifications.—Except as provided in section (c), the President may proclaim—

"(1) such modifications or continuance of any existing duty,

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

"(3) such additional duties,

"as the President determines to be required or appropriate to carry out the schedule of duty reductions with respect to Israel set forth in annex 1 of the Agreement.

"(b) Additional Tariff Modification Authority.—Except as provided in subsection (c), whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the Agreement, the President may proclaim—

"(1) such withdrawal, suspension, modification, or continuance of any duty,

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

"(3) such additional duties,

"as the President determines to be required or appropriate to carry out the Agreement.

"(c) Exception to Authority.—No modification of any duty imposed on any article provided for in paragraph (4) of annex 1 of the Agreement that may be proclaimed under subsection (a) or (b) shall take effect prior to January 1, 1995.

"SEC. 5. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

"(a) United States Statutes To Prevail in Conflict.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with—

"(1) title IV of the Trade and Tariff Act of 1984 [title IV of Pub. L. 98–573, set out as annex 4 of this section and enacting provisions set out below], or

"(2) any other statute of the United States, shall be given effect under the laws of the United States.

"(b) Implementing Regulations.—Regulations that are necessary or appropriate to carry out actions proposed in any statement of proposed administrative action submitted to the Congress under section 102 of the Trade Act of 1974 (19 U.S.C. 2112) in order to implement the Agreement shall be prescribed. Initial regulations to carry out such action shall be issued within one year after the date of the entry into force of the Agreement.

"(c) Changes in Statutes To Implement A Requirement, Amendment, or Recommendation.—

"(1) Except as otherwise provided in paragraph (2), the provisions of section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply with respect to the Agreement and—

"(A) no requirement of, amendment to, or recommendation under the Agreement shall be implemented under United States law, and

"(B) no amendment, repeal, or enactment of a statute of the United States to implement any such requirement, amendment, or recommendation shall enter into force with respect to the United States, unless there has been compliance with the provisions of section 3(c) of the Trade Agreements Act of 1979.

"(2) The provisions of section 3(c)(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)(4)) shall apply to any bill implementing any requirement of, amendment to, or recommendation made under the Agreement that reduces or eliminates any duty imposed on any article provided for in paragraph (4) of annex 1 of the Agreement if—

"(A) any reduction of such duty provided in such bill—

"(i) takes effect after December 31, 1988, and

"(ii) takes effect gradually over the period that begins on January 1, 1990, and ends on December 31, 1994,

"(B) any elimination of such duty provided in such bill does not take effect prior to January 1, 1995, and

"(C) the consultations required under section 3(c)(1) of such Act occur at least ninety days prior to the date on which such bill is submitted to the Congress under section 3(c) of such Act.

"(d) Private Remedies Not Created.—Neither the entry into force of the Agreement with respect to the United States, nor the enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

"SEC. 6. TERMINATION.

"The provisions of section 125(a) of the Trade Act of 1974 (19 U.S.C. 2135(a)) shall not apply to the Agreement.

"SEC. 7. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN ISRAELI PRODUCTS.

"(Section amended section 2518(4)(C) of this title.)

"SEC. 8. TECHNICAL AMENDMENTS.

"(Section amended title IV of Pub. L. 98–573, set out as a note below, this section, and sections 2462 to 2464 of this title.)
§ 2112

TITLE 19—CUSTOMS DUTIES

Page 454

SEC. 9. ADDITIONAL PROCLAMATION AUTHORITY.

(a) ELIMINATION OR MODIFICATIONS OF DUTIES.—The President is authorized to proclaim elimination or modification of any existing duty as the President determines is necessary to exempt any article from duty if—

(1) that article is wholly the growth, product, or manufacture of the West Bank, the Gaza Strip, or a qualifying industrial zone or is a new or different article of commerce that has been grown, produced, or manufactured in the West Bank, the Gaza Strip, or a qualifying industrial zone;

(2) that article is imported directly from the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone; and

(3) the sum of—

(A) the cost or value of the materials produced in the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone, plus

(B) the direct costs of processing operations performed in the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone, is not less than 35 percent of the appraised value of the product at the time it is entered into the United States.

For purposes of determining the 35 percent content requirement contained in paragraph (3), the cost or value of materials which are used in the production of an article in the West Bank, the Gaza Strip, or a qualifying industrial zone, and are the products of the United States, may be counted in an amount up to 15 percent of the appraised value of the article.

(b) APPLICABILITY OF CERTAIN PROVISIONS OF THE AGREEMENT.—

(1) NONQUALIFYING OPERATIONS.—No article shall be considered a new or different article of commerce under this section, and no material shall be included for purposes of determining the 35 percent requirement of subsection (a)(3), by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or with another substance that does not materially alter the characteristic of the article or material.

(2) REQUIREMENTS FOR NEW OR DIFFERENT ARTICLE OF COMMERCE.—For purposes of subsection (a)(1), an article is a ‘new or different article of commerce’ if it has been substantially transformed into an article having a new name, character, or use.

(3) COST OR VALUE OF MATERIALS.—(A) For purposes of this section, the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone includes—

(i) the manufacturer’s actual cost for the materials;

(ii) when not included in the manufacturer’s actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer’s plant;

(iii) the actual cost of waste or spoilage, less the value of recoverable scrap; and

(iv) taxes or duties imposed on the materials by the United States, including any increase in the cost of the materials due to any duties or taxes payable in an intermediate country.

(B) If a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of—

(i) all expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(ii) an amount for profit; and

(iii) freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer’s plant.

If the information necessary to compute the cost or value of a material is not available, the Customs Service may ascertain or estimate the value thereof using all reasonable methods.

(4) DIRECT COSTS OF PROCESSING OPERATIONS.—(A) For purposes of this section, the ‘direct costs of processing operations performed in the West Bank, Gaza Strip, or a qualifying industrial zone’ with respect to an article are those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly, of that article.

(B) Those items that are not included as direct costs of processing operations with respect to an article are those which are not directly attributable to the article or are not costs of manufacturing the article. Such items include, but are not limited to—

(i) profit; and

(ii) general expenses of doing business which are either not allocable to the article or are not related to the growth, production, manufacture, or assembly of the article, such as administrative salaries, casualty and liability insurance, advertising, and salesmen’s salaries, commissions, or expenses.

(5) IMPORTED DIRECTLY.—For purposes of this section—

(A) articles are ‘imported directly’ if—

(i) the articles are shipped directly from the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel into the United States without passing through the territory of any intermediate country; or

(ii) if shipment is through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of any intermediate country and the invoices, bills of lading, and other shipping documents specify the United States as the final destination; or

(B) if articles are shipped through an intermediate country, the invoices and other documents do not specify the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they—

(i) remain under the control of the customs authority in an intermediate country;

(ii) do not enter into the commerce of an intermediate country except for the purpose of a sale other than at retail, but only if the articles are imported as a result of the original commercial transactions between the importer and the producer or the producer’s sales agent; and

(iii) have not been subjected to operations other than loading, unloading, or other activities necessary to preserve the article in good condition.

(6) DOCUMENTATION REQUIRED.—An article is eligible for the duty exemption under this section only if—

(A) the importer certifies that the article meets the conditions for the duty exemption; and

(B) when requested by the Customs Service, the importer, manufacturer, or exporter submits a declaration setting forth all pertinent information with respect to the article, including the following:

(i) A description of the article, quantity, numbers, and marks of packages, invoice numbers, and bills of lading;

(ii) A description of the operations performed in the production of the article in the West Bank,
the Gaza Strip, a qualifying industrial zone, or Israel and identification of the direct costs of processing operations.

(ii) A description of any materials used in production of the article which are wholly the growth, product, or manufacture of the West Bank, the Gaza Strip, a qualifying industrial zone, Israel or United States, and a statement as to the cost or value of such materials.

(iv) A description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the article which are claimed to have been sufficiently processed in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel so as to be materials produced in the West Bank, the Gaza Strip, a qualifying industrial zone, or Israel.

(v) A description of the origin and cost or value of any foreign materials used in the article which have not been substantially transformed in the West Bank, the Gaza Strip, or a qualifying industrial zone.

"(g) EQUIPMENT OF ARTICLES OF ISRAEL THROUGH WEST BANK OR GAZA STRIP.—The President is authorized to proclaim that the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(1) of Annex 3 of the Agreement, and the direct costs of processing operations performed in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(2) of Annex 3 of the Agreement.

"(h) QUALIFYING INDUSTRIAL ZONE DEFINED.—For purposes of this section, a 'qualifying industrial zone' means any area that—

(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt;

(2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and

(3) has been specified by the President as a qualifying industrial zone.

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

TRADE AGREEMENTS WITH ISRAEL


"SEC. 402. CRITERIA FOR DUTY-FREE TREATMENT OF ARTICLES.

"(a)(1) The reduction or elimination of any duty imposed on any article by the United States provided for in a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2122(b)(1)] shall apply only if—

"(A) that article is the growth, product, or manufacture of Israel or is a new or different article of commerce that has been grown, produced, or manufactured in Israel;

"(B) that article is imported directly from Israel into the customs territory of the United States; and

"(C) the sum of—

"(i) the cost of value of the materials produced in Israel, plus

"(ii) the direct costs of processing operations performed in Israel, is not less than 35 percent of the appraised value of such article at the time it is entered.

If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this subsection applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (C).

"(2) No article may be considered to meet the requirements of paragraph (1)(A) by virtue of having merely undergone—

"(A) simple combining or packaging operations; or

"(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

"(b) As used in this section, the phrase 'direct costs of processing operations' includes, but is not limited to—

"(1) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel;

"(2) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise; and

Such phrase does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as (A) profit, and (B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

"(c) REGULATIONS.—The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this section.

"SEC. 403. APPLICATION OF CERTAIN OTHER TRADE LAW PROVISIONS.

(a) SUSPENSION OF DUTY-FREE TREATMENT.—The President may by proclamation suspend the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under the authority of section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2122(b)(1)] with respect to any article and may proclaim a duty rate for such article if such action is proclaimed under section 203 of the Trade Act of 1974 [19 U.S.C. 2253] or section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1352].

"(b) ITC REPORTS.—In any report by the United States International Trade Commission (hereinafter referred to in this title [this note] as the 'Commission') to the President under section 202(c) of the Trade Act of 1974 [19 U.S.C. 2252(c)] regarding any article for which a reduction or elimination of any duty is provided under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2122(b)(1)], the Commission shall state whether and to what extent its findings and recommendations apply to such an article when imported from Israel.

"(c) For purposes of section 202(a) of the Trade Act of 1974 [19 U.S.C. 2253], the suspension of the reduction or elimination of a duty under subsection (a) shall be treated as an increase in duty.

"(d) No proclamation which provides solely for a suspension referred to in subsection (a) with respect to any article shall be made under section 203 of the Trade Act of
Act of 1974 [19 U.S.C. 2253], unless the Commission, in addition to making an affirmative determination with respect to such article under section 202(b) of the Trade Act of 1974 [19 U.S.C. 2253(b)], determines in the course of its investigation under that section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)].

“(e)(1) Any proclamation issued under section 203 of the Trade Act of 1974 [19 U.S.C. 2253] that is in effect when an agreement with Israel is entered into under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] shall remain in effect until modified or terminated.

“(2) If any article is subject to import relief at the time an agreement is entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)], the President may reduce or terminate the application of such import relief to the importation of such article before the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of sections 203 and 205 of the Trade Act of 1974 [19 U.S.C. 2253, 2254].

“SEC. 404. FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

“(a) If a petition is filed with the Commission under the provisions of section 202(a) of the Trade Act of 1974 [19 U.S.C. 2253(a)] regarding a perishable product which is subject to any reduction or elimination of a duty imposed by the United States under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] and alleges injury from imports of that product, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under subsection (c) with respect to such article.

“(b) Within 14 days after the filing of a petition under subsection (a)—

“(1) if the Secretary of Agriculture has reason to believe that a perishable product from Israel is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

“(2) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

“(c) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action under subsection (b), he shall issue a proclamation withdrawing the reduction or elimination of duty provided to the perishable product under any trade agreement provision entered into under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] or publish a notice of his determination not to take emergency action.

“(d) The emergency action provided under subsection (c) shall cease to apply—

“(1) upon the taking of actions under section 203 of the Trade Act of 1974 [19 U.S.C. 2253];

“(2) on the day a determination of the President under section 203 of such Act [19 U.S.C. 2253] not to take action becomes final;

“(3) in the event of a report of the Commission containing a negative finding, on the day the Commission’s report is submitted to the President; or

“(4) whenever the President determines that because of changed circumstances such relief is no longer warranted.

“(e) For purposes of this section, the term ‘perishable product’ means any—

“(1) live plants and fresh cut flowers provided for in chapter 6 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1262, hereinafter referred to as the ‘HTS’);

“(2) vegetables, edible nuts or fruit provided for in chapters 7 and 8, heading 1105, subheadings 1106.10.00 and 1106.30, heading 1202, subheadings 1214.90.00 and 1704.90.60, headings 2001 through 2008 (excluding subheadings 2001.90.20 and 2004.90.10) and subheading 2103.20.40 of the HTS;

“(3) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, and 2009.30.60 of the HTS.

“(f) No trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] shall affect fees imposed under section 2252(a) of the HTS.

“SEC. 405. CONSTRUCTION OF TITLE.

“Neither the taking effect of any trade agreement provision entered into with Israel under section 102(b)(1) [19 U.S.C. 2112(b)(1)], nor any proclamation issued to implement any such provision, may affect in any manner, or to any extent, the application to any other provisions of law under which relief from injury caused by import competition or by unfair import trade practices may be sought.”

[Amendment of section 404 of Pub. L. 98–573 by section 1214(c)(4) of Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.]

[The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.]

“PRESIDENTIAL DETERMINATION REGARDING MULTILATERAL TRADE NEGOTIATIONS

For provisions relating to Presidential determination regarding multilateral trade negotiations and Presidential determination regarding acceptance and application of certain international trade agreements, see notes set out under section 2503 of this title.

EX. ORD. No. 12362. IMPLEMENTING UNITED STATES-CANADA FREE-TRADE IMPLEMENTATION ACT


By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449, 102 Stat. 1851) (‘‘FTA Implementation Act’’) (set out as a note above), it is hereby ordered as follows:


Sec. 1. Establishment of United States Secretariat. Pursuant to subsection 405(e) of the FTA Implementation Act, a ‘‘United States Secretariat’’ shall be established within the International Trade Administration of the Department of Commerce. The Secretariat shall facilitate:

(1) the operation of Chapters 18 and 19 of the Free-Trade Agreement, and
(2) the work of the binational panels and extraordinary challenge committees convened under those Chapters.

Sic. 2. Acceptance by the President of Panel and Committee Decisions. In accordance with subsection 401(c) of the FTA Implementation Act, in the event that the provisions of subparagraph 516A(g)(7)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. section 516A(g)(7)(B), take effect, I accept, as a whole, all decisions of binational panels and extraordinary challenge committees.

Sic. 3. Judicial Review. This Order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Sic. 5. Effective Date. This Order shall take effect upon the entry into force of the Free-Trade Agreement.

Ex. Ord. No. 13141. ENVIRONMENTAL REVIEW OF TRADE AGREEMENTS

Ex. Ord. No. 13141, Nov. 16, 1999, 64 F.R. 63169, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further the environmental and trade policy goals of the United States, it is hereby ordered as follows:

Section 1. Policy. The United States is committed to a policy of careful assessment and consideration of the environmental impacts of trade agreements. The United States will factor environmental considerations into the development of its trade negotiating objectives. Responsible agencies will accomplish these goals through a process of ongoing assessment and evaluation, and, in certain instances, written environmental reviews.

Sic. 2. Purpose and Need. Trade agreements should contribute to the broader goal of sustainable development. Environmental reviews are an important tool to help identify potential environmental effects of trade agreements, both positive and negative, and to help facilitate consideration of appropriate responses to those effects whether in the course of negotiations, through other means, or both.

Sic. 3. (a) Implementation. The United States Trade Representative (Trade Representative) and the Chair of the Council on Environmental Quality shall oversee the implementation of this order, including the development of procedures pursuant to this order, in consultation with appropriate foreign policy, environmental, and economic agencies.

(b) Conduct of Environmental Reviews. The Trade Representative, through the interagency Trade Policy Staff Committee (TPSC), shall conduct the environmental reviews of the agreements under section 4 of this order.

Sic. 4. Trade Agreements. Certain agreements that the United States may negotiate shall require an environmental review. These include:

(i) comprehensive multilateral trade rounds;
(ii) bilateral or plurilateral free trade agreements; and
(iii) major new trade liberalization agreements in natural resource sectors.

(b) Agreements reached in connection with enforcement and dispute resolution actions are not covered by this order.

(c) For trade agreements not covered under subsections 4(a) and (b), environmental reviews will generally not be required. Most sectoral liberalization agreements will not require an environmental review. The Trade Representative, through the TPSC, shall determine whether an environmental review of an agreement or category of agreements is warranted based on such factors as the significance of reasonably foreseeable environmental impacts.

Sic. 5. Environmental Reviews.

(a) Environmental reviews shall be:

(i) written;
(ii) initiated through a Federal Register notice, outlining the proposed agreement and soliciting public comment and information on the scope of the environmental review of the agreement;
(iii) undertaken sufficiently early in the process to inform the development of negotiating positions, but shall not be a condition for the timely tabling of particular negotiating proposals;
(iv) made available in draft form for public comment, where practicable; and
(v) made available to the public in final form.

(b) As a general matter, the focus of environmental reviews will be impacts in the United States. As appropriate and prudent, reviews may also examine global and transboundary impacts.

Sic. 6. Resources. Upon request by the Trade Representative, with the concurrence of the Deputy Director for Management of the Office of Management and Budget, Federal agencies shall, to the extent permitted by law and subject to the availability of appropriations, provide analytical and financial resources and support, including the detail of appropriate personnel, to the Office of the United States Trade Representative to carry out the provisions of this order.

William J. Clinton.

DELEGATION OF AUTHORITY UNDER SECTION 103(a) OF UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988

Memorandum of President of the United States, Feb. 11, 1991, 56 F.R. 6790, provided:

Memorandum for the United States Trade Representative

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, you are hereby delegated the authority to perform the functions necessary to fulfill the consultation and lay-over requirements set forth in section 103(a)(1) through (4) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the Act) [Pub. L. 100–449, set out as a note above], including:

(1) obtaining advice from the appropriate advisory committees and the U.S. International Trade Commission on the proposed implementation of an action by Presidential proclamation;
(2) submitting a report on such action to the House Ways and Means and Senate Finance Committees; and
(3) consulting with such committees during the 60-day period following the date on which the requirements under (1) and (2) have been met.

The President retains the sole authority under the Act to implement an action by proclamation after the consultation and lay-over requirements set forth in section 103(a)(1) through (4) have been met.

You are authorized and directed to publish this memorandum in the Federal Register.

George Bush.

§ 2113. Overall negotiating objective

The overall United States negotiating objective under sections 2111 and 2112 of this title shall be to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices which distort trade or commerce. To the maximum extent feasible, the harmonization, reduction, or elimination of agricultural trade barriers and distortions shall be undertaken in conjunction with the harmonization, reduction, or elimination of industrial trade barriers and distortions.

§ 2114. Sector negotiating objectives

(a) Obtaining equivalent competitive opportunities

A principal United States negotiating objective under sections 2111 and 2112 of this title shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) Conduct of negotiations on basis of appropriate product sectors of manufacturing

As a means of achieving the negotiating objective set forth in subsection (a) of this section, to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, through the development of fair and equitable market opportunities, and through open and nondiscriminatory world trade), negotiations shall, to the extent feasible be conducted on the basis of appropriate product sectors of manufacturing.

(c) Identification of appropriate product sectors of manufacturing

For the purposes of this section and section 2155 of this title, the United States Trade Representative together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established under section 2155 of this title and after consultation with interested private or non-Federal governmental organizations, identify appropriate product sectors of manufacturing.

(d) Presidential analysis of how negotiating objectives are achieved in each product sector by trade agreements

If the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under section 2111 or 2112 of this title, he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in subsection (a) of this section is achieved by such agreement in each product sector or product sector.


MENDMENTS

1984—Subsec. (c). Pub. L. 98–573 inserted ‘‘or non-Federal governmental’’ after ‘‘private’’.

§ 2114a. Negotiating objectives with respect to trade in services, foreign direct investment, and high technology products

(a) Trade in services

(1) In general

Principal United States negotiating objectives under section 2112 of this title shall be—

(A) to reduce or to eliminate barriers to, or other distortions of, international trade in services (particularly United States service sector trade in foreign markets), including barriers that deny national treatment and restrictions on the establishment and operation in such markets; and

(B) to develop internationally agreed rules, including dispute settlement procedures, which—

(i) are consistent with the commercial policies of the United States, and

(ii) will reduce or eliminate such barriers or distortions and help ensure open international trade in services.

(2) Domestic objectives

In pursuing the objectives described in paragraph (1), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto.

(b) Foreign direct investment

(1) In general

Principal United States negotiating objectives under section 2112 of this title shall be—

(A) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(B) to develop internationally agreed rules, including dispute settlement procedures, which—

(i) will help ensure a free flow of foreign direct investment, and

(ii) will reduce or eliminate the trade distortive effects of certain investment related measures.

(2) Domestic objectives

In pursuing the objectives described in paragraph (1), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto.

(c) High technology products

Principal United States negotiating objectives shall be—
(d) Definition of barriers and other distortions

For purposes of subsection (a) of this section, the term “barriers to, or other distortions of, international trade in services” includes, but is not limited to—

(1) barriers to establishment in foreign markets; and

(2) restrictions on the operation of enterprises in foreign markets, including—

(A) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

(B) restrictions on the use of data processing facilities within or outside of such country or instrumentality.


$2114b. Provisions relating to international trade in services

(1) The Secretary of Commerce shall establish a service industries development program designed to—

(A) develop, in consultation with other Federal agencies as appropriate, policies regarding services that are designed to increase the competitiveness of United States service industries in foreign commerce;

(B) develop a data base for assessing the adequacy of Government policies and actions pertaining to services, including, but not limited to, data on trade, both aggregate and pertaining to individual service industries;

(C) collect and analyze, in consultation with appropriate agencies, information pertaining to the international operations and competitiveness of United States service industries, including information with respect to—

(i) policies of foreign governments toward foreign and United States service industries;

(ii) Federal, State, and local regulation of both foreign and United States suppliers of services, and the effect of such regulation on trade;

(iii) the adequacy of current United States policies to strengthen the competitiveness of United States service industries in foreign commerce, including export promotion activities in the service sector;

(iv) tax treatment of services, with particular emphasis on the effect of United States taxation on the international competitiveness of United States firms and exports;

(v) treatment of services under international agreements of the United States;

(vi) antitrust policies as such policies affect the competitiveness of United States firms; and

(vii) treatment of services in international agreements of the United States;

(D) conduct a program of research and analysis of service-related issues and problems, including forecasts and industrial strategies; and

(E) conduct sectoral studies of domestic service industries.

(2) For purposes of the collection and analysis required by paragraph (1), and for the purpose of any reporting the Department of Commerce makes under paragraph (3), such collection and reporting shall distinguish between income from investment and income from noninvestment services.

(3) On not less than a biennial basis beginning in 1986, the Secretary shall prepare a report which analyzes the information collected under paragraph (1). Such report shall be submitted to the Congress and to the President by not later than the date that is 120 days after the close of the period covered by the report.
(4) The Secretary of Commerce shall carry out the provisions of this subsection from funds otherwise made available to him which may be used for such purposes.

(5) For purposes of this section, the term “services” means economic activities whose outputs are other than tangible goods. Such term includes, but is not limited to, banking, insurance, transportation, postal and delivery services, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design and engineering, management consulting, real estate, professional services, entertainment, education, health care, and tourism.


CODIFICATION

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (a) of section 306 of Pub. L. 98–573. Subsec. (b) of such section amended sections 3101, 3103, and 3104 of Title 22, Foreign Relations and Intercourse, and enacted a provision set out as a note under section 3101 of Title 22, subsec. (c)(1), (2)(A) of such section is classified to section 2114c of this title, and subsec. (c)(2)(B), (C) of such section amended sections 2114, 2155, 2413, and 2414 of this title.

AMENDMENTS

1988—Par. (5). Pub. L. 105–277, which directed the amendment of par. (5) by inserting “postal and delivery services,” after “transportation,” in second sentence, was executed by making the insertion after “transportation,” to reflect the probable intent of Congress.

§ 2114c. Trade in services: development, coordination, and implementation of Federal policies; staff support and other assistance; specific service sector authorities unaffected; executive functions

(1)(A) The United States Trade Representative, through the interagency trade organization established pursuant to section 1872(a) of this title or any subcommittee thereof, shall, in conformance with this Act and other provisions of law, develop (and coordinate the implementation of) United States policies concerning trade in services.

(B) In order to encourage effective development, coordination, and implementation of United States policies on trade in services—

(i) each department or agency of the United States responsible for the regulation of any service sector industry shall, as appropriate, advise and work with the United States Trade Representative concerning matters that have come to the department’s or agency’s attention with respect to—

(I) the treatment afforded United States service sector interest in foreign markets; or

(II) allegations of unfair practices by foreign governments or companies in a service sector; and

(ii) the Department of Commerce, together with other appropriate agencies as requested by the United States Trade Representative, shall provide staff support and other assistance for negotiations on service-related issues by the United States Trade Representatives and the domestic implementation of service-related agreements.

(C) Nothing in this paragraph shall be construed to alter any existing authority or responsibility with respect to any specific service sector.

(2)(A) The President shall, as he deems appropriate—

(i) consult with State governments on issues of trade policy, including negotiating objectives and implementation of trade agreements, affecting the regulatory authority of non-Federal governments, or their procurement of goods and services;

(ii) establish one or more intergovernmental policy advisory committees on trade which shall serve as a principal forum in which State and local governments may consult with the Federal Government with respect to the matters described in clause (i); and

(iii) provide to State and local governments and to United States service industries, upon their request, advice, assistance, and (except as may be otherwise prohibited by law) data, analyses, and information concerning United States policies on international trade in services.


REFERENCES IN TEXT


CODIFICATION

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (c)(1), (2)(A) of section 306 of Pub. L. 98–573. Subsec. (a) of such section is classified to section 2114(b) of this title, subsec. (b) of such section amended sections 3101, 3103, and 3104 of Title 22, Foreign Relations and Intercourse, and enacted a provision set out as a note under section 3101 of Title 22, subsec. (c)(2)(B), (C) of such section amended sections 2114, 2155, 2413, and 2414 of this title.

§ 2114d. Foreign export requirements; consultations and negotiations for reduction and elimination; restrictions on and exclusion from entry of products or services; savings provision; compensation authority applicable

(1) If the United States Trade Representative, with the advice of the committee established by section 1872 of this title, determines that action by the United States is appropriate to respond to any export performance requirements of any foreign country or instrumentality that adversely affect the economic interests of the United States, then the United States Trade Representative shall seek to obtain the reduction and elimination of such export performance

1 So in original. Probably should be “Representative”.

2 See Codification note below.
requirements through consultations and negotiations with the foreign country or instrumentality concerned.

(2) In addition to the action referred to in subsection (1), the United States Trade Representative may impose duties or other import restrictions on the products or services of such foreign country or instrumentality for such time as he determines appropriate, including the exclusion from entry into the United States of products subject to such requirements.

(3) Nothing in paragraph (2) shall apply to any products or services with respect to which—

(A) any foreign direct investment (including a purchase of land or facilities) has been made directly or indirectly by any United States person before October 30, 1984, or

(B) any written commitment relating to a foreign direct investment that is binding on October 30, 1984, has been made directly or indirectly by any United States person.

(4) Whenever the international obligations of the United States and actions taken under paragraph (2) make compensation necessary or appropriate, compensation may be provided by the United States Trade Representative subject to the limitations and conditions contained in section 2233 of this title for providing compensation for actions taken under section 2233 of this title.


CODIFICATION

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (a) of section 308 of Pub. L. 98–573. Subsec. (b) of such section 308 enacted section 2138 of this title.

§ 2115. Bilateral trade agreements

If the President determines that bilateral trade agreements will more effectively promote the economic growth of, and full employment in, the United States, then, in such cases, a negotiating objective under sections 2111 and 2112 of this title shall be to enter into bilateral trade agreements. Each such trade agreement shall provide for mutually advantageous economic benefits.


§ 2116. Agreements with developing countries

A United States negotiating objective under sections 2111 and 2112 of this title shall be to enter into trade agreements which promote the economic growth of both developing countries and the United States and the mutual expansion of market opportunities.


§ 2117. International safeguard procedures

(a) Harmonization, reduction, or elimination of barriers and distortions affecting international trade; use of temporary measures

A principal United States negotiating objective under section 2112 of this title shall be to obtain internationally agreed upon rules and procedures, in the context of the harmonization, reduction, or elimination of barriers to, and other distortions of, international trade, which permit the use of temporary measures to ease adjustment to changes occurring in competitive conditions in the domestic markets of the parties to an agreement resulting from such negotiations due to the expansion of international trade.

(b) Permissible provisions

Any agreement entered into under section 2112 of this title may include provisions establishing procedures for—

(1) notification of affected exporting countries,

(2) international consultations,

(3) international review of changes in trade flows,

(4) making adjustments in trade flows as the result of such changes, and

(5) international mediation.

Such agreements may also include provisions which—

(A) exclude, under specified conditions, the parties thereto from compensation obligations and retaliation, and

(B) permit domestic public procedures through which interested parties have the right to participate.
§ 2118. Access to supplies

(a) Fair and equitable access

A principal United States negotiating objective under section 2112 of this title shall be to enter into trade agreements with foreign countries and instrumentalities to assure the United States of fair and equitable access at reasonable prices to supplies of articles of commerce which are important to the economic requirements of the United States and for which the United States does not have, or cannot easily develop, the necessary domestic productive capacity to supply its own requirements.

(b) Continued availability; reciprocal concessions; comparable trade obligations

Any agreement entered into under section 2112 of this title may include provisions which—

(1) assure to the United States the continued availability of important articles at reasonable prices, and

(2) provide reciprocal concessions or comparable trade obligations, or both, by the United States.


§ 2119. Staging requirements and rounding authority

(a) Maximum aggregate reductions in rates of duty

Except as otherwise provided in this section, the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement under section 2111 of this title shall not exceed the aggregate reduction which would have been in effect on such day if—

(1) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed pursuant to section 2111(a)(2) of this title to carry out such agreement with respect to such article, and

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

This subsection shall not apply in any case where the total reduction in the rate of duty does not exceed 10 percent of the rate before the reduction.

(b) Simplification of computation

If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitation provided by section 2111(b) of this title or subsection (a) of this section by not more than whichever of the following is lesser:

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

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

(c) Ten-year period for commencement of reductions in rates of duty

(1) No reduction in the rate of duty on any article pursuant to a trade agreement under section 2111 of this title shall take effect more than 10 years after the effective date of the first reduction proclaimed to carry out such trade agreement with respect to such article.

(2) If any part of a reduction takes effect, then any time thereafter during which any part of the reduction is not in effect by reason of legislation of the United States or action thereunder, the effect of which is to maintain or increase the rate of duty on an article, shall be excluded in determining—

(A) the 1-year intervals referred to in subsection (a)(2) of this section, and

(B) the expiration of the 10-year period referred to in paragraph (1) of this subsection.


AMENDMENTS

1979—Subsec. (c)(2). Pub. L. 96–39 substituted “any part of the reduction” for “such part of the reduction”.

Effective Date of 1979 Amendment

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

Staging of Certain Tariff Reductions

Section 503 of Pub. L. 96–39 provided that:

“(a) IN GENERAL.—The aggregate reduction in the rate of duty applicable to items described in this subsection in effect on any day pursuant to a trade agreement entered into under section 101 of the Trade Act of 1974 [19 U.S.C. 2111] before January 3, 1980, may exceed the limitation in section 109(a) of such Act [19 U.S.C. 2119]:

“(1) Items amended under section 223(d) of this Act [items 402.00 to 413.51 of the Tariff Schedules] to the extent that they apply to articles which the President determines are not imported into the United States before January 1, 1978, and were not produced in the United States before May 1, 1973.

“(2) Items to the extent that they apply to articles which the President determines are not import sensitive and are the product of a least developed developing country as defined in the United Nations General Assembly list of “Least Developed Countries” and which are beneficiary developing countries under section 502 of the Trade Act of 1974 [19 U.S.C. 2462].

“(b) The President may at any time suspend the treatment accorded under subparagraph (A) in which case the aggregate reduction in effect for such products shall be the reduction in effect for countries other than least developed developing countries.

“(c) Items 628.57. Notwithstanding the first sentence of this subsection, the limitation in section 109(a) of the Trade Act of 1974 may be exceeded only to the extent necessary to permit an aggregate reduction of 4.8 percent ad valorem in the rate of duty in effect under such item during the first 1-year period after the effective date of the first reduction in the rate of duty proclaimed for such item.

“(d) Items 306.31, 306.32, 306.33, and 306.34. Notwithstanding subsection (a), the limitation in section 109(a) of the Trade Act of 1974 may be exceeded only to the extent necessary to permit the total reduction proclaimed under section 101 of the Trade Act of 1974...
relating to such item to take effect within 2 years after the effective date of the first reduction in the rate of duty proclaimed for such item.

"(b) Items for which the President determines the effective date of the first reduction will be after June 30, 1980, and before January 1, 1981, to the extent necessary to permit the second reduction to take effect on January 1, 1981.

"(c) OPPORTUNITY FOR COMMENT.—Before making any determination under subsection (a)(1) and (2), the President shall provide interested parties an opportunity to comment and shall publish his final determinations in the Federal Register before July 1, 1980."

PART 2—OTHER AUTHORITY

§ 2131. Authorization of appropriation for GATT revision

There are authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the Contracting Parties to the General Agreement on Tariffs and Trade. This authorization does not imply approval or disapproval by the Congress of all of the General Agreement on Tariffs and Trade.


AMENDMENTS

1988—Pub. L. 100–647 substituted "There are" for "(d) There are".

Subsec. (a) to (c). Pub. L. 100–418 struck out subsec. (a) which provided for bringing existing trade agreements into conformity with principles promoting open, nondiscriminatory, and fair world economic system, subsec. (b) which provided for agreements with foreign countries or instrumentalities, and subsec. (c) which provided for changes in Federal law through legislation implementing trade agreements.

1979—Subsec. (c). Pub. L. 96–39 substituted "Such trade agreement may be entered into under section 2112 of this title" for "Such trade agreement may be submitted to the Congress for approval in accordance with the procedures of section 2191 of this title".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

§ 2132. Balance-of-payments authority

(a) Presidential proclamations of temporary import surcharges and temporary limitations on imports through quotas in situations of fundamental international payments problems

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

(1) to deal with large and serious United States balance-of-payments deficits,

(2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium,

the President shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress)—

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

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

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

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

(b) Import restrictions not imposed when contrary to national interest of United States

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

(1) immediately inform Congress of his determination, and

(2) immediately convene the group of congressional official advisers designated under section 2211(a) of this title and consult with them as to the reasons for such determination.

(c) Presidential proclamations liberalizing imports

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

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

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

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

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

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

Import liberalizing actions proclaimed pursuant to this subsection shall be of broad and uniform
§ 2133

TITLE 19—CUSTOMS DUTIES

Page 464

application with respect to product coverage except that the President shall not proclaim measures under this subsection with respect to those articles where in his judgment such action will cause or contribute to material injury to firms or workers in any domestic industry, including agriculture, mining, fishing, or commerce, or to impairment of the national security, or will otherwise be contrary to the national interest.

(d) Nondiscriminatory treatment of import restricting actions

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

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

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

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

(e) Broad and uniform application of import restricting actions

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

(f) Quantitative limitations

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

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

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

(g) Suspension, modification, or termination of proclamations

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

(h) Termination of tariff concessions

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


§ 2133. Compensation authority

(a) New concessions

Whenever—

(1) any action taken under part 1 of subchapter II of this chapter or subchapter III of this chapter, or under part 2 of subchapter IV of this chapter; or

(2) any judicial or administrative tariff reclassification that becomes final after August 23, 1988;

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

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

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

(b) Reductions in rates of duty

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

(2) Where the rate of duty in effect at any time is an intermediate stage under section 2902(a) of this title, the proclamation made pursuant to subsection (a) of this section may provide for the reduction of each rate of duty at each such
stage proclaimed under such section 2902(a) of this title by not more than 30 percent of such rate of duty, and may provide for a final rate of duty which is not less than 70 percent of the rate of duty proclaimed as the final stage under such section 2902(a) of this title.

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

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

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

(4) Any concessions granted under subsection (a)(1) of this section shall be reduced and terminated according to substantially the same time schedule for reduction applicable to the relevant action under sections 2253(e) and 2254 of this title.

(c) Consideration of past violations of trade concessions

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

(d) Basic authority for trade agreements as authority for granting new concessions as compensation

Notwithstanding the provisions of subsection (a) of this section, the authority delegated under section 2902 of this title shall be used for the purpose of granting new concessions as compensation within the meaning of this section until such authority terminates.

(e) International obligations determination prerequisite to application of authority

The provisions of this section shall apply by reason of action taken under subchapter III of this chapter only if the President determines that action authorized under this section is necessary or appropriate to meet the international obligations of the United States.


AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–286 inserted ‘‘, or under part 2 of subchapter IV of this chapter’’ after ‘‘subchapter III of this chapter’’.

1988—Subsec. (a). Pub. L. 100–418, §1104(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ‘‘Whenever any action has been taken under section 2253 of this title to increase or impose any duty or other import restriction, the President—

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

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

Subsec. (b)(2). Pub. L. 100–418, §1104(2), substituted ‘‘section 2902(a)’’ for ‘‘section 2119’’ and ‘‘such section 2902(a)’’ for ‘‘section 2111’’ in two places.

Subsec. (b)(4). Pub. L. 100–418, §1401(b)(1)(A), substituted ‘‘action under sections 2253(e) and 2254 of this title’’ for ‘‘import relief under section 2253(h) of this title’’.

Subsec. (d). Pub. L. 100–418, §1104(3), substituted ‘‘section 2902’’ for ‘‘section 2111’’.


EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1401(b)(1)(A) of Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under part I (§2251 et seq.) of subchapter III of this chapter on or after that date, see section 1401(c) of Pub. L. 100–418, set out as a note under section 2251 of this title.

§2134. Two-year residual authority to negotiate duties

(a) Trade agreements

Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes of this chapter will be promoted thereby, the President—

(1) may enter into trade agreements with foreign countries or instrumentalities thereof, and

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

(b) Maximum volume of imported articles subject to reduction of duties or continuance of duty-free or excise treatment

Agreements entered into under this section in any 1-year period shall not provide for the reduction of duties, or the continuance of duty-free or excise treatment, for articles which account for more than 2 percent of the value of United States imports for the most recent 12-month period for which import statistics are available.

(c) Maximum reduction in duties

(1) No proclamation shall be made pursuant to subsection (a) of this section decreasing any rate of duty to a rate which is less than 80 percent of the existing rate of duty.

(2) No proclamation shall be made pursuant to subsection (a) of this section decreasing or increasing any rate of duty to a rate which is lower or higher than the corresponding rate which would have resulted if the maximum authority granted by section 2111 of this title with respect to such article had been exercised.

(3) Where the rate of duty in effect at any time is an intermediate stage under section 2119 of this title, the proclamation made pursuant to subsection (a) of this section may provide for the reduction of each rate of duty at each such stage proclaimed under section 2111 of this title by not more than 20 percent of such rate of duty, and, subject to the limitation in paragraph (2),...
may provide for a final rate of duty which is not less than 80 percent of the rate of duty proclaimed as the final stage under section 2111 of this title.

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

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

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

(d) Two-year period of authority

Agreements may be entered into under this section only during the 2-year period which immediately follows the close of the period during which agreements may be entered into under section 2111 of this title.

(Pub. L. 93–618, title I, §124, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.)

§ 2135. Termination and withdrawal authority

(a) Grant of authority for termination or withdrawal at end of period specified in agreement

Every trade agreement entered into under this chapter shall be subject to termination, in whole or in part, or withdrawal, upon due notice, at the end of a period specified in the agreement. Such period shall be not more than 3 years from the date on which the agreement becomes effective. If the agreement is not terminated or withdrawn from at the end of the period so specified, it shall be subject to termination or withdrawal thereafter upon not more than 6 months’ notice.

(b) Authority to terminate proclamations at any time

The President may at any time terminate, in whole or in part, any proclamation made under this chapter.

(c) Increased duties or other import restrictions following withdrawal, suspension, or modification of obligations with respect to trade of foreign countries or instrumentalities

Whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to this chapter, section 2121 of this title, or section 1351 of this title, withdraws, suspends, or modifies any obligation with respect to the trade of any foreign country or instrumentality thereof, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States. No proclamation shall be made under this subsection increasing any existing duty to a rate more than 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or 20 percent ad valorem above the rate existing on January 1, 1975, whichever is higher.

(d) Retaliatory authority

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

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

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

(e) Continuation of duties or other import restrictions after termination of or withdrawal from agreements

Duties or other import restrictions required or appropriate to carry out any trade agreement entered into pursuant to this chapter, section 2121 of this title, or section 1351 of this title shall not be affected by any termination, in whole or in part, of such agreement or by the withdrawal of the United States from such agreement and shall remain in effect after the date of such termination or withdrawal for 1 year, unless the President by proclamation provides that such rates shall be restored to the level at which they would be but for the agreement. Within 60 days after the date of any such termination or withdrawal, the President shall transmit to the Congress his recommendations as to the appropriate rates of duty for all articles which were affected by the termination or withdrawal or would have been so affected but for the preceding sentence.

(f) Public hearings

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


References in Text

This chapter, referred to in subsections (b), (c), (e), was in the original “this Act”, meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.
The Tariff Schedules of the United States, referred to in subsec. (c), to be treated as a reference to the Harmonized Tariff Schedule pursuant to section 3012 of this title. The Harmonized Tariff Schedule is not set out in this Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

**Authority To Increase Duties on Imports of Certain Tobacco and Tobacco Products**


“(a) IN GENERAL.—In the application of section 125(c) of the Trade Act of 1974 (19 U.S.C. 2135) with respect to any item provided for in subheadings 2401.10.60, 2401.20.30, 2401.20.60, 2401.30.30, 2401.30.60, 2401.30.90, 2403.10.00, 2403.91.40, or 2403.99.00 of the HTS, ‘‘350’’ shall be substituted for ‘‘20’’ where it appears in such section.

“(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act (Dec. 8, 1994).”

**TARIFF REDUCTIONS UNDER TRADE AGREEMENTS ACT OF 1979**

Pub. L. 96–39, title V, §502(b), July 26, 1979, 93 Stat. 251, provided that: “For purposes of section 125 (19 U.S.C. 2135) of the Trade Act of 1974 the amendments made under sections 508, 511, 512, and 513 (amending 19 U.S.C. 2113, 2121, 2126, 750.27, 750.45, 905.10, and 905.11 of the Tariff Schedules of the United States. See Publication of Tariff Schedules note under section 1202 of this title) not including the rates of duty appearing in rate column numbered 2, if any, shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 [this chapter], of benefit to foreign countries or instrumentalities.”

Pub. L. 96–39, title VI, §601(b), July 26, 1979, 93 Stat. 268, provided that: “For purposes of section 125 of the Trade Act of 1974 [this chapter], the amendments made under subsection (a), if any [amending the Tariff Schedules of the United States with regard to civil aircraft (see Publication of Tariff Schedules note under section 1202) and, and, amending section 1466 of this title], shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 [this chapter] of benefit to foreign countries or instrumentalities.”

Rates of duty proclaimed under section 855(a) of Pub. L. 96–39 (covering spirits, spirituous beverages, and beverage preparations) to be deemed, for purposes of this section, a trade agreement obligation which is of benefit to a foreign country or instrumentality, and, in the case of any item affected by such a proclamation, the last sentence of subsec. (c) of this section to be applied as if it authorized (in addition to any increase authorized therein) an increase up to the rate of duty for such item set forth in rate column numbered 1 of subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States (see Publication of Tariff Schedules note under section 1202 of this title) as amended by section 852 of Pub. L. 96–39, see section 855(b) of Pub. L. 96–39.

**REVIEW OF INTERNATIONAL TRADE IN ALCOHOLIC BEVERAGES**

Pub. L. 96–39, title VIII, §854, July 26, 1979, 93 Stat. 294, provided that:

“(a) REVIEW.—The President shall review foreign tariff and nontariff barriers affecting United States exports of alcoholic beverages. Not later than January 1, 1982, the President shall report to the Congress the results of his review.

“(b) WITHDRAWAL OF CONCESSIONS.—If, as the result of his review under subsection (a), the President determines that a foreign country or instrumentality has not implemented concessions to the United States affecting alcoholic beverages which were negotiated in trade agreements entered into before January 3, 1980, under the authority of title I of the Trade Act of 1974 [this subchapter], the President shall withdraw, suspend, or modify the application of substantially equivalent trade agreement obligations of benefit to such foreign country or instrumentality under section 125 of the Trade Act of 1974 (19 U.S.C. 2135).”

“This section shall take effect on the date of the enactment of this Act (Jan. 3, 1980).”

**§2136. Reciprocal nondiscriminatory treatment**

(a) Direct and indirect imports

Except as otherwise provided in this chapter or in any other provision of law, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this subchapter shall apply to products of all foreign countries, whether imported directly or indirectly.

(b) Presidential determination of whether major industrial countries have made substantially equivalent concessions to the United States

The President shall determine, after the conclusion of all negotiations entered into under this chapter or at the end of the 5-year period beginning on January 3, 1975, whichever is earlier, whether any major industrial country has failed to make concessions under trade agreements entered into under this chapter which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities, provided by concessions made by the United States under trade agreements entered into under this chapter, for the commerce of such country in the United States. (c) Major industrial countries

For purposes of this section, “major industrial country” means Canada, the European Economic Community, the individual member countries of such Community, Japan, and any other foreign country designated by the President for purposes of this subsection.


**REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a) and (b), was in the original “this Act”, meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 192, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

**AMENDMENTS**

1998—Subsecs. (c), (d), Pub. L. 105–362 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to recommendations to Congress for legislation following a Presidential determination that a major industrial country failed to grant equivalent concessions.

**§2137. Reservation of articles for national security or other reasons**

(a) National security considerations

No proclamation shall be made pursuant to the provisions of this chapter reducing or eliminating the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.
(b) Action taken under other laws

While there is in effect with respect to any article any action taken under section 2523 of this title, or section 1862 or 1981 of this title, the President shall reserve such article from negotiations under this subchapter (and from any action under section 2132(c) of this title) contemplating reduction or elimination of—

(A) any duty on such article,

(B) any import restriction imposed under such section, or

(C) any other import restriction, the removal of which will likely to undermine the effect of the import restrictions referred to in subparagraph (B).

In addition, the President shall also so reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 2151, 2152, and 2153 of this title, where applicable.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1993, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 127 of act Jan. 3, 1975. Subsec. (c) of such section was classified to section 1863 of this title, prior to its repeal by Pub. L. 100–416, title I, §1501(b)(2), Aug. 23, 1988, 102 Stat. 1259, and subsec. (d) amended section 1862 of this title.

§ 2138. Omitted

CODIFICATION


PART 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

§ 2151. 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 2133 of this title or section 3803(a) or (b) of this title, 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 3803(b) of this title, 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) of this section 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. Such advice may include 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 3803(a)(3)(A) of this title.

(c) Additional investigations and reports requested by President or Trade Representative

In addition, in order to assist the President in his determination whether to enter into any agreement under section 2133 of this title or section 3803 of this title, 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 industries, workers, industries or sectors, purchasers, prices, and quantities of articles in the United States.

(d) Commission steps in preparing its advice to President

In preparing its advice to the President under this section, the Commission shall to the extent practicable—

(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles in question and the domestic industries producing the like or directly competitive articles or services; and

(2) analyze the production, trade, and consumption of each like or directly competitive article or service, taking into consideration, as appropriate, employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers re-
event, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities; the overall impact of such or other possible changes on the competitiveness of relevant domestic industries or sectors; and such other conditions as it deems relevant in the domestic industries or sectors concerned which it believes such modifications would cause; and

(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, consumers, services, intellectual property and investment, using to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

(e) Public hearings

In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.


AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–210, § 2110(a)(2)(A)(i), substituted “section 2133 of this title or section 3803(a) or (b) of this title,” for “section 2133 of this title or section 2902(a) or (c) of this title.”.

Subsec. (a)(2). Pub. L. 107–210, § 2110(a)(2)(A)(ii), substituted “section 3803(b) of this title” for “section 2902(b) or (c) of this title”.

Subsec. (b). Pub. L. 107–210, § 2110(a)(2)(B), substituted “section 2902(a)(3)(A) of this title” for “section 2133 of this title or section 3803 of this title.”.

Subsec. (c). Pub. L. 107–210, § 2110(a)(2)(C), substituted “section 3803 of this title,” for “section 2902 of this title.”.

1988—Pub. L. 100–418 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), lists of articles which could be considered for modification or discontinuance of duties, duty-free or excise treatment, or additional duties; in subsec. (b), advice to President following receipt of list by Commission; in subsec. (c), additional investigations and reports requested by President; in subsec. (d), Commission steps in preparing its advice to President; and in subsec. (e), public hearings.

DELEGATION OF AUTHORITY


§ 2153. Public hearings

(a) Opportunity for presentation of views

In connection with any proposed trade agreement under section 2133 of this title or section 3803 of this title, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published under section 2151 of this title, 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.


AMENDMENTS


1988—Pub. L. 100–418 amended section generally. Prior to amendment, section read as follows: “Before any trade agreement is entered into under part 1 of this subchapter or section 2133 or 2314 of this title, 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.”

REFERENCES IN TEXT

Reorganization Plan Number 3 of 1979, referred to in text, is set out as a note under section 2171 of this title.

Directing Order Number 12188, referred to in text, is set out as a note under section 2171 of this title.

AMENDMENTS

§ 2154. Prerequisites for offers

(a) In any negotiation seeking an agreement under section 2133 of this title or section 3803 of this title, 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 subchapter, 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 2153 of this title. 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 2151(a) of this title, only after he has received advice concerning such article from the International Trade Commission under section 2151(b) of this title, 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) of this section in the course of negotiating any trade agreement under section 3803 of this title, 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 2155 of this title;

(3) any organization that holds public hearings under section 2153 of this title;

with respect to any article, or domestic industry, that is sensitive, or potentially sensitive, to imports.

§ 2155. 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 subchapter or section 3803 of this title;

(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 Number 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 subsections (a) and (b) of this section.

1968—Pub. L. 100–418 amended section generally. Prior to amendment, section read as follows: “In any negotiations seeking an agreement under part 1 of this subchapter or section 2133 or 2151 of this title, the President may make an 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 restriction, or other barrier to (or other distortion of) international trade, with respect to any article 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 2153 of this title. 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 2151(a) of this title, only after he has received advice concerning such article from the International Trade Commission under section 2151(b) of this title, or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.”

DELegation OF AUTHORITY


AMendments


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) of this section. 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 4 years or until the committee is scheduled to expire. 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) of this section. 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.

(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) of this section, 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) of this section 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) of this section.

(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 3803 of this title, to provide to the President, to Congress, and to the United States Trade Represent-
ative a report on such agreement. Each report that applies to a trade agreement entered into under section 3803 of this title shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under section 3802(a)(A) of this title 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 3802 of this title, as appropriate.

(3) The report of the appropriate sectoral or functional committee under paragraph (1) shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) Application of Federal Advisory Committee Act

The provisions of the Federal Advisory Committee Act apply—

(A) to the Advisory Committee for Trade Policy and Negotiations established under subsection (b) of this section; and

(B) to all other advisory committees which may be established under subsection (c) of this section, except that—

(1) the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or the President’s designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives, or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section; and

(2) notwithstanding subsection (a)(2) of section 14 of the Federal Advisory Committee Act, any committee established under subsection (b) or (c) of this section may, in the discretion of the President or the President’s designee, terminate not later than the expiration of the 4-year period beginning on the date of its establishment.

(g) Trade secrets and confidential information

(1) Trade secrets and commercial or financial information which is privileged or confidential, and which is submitted in confidence by the private sector or non-Federal government to officers or employees of the United States in connection with trade negotiations, may be disclosed upon request to—

(A) officers and employees of the United States designated by the United States Trade Representative;

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated as official advisers under section 2211(a)(1) of this title or are designated by the chairmen of either such committee under section 2211(b)(3)(A) of this title and staff members of either such committee designated by the chairmen under section 2211(b)(3)(A) of this title; and

(C) members of any committee of the House or Senate or any joint committee of Congress who are designated as advisers under section 2211(a)(2) of this title or designated by the chairman of such committee under section 2211(b)(3)(B) of this title and staff members of such committee designated under section 2211(b)(3)(B) of this title, but disclosure may be made under this subparagraph only with respect to trade secrets or commercial or financial information that is relevant to trade policy matters or negotiations that are within the legislative jurisdiction of such committee; for use in connection with matters referred to in subsection (a) of this section.

(2) Information other than that described in paragraph (1), and advice submitted in confidence by the private sector or non-Federal government to officers or employees of the United States, to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c) of this section, in connection with matters referred to in subsection (a) of this section, may be disclosed upon request to—

(A) the individuals described in paragraph (1); and

(B) the appropriate advisory committee established under this section.

(3) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c) of this section, may be disclosed in accordance with rules issued by the United States Trade Representative and the Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, after consultation with the relevant advisory committees established under subsection (c) of this section. Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the development of trade policy, priorities, or United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a) of this section.

(h) Advisory committee support

The United States Trade Representative, and the Secretaries of Commerce, Labor, Defense, Agriculture, the Treasury, or other executive
shall not apply to any advisory committee established under subsection (c) of this section.

(m) "Non-Federal government" defined
As used in this section, the term "non-Federal government" means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof; or

(2) any agency or instrumentality of any entity described in paragraph (1).


References in Text
Reorganization Plan Number 3 of 1979, referred to in subsec. (a)(1)(C), is set out as a note under section 2171 of this title.

Executive Order Numbered 12188, referred to in subsec. (a)(1)(C), is set out as a note under section 2171 of this title.


The Food and Agriculture Act of 1977 is classified generally to chapter 55A (§2281 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 1281 of Title 7 and Tables.

Amendments

2004—Subsec. (b)(1). Pub. L. 108–429, § 2004(i)(2), substituted “4 years or until the committee is scheduled to expire” for “2 years”.

Subsec. (f)(2). Pub. L. 108–429, § 2004(i)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “to all other advisory committees which may be established under subsection (c) of this section; except that the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section.”


Subsec. (e)(1). Pub. L. 107–210, § 2110(a)(5)(B), substituted “section 3803 of this title” for “section 2902 of this title” in two places and “section 3805(a)(1)(A) of this title” for “section 2903(a)(1)(A) of this title”.

Consultation with advisory committees; procedures; nonacceptance of committee advice or recommendations

(1) Consultation with advisory committees; procedures; nonacceptance of committee advice or recommendations

It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established under subsection (c) of this section on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to—

(1) significant issues and developments; and

(2) overall negotiating objectives and positions of the United States and other parties;

with respect to matters referred to in subsection (a) of this section. The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees, but shall inform the advisory committees of significant departures from such advice or recommendations made. In addition, in the course of consultations with the Congress under this subchapter, information on the advice and information provided by advisory committees shall be made available to congressional advisers.

(j) Private organizations or groups

In addition to any advisory committee established under this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal basis (and, if such information is submitted under the provisions of subsection (g) of this section, on a confidential basis) by private organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data and other trade information, as well as policy recommendations, pertinent to any matter referred to in subsection (a) of this section.

(k) Scope of participation by members of advisory committees

Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a) of this section. To the maximum extent practicable, the members of the committees established under subsections (b) and (c) of this section, and other appropriate parties, shall be informed and consulted before and during any such negotiations. They may be designated as advisors to a negotiating delegation, and may be permitted to participate in international meetings to the extent that the head of the United States delegation deems appropriate. However, they may not speak or negotiate for the United States.

(l) Advisory committees established by Department of Agriculture

The provisions of title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to any advisory committee established under subsection (c) of this section.

(m) "Non-Federal government" defined
As used in this section, the term "non-Federal government" means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof; or

(2) any agency or instrumentality of any entity described in paragraph (1).


References in Text
Reorganization Plan Number 3 of 1979, referred to in subsec. (a)(1)(C), is set out as a note under section 2171 of this title.

Executive Order Numbered 12188, referred to in subsec. (a)(1)(C), is set out as a note under section 2171 of this title.

The Federal Advisory Committee Act, referred to in subsec. (l), is Pub. L. 95–95, Sept. 29, 1977, 91 Stat. 914, as amended. Title XVIII of the Act is classified generally to chapter 55A (§2281 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 1281 of Title 7 and Tables.

Amendments

2004—Subsec. (b)(1). Pub. L. 108–429, § 2004(i)(2), substituted “4 years or until the committee is scheduled to expire” for “2 years”.

Subsec. (f)(2). Pub. L. 108–429, § 2004(i)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “to all other advisory committees which may be established under subsection (c) of this section; except that the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section.”


Subsec. (e)(1). Pub. L. 107–210, § 2110(a)(5)(B), substituted “section 3803 of this title” for “section 2902 of this title” in two places and “section 3805(a)(1)(A) of this title” for “section 2903(a)(1)(A) of this title”.
Subsec. (e)(2). Pub. L. 107–210, §2110(a)(9)(C), substituted “section 3802 of this title” for “section 2901 of this title”.

Subsec. (a)(1)(B). Pub. L. 103–465, §127(f), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the operation of any trade agreement once entered into; and”.


1989—Pub. L. 100–418 amended section generally, substituting present provisions for provisions which, in the following subsections, had related to: subsec. (a), information and advice on trade agreements and other matters; subsec. (b), Advisory Committee for Trade Negotiations; subsec. (c), general policy, sectoral, functional, or policy advisory committees; subsec. (d), policy advice, technical advice and information, and other advice; subsec. (e), meeting of advisory committees at consulting on negotiations for trade agreements; subsec. (f), Federal Advisory Committee Act; subsec. (g), trade secrets and confidential commercial, financial, or other information; subsec. (h), staff, information, personnel, and administrative services and assistance to advisory committees; subsec. (i), consultation with advisory committees; adoption of procedures; nonacceptance of committee advice or recommendations; subsec. (j), private or non-Federal government organizations or groups; subsec. (k), direct participation in negotiations by private individuals not authorized; information, consultation, participation of committee members and appropriate parties in international meetings; restrictions; subsec. (l), advisory committees established by Department of Agriculture; and subsec. (m), definition of “non-Federal government”.


1983—Subsec. (a). Pub. L. 96–39, §1103(1), (2), struck out “as,” in accordance with the provisions of this section, “after” “President” and required the seeking of information and advice respecting operation of a trade agreement once entered into and respecting other matters arising in connection with the administration of trade policy of the United States.

Subsec. (b)(1). Pub. L. 96–39, §1103(3), substituted “matters referred to in subsection (a) of this section for ‘any trade agreement referred to in section 2111 or 2112 of this title’.”

Subsec. (b)(2). Pub. L. 96–39, §1103(4), substituted the Committee from among its membership for provision designating the Special Representative as Chairman and struck out provision for termination of the Committee upon submission of its report to Congress as soon as practicable after the end of the period which ends 5 years after Jan. 3, 1975.

Subsec. (c)(1). Pub. L. 96–39, §1103(5), inserted a comma after “initiative,” included references to “services,” and substituted “general policy advice on matters referred to in subsection (a) of this section” for “general policy advice on any trade agreement referred to in section 2111 or 2112 of this title”.

“Special Representative for Trade Negotiations” for “President acting through the Special Representative for Trade Negotiations” and “or Agriculture” for “and Agriculture”. (c) Pub. L. 96–39, §1106(b)(9), substituted “The President shall establish such sectoral or functional advisory committees as may be appropriate” for “The President shall, on his own initiative or at the request of organizations in a particular sector, establish such industry, labor, or agricultural sector advisory committees as he determines to be necessary for any trade negotiations referred to in section 2111 or 2112 of this title” and “Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or non-Federal government” (including small business interests in the sector concerned) “for ‘the Special Representative for Trade Negotiations’ for ‘the President, acting through the Special Representative for Trade Negotiations’, struck out ‘product sector’ before ‘‘advisory committees’”, and inserted “, in the case of each sectoral committee,” before “the product line”.

Subsec. (d). Pub. L. 96–39, §1103(10), required committee meetings to be also summoned at joint instance of Secretary of Agriculture, Commerce, or Labor, as appropriate, previously required to be called before and during trade negotiations, struck out item (1) through (3) designation for “policy advice,” “technical advice” and “advice on other factors”, struck out “on negotiations” and “on negotiations on particular products both domestic and foreign after policy advice and technical advice and information” and substituted “factors relevant to the matters referred to in subsection (a) of this section” for “factors relevant to provisions of the United States in trade negotiations”.

Subsec. (e). Pub. L. 96–39, §1103(11)–(14), redesignated par. (1) as entire provision, and in provision as so redesignated, substituted “each sector or functional advisory committee, if the sector or area” for “each sector advisory committee, if the sector, “appropriate sector or functional area” for “appropriate sector”, and “within the sector or within the functional area” for “within the sector”, and struck out par. (2) which required a report to Congress by the Advisory Committee for Trade Negotiations by each policy advisory committee, and, each sector advisory committee as soon as practicable at end of period ending 5 years after Jan. 3, 1975, including advisory opinions of the respective committees as to how the trade agreements serve the economic interests of United States and how provision is made for equity and reciprocity within the sector.

Subsec. (f)(2). Pub. L. 96–39, §1103(15)(A), (B), substituted “committees” for “groups” and “with respect to matters referred to in subsection (a) of this section for “‘on the negotiation of any trade agreement’”.

Subsec. (g). Pub. L. 96–39, §1103(16), (17)(A), (B), substituted in par. (1)(A) “matters referred to in subsection (a) of this section for “a trade agreement referred to in section 2111 or 2112 of this title”, in par. (1)(B) “matters referred to in subsection (a) of this section” for “trade negotiations”, and in par. (2) “matters referred to in subsection (a) of this title” for “proposed trade agreements”.

Subsec. (i). Pub. L. 96–39, §1103(18)(A)–(C), struck out in provision before cl. (1) “, both during preparation for negotiations and actual negotiations” after “basis” and in cl. (1) “‘arising in preparation for or in the course of such negotiations’ after ‘developments’ and substituted in cl. (2) “with respect to matters referred to in subsection (a) of this section for “to the negotiations”.

Subsec. (j). Pub. L. 96–39, §1103(19), substituted “matters referred to in subsection (a) of this section for “trade agreement referred to in section 2111 or 2112 of this title” and provided for information to and consultation with committee members and appropriate parties and participation in international meetings without becoming spokesmen or negotiators for the United States.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 86c of this title.

EFFECTIVE DATE OF 2004 AMENDMENT


EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 130 of Pub. L. 103–465, set out as an Effective Date note under section 3531 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

DELEGATION OF AUTHORITY


PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

EX. ORD. NO. 12965, TRADE AND ENVIRONMENT POLICY ADVISORY COMMITTEE

Ex. Ord. No. 12965, Mar. 25, 1994, 59 F.R. 14733, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and section 135(c)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)(1)) ("Act"), it is hereby ordered as follows:

SECTION 1. Establishment. There is established in the Office of the United States Trade Representative ("Trade Representative") the "Trade and Environment Policy Advisory Committee" ("Committee").

SIC. 2. Membership. (a) The Committee shall consist of not more than 35 members, including, but not limited to, representatives from environmental interest groups, industry (including the environmental technology and environmental services industries), agriculture, services, non-Federal government, and consumer interests. The Committee should be broadly representative of the key sectors and groups of the economy with an interest in trade and environmental policy issues.

(b) The Chairman of the Committee shall be elected by the Committee from among its members. Members of the Committee shall be appointed by the Trade Representative, in consultation with the Cabinet secretaries described in section 2155(c)(1) of title 19, United States Code, for a term of 2 years and may be reappointed for any number of terms. Appointments to the Committee shall be made without regard to political affiliation. Any member may be removed at the discretion of the Trade Representative.

SIC. 3. Functions. (a) The Committee shall provide the Trade Representative with policy advice on issues involving trade and the environment.

(b) The Committee shall submit a report to the President, to the Congress, and to the Trade Representative at the conclusion of negotiations for each trade agreement referred to in section 102 of the Act (19 U.S.C. 2121). The report shall include an advisory opinion on whether and to what extent the agreement promotes the interests of the United States.

(c) The Committee may establish such subcommittees of its members as it deems necessary, subject to the provisions of the Federal Advisory Committee Act and the approval of the Trade Representative, or his designee.

(d) The Committee shall report its activities to the Trade Representative, or his designee.

SIC. 4. Administration. (a) The Trade Representative, or his designee, with the advice of the Chairman, shall be responsible for prior approval of the agenda for all Committee meetings.

(b) The Trade Representative, or his designee, shall be responsible for determinations, filings, and other administrative requirements of the Federal Advisory Committee Act.

(c)(1) The Trade Representative shall provide funding and administrative and staff support for the Committee.

(2) The Committee shall have an Executive Director who shall be a Federal officer or employee designated by the Trade Representative.

(d) Members of the Committee shall serve without either compensation or reimbursement of expenses.

(e) The Committee shall meet as needed at the call of the Trade Representative or his designee, depending on various factors such as the level of activity of trade negotiations and the needs of the Trade Representative, or at the call of two-thirds of the members of the Committee.

SIC. 5. General. The Committee shall function for such period as may be necessary. In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), the Committee shall terminate after 2 years from the date of this order unless otherwise extended.

WILLIAM J. CLINTON.

EXTENSION OF TERM OF TRADE AND ENVIRONMENT POLICY ADVISORY COMMITTEE


PART 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

AMENDMENTS


§ 2171. Structure, functions, powers, and personnel

(a) Establishment within Executive Office of the President

There is established within the Executive Office of the President the Office of the United States Trade Representative (hereinafter in this section referred to as the “Office”).

(b) United States Trade Representative; Deputy United States Trade Representatives

(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office three Deputy United States Trade Representatives and one Chief Agricultural Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The Deputy United States Trade Representatives shall hold office at the pleasure of the President and shall have the rank of Ambassador.

(3) A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.

(c) Duties of United States Trade Representative and Deputy United States Trade Representatives

(1) The United States Trade Representative shall—

(A) have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters, and, to the extent they are related to international trade policy, direct investment matters;

(B) serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade;

(C) have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations, including all negotiations on any matter considered under the auspices of the World Trade Organization, commodity and direct investment negotiations, in which the United States participates;

(D) issue and coordinate policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade functions, including any matter considered under the auspices of the World Trade Organization, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

(E) act as the principal spokesman of the President on international trade;

(F) report directly to the President and the Congress regarding, and be responsible to the President and the Congress for the administration of, trade agreements programs;

(G) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

(H) be responsible for making reports to Congress with respect to matters referred to in subparagraphs (C) and (F);

(I) be chairman of the interagency trade organization established under section 1872(a) of this title, and shall consult with and be advised by such organization in the performance of his functions; and

(J) in addition to those functions that are delegated to the United States Trade Representative as of August 23, 1988, be responsible for such other functions as the President may direct.

(2) It is the sense of Congress that the United States Trade Representative should—

(A) be the senior representative on any body that the President may establish for the purpose of providing to the President advice on overall economic policies in which international trade matters predominate; and

(B) be included as a participant in all economic summit and other international meetings at which international trade is a major topic.

(3) The United States Trade Representative may—

(A) delegate any of his functions, powers, and duties to such officers and employees of the Office as he may designate; and

(B) authorize such successive redelegations of such functions, powers, and duties to such
officers and employees of the Office as he may deem appropriate.

(4) Each Deputy United States Trade Representative shall have as his principal function the conduct of trade negotiations under this chapter and shall have such other functions as the United States Trade Representative may direct.

(5) The principal function of the Chief Agricultural Negotiator shall be to conduct trade negotiations and to enforce trade agreements relating to United States agricultural products and services. The Chief Agricultural Negotiator shall be a vigorous advocate on behalf of United States agricultural interests. The Chief Agricultural Negotiator shall perform such other functions as the United States Trade Representative may direct.

(d) Unfair trade practices; additional duties of Representative; advisory committee; definition

(1) In carrying out subsection (c) of this section with respect to unfair trade practices, the United States Trade Representative shall—

(A) coordinate the application of interagency resources to specific unfair trade practice cases;

(B) identify, and refer to the appropriate Federal department or agency for consideration with respect to action, each act, policy, or practice referred to in the report required under section 2241(b) of this title, or otherwise known to the United States Trade Representative on the basis of other available information, that may be an unfair trade practice that—

(i) is considered to be inconsistent with the provisions of any trade agreement and has a significant adverse impact on United States commerce, or

(ii) has a significant adverse impact on domestic firms or industries that are either too small or financially weak to initiate proceedings under the trade laws;

(C) identify practices having a significant adverse impact on United States commerce that the attainment of United States negotiating objectives would eliminate; and

(D) identify, on a biennial basis, those United States Government policies and practices that, if engaged in by a foreign government, might constitute unfair trade practices under United States law.

(2) For purposes of carrying out paragraph (1), the United States Trade Representative shall be assisted by an interagency unfair trade practices advisory committee composed of the Trade Representative, who shall chair the committee, and senior representatives of the following agencies, appointed by the respective heads of those agencies:

(A) The Bureau of Economics and Business Affairs of the Department of State.

(B) The United States and Foreign Commercial Services of the Department of Commerce.

(C) The International Trade Administration (other than the United States and Foreign Commercial Service) of the Department of Commerce.

(D) The Foreign Agricultural Service of the Department of Agriculture.

The United States Trade Representative may also request the advice of the United States International Trade Commission regarding the carrying out of paragraph (1).

(3) For purposes of this subsection, the term "unfair trade practice" means any act, policy, or practice that—

(A) may be a subsidy with respect to which countervailing duties may be imposed under subtitle A of title VII [19 U.S.C. 1771 et seq.];

(B) may result in the sale or likely sale of foreign merchandise with respect to which antidumping duties may be imposed under subtitle B of title VII [19 U.S.C. 1673 et seq.];

(C) may be either an unfair method of competition, or an unfair act in the importation of articles into the United States, that is unlawful under section 337 [19 U.S.C. 1337]; or

(D) may be an act, policy, or practice of a kind with respect to which action may be taken under subchapter III of this chapter.

(e) Powers of United States Trade Representative

The United States Trade Representative may, for the purpose of carrying out his functions under this section—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary and prescribe their authority and duties, except that not more than 20 individuals may be employed without regard to any provision of law regulating the employment or compensation at rates not to exceed the rate of pay for level IV of the Executive Schedule in section 53141 of title 5;

(2) employ experts and consultants in accordance with section 3109 of title 5 and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of title 5 and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5 for persons in Government service employed intermittently;

(3) promulgate such rules and regulations as may be necessary to carry out the functions, powers and duties vested in him;

(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies;

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the United States Trade Representative may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

1 So in original. Probably should be section "5314".
(7) adopt an official seal, which shall be judicially noticed;

(8) pay for expenses approved by him for official travel without regard to the Federal Travel Regulations or to the provisions of subchapter I of chapter 57 of title 5 relating to rates of per diem allowances in lieu of subsistence expenses;

(9) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office;

(10) acquire, by purchase or exchange, not more than two passenger motor vehicles for use abroad, except that no vehicle may be acquired at a cost exceeding $9,500; and

(11) provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be credited to, and be available for use from, the account from which expenditures relating thereto were made.

(f) Use of other Federal agencies

The United States Trade Representative shall, to the extent he deems it necessary for the proper administration and execution of the trade agreements programs of the United States, draw upon the resources of, and consult with, Federal agencies in connection with the performance of his functions.

(g) Authorization of appropriations

(1)(A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions the following:

(i) $32,300,000 for fiscal year 2003.


(B) Of the amounts authorized to be appropriated under subparagraph (A) for any fiscal year—

(i) not to exceed $98,000 may be used for entertainment and representation expenses of the Office; and

(ii) not to exceed $1,000,000 shall remain available until expended.

(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970.

(3) By not later than the date on which the President submits to Congress the budget of the United States Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of such additional sums as may be provided by law for fiscal year 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office; and

(4) The United States Trade Representative shall, upon the recommendation of such special officers and employees as he may deem necessary, request and receive such funds for the purpose of carrying out the provisions of this chapter.

(5) The authorization of funds provided for in this section shall be available until expended.

(6) The United States Trade Representative shall, by not later than the date on which the President submits to Congress the budget of the Office, request and receive such funds as he may deem necessary for to carry out the provisions of this chapter.

(7) The authorization of funds provided for in this section shall be available until expended.

(8) For purposes of section 5304(d)(2) of Title 5, Government Organization and Employees, amended sections 5108, 5301, and 5942 of Title 5 and section 410 of Title 39, Postal Service, repealed section 5302 of Title 5, and enacted provisions set out as notes under sections 5939 and 5942 of Title 5, section 65a of Title 2, The Congress, and section 410 of Title 39. For complete classification of this Act to the Code, see section 1644 of this title and Tables.


Subtitles A and B of title VII and section 337, referred to in subsec. (d)(3)(A) to (C), probably mean subtitles A and B of title VII and section 337 of the Tariff Act of 1930 which is act June 17, 1930, ch. 497, 46 Stat. 528. Subtitles A and B of title VII of the Tariff Act of 1930 are classified generally to parts I and II (§1671 et seq. and 1673 et seq., respectively) of subtitle IV of chapter 4 of this title. Section 337 of the Tariff Act of 1930 is classified to section 1337 of this title. For complete classification of this Act to the Code, see section 1644 of this title and Tables.


References in Text

Subtitles A and B of title VII and section 337, referred to in subsections (b)(2) to (d), probably mean subtitles A and B of title VII and section 337 of the Tariff Act of 1930 which is act June 17, 1930, ch. 497, 46 Stat. 528. Subtitles A and B of title VII of the Tariff Act of 1930 are classified generally to parts I and II (§1671 et seq. and 1673 et seq., respectively) of subtitle IV of chapter 4 of this title. Section 337 of the Tariff Act of 1930 is classified to section 1337 of this title. For complete classification of this Act to the Code, see section 1644 of this title and Tables.

Codification

Section is comprised of section 141 of Pub. L. 93–618. Section 141(d) of Pub. L. 93–618 contains two pars. (3), the first of which amended sections 5312 and 5314 of Title 5, Government Organization and Employees.

Amendments


Subsec. (g)(1)(A)(i). Pub. L. 107–210, §361(a)(1)(B), added cl. (i) and struck out former cl. (i) which read as follows: “$22,250,000 for fiscal year 1991.”

Subsec. (g)(1)(A)(ii). Pub. L. 107–210, §361(a)(1)(C), added cl. (ii) and struck out former cl. (i) which read as follows: “$21,077,000 for fiscal year 1992.”

Subsec. (g)(1)(B). Pub. L. 107–210, §361(a)(2), inserted “and” at end of cl. (i), redesignated cl. (ii) as (i) and struck out former cl. (ii) which read as follows: “not to exceed $2,050,000 may be used to pay the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the United States-Canada Free-Trade Agreement; and”.

Subsec. (g)(3). Pub. L. 107–210, §361(b), added par. (3).

2000—Subsec. (b)(2). Pub. L. 106–200, §406(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “There shall be in the Office three Deputy United States Trade Representatives who shall be appointed by the President, and with the advice and
ing the employment or compensation at rates not to exceed the rate of pay for level IV of the Executive Schedule.

Subsec. (g), Pub. L. 97–456, §3(d)(1), struck out subsec. (g) which abolished the Office of Special Representative for Trade Negotiations and transferred its assets and obligations to the Office of United States Trade Representative.

Subsec. (h), Pub. L. 97–456, §3(d)(1), struck out subsec. (h) which permitted any individual holding the position of Special Representative for Trade Negotiations or Deputy Special Representative for Trade Negotiations on Jan. 3, 1975, appointed with the advice and consent of the Senate, to continue to hold such position, and provided for the transfer of personnel employed by the Office of Special Representative for Trade Negotiations on Jan. 2, 1975, to the Office of United States Trade Representative.

EFFECTIVE DATE OF 2002 AMENDMENT
Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of this chapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 1271 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT
Amendment by Pub. L. 104–65 applicable with respect to an individual appointed as United States Trade Representative or as a Deputy United States Trade Representative on or after Dec. 19, 1995, see section 21(c) of Pub. L. 104–65, set out as a note under section 1877k of Title 19, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1994 AMENDMENT
Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 621(b) of Pub. L. 103–465, set out as a note under section 1677k of this title.

CHIEF NEGOTIATOR FOR INTELLECTUAL PROPERTY ENFORCEMENT

WAIVER OF PROVISIONS LIMITING APPOINTMENT OF TRADE REPRESENTATIVE
Pub. L. 109–5, Mar. 17, 1999, 111 Stat. 11, provided: "That notwithstanding the provisions of paragraph (3) of section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)(3)) or any other provision of law, the President, acting by and with the advice and consent of the Senate, is authorized to appoint Charlene Barshefsky as the United States Trade Representative."

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES
References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §181(c)(1)] of Pub. L. 101–515, set out in a note under section 5376 of Title 5.

SENIOR COMMERCIAL OFFICERS TO HOLD TITLE OF MINISTER-COUNSELOR; MAXIMUM NUMBER DESIGNATED
Provisions requiring the Secretary of State, upon the request of the Secretary of Commerce, to accord the diplomatic title of Minister-Counselor to the senior Commercial Officer assigned to any United States mission abroad with a limit on the number of Commercial Service officers accorded such diplomatic title at any time were contained in the following appropriation acts:


PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989
For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1801–1899A] of Pub. L. 99–314 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–314, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

REORGANIZATION PLAN NO. 3 OF 1979
Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, September 25, 1979, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

REORGANIZATION OF FUNCTIONS RELATING TO INTERNATIONAL TRADE
SECTION 1. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
(a) The Office of the Special Representative for Trade Negotiations is redesignated the Office of the United States Trade Representative.

(b)(1) The Special Representative for Trade Negotiations is redesignated the United States Trade Representative (hereinafter referred to as the "Trade Representative"). The Trade Representative shall have primary responsibility, with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1772) (hereinafter referred to as the "Committee"), for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters and, to the extent they are related to international trade policy, direct investment matters. The Trade Representative shall serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade.

(2) The Trade Representative shall have lead responsibility for the conduct of international trade negotiations, including commodity and direct investment negotiations in which the United States participates.

(3) To the extent necessary to assure the coordination of international trade policy, and consistent with any other law, the Trade Representative, with the advice of the Committee, shall issue policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of the following international trade functions. Such guidance shall determine the policy of the United States with respect to international trade issues arising in the exercise of such functions:

(A) matters concerning the General Agreement on Tariffs and Trade, including implementation of the trade agreements set forth in section 2(c) of the Trade Agreements Act of 1979 [19 U.S.C. 2503(c)];

United States Government positions on trade and commodity matters dealt with by the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development, and other multilateral organizations; and the assertion and protection of the rights of the United States under bilateral and multilateral international trade and commodity agreements;

(B) expansion of exports from the United States;

(C) policy research on international trade, commodity, and direct investment matters;
(D) to the extent permitted by law, overall United States policy with regard to unfair trade practices, including enforcement of countervailing duties and antidumping functions under section 303 and title VII of the Tariff Act of 1930 [19 U.S.C. 1303, 1671 et seq.];
(E) bilateral trade and commodity issues, including East-West trade matters; and
(F) international trade issues involving energy.
(4) All functions of the Trade Representative shall be conducted under the direction of the President.
(c) The Deputy Special Representatives for Trade Negotiations are redesignated Deputy United States Trade Representatives.

SEC. 2. DEPARTMENT OF COMMERCE

(a) The Secretary of Commerce (hereinafter referred to as the “Secretary”) shall have, in addition to any other functions assigned by law, general operational responsibility for major nonagricultural international trade functions of the United States Government, including export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and monitoring compliance with international trade agreements to which the United States is a party.
(b)(1) There shall be in the Department of Commerce (hereinafter referred to as the “Department”) a Deputy Secretary appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall receive compensation at the rate payable for Level II of the Executive Schedule [5 U.S.C. 5315], and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.
(c) There shall be in the Department an Under Secretary for International Trade appointed by the President, by and with the advice and consent of the Senate. The Under Secretary for International Trade shall receive compensation at the rate payable for Level III of the Executive Schedule [5 U.S.C. 5314], and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.
(d) There shall be in the Department two additional Assistant Secretaries appointed by the President, by and with the advice and consent of the Senate. Each such Assistant Secretary shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.
(e) There shall be in the Department of Commerce a Director General of the United States and Foreign Commercial Services who shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate prescribed by law for level IV of the Executive Schedule [5 U.S.C. 5315]. [As amended Pub. L. 97-195, § 1(c)(6), June 16, 1982, 96 Stat. 115; Pub. L. 97-377, title I, § 122, Dec. 21, 1982, 96 Stat. 1113.]

SEC. 3. EXPORT-IMPORT BANK OF THE UNITED STATES

The Trade Representative and the Secretary shall serve, ex officio and without vote, as additional members of the Board of Directors of the Export-Import Bank of the United States.

SEC. 4. OVERSEAS PRIVATE INVESTMENT CORPORATION

(a) The Trade Representative shall serve, ex officio, as an additional voting member of the Board of Directors of the Overseas Private Investment Corporation. The Trade Representative shall be the Vice Chair of such Board.
(b) There shall be an additional member of the Board of Directors of the Overseas Private Investment Corporation who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall not be an official or employee of the Government of the United States. Such Director shall be appointed for a term of no more than three years.

SEC. 5. TRANSFER OF FUNCTIONS

(a)(1) There are transferred to the Secretary all functions of the Secretary of the Treasury, the General Counsel of the Department of the Treasury, or the Department of the Treasury pursuant to the following:
(A) section 305(b) of the Trade Agreements Act of 1979 [19 U.S.C. 2515(b)], to be exercised in consultation with the Secretary of the Treasury;
(B) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);
(C) section 303 and title VII (including section 771(t) [19 U.S.C. 1677(t)] of the Tariff Act of 1930 [19 U.S.C. 1303, 1671 et seq.], except that the Customs Service of the Department of the Treasury shall accept such deposits, bonds, or other security as deemed appropriate by the Secretary, shall assess and collect such duties as may be directed by the Secretary, and shall furnish such of its important records or copies thereof as may be requested by the Secretary incident to the functions transferred by this subparagraph;
(D) sections 514, 515, and 516 of the Tariff Act of 1930 (19 U.S.C. 1514, 1515, and 1516) insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreement Act of 1979 [19 U.S.C. 1516a note];
(E) with respect to the functions transferred by subparagraph (C) of this paragraph, section 316 of the Tariff Act of 1930 (19 U.S.C. 1318), to be exercised in consultation with the Secretary of the Treasury;
(F) with respect to the functions transferred by subparagraph (C) of this paragraph, section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)), and, insofar as it provides authority to issue regulations and disseminate information, to be exercised in consultation with the Secretary of the Treasury to the extent that the Secretary of the Treasury has responsibility under subparagraph (C), section 502(a) of such Act (19 U.S.C. 1502a).
(G) with respect to the functions transferred by subparagraph (C) of this paragraph, section 617 of the Tariff Act of 1930 (19 U.S.C. 1617); and
(H) section 2332(e) of title 28 of the United States Code, insofar as it relates to actions taken by the Secretary reviewable under section 516A of the Tariff Act of 1930 (19 U.S.C. 1516(a)) [19 U.S.C. 1516a].
(2) The Secretary shall consult with the Trade Representative regularly in exercising the functions transferred by subparagraph (C) of paragraph (1) of this subsection, and shall consult with the Trade Representative regarding any substantive regulation proposed to be issued to enforce such functions.
(b)(1) There are transferred to the Secretary all trade promotion and commercial functions of the Secretary of State or the Department of State that are—
(A) performed in full-time overseas trade promotion and commercial positions; or
(B) performed in such countries as the President may from time to time prescribe.
(2) To carry out the functions transferred by paragraph (1) of this subsection, the President, to the extent he deems it necessary, may authorize the Secretary to utilize Foreign Service personnel authorities and to exercise the functions vested in the Secretary of State by the Foreign Service Act of 1946 (22 U.S.C. 801 et seq.) [see 22 U.S.C. 3901 et seq.] and by any other laws with respect to personnel performing such functions.
(c) There are transferred to the President all functions of the East-West Foreign Trade Board under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2411(c)).
(d) Appropriations available to the Department of State for Fiscal Year 1980 for representation of the United States concerning matters arising under the General Agreement on Tariffs and Trade and trade and investment commodity matters dealt with under the auspices of the United Nations Conference on Trade and Development are transferred to the Trade Representative.
(e) There are transferred to the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) all functions of the East-West Foreign Trade Board under section 411(a) and (b) of the Trade Act of 1974 (19 U.S.C. 2441(a) and (b)).

SEC. 6. ABOLITION

The East-West Foreign Trade Board established under section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is abolished.

SEC. 7. RESPONSIBILITY OF THE SECRETARY OF STATE

Nothing in this reorganization plan is intended to derogate from the responsibility of the Secretary of State for advising the President on foreign policy matters, including the foreign policy aspects of international trade and trade-related matters:

SEC. 8. INCIDENTAL TRANSFERS; INTERIM OFFICERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the appropriate agency, organization, or component at such time or times as such Director shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation originally was made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agency abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of the reorganization plan.

(b) Pending the assumption of office by the initial officers provided for in section 2 of this reorganization plan, the functions of each such office may be performed, for up to a total of 60 days, by such individuals as the President may designate. Any individual so designated shall be compensated at the rate provided herein for such position.

SEC. 9. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but not sooner than the earliest time allowable under section 906 of title 5 of the United States Code.

[Provided pursuant to Ex. Ord. 12175, Dec. 7, 1979, 44 F.R. 70705, section 2(b)(1) of this Reorg. Plan is effective Dec. 7, 1979]

[Provided pursuant to Ex. Ord. 12188, Jan. 2, 1980, 45 F.R. 989, sections 1, 2(a), (b)(2), (c), (d), 3, 4, 5(a), (b)(2), (c)–(e), 6–8 of this Reorg. Plan shall be effective Jan. 2, 1980, and section 5(b)(1) of this Reorg. Plan is effective Apr. 1, 1980].

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1979, to consolidate trade functions of the United States Government. I am acting under the authority vested in me by the Reorganization Act of 1977, chapter 9 of title 5 of the United States Code, and pursuant to section 1109 of the Trade Agreements Act of 1979 [19 U.S.C. 2111 note] which directs that I transmit to the Congress a proposal to restructure the international trade functions of the Executive branch.

The goal of this reorganization is to improve the capacity of the Government to strengthen the export performance of United States industry and to assure fair international trade practices, taking into account the interests of all elements of our economy.

Recent developments, which have raised concern about the vitality of our international trade performance, have focused much attention on the way our trade machinery is organized. These developments include our negative trade balance, increasing dependence upon foreign oil, and international pressures on the dollar. New challenges, such as implementation of the Multilateral Trade Negotiation (MTN) agreements and trade with non-market economies, will further test our Government trade organization.

We must be prepared to apply domestically the MTN codes on procurement, subsidies, standards, and customs valuation. We also must monitor major implementation measures abroad, reporting back to American business on important developments and, where necessary, raising questions internationally about foreign implementation. MTN will work—will open new markets for U.S. labor, farmers, and business—only if we have adequate procedures for aggressively monitoring and enforcing it. We intend to meet our obligations, and we expect others to do the same.

The trade machinery we now have cannot do this job effectively. Although the Special Trade Representative (STR) takes the lead role in administering the trade agreements program, many issues are handled elsewhere and no agency has across-the-board leadership in trade. Aside from the Trade Representative and the Export-Import Bank, trade is not the primary concern of any Executive branch agency where trade functions are located. The current arrangements lack a central authority capable of planning a coherent trade strategy and assuring its vigorous implementation.

This reorganization is designed to correct such deficiencies and to prepare us for strong enforcement of the MTN codes. It aims to improve our export promotion and activities so that United States exporters can take full advantage of trade opportunities in foreign markets. It provides for the timely and efficient administration of our unfair trade laws. It also establishes an efficient mechanism for shaping an effective, comprehensive United States trade policy.

To achieve these objectives, I propose to place policy coordination and negotiation—those international trade functions that most require comprehensiveness, influence, and Government-wide perspective—in the Executive Office of the President. I propose to place operational and implementation responsibilities, which are staff-intensive, in line departments that have the requisite resources and knowledge of the major sectors of our economy to handle them. I have concluded that building our trade structure on STR and Commerce, respectively, best satisfies these considerations.

I propose to enhance STR, to be renamed the Office of the United States Trade Representative, by centralizing in it international trade policy development, coordination, and negotiation functions. The Department will become the focus of non-agricultural operational trade responsibilities by adding to its existing duties those for commercial representation abroad, antidumping and countervailing duty cases, the non-agricultural aspects of MTN implementation, national security investigations, and embargoes.

THE UNITED STATES TRADE REPRESENTATIVE

The Trade Representative, with the advice of the Trade Policy Committee, will be responsible for developing and coordinating our international trade and direct investment policy, including the following areas:

Import remedies.—The Trade Representative will exercise policy oversight of the application of import remedies, analyze long-term trends in import remedy cases and recommend any necessary legislative changes. For antidumping and countervailing duty matters, such coordination, to the extent legally permissible, will be directed toward the establishment of new precedents, negotiation of assurances, and coordination with other trade matters, rather than case-by-case fact finding and determinations.

East-West trade policy.—The Trade Representative will have lead responsibility for East-West trade negotiations and will coordinate East-West trade policy. The Trade Policy Committee will assure the responsibilities of the East-West Foreign Trade Board.

International investment policy.—The Trade Representative will have the policy lead regarding issues of di-
rect foreign investment in the United States, direct investment by Americans abroad, operations of multinational enterprises, and multilateral agreements on international investment, insofar as such issues relate to international trade.

International commodity policy.—The Trade Representative will assume responsibility for commodity negotiations and also will coordinate his responsibilities in the area of international commodity policy.

Energy trade.—While the Departments of Energy and State will continue to share responsibility for international energy issues, the Trade Representative will coordinate energy trade matters. The Department of Energy will become a member of the TPC.

Export-expansion policy.—To ensure a vigorous and coordinated Government-wide export expansion effort, policy oversight of our export expansion activities will be the responsibility of the Trade Representative.

The Trade Representative will have the lead role in bilateral and multilateral trade, commodity, and direct investment negotiations. The Trade Representative will represent the United States in General Agreement on Tariffs and Trade (GATT) matters. Since the GATT will be the principal international forum for implementing and interpreting the MTN agreements and since GATT meetings, including committee and working group meetings, occur almost continuously, the Trade Representative will have a limited number of permanent staff in Geneva. In some cases, it may be necessary to assign a small number of USTR staff abroad to assist in oversight of MTN enforcement. In their functions, the responsibilities of the Secretary of State regarding our foreign policy, the activities of overseas personnel of the Trade Representative and the Commerce Department will be fully coordinated with other elements of our diplomatic missions.

In addition to his role with regard to GATT matters, the Trade Representative will have the lead responsibility for trade and commodity matters considered in the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) when such matters are the primary issues under negotiation. Because of the Secretary of State’s foreign policy responsibilities, and the responsibilities of the Director of the International Development Cooperation Agency as the President’s principal advisor on development, the Trade Representative will exercise his OECD and UNCTAD responsibilities in close cooperation with these officials.

To ensure that all trade negotiations are handled consistently and that our negotiating leverage is employed to the maximum, the Trade Representative will manage the negotiation of particular issues. Where appropriate, the Trade Representative may delegate responsibility for negotiations to other agencies with expertise on the issues under consideration. He will coordinate the operational aspects of negotiations through a Trade Negotiating Committee, chaired by the Trade Representative and including the Departments of Commerce, State, Treasury, Agriculture, and Labor.

The Trade Representative will be concerned not only with ongoing negotiations and coordination of specific, immediate issues, but also—very importantly—with the development of long-term United States trade strategies and policies. He will oversee implementation of the MTN agreements, and will advise the President on the effects of other Government policies (e.g., antitrust, taxation) on U.S. trade. In order to participate more fully in international investment and export financing activities, the Trade Representative will become a member of the National Advisory Council on International Monetary and Financial Policies and the Boards of the Export-Import Bank and the Overseas Private Investment Corporation.

In performing these functions, the Trade Representative will exercise his OECD and UNCTAD responsibilities in close cooperation with these officials.

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In performing these functions, the Trade Representative will act as the principal trade spokesman of the President. To assure that our trade policies take into account the broadest range of perspectives, the Trade Representative will consult with the Trade Policy Committee, whose mandate and membership will be expanded. The Trade Representative will, as appropriate, invite agencies such as the Export-Import Bank and the Overseas Private Investment Corporation to participate in TPC meetings in addition to the permanent TPC members. When different departmental views on trade matters exist within the TPC as will be the case on a complex policy area, I do not expect the Trade Representative to resolve policy disagreements in his best judgment, subject to appeal to the President.

THE DEPARTMENT OF COMMERCE

The Department of Commerce, under this proposal, will become the focal point of operational responsibilities in the non-agricultural trade area. My reorganization plan will transfer to the Commerce Department important responsibilities for administration of countervailing and antidumping matters, foreign commercial representation, and MTN implementation support. Consolidating these trade functions in the Department of Commerce builds upon an agency with extensive trade experience. The Department will retain its operational responsibilities in such areas as export controls, East-West trade, trade adjustment assistance to firms and communities, trade policy analysis, and monitoring foreign compliance with trade agreements. The Department will be substantially reorganized to consolidate and reshape its trade functions under an Under Secretary for International Trade.

With this reorganization, trade functions will be strengthened within the Department of Commerce, and much related efforts in the Department of State for the promotion of industrial innovation and the productivity, encouraging local and regional economic development, and sectoral analysis, will be closely linked to an aggressive trade program. Fostering the international competitiveness of American industry will become the principal mission of the Department of Commerce.

Import remedies

I propose to transfer to the Department of Commerce responsibility for administration of the countervailing duty and antidumping statutes. This function will be performed efficiently and effectively in an organizational setting where trade is the primary mission. This activity will be directed by a new Assistant Secretary for Trade Administration, subject to Senate confirmation. Although the plan permits its provisions to take effect as late as October 1, 1980, I intend to make this transfer effective by January 1, 1980, so that it will occur as the new MTN codes take effect. Commerce will continue its supportive role in the staffing of other unfair trade practice issues, such as cases arising under section 301 of the Trade Act of 1974 (19 U.S.C. 2411).

Commercial representation

This reorganization plan will transfer to the Department of Commerce responsibility for commercial representation abroad. This transfer would place domestic and overseas export promotion activities under a single organization, directed by an Assistant Secretary for Export Development, charged with aggressively expanding U.S. export opportunities. Placing this Foreign Commercial Service in the Commerce Department will allow commercial officers to concentrate on the promotion of U.S. exports as their principal activity.

Initially, the transfer of commercial representation from State to Commerce will involve all full-time overseas trade promotion and commercial positions (approximately 162), responsibility for this function in the countries (approximately 60) to which these individuals are assigned, and the associated foreign national employees in those countries. Over time, the Department of Commerce undoubtedly will review the deployment of commercial officers in light of changing trade circumstances and propose extensions or alterations of coverage of the Foreign Commercial Service.

MTN implementation

I am dedicated to the aggressive implementation of the Multilateral Trade Agreements. The United States
must seize the opportunities and enforce the obligations created by these agreements. Under this proposal, the Department of Commerce will assign high priority to the task. The Department will be responsible for the day-to-day implementation of non-agricultural aspects of the MTN agreements. Management of this function will be a principal assignment of an Assistant Secretary for Trade Policy and Programs. Implementation activities will include:

- monitoring agreements and targeting problems for consultation and negotiation;
- operating a Trade Complaint Center where the private sector can receive advice as to the recourse and remedies available;
- aiding in the settlement of disputes, including drafting of formal complaint cases;
- identifying problem areas for consideration by the Trade Representative and the Trade Policy Committee;
- educational and promotion programs regarding the provisions of the agreements and the processes for dealing with problems that arise;
- providing American business with basic information on foreign laws, regulations and procedures;
- consultations with private sector advisory committees; and
- general analytical support.

These responsibilities will be handled by a unit built around the staff from Commerce that provided essential analytical support to STR throughout the MTN negotiation process. Building implementers of MTN around this core group will assure that the government's institutional memory and expertise on MTN is most effectively devoted to the challenge ahead. When American business needs information or encounters problems in the MTN area, it can turn to the Department of Commerce for knowledgeable assistance.

Matching the increased importance of trade in the Department's mission will be a much strengthened trade organization within the Department. By creating a comprehensive service industry representation in our international trade operations, we will ensure that trade policy implementation will increase significantly our ability to implement the MTN agreements efficiently and effectively and will improve greatly the services of the government with regard to our industrial development. These improvements will be achieved with no increase in personnel or expenditures, except for an annual expense of about $300,000 for the salaries and clerical support of the three additional senior Commerce Department officials and a non-recurring expense of approximately $600,000 in connection with the transfers of functions provided in the plan. I find that the reorganization made by this plan makes necessary the provisions for the appointment and pay of a Deputy Secretary, an Under Secretary for International Trade, and two additional Assistant Secretaries of the Department of Commerce, and additional members of the Boards of Directors of the Export-Import Bank and the Overseas Private Investment Corporation.

It is indeed appropriate that this proposal follows so soon after the overwhelming approval by the Congress of the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.), for it will sharpen and unify trade policy direction, improve the efficiency of trade law enforcement, and enable us to negotiate abroad from a position of strength. The extensive discussions between Administration officials and the Congress on this plan have been a model of the kind of cooperation that can exist between the two branches. I look forward to our further cooperation in successfully implementing both this reorganization proposal and the MTN agreements.

JIMMY CARTER.


EXECUTIVE ORDER No. 11143

EXECUTIVE ORDER No. 11425
Ex. Ord. No. 11425, Aug. 30, 1968, 33 F.R. 12663, formerly set out under section 1871 of this title, which directed the Special Representative for Trade Negotiations (established by Ex. Ord. No. 11075, Jan. 15, 1963, 28 F.R. 473) to conduct a long range study of United States foreign trade policy and to consider the views of Congress, the Public Advisory Committee on Trade Policy, and other federal agencies; established the Public Advisory Committee on Trade Policy for purposes of this study; and abolished the Public Advisory Committee for Trade Negotiations; was omitted in view of the revocation of Ex. Ord. No. 11075 by Ex. Ord. No. 11846, Mar. 27, 1975, 40 F.R. 14291, set out under section 2111 of this title, and in view of the abolition of the Office of Special Representative for Trade Negotiations (as established under Ex. Ord. No. 11075) by section 2112(g) of this title.

EX. ORD. No. 12175. EFFECTIVE DATE OF SECTION 2(b)(1) OF REORGANIZATION PLAN NO. 3 OF 1979 RESPECTING REORGANIZATION OF FUNCTIONS RELATING TO INTERNATIONAL TRADE
Ex. Ord. No. 12175, Dec. 7, 1979, 44 F.R. 70703, provided: By the authority vested in me as President of the United States of America by Section 9 of Reorganization Plan No. 3 of 1979 (transmitted to the Congress on September 29, 1979) [set out as a note above], the time period prescribed by Section 906 of Title 5 of the United States Code having elapsed without the adoption of a resolution of disapproval by either House of Congress, it is hereby ordered that Section 2(b)(1) of that Plan, establishing the Office of Deputy Secretary of Commerce, is effective immediately.

JIMMY CARTER.
tions'' includes discussions and meetings with foreign representatives from such negotiations. Members of the Trade Negotiating Committee and representatives of other departments or agencies as may be appropriate to participate in the negotiations and other activities set forth in subsection (a).

The function vested in the President by section 412(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2542(b)) is delegated to the Secretary of Commerce with regard to the technical office established under section 412(a)(2) of such Act [19 U.S.C. 2542(a)(2)]. In prescribing the functions of each technical office, the Secretary concerned shall consult with the Trade Representative and with all affected regulatory agencies. The functions delegated by this section shall be exercised in coordination with the Trade Representative.

The Secretary of Commerce (hereinafter referred to as the “Secretary") is authorized to establish a Foreign Commercial Service in the Department of Commerce, and a category of career officers of the Foreign Commercial Service to be known as Foreign Commercial Officers. For purposes of the utilization by the Secretary of the authorities granted to the Secretary under this section, the terms “Foreign Service” and “Foreign Service Officer” shall be construed to mean “Foreign Commercial Service” and “Foreign Commercial Officer,” respectively.

The Board of the Foreign Service and the Board of Examiners for the Foreign Service established by Executive Order 11264 of December 31, 1965, shall exercise with respect to Foreign Service personnel of the Department of Commerce the
functions delegated to them by that order with respect to Foreign Service personnel of the Department of State. The Boards shall perform such additional functions with respect to Foreign Service personnel of the Department of Commerce as the Secretary may from time to time delegate or otherwise assign, consistent with the functions of such boards.

§ 1-196. Prior Executive Orders and Determination.

(a) Section 1(b) of Executive Order 11269 of February 14, 1966, as amended [22 U.S.C. 2680 note], is amended by adding “the United States Trade Representative,” after “the Secretary of State,”

(b)(1) Section 1 of Executive Order 11539 of June 30, 1970 [7 U.S.C. 1854 note], is amended to read as follows:

“Section 1. The United States Trade Representative, with the concurrence of the Secretary of Agriculture and the Secretary of State, is authorized to negotiate bilateral agreements with representatives of governments of foreign countries limiting the export from the respective countries and the importation into the United States of—

“(1) fresh, chilled, or frozen cattle meat,

“(2) fresh, chilled, or frozen meat of goats and sheep (except lambs), and

“(3) prepared and preserved beef and veal (except sausage) if articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved, that are the products of such countries.”.

(2) Section 4 of such order is amended by striking out “the Secretary of State” and inserting in lieu thereof “the United States Trade Representative”.

(c) The last sentence of section 1(a) of Executive Order 11651 of March 3, 1972, as amended [7 U.S.C. 1854 note] is amended to read as follows: “The United States Trade Representative, or his designee, also shall be a member of the Committee.”.

(d) The first sentence of section 3 of Executive Order 11765 of February 7, 1973 [19 U.S.C. 1862 note], is amended to read as follows: “The Oil Policy Committee shall henceforth consist of the United States Trade Representative, chair, and the Secretaries of State, Treasury, Defense, the Interior, Commerce and Energy, the Attorney General, and the Chairman of the Council of Economic Advisers, as members.”.

(e) Sections 2(b) and 3(a), the first sentence of section 3(b), and sections 3(e), 3(f), and 6 of Executive Order 11846 of March 27, 1975, as amended [19 U.S.C. 2111 note], are revoked.

(f)(1) Section 1(a)(8) of Executive Order 11858 of May 7, 1975 [50 U.S.C. App. 2170 note], is amended to read: “(5) The United States Trade Representative”.

(2) Section 1(a)(6) of such order is amended to read: “(6) The Chairman of the Council of Economic Advisers”.

(g) Executive Order 12096 of November 2, 1978, is revoked.

(h) The last paragraph of the Presidential Determination Regarding the Acceptance and Application of Certain International Trade Agreements (dated December 14, 1979) (44 FR 74781, at 74784; December 18, 1979) [19 U.S.C. 2503 note], delegating functions under section 2(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2503(b)) and section 701(b) of the Tariff Act of 1930 (19 U.S.C. 1671b), is revoked.

(i) Any reference to the Office of the Special Representative for Trade Negotiations or to the Special Representative for Trade Negotiations in any Executive order, proclamation, or other document shall be deemed to refer to the Office of the United States Trade Representative or to the United States Trade Representative, respectively.

§ 1-196. Incidental Transfers and Reassignments.

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions transferred or reassigned by the provisions of this order as the Director of the Office of Management and Budget shall determine shall be transferred or reassigned for use in connection with such functions.

§ 1-107. Effective Dates.

(a) Sections 1, 2(a), 2(b)(2), 2(c), 2(d), 3, 4, 5(a), 5(b)(2), 5(c) through (e), and 6 through 8 of Reorganization Plan No. 3 of 1979 [set out as a note above] and the provisions of this order, shall take effect as of January 2, 1980.

(b) Section 5(b)(1) of such plan [set out as a note above] shall take effect as of April 1, 1980.

PART 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

§ 2191. 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 2192 and 2193 of this title 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) of this section, implementing revenue bills described in subsection (b)(2) of this section, approval resolutions described in subsection (b)(3) of this section, and resolutions described in sections 2192(a) and 2193(a) of this title; 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) of this section with respect to one or more trade agreements, or with respect to an extension described in section 3572(c)(5) of this title, submitted to the House of Representatives and the Senate under section 2112 of this title, section 3572 of this title, or section 3805(a)(1) of this title and which contains—

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

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

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

(2) The term “implementing revenue bill or resolution” means an implementing bill, or approval resolution, which contains one or more revenue measures by reason of which it must originate in the House of Representatives.
(3) The term “approval resolution” means only a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: “That the Congress approves the extension of nondiscriminatory treatment with respect to the products of ______ transmitted by the President to the Congress on ______,” the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) Period for committee and floor consideration

(1) Except as provided in paragraph (2), if the committee or committees of either House to which an implementing bill or approval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill or resolution and it shall be placed on the appropriate calendar. A vote on final passage of the bill or resolution shall be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees of either House to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution. If prior to the passage by one House of an implementing bill or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House, then—
(A) the procedure in that House shall be the same as if no implementing bill or approval resolution had been received from the other House, but
(B) the vote on final passage shall be on the implementing bill or approval resolution of the other House.

(2) The provisions of paragraph (1) shall not apply in the Senate to an implementing revenue bill or resolution. An implementing revenue bill or resolution received from the House shall be referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill or resolution at the close of the 45th day after its receipt by the Senate or, if later, before the close of the 45th day after the corresponding implementing revenue bill or resolution was introduced in the Senate, such committee or committees shall be automatically discharged from further consideration of such bill or resolution and it shall be placed on the calendar. A vote on final passage of such bill or resolution shall be taken in the Senate on or before the close of the 15th day after such bill or resolution is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill or resolution.

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

(f) Floor consideration in the House

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

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

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

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

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

(g) Floor consideration in the Senate

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

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

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

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

§ 2192. Resolutions disapproving certain actions

(a) Contents of resolutions

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

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

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

(2) The first blank space referred to in paragraph (1)(B) shall be filled, in the case of a resolution referred to in section 237(b)(2) of this title, with the phrase “the report of the President submitted under section ______ of the Trade Act of 1974 with respect to ______” (with the first blank space being filled with “402(b)” or...
by which a resolution is agreed to or disagreed to.

(b) Reference to committees

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

(c) Discharge of committees

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 2194(b) of this title, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except that a motion to discharge—

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

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

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

(d) Floor consideration in the House

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

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

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

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

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

(e) Floor consideration in the Senate

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

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

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

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

(f) Procedures in the Senate

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

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

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

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

(2) If the texts of joint resolutions described in this section or section 2193(a) of this title, whichever is applicable, concerning any matter are not identical—

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

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

(3) Consideration in the Senate of any veto message with respect to a joint resolution described in subsection (a)(2)(B) of this section or section 2193(a) of this title, including consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.


REFERENCES IN TEXT


Sections 402(b) and 409(b) of the Trade Act of 1974, referred to in subsec. (a)(2)(C), are sections 402(b) and 409(b) of Pub. L. 93–618, title IV, Jan. 3, 1975, 88 Stat. 2060, 2064, respectively, which are classified to sections 2432 and 2439 of this title, respectively.

AMENDMENTS


1994—Subsec. (a)(2). Pub. L. 104–295, substituted comma for “as follows:” after “shall be filled” in introductory provisions, struck out “(B)” before “in the case”, and struck out subpar. (A) which read as follows: “in the case of a resolution referred to in section 1303(e) of this title, with the phrase the extension of nondiscriminatory treatment with respect to the products of” replaced with “with respect to the products of”.

1990—Subsec. (a)(1)(B). Pub. L. 101–382, §132(c)(2), substituted first for second” for “second)” in introductory provisions and “2437(c)(2)” for “2437(c)(3)” in subpar. (C), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “in the case of a resolution referred to in section 2437(c)(2) of this title, with the phrase the extension of nondiscriminatory treatment with respect to the products of” and “(with this blank space being filled with the name of the country involved)”.

Subsec. (c)(1). Pub. L. 101–382, §132(c)(4), substituted “except that a motion to discharge—” and “(A) may only be made on the second legislative day after the calendar day on which the Member making the motion announces to the House his intention to do so; and

“(B) is not in order after the Committee has reported a resolution with respect to the same matter” for “except no motion to discharge shall be in order after the committee has reported a resolution with respect to the same matter”.

Subsec. (f). Pub. L. 101–382, §132(c)(5), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “In the case of a resolution described in sub-section (a)(1) of this section, if prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

“(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

“(2) the vote on final passage shall be on the resolution of the other House.”


1979—Subsec. (a)(1)(A). Pub. L. 96–39, §902(a)(1)(A), substituted “does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on . . . the blank space being filled with the appropriate date” for “does not approve transmitted to the Congress on . . . the blank space being filled in accordance with paragraph (2) and the second blank space being filled with the appropriate date”.


Subsec. (a)(2). Pub. L. 96–39, §902(a)(1)(C), (D), redesignated par. (3) as (2). Former par. (2), relating to the first blank space referred to in subsec. (a)(1)(A), was struck out.

Subsec. (c)(1). Pub. L. 96–39, §1106(c)(5), substituted “section 2194(b) of this title” for “section 2190(b) of this title.”

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 132(c)(4) and (5) of Pub. L. 101–382 applicable with respect to recommendations made under section 2432(d) of this title by the President after May 23, 1990, see section 132(d) of Pub. L. 101–382, set out as a note under section 2432 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see sections 903 and 1114 of Pub. L. 96–39, set out as Effective Date notes under sections 2411 and 2581 of this title, respectively.
§ 2193. Resolutions relating to extension of waiver authority under section 402 of the Trade Act of 1974

(a) Contents of resolution

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

(b) Application of rules of section 2192 of this title; exceptions

(1) Except as provided in this section, the provisions of section 2192 of this title shall apply to resolutions described in subsection (a) of this section.

(2) In applying section 2192(d)(1) of this title, all calendar days shall be counted.

(3) That part of section 2192(d)(2) of this title which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. Debate in the House of Representatives on any amendment to a resolution shall be limited to not more than 1 hour, to be equally divided between those favoring and those opposing the amendment. A motion in the House to further limit debate on an amendment to a resolution is not debatable.

(4) That part of section 2192(e)(4) of this title which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. The time limit on a debate on a resolution in the Senate under section 2192(e)(2) of this title shall include all amendments to a resolution. Debate in the Senate on any amendment to a resolution shall be limited to not more than 1 hour which shall be equally divided between those favoring and those opposing the amendment. The time in opposition thereto shall be controlled by, the mover and the manager of the conference report.

(c) Consideration of second resolution not in order

It shall not be in order in either the House of Representatives or the Senate to consider a resolution with respect to a recommendation of the President under section 2432(d) of this title (other than a resolution described in subsection (a) of this section received from the other House), if that House has adopted a resolution with respect to the same recommendation.

(d) Procedures relating to conference reports in the Senate

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

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


REFERENCES IN TEXT

Section 402 of the Trade Act of 1974, referred to in catchline and subsec. (a), is classified to section 2432 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–382, §132(a)(3), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "For purposes of this section, the term 'resolution' means only—

''(1) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: 'That the Congress does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on ___ with respect to ___,', with the first blank space being filled with the appropriate date, and the second blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the clause beginning with 'with respect to' being omitted if the extension of the authority is not approved with respect to any country; and

''(2) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: 'That the ___ does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on ___ with respect to ___,', with the first blank space being filled with the name of the resolution House, the second blank space being filled with the appropriate date, and the third blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the with-respect-to clause being omitted if the extension of the authority is not approved with respect to any country,''.

Subsec. (b). Pub. L. 101–382, §132(a)(4), in par. (2), struck out provisions substituting 20 days for 30 days in resolution related to section 2432(d)(4) of this title, and in pars. (3) and (4), struck out provisions relating to ex-
cept clause in resolutions under subsec. (a)(1) and provisions identifying with-respect-to clause as relating to resolutions under subsec. (a)(2).

Subsec. (c). Pub. L. 101–382, §132(a)(5), substituted ‘‘subsection (a)’’ for ‘‘subsection (a)(1)’’.


**Effective Date of 1990 Amendment**
Amendment by Pub. L. 101–382 applicable with respect to recommendations made under section 2412(d) of this title by the President after May 23, 1990, see section 153(d) of Pub. L. 101–382, set out as a note under section 2412 of this title.

**§ 2194. Special rules relating to Congressional procedures**

(a) **Delivery of documents to both Houses**

Whenever, pursuant to section 2112(e), 2253(b), 2432(d), or 2437(a) or (b), a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) **Computation of 90-day period**

For purposes of sections 2253(c) and 2437(c)(2) of this title, the 90-day period referred to in such sections shall be computed by excluding—

1. the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

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


**Amendments**

1999—Subsec. (b). Pub. L. 106–36 substituted “For purposes of sections 2253(c) and 2437(c)(2) of this title, the 90-day period” for “For purposes of sections 2253(c), and 2437(c)(2) of this title, the 90-day period” in introductory provisions.


1990—Subsec. (b). Pub. L. 101–382, which directed the substitution of “and 2437(c)(2)” for “2437(c)(2) and 2437(c)(3)”’, was executed by making the substitution of “subsection (a)” for “subsection (a)(1)”.


Subsec. (b). Pub. L. 96–39 struck out reference to section 2412(b) of this title.

**Effective Date of 1994 Amendment**

**Effective Date of 1979 Amendment**
Amendment by Pub. L. 96–39 effective July 26, 1979, see section 903 of Pub. L. 96–39, set out as an Effective Date note under section 2411 of this title.

**PART 6—CONGRESSIONAL LIAISON AND REPORTS**

**§ 2211. Congressional advisers for trade policy and negotiations**

(a) **Selection**

(1) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, who shall be designated congressional advisers on trade policy and negotiations. They shall provide advice on the development of trade policy and priorities for the implementation thereof. They shall also be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements.

(2)(A) In addition to the advisers designated under paragraph (1) from the Committee on Ways and Means and the Committee on Finance—

(i) the Speaker of the House may select additional members of the House, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the House or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations; and

(ii) the President pro tempore of the Senate may select additional members of the Senate, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the Senate or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations.

Members of the House and Senate selected as congressional advisers under this subparagraph shall be accredited by the United States Trade Representative.

(B) Before designating any member under subparagraph (A), the Speaker or the President pro tempore shall consult with—

(i) the chairman and ranking member of the Committee on Ways and Means or the Committee on Finance, as appropriate; and

(ii) the chairman and ranking minority member of the committee from which the member will be selected.

(C) Not more than 3 members (not more than 2 of whom are members of the same political party) may be selected under this paragraph as advisers from any committee of Congress.

(b) **Briefing**

(1) The United States Trade Representative shall keep each official adviser designated under subsection (a)(1) of this section currently informed on matters affecting the trade policy of the United States and, with respect to possible
agreements, negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

(2) The United States Trade Representative shall keep each official adviser designated under subsection (a)(2) of this section currently informed regarding the trade policy matters and negotiations with respect to which the adviser is designated.

(3)(A) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisers under subsection (a)(2) of this section) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

(B) The Chairman\(^1\) of any committee of the House or Senate or any joint committee of Congress from which official advisers are selected under subsection (a)(2) of this section may designate other members of such committee, and staff members of such committee, who shall have access to the information provided to official advisers under paragraph (2).

(c) Committee consultation

The United States Trade Representative shall consult on a continuing basis with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the other appropriate committees of the House and Senate on the development, implementation, and administration of overall trade policy of the United States. Such consultations shall include, but are not limited to, the following elements of such policy:

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

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

(3) The actions taken, and proposed to be taken, under the trade laws of the United States and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives.

(4) The important developments and issues in other areas of trade for which there must be developed proper policy response.

When necessary, meetings shall be held with each Committee\(^1\) in executive session to review matters under negotiation.


**AMENDMENTS**

1988—Pub. L. 100–647 substituted “Committee on” for “Chairman of the Committee on” in a prior section, substituted “Chairman” for “Chairman of the Committee on” in a prior section, amended section generally, substituting present provisions for similar provisions which had related to Congressional delegates to negotiations, and changing the structure of the section from one consisting of subsecs. (a) and (b) to one consisting of subsecs. (a) to (c).

1979—Subsec. (b)(1). Pub. L. 96–39 substituted “trade agreement or any requirement of, amendment to, or recommendation under, such agreement” for “trade agreement”.

**§ 2212. Transmission of agreements to Congress**

(a) Submission of copy and reasons

As soon as practicable after a trade agreement entered into under section 2123 or 2124 of this title or under section 3803 of this title 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 2151(b) of this title, if any, and of other relevant considerations, of his reasons for entering into the agreement.

(b) Submission to each member

The President shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a) of this section. For purposes of this subsection, the term “Member” includes any Delegate or Resident Commissioner.


**AMENDMENTS**

2002—Subsec. (a). Pub. L. 107–210 substituted “or under section 3803 of this title” for “or under section 2902 of this title”.

1988—Subsec. (a). Pub. L. 100–647 struck out “part 1 of this subchapter or” after “entered into under”, and inserted “or under section 2902 of this title” after “2134 of this title”.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

**DELEGATION OF AUTHORITY**


**§ 2213. Reports**

(a) Annual report on trade agreements program and national trade policy agenda

(1) The President shall submit to the Congress during each calendar year (but not later than March 1 of that year) a report on—

(A) the operation of the trade agreements program, and the provision of import relief and adjustment assistance to workers and firms, under this chapter during the preceding calendar year; and

(B) the national trade policy agenda for the year in which the report is submitted.

(2) The report shall include, with respect to the matters referred to in paragraph (1)(A), information regarding—

\(^1\)So in original. Probably should not be capitalized.
§ 2213

(A) new trade negotiations;
(B) changes made in duties and nontariff barriers and other distortions of trade of the United States;
(C) reciprocal concessions obtained;
(D) changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor);
(E) the extension or withdrawal of nondiscriminatory treatment by the United States with respect to the products of foreign countries;
(F) the extension, modification, withdrawal, suspension, or limitation of preferential treatment to exports of developing countries;
(G) the results of actions to obtain the removal of foreign trade restrictions (including discriminatory restrictions) against United States exports and the removal of foreign practices which discriminate against United States service industries (including transportation and tourism) and investment;
(H) the measures being taken to seek the removal of other significant foreign import restrictions;
(I) each of the referrals made under section 2171(d)(1)(B) of this title and any action taken with respect to such referral;
(J) other information relating to the trade agreements program and to the agreements entered into thereunder; and
(K) the number of applications filed for adjustment assistance for workers and firms, the number of such applications which were approved, and the extent to which adjustment assistance has been provided under such approved applications.

(3)(A) The national trade policy agenda required under paragraph (1)(B) for the year in which a report is submitted shall be in the form of a statement of—
(i) the trade policy objectives and priorities of the United States for the year, and the reasons therefor;
(ii) the actions proposed, or anticipated, to be undertaken during the year to achieve such objectives and priorities, including, but not limited to, actions authorized under the trade laws and negotiations with foreign countries;
(iii) any proposed legislation necessary or appropriate to achieve any of such objectives or priorities; and
(iv) the progress that was made during the preceding year in achieving the trade policy objectives and priorities included in the statement provided for that year under this paragraph.

(B) The President may separately submit any information referred to in subparagraph (A) to the Congress in confidence if the President considers confidentiality appropriate.

(C) Before submitting the national trade policy agenda for any year, the President shall seek advice from the appropriate advisory committees established under section 2155 of this title and shall consult with the appropriate committees of the Congress.

(D) The United States Trade Representative (hereafter referred to in this section as the “Trade Representative”) and other appropriate officials of the United States Government shall consult periodically with the appropriate committees of the Congress regarding the annual objectives and priorities set forth in each national trade policy agenda with respect to—
(i) the status and results of the actions that have been undertaken to achieve the objectives and priorities; and
(ii) any development which may require, or result in, changes to any of such objectives or priorities.

(b) Annual trade projection report

(1) In order for the Congress to be informed of the impact of foreign trade barriers and macroeconomic factors on the balance of trade of the United States, the Trade Representative and the Secretary of the Treasury shall jointly prepare and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter referred to in this subsection as the “Committees”) on or before March 1 of each year a report which consists of—
(A) a review and analysis of—
(i) the merchandise balance of trade,
(ii) the goods and services balance of trade,
(iii) the balance on the current account,
(iv) the external debt position,
(v) the exchange rates,
(vi) the economic growth rates,
(vii) the deficit or surplus in the fiscal budget, and
(viii) the impact on United States trade of market barriers and other unfair practices, of countries that are major trading partners of the United States, including, as appropriate, groupings of such countries;
(B) projections for each of the economic factors described in subparagraph (A) (except those described in clauses (v) and (viii)) for each of the countries and groups of countries referred to in subparagraph (A) for the year in which the report is submitted and for the succeeding year; and
(C) conclusions and recommendations, based upon the projections referred to in subparagraph (B), for policy changes, including trade policy, exchange rate policy, fiscal policy, and other policies that should be implemented to improve the outlook.

(2) To the extent that subjects referred to in paragraph (1)(A), (B), or (C) are covered in the national trade policy agenda section of this chapter or other reports required by this chapter or other law, the Trade Representative and the Secretary of the Treasury may, as appropriate, draw on the information, analysis, and conclusions, if any, in those reports for the purposes of preparing the report required by this subsection.

(3) The Trade Representative and the Secretary of the Treasury shall consult with the Chairman of the Board of Governors of the Federal Reserve System in the preparation of each report required under this subsection.

(4) The Trade Representative and the Secretary of the Treasury may separately submit any information, analysis, or conclusion re-
ferred to in paragraph (1) to the Committees in confidence if the Trade Representative and the Secretary consider confidentiality appropriate.

(5) After submission of each report required under paragraph (1), the Trade Representative and the Secretary of the Treasury shall consult with each of the Committees with respect to the report.

(c) ITC reports

The United States International Trade Commission shall submit to the Congress, at least once a year, a factual report on the operation of the trade agreements program.

(Pub. L. 93–618, title I, § 163, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A) and (b), was in the original "this Act", meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

AMENDMENTS

1988—Pub. L. 100–418 amended section generally, completely revising and expanding provisions covering reports, changing the structure of the section from one consisting of subsecs. (a) and (b) to one consisting of subsecs. (a) to (c).

DELEGATION OF FUNCTIONS

Memorandum of President of the United States, Mar. 1, 2004, 69 F.R. 10123, provided:

Memorandum for the United States Trade Representative By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2215), to provide the specified report to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

TRADE DEFICIT REVIEW COMMISSION


"(a) SHORT TITLE.—This section may be cited as the 'Trade Deficit Review Commission Act'.

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

"(1) The United States continues to run substantial merchandise trade and current account deficits.

"(2) Economic forecasts anticipate continued growth in such deficits in the next few years.

"(3) The positive net international asset position that the United States built up over many years was eliminated in the 1980s. The United States today has become the world's largest debtor nation.

"(4) The United States merchandise trade deficit is characterized by large bilateral trade imbalances with a handful of countries.

"(5) The United States has one of the most open borders and economies in the world. The United States faces significant tariff and nontariff trade barriers with its trading partners. The United States does not benefit from fully reciprocal market access.

"(6) The United States is once again at a critical juncture in trade policy development. The nature of the United States trade deficit and its causes and consequences must be analyzed and documented.

"(c) ESTABLISHMENT OF COMMISSION.—

"(1) ESTABLISHMENT.—There is established a commission to be known as the 'Trade Deficit Review Commission' (hereinafter in this section referred to as the 'Commission').

"(2) PURPOSE.—The purpose of the Commission is to study the nature, causes, and consequences of the United States merchandise trade and current account deficits.

"(3) MEMBERSHIP OF COMMISSION.—

"(A) COMPOSITION.—The Commission shall be composed of 12 members as follows:

"(i) Three persons shall be appointed by the President pro tempore of the Senate upon the recommendation of the Majority Leader of the Senate, after consultation with the Chairman of the Committee on Finance.

"(ii) Three persons shall be appointed by the President pro tempore of the Senate upon the recommendation of the Minority Leader of the Senate, after consultation with the ranking minority member of the Committee on Finance.

"(iii) Three persons shall be appointed by the Speaker of the House of Representatives, after consultation with the Chairman of the Committee on Ways and Means.

"(iv) Three persons shall be appointed by the Minority Leader of the House of Representatives, after consultation with the ranking minority member of the Committee on Ways and Means.

"(B) QUALIFICATIONS OF MEMBERS.—

"(i) APPOINTMENTS.—Persons who are appointed under subparagraph (A) shall be persons who—

"(I) have expertise in economics, international trade, manufacturing, labor, environment, business, or have other pertinent qualifications or experience; and

"(II) are not officers or employees of the United States.

"(ii) OTHER CONSIDERATIONS.—In appointing Commission members, every effort shall be made to ensure that the members—

"(I) are representative of a broad cross-section of economic and trade perspectives within the United States; and

"(II) provide fresh insights to analyzing the causes and consequences of United States merchandise trade and current account deficits.

"(4) PERIOD OF APPOINTMENT; VACANCIES.—

"(A) IN GENERAL.—Members shall be appointed not later than 60 days after the date of enactment of this Act (Oct. 21, 1998) and the appointment shall be for the life of the Commission.

"(B) VACANCIES.—A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

"(5) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

"(6) MEETINGS.—The Commission shall meet at the call of the Chairperson.

"(7) CHAIRPERSON AND VICE CHAIRPERSON.—The members of the Commission shall elect a chairperson and vice chairperson from among the members of the Commission.

"(8) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

"(9) VOTING.—Each member of the Commission shall be entitled to 1 vote, which shall be equal to the vote of every other member of the Commission.

"(d) DUTIES OF THE COMMISSION.—

"(1) IN GENERAL.—The Commission shall be responsible for examining the nature, causes, and consequences of, and the accuracy of available data on, the
§ 2213

UNITED STATES MERCHANDISE TRADE AND CURRENT ACCOUNT DEFICITS.

(2) ISSUES TO BE ADDRESSED.—The Commission shall examine and report to the President, the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and other appropriate committees of Congress on the following:

(A) The relationship of the merchandise trade and current account balances to the overall well-being of the United States economy, and to wages and employment in various sectors of the United States economy.

(B) The impact that United States monetary and fiscal policies may have on United States merchandise trade and current account deficits.

(C) The extent to which the coordination, allocation, and accountability of trade responsibilities among Federal agencies may contribute to the trade and current account deficits.

(D) The causes and consequences of the merchandise trade and current account deficits and specific bilateral trade deficits. In this regard:

(i) identification and quantification of—

(I) the macroeconomic factors and bilateral trade barriers that may contribute to the United States merchandise trade and current account deficits;

(ii) a review of the adequacy and accuracy of the current collection and reporting of import and export data, and the identification and development of additional data bases and economic measurements that may be needed to properly quantify the merchandise trade and current account balances, and any impact the merchandise trade and current account balances may have on the United States economy; and

(iii) any impact of the merchandise trade and current account deficits on the defense production and innovation capabilities of the United States; and

(E) Any relationship of United States merchandise trade and current account deficits to both comparative and competitive trade advantages within the global economy, including—

(i) a systematic analysis of the United States trade patterns with different trading partners and to what extent the trade patterns are based on comparative and competitive trade advantages;

(ii) the extent to which the increased mobility of capital and technology has changed both comparative and competitive trade advantages;

(iii) the extent to which labor, environmental, or health and safety standards and regulations may contribute to the United States manufacturing sectors and

(iv) the effect that offset and technology transfer agreements have on the long-term competitiveness of the United States manufacturing sectors; and

(v) any factor that international trade, labor, environmental, or other agreements may have on United States competitiveness;

(F) The extent to which differences in the growth rates of the United States and its trading partners may impact on United States merchandise trade and current account deficits.

(G) The impact that currency exchange rate fluctuations and any manipulation of exchange rates may have on United States merchandise trade and current account deficits.

(H) The flow of investments both into and out of the United States, including—

(i) any consequences for the United States economy of the current status of the United States as a debtor nation;

(ii) any relationship between such investment flows and the United States merchandise trade and current account deficits and living standards of United States workers;

(iii) any impact such investment flows may have on United States labor, community, environmental, and health and safety standards, and how such investment flows influence the location of manufacturing facilities; and

(iv) the effect of barriers to United States foreign direct investment in developed and developing nations, particularly nations with which the United States has a merchandise trade and current account deficit.

(e) FINAL REPORT.—

(1) IN GENERAL.—Not later than 15 months after the date of the initial meeting of the Commission, the Commission shall submit to the President and Congress a final report which contains—

(A) the findings and conclusions of the Commission described in subsection (d); and

(B) recommendations for addressing the problems identified as part of the Commission’s analysis.

(2) SEPARATE VIEWS.—Any member of the Commission may submit additional findings and recommendations as part of the final report.

(f) POWERS OF COMMISSION.—

(1) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission may find advisable to fulfill the requirements of this section. The Commission shall hold at least 1 or more hearings in Washington, D.C., and in 4 different regions of the United States.

(2) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(g) COMMISSION PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) STAFF.—

(A) IN GENERAL.—The Chairperson of the Commission may, without regard to the civil service laws and regulations, appoint an executive director and such other additional personnel as may be necessary to enable the Commission...
to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

“(b) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

“(4) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

“(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

“(6) APPLICABILITY OF CERTAIN PAY AUTHORITIES.—An individual who is a member of the Commission and is an annuitant or otherwise covered by section 8344 or 8468 of title 5, United States Code, by reason of membership on the Commission is not subject to the provisions of section 8344 or 8468 (whichever is applicable) with respect to such membership.

“(h) SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

“(i) APPROPRIATIONS.—There are appropriated $2,000,000 to the Commission to carry out the provisions of this section. Amounts appropriated pursuant to this subsection shall remain available until the date which is 90 days after the date on which the Commission submits the final report described in subsection (e).

“(j) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (Public Law 92–663; 5 U.S.C. App.) shall not apply to the Commission.

“(k) TERMINATION.—The Commission shall terminate 90 days after the date on which the Commission submits the final report under subsection (e).”

§ 2241. Estimates of barriers to market access

1. National trade estimates

(a) In general

For calendar year 1988, and for each succeeding calendar year, the United States Trade Representative, through the interagency trade organization established pursuant to section 1872(a) of this title and with the assistance of the interagency advisory committee established under section 211(d)(2) of this title, shall—

(A) identify and analyze acts, policies, or practices of each foreign country which constitute significant barriers to, or distortions of—

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons),

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services;1 and

(iii) United States electronic commerce.2

(b) Make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A); and

(C) make an estimate, if feasible, of—

(i) the value of additional goods and services of the United States;

(ii) the value of additional foreign direct investment by United States persons, and

(iii) the value of additional United States electronic commerce, that would have been exported to, or invested in or transacted with, each foreign country during such calendar year if each of such acts, policies, and practices of such country did not exist.

(2) Certain factors taken into account in making analysis and estimate

In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account—

1 So in original. The semicolon probably should be a comma.
2 So in original. The comma probably should be a semicolon.
3 So in original.
§ 2241

(2) Reports

(3) Consultation with Congress on trade policy

(4) Reports to include information with respect to action being taken

(5) Consultation with Congress on trade policy priorities

(c) Assistance of other agencies

(1) Furnishing of information

The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as necessary for the Trade Representative to carry out his functions under this section. In preparing the section of the report required by subsection (b)(2)(C) of this section, the Trade Representative shall consult in particular with the Attorney General.

(2) Restrictions on release or use of information

Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

(d) Electronic commerce

For purposes of this section, the term "electronic commerce" has the meaning given that term in section 1104(3) of the Internet Tax Freedom Act.


REFERENCES IN TEXT


AMENDMENTS


Subsec. (b)(3). Pub. L. 103–465, § 312, inserted at end "After the submission of the report required by paragraph (1), the Trade Representative shall also consult periodically with, and take into account the views of, the committees described in that paragraph regarding means to address the foreign trade barriers identified in the report, including the possible initiation of investigations under section 2142 of this title or other trade actions."

*So in original. See References in Text note below.
Subsec. (c)(1). Pub. L. 103–465, §311(a)(2), inserted at end "in preparing the section of the report required by subsection (b)(2)(C) of this section, the Trade Representative shall consult in particular with the Attorney General."


Subsec. (a)(1). Pub. L. 100–418, §1304(a)(1), substituted "For calendar year 1988, and for each succeeding calendar year," for "Not later than the date on which the initial report is required under subsection (b)(1) of this section."

Pub. L. 100–418, §1304(a)(9), which directed the insertion of "and with the assistance of the interagency advisory committee established under section 217(4)(2) of this title," after "section 1872(a) of this title," was executed by making the insertion after "section 1872(a) of this title" to reflect the probable intent of Congress.

Subsec. (a)(1)(A). Pub. L. 100–418, §1304(a)(2), inserted "of each foreign country" after "or practices".


Subsec. (b)(1). Pub. L. 100–418, §1304(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "On or before the date which is one year after October 30, 1984, and each year thereafter, the Trade Representative shall submit to the House of Representatives an analysis and estimate under subsection (a) of this section to the Committee on Finance and the Committee on Ways and Means of the House of Representatives."

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 316 of Pub. L. 103–465, set out as an Effective Date note under section 3561 of this title.

**SEVERABILITY**

Pub. L. 105–277, div. C, title XII, §1206, Oct. 21, 1998, 112 Stat. 2681–726, provided that: "Nothing in this title [amending this section and enacting provisions set out under this section] shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of the enactment of this Act (Oct. 21, 1998)."

Pub. L. 105–277, div. C, title XII, §1205, Oct. 21, 1998, 112 Stat. 2681–726, provided that: "Nothing in this title [amending this section and enacting provisions set out under this section] shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 (Public Law 104–104) [see Short Title of 1996 Amendments set out under Title 47, Telecommunications, and Radiotelegraphs] or the amendments made by such Act."

**DECLARATION THAT THE INTERNET SHOULD BE FREE OF FOREIGN TARIFFS, TRADE BARRIERS, AND OTHER RESTRICTIONS**

Pub. L. 105–277, div. C, title XII, §1203, Oct. 21, 1998, 112 Stat. 2681–727, provided that: "(a) In general.—It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Pacific Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the Americas, the North American Free Trade Agreement, and other appropriate venues.

(b) Negotiating objectives.—The negotiating objectives of the United States shall be—

1. to assure that electronic commerce is free from—
   (A) tariff and nontariff barriers;
   (B) burdensome and discriminatory regulation and standards; and
   (C) discriminatory taxation; and

2. to accelerate the growth of electronic commerce by expanding market access opportunities for—

(A) the development of telecommunications infrastructure;

(B) the procurement of telecommunications equipment;

(C) the provision of Internet access and telecommunications services; and

(D) the exchange of goods, services, and digitalized information.

(c) Electronic Commerce.—For purposes of this section, the term "electronic commerce" has the meaning given that term in section 1104(3) [probably means Pub. L. 105–277, div. C, title XI, §1104(3), set out in a note under section 315 of Title 47, Telegraphs, Telephones, and Radiotelegraphs]."

§2242. Identification of countries that deny adequate protection, or market access, for intellectual property rights

(a) In general

By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 2241(b) of this title, the United States Trade Representative (hereafter in this section referred to as the "Trade Representative") shall identify—

1. those foreign countries that—
   (A) deny adequate and effective protection of intellectual property rights, or
   (B) deny fair and equitable market access to United States persons that rely upon intellectual property protection, and

2. those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

(b) Special rules for identifications

1. In identifying priority foreign countries under subsection (a)(2) of this section, the Trade Representative shall only identify those foreign countries—

(A) that have the most onerous or egregious acts, policies, or practices that—
   (i) deny adequate and effective intellectual property rights, or
   (ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection, and

(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

(C) that are not—
   (i) entering into good faith negotiations, or
(ii) making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

(2) In identifying priority foreign countries under subsection (a)(2) of this section, the Trade Representative shall—

(A) consult with the Register of Copyrights, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, other appropriate officers of the Federal Government, and

(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 2241(b) of this title and petitions submitted under section 2412 of this title.

(3) The Trade Representative may identify a foreign country under subsection (a)(1)(B) of this section only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3) of this section.

(4) In identifying foreign countries under paragraphs (1) and (2) of subsection (a) of this section, the Trade Representative shall take into account—

(A) the history of intellectual property laws and practices of the foreign country, including any previous identification under subsection (a)(2) of this section, and

(B) the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights.

c(Revocations and additional identifications)

(1) The Trade Representative may at any time—

(A) revoke the identification of any foreign country as a priority foreign country under this section, or

(B) identify any foreign country as a priority foreign country under this section, if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 2419(3) of this title a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

d(Definitions)

For purposes of this section—

(1) The term “persons that rely upon intellectual property protection” means persons involved in—

(A) the creation, production or licensing of works of authorship (within the meaning of sections 102 and 103 of title 17) that are copyrighted, or

(B) the manufacture of products that are patented or for which there are process patents.

(2) A foreign country denies adequate and effective protection of intellectual property rights if the foreign country denies adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such foreign country to secure, exercise, and enforce rights relating to patents, registered trademarks, copyrights and mask works.

(3) A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright or related right, patent, trademark, mask work, trade secret, or plant breeder’s right, through the use of laws, procedures, practices, or regulations which—

(A) violate provisions of international law or international agreements to which both the United States and the foreign country are parties, or

(B) constitute discriminatory nontariff trade barriers.

(4) A foreign country may be determined to deny adequate and effective protection of intellectual property rights, notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 3511(d)(15) of this title.

e(Publication)

The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) of this section and shall make such revisions to the list as may be required by reason of action under subsection (c) of this section.

(f(Special rule for actions affecting United States cultural industries)

(1) In general

By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 2241(b) of this title, the Trade Representative shall identify any act, policy, or practice of Canada which—

(A) affects cultural industries,

(B) is adopted or expanded after December 17, 1992, and

(C) is actionable under article 2106 of the North American Free Trade Agreement.

(2) Special rules for identifications

For purposes of section 2412(b)(3)(A) of this title, an act, policy, or practice identified under this subsection shall be treated as an act, policy, or practice that is the basis for identification of a country under subsection (a)(2) of this section, unless the United States has already taken action pursuant to article 2106 of the North American Free Trade Agreement in response to such act, policy, or practice. In deciding whether to identify an act, policy, or practice under paragraph (1), the Trade Representative shall—
(A) consult with and take into account the views of representatives of the relevant domestic industries, appropriate committees established pursuant to section 2135 of this title, and appropriate officers of the Federal Government, and

(B) take into account the information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 2241(b) of this title.

(3) Cultural industries

For purposes of this subsection, the term "cultural industries" means persons engaged in any of the following activities:

(A) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing.

(B) The production, distribution, sale, or exhibition of film or video recordings.

(C) The production, distribution, sale, or exhibition of audio or video music recordings.

(D) The publication, distribution, or sale of music in print or machine readable form.

(E) Radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcast network services.

(g) Annual report

The Trade Representative shall, by not later than the date by which countries are identified under this section during the 12 months preceding, including a description of progress made in achieving improved intellectual property protection, and the reasons for such action, whether such procurement is from any person of any country.


Effective Date of 1999 Amendment

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1006(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 33, Patents.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 316 of Pub. L. 103–465, set out as an Effective Date note under section 3561 of this title.

Procurement From Countries That Deny Adequate and Effective Protection of Intellectual Property Rights

Pub. L. 103–182, divided into titles VIII, §852, Nov. 29, 1999, 103 Stat. 5674, as amended by Pub. L. 101–510, div. A, title XIII, §1302(a), Nov. 5, 1990, 104 Stat. 1668, provided that it is the sense of Congress that it be a very important consideration in procurement of property, services, or technology by the Department of Defense whether such procurement is from any person of any country which has been identified by the United States Trade Representative as denying adequate and effective protection of intellectual property rights or fair and equitable market access to United States persons that rely upon intellectual property protection.

Identification Of Countries That Deny Adequate and Effective Protection Of Intellectual Property Rights

Section 1303(a) of Pub. L. 100–418 provided that:

"(1) The Congress finds that—"

(A) international protection of intellectual property rights is vital to the international competitiveness of United States persons that rely on protection of intellectual property rights; and

(B) the absence of adequate and effective protection of United States intellectual property rights, and the denial of fair and equitable market access, seriously impede the ability of the United States persons that rely on protection of intellectual property rights to export and operate overseas, thereby harming the economic interests of the United States.

"(2) The purpose of this section (enacting this section and this note) is to provide for the development of an overall strategy to ensure adequate and effective protection of intellectual property rights and fair and equitable market access for United States persons that rely on protection of intellectual property rights."

Subchapter II—Relief From Injury Caused By Import Competition

Part 1—Positive Adjustment By Industries Injured By Imports

§2251. Action to facilitate positive adjustment to import competition

(a) Presidential action

If the United States International Trade Commission (hereinafter referred to in this part as the "Commission") determines under section 2252(b) of this title that an article is being im-
ported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, the President, in accordance with this part, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(b) Positive adjustment to import competition

(1) For purposes of this part, a positive adjustment to import competition occurs when—

(A) the domestic industry—

(i) is able to compete successfully with imports after actions taken under section 2254 of this title terminate, or

(ii) the domestic industry experiences an orderly transfer of resources to other productive pursuits; and

(B) dislocated workers in the industry experience an orderly transition to productive pursuits.

(2) The domestic industry may be considered to have made a positive adjustment to import competition even though the industry is not of the same size and composition as the industry at the time the investigation was initiated under section 2252(b) of this title.


By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), and as President of the United States of America, in order to reduce the reporting burden with respect to the collection of information pursuant to Title II of the Trade Act of 1974 (88 Stat. 1971, 19 U.S.C. 2251 et seq.) and consistent with Chapter 35 of Title 44 of the United States Code, it is hereby ordered as follows:

Section 1. Whenever the United States International Trade Commission, in connection with investigations pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251), collects factual data from firms on their sales, production, employment, and financial experience, the Commission shall provide such information to the Secretaries of Commerce and Labor.

Sic. 2. The Secretaries of Commerce and Labor shall ensure that the factual data, received pursuant to Section 1, are used solely for the performance of their functions pursuant to Sections 261 and 224, respectively, of the Trade Act of 1974 (19 U.S.C. 2261 and 2274).

Gerald R. Ford.

§ 2252. Investigations, determinations, and recommendations by Commission

(a) Petitions and adjustment plans

(1) A petition requesting action under this part for the purpose of facilitating positive adjustment to import competition may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

(2) A petition under paragraph (1)—

(A) shall include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition; and

(B) may—

(i) subject to subsection (d)(1)(C)(i) of this section, request provisional relief under subsection (d)(1) of this section; or

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

Effective Date of 1979 Amendment


Study on trade adjustment assistance for fishermen


Term ‘‘industry’’ to include producers located in United States Insular Possessions

Pub. L. 98–47, title II, § 214(f), Aug. 5, 1983, 97 Stat. 393, provided that: ‘‘For purposes of chapter I of title II of the Trade Act of 1974 (this part), the term ‘industry’ shall include producers located in the United States insular possessions.’’

Ex. Ord. No. 11913, Collection of Information for Import Relief and Adjustment Assistance Ex. Ord. No. 11913, Apr. 26, 1976, 41 F.R. 17721, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), and as President of the United States of America, in order to reduce the reporting burden with respect to the collection of information pursuant to Title II of the Trade Act of 1974 (88 Stat. 1971, 19 U.S.C. 2251 et seq.) and consistent with Chapter 35 of Title 44 of the United States Code, it is hereby ordered as follows:

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Sic. 2. The Secretaries of Commerce and Labor shall ensure that the factual data, received pursuant to Section 1, are used solely for the performance of their functions pursuant to Sections 261 and 224, respectively, of the Trade Act of 1974 (19 U.S.C. 2261 and 2274).

Gerald R. Ford.
(ii) request provisional relief under subsection (d)(2) of this section.

(3) Whenever a petition is filed under paragraph (1), the Commission shall promptly transmit copies of the petition to the Office of the United States Trade Representative and other Federal agencies directly concerned.

(4) A petitioner under paragraph (1) may submit to the Commission and the United States Trade Representative (hereafter in this part referred to as the "Trade Representative"), either with the petition, or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(5)(A) Before submitting an adjustment plan under paragraph (4), the petitioner and other entities referred to in paragraph (1) that wish to participate may consult with the Trade Representative and the officers and employees of any Federal agency that is considered appropriate by the Trade Representative, for purposes of evaluating the adequacy of the proposals being considered for inclusion in the plan in relation to specific actions that may be taken under this part.

(B) A request for any consultation under subparagraph (A) must be made to the Trade Representative. Upon receiving such a request, the Trade Representative shall confer with the petitioner and provide such assistance, including publication of appropriate notice in the Federal Register, as may be practicable in obtaining other participants in the consultation. No consultation may occur under subparagraph (A) unless the Trade Representative, or his delegate, is in attendance.

(6)(A) In the course of any investigation under subsection (b) of this section, the Commission shall seek information (on a confidential basis, to the extent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(B) Regardless whether an adjustment plan is submitted under paragraph (4) by the petitioner, if the Commission makes an affirmative determination under subsection (b) of this section, any—

(i) firm in the domestic industry;

(ii) certified or recognized union or group of workers in the domestic industry;

(iii) State or local community;

(iv) trade association representing the domestic industry; or

(v) any other person or group of persons, may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

(7) Nothing in paragraphs (5) and (6) may be construed to provide immunity under the anti-trust laws.

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 [19 U.S.C. 1332(g)] shall apply with respect to information received by the Commission in the course of investigations conducted under this part, part 1 of title III of the North American Free Trade Agreement Implementation Act [19 U.S.C. 3351 et seq.], title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Implementation Act, title III of the United States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Implementation Act, title III of the United States-Bahrain Free Trade Agreement Implementation Act, title III of the United States-Peru Trade Promotion Agreement Implementation Act, and title III of the United States-Oman Free Trade Agreement Implementation Act, and title III of the United States-Panama Trade Promotion Agreement Implementation Act. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

(b) Investigations and determinations by Commission

(1)(A) Upon the filing of a petition under subsection (a) of this section, the petition or the Trade Representative, the resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(B) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

(2)(A) Except as provided in subparagraph (B), the Commission shall make the determination under paragraph (1) within 120 days (180 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(B) If before the 100th day after a petition is filed under subsection (a)(1) of this section the Commission determines that the investigation is extraordinarily complicated, the Commission shall make the determination under paragraph (1) within 150 days (210 days if the petition alleges that critical circumstances exist) after the date referred to in subparagraph (A).

(3) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties and consumers an opportunity
to be present, to present evidence, to comment on the adjustment plan, if any, submitted under subsection (a) of this section, to respond to the presentations of other parties and consumers, and otherwise to be heard.

(c) Factors applied in making determinations

(1) In making determinations under subsection (b) of this section, the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—
(A) with respect to serious injury—
   (i) the significant idling of productive facilities in the domestic industry,
   (ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and
   (iii) significant unemployment or underemployment within the domestic industry;
(B) with respect to threat of serious injury—
   (i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,
   (ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,
   (iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and
(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

(2) In making determinations under subsection (b) of this section, the Commission shall—
(A) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and
(B) examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry.

The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e) of this section.

(3) The presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) of paragraph (1) is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.

(4) For purposes of subsection (b) of this section, in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—
(A) to the extent information is available, shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production; and
(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and
(C) may, in the case of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(5) In the course of any proceeding under this subsection, the Commission shall investigate any factor which in its judgment may be contributing to increased imports of the article under investigation. Whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII [19 U.S.C. 1671 et seq., 1673 et seq.] or section 337 [19 U.S.C. 1337] of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(d) Provisional relief

(1)(A) An entity representing a domestic industry that produces a perishable agricultural product or citrus product that is like or directly competitive with an imported perishable agricultural product or citrus product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—
   (i) the imported product is a perishable agricultural product or citrus product; and
inclusive the collection and analysis of information for a period not to exceed 2 years. The monitoring and investigation may include the collection and analysis of information that would expedite an investigation under subsection (b) of this section.

(C) If a petition filed under subsection (a) of this section—

(i) alleges injury from imports of a perishable agricultural product or citrus product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under subparagraph (B) for not less than 90 days; and

(ii) requests that provisional relief be provided under this subsection with respect to such imports;

the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product or citrus product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product or citrus product, and whether either—

(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(II) the serious injury cannot be timely prevented through investigation under subsection (b) of this section and action under section 2253 of this title.

(D) At the request of the Commission, the Secretary of Agriculture may have for purposes of making determinations and findings under this subsection.

(E) Whenever the Commission makes an affirmative preliminary determination under subparagraph (C), the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(F) The Commission shall immediately report to the President its determination under subparagraph (C) and, if the determination is affirmative, the finding under subparagraph (E).

(G) Within 7 days after receiving a report from the Commission under subparagraph (F) containing an affirmative determination, the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (E), shall proclaim such provisional relief that the President considers necessary to prevent or remedy the serious injury.

(2)(A) When a petition filed under subsection (a) of this section alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to imports of the article identified in the petition, the Commission shall, not later than 60 days after the petition containing the request was filed, determine, on the basis of available information, whether—

(i) there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

(ii) delay in taking action under this part would cause damage to that industry that would be difficult to repair.

(B) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(C) The Commission shall immediately report to the President its determinations under subparagraph (A)(i) and (ii) and, if the determinations are affirmative, the finding under subparagraph (B).

(D) Within 30 days after receiving a report from the Commission under subparagraph (C) containing an affirmative determination under subparagraph (A)(i) and (ii), the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (B), shall proclaim, for a period not to exceed 200 days, such provisional relief that the President considers necessary to prevent or remedy the serious injury. Such relief shall take the form of an increase in, or the imposition of, a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(3) If provisional relief is proclaimed under paragraph (1)(G) or (2)(D) in the form of an increase, or the imposition of, a duty, the President shall order the suspension of liquidation of all imported articles subject to the affirmative determination under paragraph (1)(C) or paragraph (2)(A), as the case may be, that are entered, or withdrawn from warehouse for consumption, on or after the date of the determination.

(4)(A) Any provisional relief implemented under this subsection with respect to an imported article shall terminate on the day on which—

(i) if such relief was proclaimed under paragraph (1)(G) or (2)(D), the Commission makes a negative determination under subsection (b) of this section regarding injury or the threat thereof by imports of such article;
(ii) action described in section 2253(a)(3)(A) or (C) of this title takes effect under section 2253 of this title with respect to such article; 
(iii) a decision by the President not to take any action under section 2253(a) of this title with respect to such article becomes final; or
(iv) whenever the President determines that, because of changed circumstances, such relief is no longer warranted.

(B) Any suspension of liquidation ordered under paragraph (3) with respect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

(C) If an increase in, or the imposition of, a duty that is proclaimed under section 2253 of this title on an imported article is different from a duty increase or imposition that was proclaimed for such an article under this section, then the entry of any such article for which liquidation was suspended under paragraph (3) may be liquidated at whichever of such rates of duty is lower.

(D) If provisional relief in the form of an increase in, or the imposition of, a duty is proclaimed under this section with respect to an imported article and neither a duty increase nor a duty imposition is proclaimed under section 2253 of this title regarding such article, the entry of any such article for which liquidation was suspended under paragraph (3) may be liquidated at the rate of duty that applied before provisional relief was provided.

(5) For purposes of this subsection:

(A) The term “citrus product” means any processed oranges or grapefruit, or any orange or grapefruit juice, including concentrate.

(B) A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account—

(i) whether the article has—

(I) a short shelf life,
(II) a short growing season, or
(III) a short marketing period,

(ii) whether the article is treated as a perishable product under any other Federal law or regulation; and

(iii) any other factor considered appropriate by the Trade Representative.

The presence or absence of any factor which the Trade Representative is required to take into account under clause (i), (ii), or (iii) is not necessarily dispositive of whether an article is a perishable agricultural product.

(C) The term “provisional relief” means—

(i) any increase in, or imposition of, any duty;

(ii) any modification or imposition of any quantitative restriction on the importation of an article into the United States; or

(iii) any combination of actions under clauses (i) and (ii).

(e) Commission recommendations

(1) If the Commission makes an affirmative determination under subsection (b)(1) of this section, the Commission shall also recommend the action that would address the serious injury, or threat thereof, to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

(2) The Commission is authorized to recommend under paragraph (1)—

(A) an increase in, or the imposition of, any duty on the imported article;

(B) a tariff-rate quota on the article;

(C) a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of this chapter; or

(E) any combination of the actions described in subparagraphs (A) through (D).

(3) The Commission shall specify the type, amount, and duration of the action recommended by it under paragraph (1). The limitations set forth in section 2253(e) of this title are applicable to the action recommended by the Commission.

(4) In addition to the recommendation made under paragraph (1), the Commission may also recommend that the President—

(A) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat; or

(B) implement any other action authorized under law that is likely to facilitate positive adjustment to import competition.

(5) For purposes of making its recommendation under this subsection, the Commission shall—

(A) after reasonable notice, hold a public hearing at which all interested parties shall be provided an opportunity to present testimony and evidence; and

(B) take into account—

(i) the form and amount of action described in paragraph (2)(A), (B), and (C) that would prevent or remedy the injury or threat thereof,

(ii) the objectives and actions specified in the adjustment plan, if any, submitted under subsection (a)(4) of this section,

(iii) any individual commitment that was submitted to the Commission under subsection (a)(6) of this section,

(iv) any information available to the Commission concerning the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the period for which action is being requested, and

(v) whether international negotiations may be constructive to address the injury or threat thereof or to facilitate adjustment.

(6) Only those members of the Commission who agreed to the affirmative determination under subsection (b) of this section are eligible to vote on the recommendation required to be made under paragraph (1) or that may be made under paragraph (3). Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (f) of this section, separate
views regarding what action, if any, should be taken under section 2253 of this title.

(f) Report by Commission

(1) The Commission shall submit to the President a report on each investigation undertaken under subsection (b) of this section. The report shall be submitted at the earliest practicable time, but not later than 180 days (240 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(2) The Commission shall include in the report required under paragraph (1) the following:

(A) The determination made under subsection (b) of this section and an explanation of the basis for the determination.

(B) If the determination under subsection (b) of this section is affirmative, the recommendations for action made under subsection (e) of this section and an explanation of the basis for each recommendation.

(C) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).

(D) The findings required to be included in the report under subsection (c)(2) of this section.

(E) A copy of the adjustment plan, if any, submitted under section 2251(b)(4) of this title.

(F) Commitments submitted, and information obtained, by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition.

(G) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection (e) of this section is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers, and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and the communities where production facilities of such industry are located, and on other domestic industries.

(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (with the exception of the confidential information obtained under subsection (a)(6)) of this section and any other information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

(g) Expedited consideration of adjustment assistance petitions

If the Commission makes an affirmative determination under subsection (b)(1) of this section, the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce of the determination. After receiving such notification—

(1) the Secretary of Labor shall give expedited consideration to petitions by workers in the domestic industry for certification for eligibility to apply for adjustment assistance under part 2 of this subchapter; and

(2) the Secretary of Commerce shall give expedited consideration to petitions by firms in the domestic industry for certification of eligibility to apply for adjustment assistance under part 3 of this subchapter.

(h) Limitations on investigations

(1) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this part, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) No new investigation shall be conducted with respect to an article that is or has been the subject of an action under section 2253 of this title if the last day on which the President could take action under section 2253 of this title in the new investigation is a date earlier than that permitted under section 2253(e)(7) of this title.

(3)(A) Not later than the date on which the Textiles Agreement enters into force with respect to the United States, the Secretary of Commerce shall publish in the Federal Register a list of all articles that are subject to the Textiles Agreement. An investigation may be conducted under this section concerning imports of any article that is subject to the Textiles Agreement only if the United States has integrated that article into GATT 1994 pursuant to the Textiles Agreement, as set forth in notices published in the Federal Register by the Secretary of Commerce, including the notice published under section 3591 of this title.

(B) For purposes of this paragraph:

(i) The term “Textiles Agreement” means the Agreement on Textiles and Clothing referred to in section 3511(d)(4) of this title.

(ii) The term “GATT 1994” has the meaning given that term in section 3501(1)(B) of this title.

(i) Limited disclosure of confidential business information under protective order

The Commission shall promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties who are parties to an investigation under this section.
AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 110–138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 109–232, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 109–169, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 106–19, see Effective and Termination Dates of 2004 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 106–103, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 404(c) of Pub. L. 107–43, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT


AMENDMENTS


REFERENCES IN TEXT


before period at end "and, title III of the United States-Chile Free Trade Agreement Implementation Act". See Effective and Termination Dates of 2003 Amendment note below.


1996—Subsec. (d)(4)(A)(i). Pub. L. 104-286 made technical amendment to reference in original act which appears in text as reference to subsection (b) of this section.

1994—Subsec. (a)(2)(B)(ii). Pub. L. 103-465, § 303(1), struck out "or at any time before the 150th day after the date of filing be amended to request," after "request".

Subsec. (a)(8). Pub. L. 103-465, § 301(a), inserted at end "The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be provided, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission." (d)(3), (4). Pub. L. 103-465, § 303(2), substituted "subsection (a)" for "subsection (b)".

Subsec. (b)(2)(A). Pub. L. 103-465, § 301(d)(2)(A)(i), inserted "180 days if the petition alleges that critical circumstances exist)" after "120 days".

Subsec. (b)(2)(B). Pub. L. 103-465, § 301(d)(2)(A)(ii), inserted "210 days if the petition alleges that critical circumstances exist)" after "150 days".

Subsec. (b)(3). Pub. L. 103-465, § 301(c)(1), added par. (3), struck out former par. (3) which provided time limits on Commission determinations where petitioner alleged existence of critical circumstances, and struck out former par. (4) which provided for notice and hearings on any adjustment plan submitted under subsec. (a) of this section.


Subsec. (d)(1)(C). Pub. L. 103-182, § 315(2), in cl. (i) and provisions before subcl. (i), inserted "or citrus product" after "agricultural product" wherever appearing and in provisions before subcl. (i), inserted "or citrus product" after "competitive perishable product".

Subsec. (d)(5). Pub. L. 103-182, § 313(3)(A), substituted "redesignated former subpars. (A) and (B) as (B) and (C), respectively.

1998—Pub. L. 100-418, in amendment generally, substituted provisions relating to investigations, determinations and recommendations for provisions relating to Presidential action after investigations. See section 2253 of this title.

**EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT**

Amendment by Pub. L. 110-138 effective on the date the United States-Peru Trade Promotion Agreement enters into force (Jan. 1, 2009) and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110-138, set out in a note under section 3865 of this title.

**EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT**

Amendment by Pub. L. 109-283 effective on the date on which the United States-Oman Free Trade Agreement enters into force (Aug. 1, 2006) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 109-283, set out in a note under section 3805 of this title.

Amendment by Pub. L. 109-169 effective on the date on which the United States-Bahrain Free Trade Agreement enters into force (Feb. 1, 2009) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 109-169, set out in a note under section 3805 of this title.

**EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT**

Amendment by Pub. L. 109-53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107(a), (c) of Pub. L. 109-53, set out as an Effective and Termination Dates note under section 4001 of this title.
§ 2253. Action by President after determination of import injury

(a) In general

(1)(A) After receiving a report under section 2252(f) of this title containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(B) The action taken by the President under subparagraph (A) shall be to such extent, and for such duration, subject to subsection (e)(1) of this section, that the President determines to be appropriate and feasible under such subparagraph.

(C) The interagency trade organization established under section 1872(a) of this title shall, with respect to each affirmative determination reported under section 2252(f) of this title, make a recommendation to the President as to what action the President should take under subparagraph (A).

(2) In determining what action to take under paragraph (1), the President shall take into account—

(A) the recommendation and report of the Commission;

(B) the extent to which workers and firms in the domestic industry are—

(i) benefitting from adjustment assistance and other manpower programs, and

(ii) engaged in worker retraining efforts;

(C) the efforts being made, or to be implemented, by the domestic industry (including the efforts included in any adjustment plan or commitment submitted to the Commission under section 2252(a) of this title) to make a positive adjustment to import competition;

(D) the probable effectiveness of the actions authorized under paragraph (3) to facilitate positive adjustment to import competition;

(E) the short- and long-term economic and social costs of the actions authorized under paragraph (3) relative to their short- and long-term economic and social benefits and other considerations relative to the position of the domestic industry in the United States economy;

(F) other factors related to the national economic interest of the United States, including, but not limited to—

(i) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this part;

(ii) the effect of the implementation of actions under this section on consumers and on competition in domestic markets for articles, and

(iii) the impact on United States industries and firms as a result of international obligations regarding compensation;

(G) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;

(H) the potential for circumvention of any action taken under this section;


Effective and Termination Dates of 2004 Amendments

Amendment by Pub. L. 108-302 effective on the date on which the United States-Morocco Free Trade Agreement enters into force (July 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 108-302, set out in a note under section 3805 of this title.

Amendment by Pub. L. 108-286 effective on the date on which the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 108-286, set out in a note under section 3805 of this title.

Effective and Termination Dates of 2003 Amendments

Amendment by Pub. L. 108-78 effective on the date the United States-Singapore Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108-78, set out in a note under section 3805 of this title.

Amendment by Pub. L. 108-77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108-77, set out in a note under section 3805 of this title.

Effective Date of 1994 Amendment

Section 304 of title III of Pub. L. 103-465 provided that:

"(a) In general.—Except as provided in subsection (b), this subtitle [subtitle A (§§201-304) of title III of Pub. L. 103-465, amending this section and sections 2253 and 2254 of this title] and the amendments made by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995]."

"(b) Section 301(b).—The section made by section 301(b) [amending this section] takes effect on the date of the enactment of this Act [Dec. 8, 1993]."

Effective Dates of 1993 Amendment

Amendment by Pub. L. 103-182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 318 of Pub. L. 103-182, set out as an Effective Date note under section 3351 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100-418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under this part on or after that date, see section 1401(c) of Pub. L. 100-418, set out as a note under section 2251 of this title.

Uruguay Round Agreements: Entry into Force

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.
(J) the national security interests of the United States; and
(J) the factors required to be considered by the Commission under section 2252(e)(5) of this title.

(3) The President may, for purposes of taking action under paragraph (1)—
(A) proclaim an increase in, or the imposition of, any duty on the imported article;
(B) proclaim a tariff-rate quota on the article;
(C) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;
(D) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of this subchapter;
(E) negotiate, conclude, and carry out agreements with foreign countries limiting the export from foreign countries and the import into the United States of such article;
(F) proclaim procedures necessary to allocate among importers by the auction of import licenses quantities of the article that are permitted to be imported into the United States;
(G) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat thereof;
(H) submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition;
(I) take any other action which may be taken by the President under the authority of law and which the President considers appropriate and feasible for purposes of paragraph (1); and
(J) take any combination of actions listed in subparagraphs (A) through (I).

(4)(A) Subject to subparagraph (B), the President shall take action under paragraph (1) within 60 days (50 days if the President has proclaimed provisional relief under section 2252(d)(2)(D) of this title with respect to the article concerned) after receiving a report from the Commission containing an affirmative determination under section 2252(b)(1) of this title (or a determination under such section which he considers to be an affirmative determination by reason of section 1390(d) of this title).

(B) If a supplemental report is requested under paragraph (5), the President shall take action under paragraph (1) within 30 days after the supplemental report is received, except that, in a case in which the President has proclaimed provisional relief under section 2252(d)(2)(D) of this title with respect to the article concerned, action by the President under paragraph (1) may not be taken later than the 200th day after the provisional relief was proclaimed.

(5) The President may, within 15 days after the date on which he receives a report from the Commission containing an affirmative determination under section 2252(b)(1) of this title, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to the industry in a supplemental report.

(b) Reports to Congress

(1) On the day the President takes action under subsection (a)(1) of this section, the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action required to be recommended by the Commission under section 2252(e)(1) of this title, the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under subsection (a)(1) of this section with respect to a domestic industry, the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(3) On the day on which the President takes any action under subsection (a)(1) of this section that is not reported under paragraph (1), the President shall transmit to Congress a document setting forth the action being taken and the reasons therefor.

(c) Implementation of action recommended by Commission

If the President reports under subsection (b)(1) or (2) of this section that—
(1) the action taken under subsection (a)(1) of this section differs from the action recommended by the Commission under section 2252(e)(1) of this title;
(2) no action will be taken under subsection (a)(1) of this section with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (d)(2) of this section) upon the enactment of a joint resolution described in section 2192(a)(1)(A) of this title within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) of this section is transmitted to the Congress.

(d) Time for taking effect of certain relief

(1) Except as provided in paragraph (2), any action described in subsection (a)(3)(A), (B), or (C) of this section, that is taken under subsection (a)(1) of this section shall take effect within 15 days after the day on which the President proclaims the action, unless the President announces, on the date he decides to take such action, his intention to negotiate one or more agreements described in subsection (a)(3)(E) of this section in which case the action under subsection (a)(3)(A), (B), or (C) of this section shall be proclaimed and take effect within 90 days after the date of such decision.

(2) If the contingency set forth in subsection (c) of this section occurs, the President shall, within 30 days after the date of the enactment of the joint resolution referred to in such subsection, proclaim the action recommended by the Commission under section 2252(e)(1) of this title.

(e) Limitations on actions

(1)(A) Subject to subparagraph (B), the duration of the period in which an action taken
under this section may be in effect shall not exceed 4 years. Such period shall include the period, if any, in which provisional relief under section 2252(d) of this title was in effect.

(B)(i) Subject to clause (ii), the President, acting on the filing of an affirmative determination from the Commission under section 2254(c) of this title (or, if the Commission is equally divided in its determination, a determination which the President considers to be an affirmative determination of the Commission), may extend the effective period of any action under this section if the President determines that—

(I) the action continues to be necessary to prevent or remedy the serious injury; and

(II) there is evidence that the domestic industry is making a positive adjustment to import competition.

(ii) The effective period of any action under this section, including any extensions thereof, may not, in the aggregate, exceed 8 years.

(2) Action of a type described in subsection (a)(3)(A), (B), or (C) of this section may be taken under subsection (a)(1) of this section, under section 2252(d)(1)(G) of this title, or under section 2252(d)(2)(D) of this title only if the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury.

(3) No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

(4) Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

(5) An action described in subsection (a)(3)(A), (B), or (C) of this section that has an effective period of more than 1 year shall be phased down at regular intervals during the period in which the action is in effect.

(6)(A) The suspension, pursuant to any action taken under this section, of—

(i) subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States with respect to an article; and

(ii) the designation of any article as an eligible article for purposes of subchapter V of this chapter;

shall be treated as an increase in duty.

(B) No proclamation providing for a suspension referred to in subparagraph (A) with respect to any article may be made by the President, nor may any such suspension be recommended by the Commission under section 2252(e) of this title, unless the Commission, in addition to making an affirmative determination under section 2252(b)(1) of this title, determines in the course of its investigation under section 2252(b) of this title that the serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be—

(i) the application of subheading 9802.00.60 or subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States; or

(ii) the designation of the article as an eligible article for the purposes of subchapter V of this chapter.

(7)(A) If an article was the subject of an action under subparagraph (A), (B), (C), or (E) of subsection (a)(3) of this section, no new action may be taken under any of those subparagraphs with respect to such article for—

(i) a period beginning on the date on which the previous action terminates that is equal to the period in which the previous action was in effect, or

(ii) a period of 2 years beginning on the date on which the previous action terminates, whichever is greater.

(B) Notwithstanding subparagraph (A), if the previous action under subparagraph (A), (B), (C), or (E) of subsection (a)(3) of this section with respect to an article was in effect for a period of 180 days or less, the President may take a new action under any of those subparagraphs with respect to such article if—

(i) at least 1 year has elapsed since the previous action went into effect; and

(ii) an action described in any of those subparagraphs has not been taken with respect to such article more than twice in the 5-year period immediately preceding the date on which the new action with respect to such article first becomes effective.

(f) Certain agreements

(1) If the President takes action under this section other than the implementation of agreements of the type described in subsection (a)(3)(E) of this section, the President may, after such action takes effect, negotiate agreements with respect to such article more than twice in the 5-year period immediately preceding the date on which the new action with respect to such article first becomes effective.

(g) Regulations

(1) The President shall by regulation provide for the efficient and fair administration of all actions taken for the purpose of providing import relief under this part.

(2) In order to carry out an international agreement concluded under this part, the President may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement of the type described in subsection (a)(3)(E) of this section that is concluded under this part with one or more countries accounting for a major part of United States imports of the article covered by

So in original. Probably should be "implementation".
such agreement, including imports into a major geographic area of the United States, the President may issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such an agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.


REFERENCES IN TEXT

AMENDMENTS

See Publication of Harmonized Tariff Schedule note set out under section 1292 of this title.

1988—Subsec. (a)(4). Pub. L. 102 Stat. 3806; Pub. L. 103–465, §301(d)(3), designated existing provisions as subpar. (A), substituted “Subject to subparagraph (B), the” for “The”, inserted “[50 days if the President has proclaimed provisional relief under section 2252(d)(2)(D) of this title with respect to the article concerned]” after “60 days, and substituted a period and subparagraph (B) for “; except that if a supplemental report is requested under paragraph (5), the President shall take action under paragraph (1) within 30 days after the supplemental report is received.”


Subsec. (e)(1). Pub. L. 103–465, §302(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

“(1)(A) The duration of the period in which action taken under this section may be in effect shall not exceed 8 years.

“(B) If the initial effective period for action taken under this section is less than 8 years, the President may extend the effective period once, but the aggregate of the initial period and the extension may not exceed 8 years.

Subsec. (e)(2). Pub. L. 103–465, §303(9), substituted “of a type described in subsection (a)(3)(A), (B), or (C) of this section may be taken under subsection (a)(1) of this section, under section 2252(d)(1)(G) of this title, or under section 2252(d)(2)(D) of this title” for “may be taken under subsection (a)(1)(A), (B), or (C) of this section” and struck out “or threat thereof” after “the serious injury”.

Subsec. (e)(4), (5). Pub. L. 103–465, §302(b)(2), (3), amended pars. (4) and (5) generally. Prior to amendment, pars. (4) and (5) read as follows:

“(4) Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article.

“(5) To the extent feasible, an effective period of more than 3 years for an action described in subsection (a)(3)(A), (B), or (C) of this section shall be phased down during the period in which the action is taken, with the first reduction taking effect no later than the close of the day which is 3 years after the day on which such action first takes effect.”

Subsec. (e)(6)(B). Pub. L. 103–465, §303(10), substituted “section 2252(e) of this title” for “subsection (c) of this section” and “section 2252(b) of this title” for “subsection (a) of this section”.


Subsec. (f). Pub. L. 103–465, §302(a)(3), in heading, substituted “Certain” for “Orderly marketing and other”, in par. (1), substituted “implementation of agreements of the type described in subsection (a)(3)(E) of this section” for “implementation of orderly marketing agreements” and “negotiate agreements of the type described in subsection (c) of this section” for “negotiate orderly marketing agreements with foreign countries”, and in par. (2), substituted “agreement implemented under subsection (a)(3)(E) of this section for “orderly marketing agreement implemented under subsection (a) of this section”.

Subsec. (g)(2). Pub. L. 103–465, §302(a)(4), in first sentence, struck out “orderly marketing or other”, in second sentence, substituted “international”, and in second sentence, substituted “agreement of the type described in subsection (a)(3)(E) of this section that is” for “orderly marketing agreement” and “covered by such agreement” for “covered by such agreements”.

1988—Pub. L. 100–418, §1401(a), in amending section generally, substituted provisions relating to action by President after determination of import injury for provisions relating to import relief.

Subsec. (e)(6)(A)(i). Pub. L. 100–418, 1214(1)(B)(A), as amended by Pub. L. 100–647, §9001(a)(2)(B)(i), (ii), substituted “subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States” for “item 806.30 or 807.00 of the Tariff Schedules of the United States”.

Subsec. (e)(6)(B). Pub. L. 100–647, §9001(a)(2)(A), substituted “(i) the application” for “(A) the application”, and “(ii) the designation” for “(B) the designation”.

Subsec. (e)(6)(B)(i). Pub. L. 100–418, 1214(1)(B)(i), as amended by Pub. L. 100–647, §9001(a)(2)(B)(i), (iii), substituted “subheading 9802.00.60 or subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States” for “item 806.30 or item 807.00.”

1984—Subsec. (c)(1). Pub. L. 98–573, §248(a)(1), substituted provision that the action recommended by the Commission shall take effect upon enactment of a joint resolution described in section 2192(a)(1)(A) of this title for provision that the action recommended by the Commission would take effect upon the adoption by both Houses of Congress, by an affirmative vote of a majority of the Members of each House present and voting under the procedures set forth in section 2192 of this title, of a concurrent resolution disapproving the action taken by the President or his determination not to provide import relief under section 2252(a)(1)(A) of this title.

Subsec. (c)(2). Pub. L. 98–573, §248(a)(2), substituted “enactment of the joint resolution referred to in paragraph (1)” for “adoption of such resolution” and “section 2251(d) for “section 2251(b)”.


Subsec. (b)(1). Pub. L. 96–39, §1106(d)(2)(A), (B), substituted “On the day the President determines under section 2252 of this title to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement” for “On the day on which the President proclaims import relief under this section or announces his intention to negotiate one or more orderly marketing agreements” and section “2251(d)(1)(A)” for “2251(b)(1)(A)” of this title.


Subsec. (e)(3). Pub. L. 96–39, § 1106(d)(4), substituted “subsection (a) of this section” for “subsection (a)(1), (2), (3), or (5) of this section”.

Amendment by Pub. L. 96–39, § 1106(d)(5), (6), struck out “quantitative” before “restriction” and substituted “pursuant to this section” for “pursuant to subsection (a)(3) or (c) of this section”.

Subsec. (g)(2). Pub. L. 96–39, § 1106(d)(7)(A), (B), struck out references to subsection (e)(3) of this section.

Subsec. (h)(3). Pub. L. 96–39, § 1106(d)(7)(A), (B), inserted references to subsection (i)(3) of this section.

Subsec. (i)(3). Pub. L. 96–39, § 1106(d)(7)(A), (B), struck out “quantitative” before “restriction” and substituted “one period of not more than 3 years” for “one 3-year period”.

**Effective Date of 1994 Amendment**

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 304(a) of Pub. L. 103–465, set out as a note under section 2292 of this title.

**Effective Date of 1988 Amendments**

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

Amendment by section 1214(c)(2) of Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(h)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

Amendment by section 1401a of Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under this subsection prior to such date, see section 1401(c) of Pub. L. 100–418, set out as a note under section 2251 of this title.

**Effective Date of 1984 Amendment**

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

**Effective Date of 1979 Amendment**

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2251 of this title.

**Steel Import Stabilization**

Título VIII of Pub. L. 98–573, as amended by Pub. L. 100–418, title I, § 1322, Aug. 23, 1988, 102 Stat. 1162; Pub. L. 100–449, title III, § 301(b), Sept. 28, 1988, 102 Stat. 1867; Pub. L. 103–182, title III, § 321(a), Dec. 8, 1993, 107 Stat. 2108, provided that this section was to be cited as the “Meat Import Act of 1979”, defined terms for purposes of this section, limited with exception the aggregate quantity of meat articles which could enter the country in any calendar year after 1979, provided for adjustment of aggregate quantity for calendar years after 1979, required Secretary of Agriculture to estimate and publish yearly aggregate quantity, authorized President to increase or limit by proclamation the total quantity of meat articles entering this country under certain circumstances, and provided for suspension of such proclamations after providing notice in Federal Register and opportunity to comment, prior to repeal by Pub. L. 103–465, title IV, § 403, Dec. 8, 1994, 108 Stat. 4099, effective on the date of entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995].

**§ 2254. Monitoring, modification, and termination of action**

(a) **Monitoring**

(1) So long as any action taken under section 2253 of this title remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.

(2) If the initial period during which the action taken under section 2253 of this title is in effect exceeds 3 years, or if an extension of such action exceeds 3 years, the Commission shall submit a report on the results of the monitoring under paragraph (1) to the President and to the Congress not later than the date that is the midpoint of the initial period, and of each such extension, during which the action is in effect.

(3) In the course of preparing each report under paragraph (2), the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(4) Upon request of the President, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of any reduction, modification, or termination of the action taken under section 2253 of this title which is under consideration.

(b) **Reduction, modification, and termination of action**

(1) Action taken under section 2253 of this title may be reduced, modified, or terminated by the President (but not before the President receives the report required under subsection (a)(2) of this section) if the President—

(A) after taking into account any report or advice submitted by the Commission under subsection (a) of this section and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, determines, on the basis that either—

(i) the domestic industry has not made adequate efforts to make a positive adjustment to import competition,

(ii) the effectiveness of the action taken under section 2253 of this title has been impaired by changed economic circumstances, that changed circumstances warrant such reduction, or termination; or...
(B) determines, after a majority of the representatives of the domestic industry submits to the President a petition requesting such reduction, modification, or termination on such basis, that the domestic industry has made a positive adjustment to import competition.

(2) Notwithstanding paragraph (1), the President is authorized to take such additional action under section 2253 of this title as may be necessary to eliminate any circumvention of any action previously taken under such section.

(3) Notwithstanding paragraph (1), the President may, after receipt of a Commission determination under section 3538(a)(4) of this title and consulting with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, reduce, modify, or terminate action taken under section 2253 of this title.

(c) Extension of action

(1) Upon request of the President, or upon petition on behalf of the industry concerned filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under section 2253 of this title is to terminate, the Commission shall investigate to determine whether action under section 2253 of this title continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(2) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(3) The Commission shall transmit to the President a report on its investigation and determination under this subsection not later than 60 days before the action under section 2253 of this title is to terminate, unless the President specifies a different date.

(d) Evaluation of effectiveness of action

(1) After any action taken under section 2253 of this title has terminated, the Commission shall evaluate the effectiveness of the actions in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 2253(b) of this title.

(2) During the course of the evaluation conducted under paragraph (1), the Commission shall, after reasonable public notice, hold a hearing on the effectiveness of the action. All interested persons shall have the opportunity to attend such hearing and to present evidence or testimony at such hearing.

(3) A report on the evaluation made under paragraph (1) and the hearings held under paragraph (2) shall be submitted by the Commission to the President and to the Congress by no later than the 180th day after the day on which the actions taken under section 2253 of this title terminated.

(e) Other provisions

(1) Action by the President under this part may be taken without regard to the provisions of section 2136(a) of this title but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 2252(c)(4)(C) of this title, then the President shall take into account the geographic concentration of domestic production and of imports in that area in taking any action authorized under paragraph (1).


AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–465, § 302(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “(A) the 2nd-anniversary of the day on which the action under section 2253 of this title first took effect; and

(3) A report on the evaluation made under paragraph (1) shall be submitted by the Commission to the President and to the Congress not later than—

(A) the 2nd-anniversary of the day on which the action under section 2253 of this title first took effect; and

(B) the last day of each 2-year period occurring after the 2-year period referred to in subparagraph (A).”


Subsecs. (c) to (e). Pub. L. 103–465, § 302(d), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1988—Subsecs. (c) to (e). Pub. L. 100–617 redesignated subsecs. (d) and (e) as (c) and (d), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 129(a)(7) of Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 130 of Pub. L. 103–465, set out as an Effective Date note under section 3531 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–617 applicable as if such amendment took effect on Aug. 23, 1988, see section 903(b) of Pub. L. 100–617, set out as an Effective and Termination Dates of 1988 Amendments note under sec. 58c of this title.

EFFECTIVE DATE

Section effective Aug. 23, 1988, and applicable with respect to investigations initiated under this part on or after that date, see section 1401(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 2252 of this title.

PART 2—ADJUSTMENT ASSISTANCE FOR WORKERS

EFFECTIVE DATE OF 2010 AMENDMENT

2371, 2372, 2373, 2373a, and 2410g of this title and provisions set out as notes below] shall take effect on January 1, 2011.''

**termination date of 2009 amendment**


''(a) SUNSET—''

''(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this subtitle [subtitle(0,13),(992,993)] of this title shall cease to have effect on December 31, 2010.''

''(2) EXCEPTION.—The amendments made by this subtitle shall continue to apply on and after January 8, 2011.''

''(b) OTHER ASSISTANCE.—''

''(1) ASSISTANCE FOR FIRMS.—''

''(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 3 [part 3 of this subchapter] after February 12, 2012.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), any assistance approved under chapter 3 on or before February 12, 2012, may be provided—''

''(i) to the extent funds are available pursuant to such chapter for such purpose; and

''(ii) to the extent the recipient of the assistance is otherwise eligible to receive such assistance.''

''(2) FARMERS.—''

''(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 6 [part 6 of this subchapter] after February 12, 2012.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), any assistance approved under chapter 6 on or before February 12, 2012, may be provided—''

''(i) to the extent funds are available pursuant to such chapter for such purpose; and

''(ii) to the extent the recipient of the assistance is otherwise eligible to receive such assistance.''

**effective date of 2002 amendment**


''(a) IN GENERAL.—Except as otherwise provided in sections 123(c) [set out as a note under section 2331 of this title], 131(b) (set out as a note under section 2401 of this title), 201(d) (set out as a note under section 35 of Title 26, Internal Revenue Code), and 202(e) [set out as a note under section 6050T of Title 26], and subsections (b), (c), and (d) of this section, the amendments made by this Act [enacting sections 1413a, 1583, 2318, and 2401 to 2401g of this title, sections 4803B, 6183, 6724, and 7213A of Title 26, and sections 1165 to 1209 of Title 29, and amending sections 58c, 482, 1318, 1341, 1405, 1599, 2075, 2171, 2271 to 2273, 2275, 2291, 2293, 2296 to 2298, 2317, 2346, and 2395 of this title] shall apply to petitions for certification filed under such chapter for such purpose; and

''(b) WORKERS CERTIFIED AS ELIGIBLE BEFORE EFFECTIVE DATE.—Notwithstanding subsection (a), a worker shall continue to receive (or be eligible to receive) trade adjustment assistance and other benefits under chapter 2 of title II of the Trade Act of 1974 [this part] before the effective date of such chapter as in effect on such date, if on or before such date, the worker—''
"(1) was certified as eligible for trade adjustment assistance benefits under such chapter as in effect on such date; and

'(2) would otherwise be eligible to receive trade adjustment assistance benefits under such chapter as in effect on such date.

'(c) WORKERS WHO BECAME ELIGIBLE DURING QUALIFIED PERIOD.—'(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, including section 285 of the Trade Act of 1974 [Pub. L. 93–618, set out as a Termination Date note below], any worker who would have been eligible to receive trade adjustment assistance or other benefits under chapter 2 of title II of the Trade Act of 1974 [this part] during the qualified period if such chapter 2 had been in effect during such period, shall be eligible to receive trade adjustment assistance and other benefits under chapter 2 of title II of the Trade Act of 1974, as in effect on September 30, 2001, for any week during the qualified period for which the worker meets the eligibility requirements of such chapter 2 as in effect on September 30, 2001.

'(2) QUALIFIED PERIOD.—For purposes of this subsection, the term ‘qualified period’ means the period beginning on January 11, 2002, and ending on the date that is 90 days after the date of enactment of this Act [Aug. 6, 2002].

'(d) ADJUSTMENT ASSISTANCE FOR FIRMS.—'(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, including section 285 of the Trade Act of 1974 [set out as a Termination Date note below], and except as provided in paragraph (2), any firm that would have been eligible to receive trade adjustment assistance under chapter 3 of title II of the Trade Act if 1974 [parts 3 to 6 of this subchapter] during the qualified period if such chapter 3 had been in effect during such period, shall be eligible to receive trade adjustment assistance under chapter 3 of title II of the Trade Act of 1974, as in effect on September 30, 2001, for any week during the qualified period for which the firm meets the eligibility requirements of such chapter 3 as in effect on September 30, 2001.

'(2) QUALIFIED PERIOD.—For purposes of this subsection, the term ‘qualified period’ means the period beginning on October 1, 2001, and ending on the date that is 90 days after the date of enactment of this Act [Aug. 6, 2002].

TERMINATION DATE


(Appendix to section 285 of Pub. L. 93–618, set out above, by section 1892(b) of Pub. L. 111–5, which substituted ‘December 31, 2010’ for ‘December 31, 2007’ wherever appearing in subsec. (a) and amended subsec. (b), generally, not applicable on or after Feb. 13, 2011, except as otherwise provided, and section 285 of Pub. L. 93–618 to be applied and administered beginning Feb. 13, 2011, as provided in section 1893(b) of Pub. L. 111–5, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note above.)


'(1) in subsec. (a), by substituting ‘February 12, 2011’ for ‘December 31, 2007’ wherever appearing; and

'(2) as if subsec. (b) read as follows:

'‘(b) OTHER ASSISTANCE.—

'‘(1) ASSISTANCE FOR FIRMS.—

'‘(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 3 [part 3 of this subchapter] after December 12, 2011.

'(B) EXCEPTION.—Notwithstanding paragraph (A), any technical assistance or grant approved under chapter 3 on or before February 12, 2011, may be provided—

'(i) to the extent funds are available pursuant to such chapter for such purpose; and

'(ii) to the extent the recipient of the technical assistance or grant is otherwise eligible to receive such technical assistance or grant, as the case may be.

'(2) FARMERS.—

'(A) IN GENERAL.—Except as provided in subparagraph (B), technical assistance and financial assistance may not be provided under chapter 6 [part 6 of this subchapter] after December 12, 2011.

'(B) EXCEPTION.—Notwithstanding subparagraph (A), any technical assistance or financial assistance approved under chapter 6 on or before February 12, 2011, may be provided—

'(i) to the extent funds are available pursuant to such chapter for such purpose; and

'(ii) to the extent the recipient of the technical or financial assistance is otherwise eligible to receive such technical or financial assistance, as the case may be.

'(3) ASSISTANCE FOR COMMUNITIES.—

'(A) IN GENERAL.—Except as provided in subparagraph (B), technical assistance and grants may not be provided under chapter 4 [part 4 of this subchapter] after December 12, 2011.

'(B) EXCEPTION.—Notwithstanding subparagraph (A), any technical assistance or grant approved under chapter 4 on or before February 12, 2011, may be provided—

'(i) to the extent funds are available pursuant to such chapter for such purpose; and

'(ii) to the extent the recipient of the technical or financial assistance or grant is otherwise eligible to receive such technical or financial assistance, as the case may be.

voyage or other benefits under such chapter as in effect on such date.

'"(1) a worker shall continue to receive trade adjustment assistance benefits and other benefits under chapter 2 for any week for which the worker meets the eligi-

bility requirements of that chapter, if on or before February 12, 2011, the worker is—

'(A) certified as eligible for trade adjustment assistance benefits under chapter 2 of this title [this part] pursuant to petitions filed under section 221 [19 U.S.C. 2271] before February 12, 2011; and

'(B) otherwise eligible to receive trade adjustment assistance benefits under chapter 2.

'(b) OTHER ASSISTANCE.—

'(1) ASSISTANCE FOR FIRMS.—

'(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 2 [part 2 of this subchapter] after February 12, 2011.

'(B) EXCEPTION.—Notwithstanding paragraph (A), any technical assistance or grant approved under chapter 2 on or before February 12, 2011, may be provided—

'(i) to the extent funds are available pursuant to such chapter for such purpose; and

'(ii) to the extent the recipient of the technical assistance or grant is otherwise eligible to receive such technical assistance or grant, as the case may be.
§ 2271

(a) Filing of petitions; assistance; publication of notice

(1) A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this part may be filed simultaneously with the Secretary of Labor and with the Governor of the State in which such workers' firm (as defined in section 2319 of this title) is located by any of the following:

(A) Any appropriate".

(B) EXCEPTION.—Notwithstanding subparagraph (A), any assistance approved under chapter 6 on or before February 12, 2012, may be provided—

(i) to the extent funds are available pursuant to such chapter for such purpose; and

(ii) to the extent the recipient of the assistance is otherwise eligible to receive such assistance.

(2) FARMERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 6 (part 6 of this subchapter) after February 12, 2012.

(B) EXCEPTION.—Notwithstanding subparagraph (A), any assistance approved under chapter 6 on or before February 12, 2012, may be provided—

(i) to the extent funds are available pursuant to such chapter for such purpose; and

(ii) to the extent the recipient of the assistance is otherwise eligible to receive such assistance.


(b) Hearing


XCEPTION

PETITIONS AND DETERMINATIONS

§ 2271. Petitions

(a) Filing of petitions; assistance; publication of notice

(1) A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this part may be filed—

(A) by the group of workers;

(B) by the certified or recognized union or other duly authorized representative of such workers;

(C) employers of such workers, one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)), including State employment security agencies, or the State dislocated worker unit established under title I of such Act (29 U.S.C. 2801 et seq.), on behalf of such workers.

(2) Upon receipt of a petition filed under paragraph (1), the Governor shall—

(A) ensure that rapid response activities and appropriate core and intensive services (as described in section 191 of the Workforce Investment Act of 1998 (29 U.S.C. 2864)) authorized under other Federal laws are made available to the workers covered by the petition to the extent authorized under such laws; and

(B) assist the Secretary in the review of the petition by verifying such information and providing such other assistance as the Secretary may request.

(3) Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register and on the website of the Department of Labor that the Secretary has received the petition and initiated an investigation.

(b) Hearing


AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–5, § 1801(e)(1)(A)(i), 1893, temporarily substituted "Secretary of Labor" for "Secretary" and "(as defined in section 2319 of this title)" for "or subdivision" in introductory provisions. See Effective and Termination Dates of 2009 Amendment note below.


REFERENCES IN TEXT


(A) ensure that rapid response activities and appropriate core and intensive services (as described in section 191 of the Workforce Investment Act of 1998 (29 U.S.C. 2864)) authorized under other Federal laws are made available to the workers covered by the petition to the extent authorized under such laws; and

(B) assist the Secretary in the review of the petition by verifying such information and providing such other assistance as the Secretary may request.

(3) Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register and on the website of the Department of Labor that the Secretary has received the petition and initiated an investigation.

If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 60 days after the date of the Secretary’s publication under subsection (a) of this section a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS


Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

Prior to amendment, subsec. (a) read as follows: "A petition for a certification of eligibility to receive adjustment assistance under this subpart may be filed with the Secretary of Labor (hereinafter in this part referred to as the 'Secretary') by a group of workers (including workers in any agricultural firm or subdivision of any agricultural firm) or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation."

Effective and Termination Dates of 2009 Amendment


"(a) IN GENERAL.—Except as otherwise provided in this subtitle [subtitle I (§§1800–1899L) of title I of div. B of pub. L. 111–5, enacting part 4 (§2371 et seq.) of this chapter and sections 226a, 2322, 2323, 2344, 2345, 2356, and 2397a of this title, amending sections 2271 to 2275, 2291 to 2295, 2296 to 2298, 2311 to 2321, 2341, 2343, 2348 to 2352, 2354, 2355, 2363, 2365, 2401 to 2401b, and 2401e to 2401g of this title, sections 35, 4908b, 7527, and 9801 of Title 26, Internal Revenue Code, section 1581 of Title 28, Judiciary and Judicial Procedure, sections 1162, 1181, 1298, and 2129 of Title 29, Labor, and sections 300bb–2 and 300gg of Title 42, The Public Health and Welfare, repealing former sections 2344 to 2347 of this title, enacting provisions set out as notes preceding section 2271 and under sections 2271, 2296a, 2296e, 2298, 2323, 2344, 2371, and 2393 of this title and sections 1, 35, 4908b, 7527, and 9801 of Title 26, and amending provisions set out as a note preceding section 2271 of this title], and subsection (b) of this section, this subtitle and the amendments made by this subtitle—

"(1) shall take effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act [Feb. 17, 2009]; and

"(2) shall apply to—

"(A) petitions for certification filed under chapter 2, 5, or 6 of title II of the Trade Act of 1974 [this part and parts 3 and 6 of this subchapter] on or after the effective date described in paragraph (1); and

"(B) petitions for assistance and proposals for grants filed under chapter 4 of title II of the Trade Act of 1974 [part 4 of this subchapter] on or after such effective date.

Notwithstanding subsection (a)—

"(1) a worker shall continue to receive (or be eligible to receive) trade adjustment assistance and other benefits under subchapter B of chapter 2 of title II of the Trade Act of 1974 [subpart B of this part], as in effect on the day before the effective date described in subsection (a)(1), for such period for which the worker meets the eligibility requirements of section 246 of that Act as in effect on the day before such effective date, if the worker—

"(A) is certified as eligible for benefits under such section 246 pursuant to a petition filed under section 221 of the Trade Act of 1974 on or before such effective date; and

"(B) would otherwise be eligible to receive benefits under such section 246(a)(2) as in effect on the day before such effective date; and

"(2) a worker shall continue to receive (or be eligible to receive) benefits under section 246(a)(2) of the Trade Act of 1974 [19 U.S.C. 2318(a)(2)], as in effect on the day before the effective date described in subsection (a)(1), for such period for which the worker meets the eligibility requirements of section 246 of that Act as in effect on the day before such effective date, if the worker—

"(A) is certified as eligible for benefits under such section 246 pursuant to a petition filed under section 221 of the Trade Act of 1974 on or before such effective date; and

"(B) would otherwise be eligible to receive benefits under such section 246(a)(2) as in effect on the day before such effective date; and

"(3) a firm shall continue to receive (or be eligible to receive) adjustment assistance under chapter 3 of title II of the Trade Act of 1974 [part 3 of this subchapter], as in effect on the day before the effective date described in subsection (a)(1), for such period for which the firm meets the eligibility requirements of such chapter 3 as in effect on the day before such effective date, if the firm—

"(A) is certified as eligible for benefits under such chapter 3 pursuant to a petition filed under section 251 of the Trade Act of 1974 [19 U.S.C. 2341] on or before such effective date; and

"(B) would otherwise be eligible to receive benefits under such chapter 3 as in effect on the day before such effective date.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding this section.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding this section.

Effective Date of 1993 Amendment

Pub. L. 100–182, title V, §506, Dec. 8, 1989, 103 Stat. 2152, provided that:

"(a) IN GENERAL.—The amendments made by sections 501, 502, 503, 504, and 505 [enacting parts 2222 and 2231 of this title and amending this section, sections 2272, 2273, 2275, 2317, and 2395 of this title, and provisions set out as a note preceding this section] shall take effect on the date the Agreement [North American Free Trade Agreement] enters into force with respect to the United States [Jan. 1, 1994].

"(b) COVERED WORKERS.—

"(1) GENERAL RULE.—Except as provided in paragraph (2), no worker shall be certified as eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974 [former 19 U.S.C. 2331 et seq.] (as added by this title) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurred before such date of entry into force.

"(2) REACHBACK.—Notwithstanding paragraph (1), any worker—

"(A) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurs—

"(i) before the date of the enactment of this Act [Dec. 8, 1990], and

"(ii) before such date of entry into force, and

"(B) who would otherwise be eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974, shall be eligible to receive such assistance in the same manner as if such separation occurred on or after such date of entry into force.

Termination Date

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided.
under this section after Feb. 12, 2011, except as otherwise provided, see section 285 of Pub. L. 93–618, set out as a note preceding this section.

**Determination of increases of imports for certain fishermen**


1. is a fisherman or aquaculture producer, and

2. is otherwise eligible for adjustment assistance under chapter 2 or 6, as the case may be,

the increase in imports of articles like or directly competitive with the agricultural commodity produced by such producer may be based on imports of wild-caught seafood, farm-raised seafood, or both.

**Declaration of policy; sense of Congress**


(a) Declaration of policy.—Congress reiterates that, under the trade adjustment assistance program under chapter 2 of title II of the Trade Act of 1974 [this part], workers are eligible for transportation, child-care, and healthcare assistance, as well as other related assistance under programs administered by the Department of Labor.

(b) Sense of Congress.—It is the sense of Congress that the Secretary of Labor, working independently and in conjunction with the States, should, in accordance with section 225 of the Trade Act of 1974 (19 U.S.C. 2275), provide more specific information about benefit allowances, training, and other employment services, and the petition and application procedures (including appropriate filing dates) for such allowances, training, and services, under the trade adjustment assistance program under chapter 2 of title II of the Trade Act of 1974 to workers who are applying for, or are certified to receive, assistance under that program, including information on all other Federal assistance available to such workers.

§ 2272. Group eligibility requirements; agricultural workers; oil and natural gas industry

(a) In general

A group of workers shall be certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to a petition filed under section 2271 of this title if the Secretary determines that—

1. a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

2. the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

3. the acquisition of services described in paragraph (2) contributed importantly to such workers' separation or threat of separation.

(b) Adversely affected workers in public agencies

A group of workers in a public agency shall be certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to a petition filed under section 2271 of this title if the Secretary determines that—

1. a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

2. the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

3. the acquisition of services described in paragraph (2) contributed importantly to such workers' separation or threat of separation.

(c) Adversely affected secondary workers

A group of workers shall be certified by the Secretary as eligible to apply for trade adjustment assistance benefits under this part pursuant to a petition filed under section 2271 of this title if the Secretary determines that—

1. a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

2. the workers' firm is a supplier and the downstream producer to a firm that employed a group of workers who received a certification of eligibility under subsection (a) of this section, and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection (d)(3) and (4) of this section); and

3. either—

   (A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

   (B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

(d) Definitions

For purposes of this section—
(1) The term “contributed importantly” means a cause which is important but not necessarily more important than any other cause.

(2)(A) Any firm that engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(B) Any firm that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

(3) **DOWNSTREAM PRODUCER.**—

(A) **IN GENERAL.**—The term “downstream producer” means a firm that performs additional, value-added production processes or services directly for another firm for articles or services with respect to which a group of workers in such other firm has been certified under subsection (a).

(B) **VALUE-ADDED PRODUCTION PROCESSES OR SERVICES.**—For purposes of subparagraph (A), value-added production processes or services include final assembly, finishing, testing, packaging, or maintenance or transportation services.

(4) **SUPPLIER.**—The term “supplier” means a firm that produces and supplies directly to another firm component parts for articles, or services, used in the production of articles or in the supply of services, as the case may be, that were the basis for a certification of eligibility under subsection (a) of this section of a group of workers employed by such other firm.

(5) **REFERENCE TO FIRM.**—For purposes of subsection (a), the term “firm” does not include a public agency.

(e) **Basis for Secretary’s determinations**

(1) **In general**

The Secretary shall, in determining whether to certify a group of workers under section 2273 of this title, obtain from the workers’ firm, or a customer of the workers’ firm, information the Secretary determines to be necessary to make the certification, through questionnaires and in such other manner as the Secretary determines appropriate.

(2) **Additional information**

The Secretary may seek additional information to determine whether to certify a group of workers under subsection (a), (b), or (c)—

(A) by contacting—

(i) officials or employees of the workers’ firm;

(ii) officials of customers of the workers’ firm;

(iii) officials of certified or recognized unions or other duly authorized representatives of the group of workers; or

(iv) one-stop operators or one-stop partners (as defined in section 2801 of title 29);

or

(B) by using other available sources of information.

(3) **Verification of information**

(A) **Certification**

The Secretary shall require a firm or customer to certify—

(i) all information obtained under paragraph (1) from the firm or customer (as the case may be) through questionnaires; and

(ii) all other information obtained under paragraph (1) from the firm or customer (as the case may be) on which the Secretary relies in making a determination under section 2273 of this title, unless the Secretary has a reasonable basis for determining that such information is accurate and complete without being certified.

(B) **Use of subpoenas**

The Secretary shall require the workers’ firm or a customer of the workers’ firm to provide information requested by the Secretary under paragraph (1) by subpoena pursuant to section 2321 of this title if the firm or customer (as the case may be) fails to provide the information within 20 days after the date of the Secretary’s request, unless the firm or customer (as the case may be) demonstrates to the satisfaction of the Secretary that the firm or customer (as the case may be) will provide the information within a reasonable period of time.

(C) **Protection of confidential information**

The Secretary may not release information obtained under paragraph (1) that the Secretary considers to be confidential business information unless the firm or customer (as the case may be) submitting the confidential business information had notice, at the time of submission, that the information would be released by the Secretary, or the firm or customer (as the case may be) subsequently consents to the release of the information. Nothing in this subparagraph shall be construed to prohibit the Secretary from providing such confidential business information to a court in camera or to another party under a protective order issued by a court.

(f) **Firms identified by the International Trade Commission**

Notwithstanding any other provision of this part, a group of workers covered by a petition filed under section 2271 of this title shall be certified under subsection (a) as eligible to apply for adjustment assistance under this part if—

(1) the workers’ firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 2322(b)(1) of this title;

(B) an affirmative determination of market disruption or threat thereof under section 2451(b)(1) of this title;

(C) an affirmative final determination of material injury or threat thereof under section 1671d(b)(1)(A) or 1673d(b)(1)(A) of this title;

(2) the petition is filed during the one-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 2322(c)(1) of this title with respect to the affirmative deter-
mination described in paragraph (1)(A) is published in the Federal Register under section 2252(f)(3) of this title; or
(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the Federal Register; and
(3) the workers have become totally or partially separated from the workers' firm within
(A) the one-year period described in paragraph (2); or
(B) notwithstanding section 2273(b)(3) of this title, the one-year period preceding the one-year period described in paragraph (2).


**AMENDMENT OF SECTION**

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

**AMENDMENTS**


Subsec. (a)(2)(A)(2). Pub. L. 111–5, §§ 1801(b)(1)(A), 1893, temporarily amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and”. See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (a)(2)(B). Pub. L. 111–5, §§ 1801(b)(1)(B), 1893, temporarily amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “(i) there has been a shift in production by such workers’ firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and
(ii)(I) the country to which the workers’ firm has shifted production of the articles is a party to a free trade agreement with the United States;
(III) the country to which the workers’ firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or
(IV) there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles that were the basis for a certification of eligibility under subsection (a) of this section of a group of workers employed by such other firm, if the certification of eligibility under subsection (a) of this section is based on an increase in imports from, or a shift in production to, Canada or Mexico.” See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (d)(4). Pub. L. 111–5, §§ 1801(e)(2)(D)(iv), 1893, temporarily struck out “(or subdivision)” after “another firm” and inserted “imported”, “or services, used in the production of articles or in the supply of services, as the case may be,” after “articles”. See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (e). Pub. L. 111–5, §§ 1801(c), 1802, 1893, temporarily added subsec. (e) and (f). See Effective and Termination Dates of 2009 Amendment note below.

2004—Subsec. (b). Pub. L. 108–429 made technical amendment to heading and inserted “pursuant to a petition filed under section 2271 of this title” after “under this part” in introductory provisions.

2002—Subsec. (a). Pub. L. 107–210, § 118(a)(1)(A), inserted heading and amended text generally. Prior to amendment, text read as follows: “The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this subpart if he determines—
(1) that a significant number or proportion of the workers in such workers’ firm or an appropriate subdivision of the firm have been totally or partially separated, or are threatened to become totally or partially separated,
“(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers’ firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.”


Subsec. (c). Pub. L. 107–210, § 113(b)(1), substituted “this section” for “subsection (a)(3) of this section” in introductory provisions.

Pub. L. 107–210, § 113(a)(1)(B), redesignated subsec. (b) as (c).

Subsec. (c)(3). (4), Pub. L. 107–210, § 113(b)(2), added paras. (3) and (4).

1989—Subsec. (a). Pub. L. 103–182 substituted “assistance under this subpart” for “assistance under this part”.

1988—Pub. L. 100–418, § 1421(a)(1)(A), struck out last sentence which defined “contributed importantly” for purposes of par. (3), designated remaining provisions as subsec. (a), and added subsec. (b).

Subsec. (a)(3). Pub. L. 100–418, § 1421(b)(1), directed the general amendment of par. (3) adding provisions relating to provision of essential goods or services by such workers’ firm, or appropriate subdivision thereof, which amendment did not become effective pursuant to section 148(b) of Pub. L. 100–418, as amended, set out as an Effective Date note under section 2297 of this title.

1986—Pub. L. 99–272 inserted “(including workers in any agricultural firm or subdivision of an agricultural firm)” after “group of workers”.

1983—Pub. L. 98–120, § 3(a)(2), substituted “For purposes of paragraph (3), the term ‘contributed importantly’ means a cause which is important, but not necessarily more important than any other cause” for “For purposes of paragraph (3), the term ‘substantial cause’ means a cause which is important and not less than any other cause” in provision following par. (3).

1981—Pub. L. 97–35 substituted provisions defining “substantial cause” and applicability of such term in par. (3) for provisions defining “contributed importantly” and applicability of such term in par. (3).

EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note preceding section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 506(a) of Pub. L. 103–182, set out as a note under section 2271 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 3(b) of Pub. L. 98–120 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to petitions for certification filed under section 221 of the Trade Act of 1974 [19 U.S.C. 2271] on or after October 1, 1981.”

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS

Amendment by Pub. L. 97–35 applicable to petitions filed on or after Oct. 1, 1983, with transition provisions applicable, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

WORKERS COVERED BY CERTIFICATION

NOTWITHSTANDING OTHER LAW

Section 1421(a)(1)(B) of Pub. L. 100–418 provided that: “Notwithstanding section 223(b) of the Trade Act of 1974 [19 U.S.C. 2273(b)], or any other provision of law, any certification made under subchapter A of chapter 2 of title II of such Act [this subpart] which—

“(i) is made with respect to a petition filed before the date that is 90 days after the date of enactment of this Act [Aug. 23, 1986], and

“(ii) would not have been made if the amendments made by subparagraph (A) [amending this section] had not been enacted into law,

shall apply to any worker whose most recent total or partial separation from the firm, or appropriate subdivision of the firm, described in section 222(a) of such Act [19 U.S.C. 2272(a)] occurs after September 30, 1985.”

§ 2273. Determinations by Secretary of Labor

(a) Certification of eligibility

As soon as possible after the date on which a petition is filed under section 2271 of this title, but in any event not later than 40 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 of this title and shall issue a certification of eligibility to apply for assistance under this subpart covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) Workers covered by certification

A certification under this section shall not apply to any worker whose last total or partial separation from the firm before the worker’s application under section 2291 of this title occurred more than one year before the date of the petition on which such certification was granted.

(c) Publication of determination in Federal Register

Upon reaching a determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register and on the website of the Department of Labor, together with the Secretary’s reasons for making such determination.

(d) Termination of certification

Whenever the Secretary determines, with respect to any certification of eligibility of the
workers of a firm, that total or partial separations from such firm are no longer attributable to the conditions specified in section 2272 of this title, the Secretary shall terminate such certification and promptly have notice of such termination published in the Federal Register and on the website of the Department of Labor, together with the Secretary’s reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

(e) Standards for investigations and determinations

(1) In general

The Secretary shall establish standards, including data requirements, for investigations of petitions filed under section 2271 of this title and criteria for making determinations under subsection (a).

(2) Consultations

Not less than 90 days before issuing a final rule with respect to the standards required under paragraph (1), the Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to such rule.


AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS

2009—Subsec. (b). Pub. L. 111–5, §§1893(1), 1893, temporarily substituted “before the worker’s application under section 2291 of this title occurred more than one year before the date of the petition on which such certification was granted,” for “or appropriate subdivision of the firm before his application under section 2291 of this title occurred—

“(1) more than one year before the date of the petition on which such certification was granted, or

“(2) more than 6 months before the effective date of this part.”

See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (d). Pub. L. 111–5, §§1893(2), 1858(a), 1893, temporarily substituted “a determination” for “his determination” and “and on the website of the Department of Labor, together with the Secretary’s reasons” for “together with his reasons”. See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (c). Pub. L. 111–5, §§1803(2), 1858(a), 1893, temporarily substituted “subdivision of the firm” for “subdivision of the firm”.

Subsec. (e). Pub. L. 111–5, §§1803(3), 1893, temporarily substituted “that total or partial separations from such firm are no longer attributable to the conditions specified in section 2272 of this title, the Secretary shall” for “or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 2272 of this title, he shall” and “and on the website of the Department of Labor, together with the Secretary’s reasons” for “together with his reasons”. See Effective and Termination Dates of 2009 Amendment note below.
of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register and on the website of the Department of Labor.

(c) Notifications following affirmative global safeguard determinations

Upon making an affirmative determination under section 241(b)(1) of this title, the Commission shall promptly notify the Secretary of Commerce and, in the case of a determination with respect to an agricultural commodity, the Secretary of Agriculture, of the determination.

(d) Notifications following affirmative bilateral or plurilateral safeguard determinations

(1) Notifications of determinations of market disruption

Upon making an affirmative determination under section 241(b)(1) of this title, the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce and, in the case of a determination with respect to an agricultural commodity, the Secretary of Agriculture, of the determination.

(2) Notifications regarding trade agreement safeguards

Upon making an affirmative determination in a proceeding initiated under an applicable safeguard provision (other than a provision described in paragraph (3)) that is enacted to implement a trade agreement to which the United States is a party, the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce and, in the case of a determination with respect to an agricultural commodity, the Secretary of Agriculture, of the determination.

(3) Notifications regarding textile and apparel safeguards

Upon making an affirmative determination in a proceeding initiated under any safeguard provision relating to textile and apparel articles that is enacted to implement a trade agreement to which the United States is a party, the President shall promptly notify the Secretary of Labor and the Secretary of Commerce and, in the case of a determination with respect to an agricultural commodity, the Secretary of Agriculture, of the determination.

(e) Notifications following certain affirmative determinations under title VII of the Tariff Act of 1930

Upon making an affirmative determination under section 705(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A)) and 1673d(b)(1)(A)), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce and, in the case of a determination with respect to an agricultural commodity, the Secretary of Agriculture, of the determination.

(f) Industry notification of assistance

Upon receiving a notification of a determination under subsection (c), (d), or (e) with respect to a domestic industry—

(1) the Secretary of Labor shall—

(A) notify the representatives of the domestic industry affected by the determination, and any firms publicly identified by name during the course of the proceeding relating to the determination, and any certified or recognized union or, to the extent practicable, other duly authorized representative of workers employed by such representatives of the domestic industry, of—

(i) the allowances, training, employment services, and other benefits available under this part;

(ii) the manner in which to file a petition and apply for such benefits; and

(iii) the availability of assistance in filing such petitions;

(B) notify the Governor of each State in which one or more firms in the industry described in subparagraph (A) are located of the Commission’s determination and the identity of the firms; and

(C) upon request, provide any assistance that is necessary to file a petition under section 2271 of this title;

(2) the Secretary of Commerce shall—

(A) notify the representatives of the domestic industry affected by the determination and any firms publicly identified by name during the course of the proceeding relating to the determination of—

(i) the benefits available under part 3;

(ii) the manner in which to file a petition and apply for such benefits; and

(iii) the availability of assistance in filing such petitions; and

(B) upon request, provide any assistance that is necessary to file a petition under section 2341 of this title; and

(3) in the case of an affirmative determination based upon imports of an agricultural commodity, the Secretary of Agriculture shall—

(A) notify representatives of the domestic industry affected by the determination and any agricultural commodity producers publicly identified by name during the course of the proceeding relating to the determination of—

(i) the benefits available under part 6;

(ii) the manner in which to file a petition and apply for such benefits; and

(iii) the availability of assistance in filing such petitions; and

(B) upon request, provide any assistance that is necessary to file a petition under section 2401a of this title.

(g) Representatives of the domestic industry

For purposes of subsection (f), the term ‘‘representatives of the domestic industry’’ means the persons that petitioned for relief in connection with—

1 a proceeding under section 2252 or 2451 of this title;

(b) a proceeding under section 702(b) or 732(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)); or

(3) any safeguard investigation described in subsection (d)(2) or (d)(3).


1 So in original. Probably should be ‘‘1671a(b) and 1673a(b)’’. 
§ 2275  Benefit information for workers

(a) The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this part and about the petition and application procedures, and the appropriate filing dates, for such allowances, training, and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 2311(a) of this title and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 2273 of this title and of projections, if available, of the needs for training under section 2296 of this title as a result of such certification.

(b) The Secretary shall provide written notice through the mail of the benefits available under this part to each worker whom the Secretary has reason to believe is covered by a certification made under this subpart.

(1) At the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(2) At the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this part to workers covered by each certification made under this subpart in newspapers of general circulation in the areas in which such workers reside.

(c) Upon issuing a certification under section 2273 of this title, the Secretary shall notify the Secretary of Commerce of the identity of each firm covered by the certification.

§ 2276  Amended provisions


AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS


Subsecs. (c) to (g). Pub. L. 111–5, §§ 1811(a)(4), 1893, temporarily added subsecs. (c) to (g). See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (b). Pub. L. 100–418 substituted “section 2252(f)” for “section 2252(f)”.

1981—Subsec. (c). Pub. L. 97–35 struck out subsec. (c) which related to availability of information to workers.

Effective and Termination Dates of 2009 Amendment

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under part 1 (§ 2251 et seq.) of this subchapter on or after that date, see section 1401(c) of Pub. L. 100–418, set out as a note under section 2251 of this title.

Effective Date of 1981 Amendment and Transition Provisions


Termination Date

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 283 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2275. Benefit information for workers

(a) The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this part and about the petition and application procedures, and the appropriate filing dates, for such allowances, training, and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 2311(a) of this title and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 2273 of this title and of projections, if available, of the needs for training under section 2296 of this title as a result of such certification.

(b) The Secretary shall provide written notice through the mail of the benefits available under this part to each worker whom the Secretary has reason to believe is covered by a certification made under this subpart.

(1) At the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(2) At the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this part to workers covered by each certification made under this subpart in newspapers of general circulation in the areas in which such workers reside.

(c) Upon issuing a certification under section 2273 of this title, the Secretary shall notify the Secretary of Commerce of the identity of each firm covered by the certification.


Amendment of Section

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

Amendments


2002—Subsec. (b). Pub. L. 107–210 struck out “or subpart D of this part” after “this subpart” in pars. (1) and (2).

1993—Subsec. (b). Pub. L. 103–182 inserted reference to subpart D in pars. (1) and (2).

1988—Pub. L. 100–418 designated existing provisions as subsec. (a) and added subsec. (b).
Qualifying requirements for workers

Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subpart A of this part who files an application for such allowance within the period applicable to the worker for any such separation occurred, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary.

For the purposes of this paragraph, any week in which such worker—

(A) is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(B) does not work because of a disability that is compensable under a workmen’s compensation law or plan of a State or the United States,

(C) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm, or

(D) is on call-up for purposes of active duty in a reserve status in the Armed Forces of the United States, provided such active duty is †Federal service‖ as defined in section 8521(a)(1) of title 5, shall be treated as a week of employment at wages of $30 or more, but not more than 7 weeks, in case of weeks described in subparagraph (A) or (C), or both (and not more than 26 weeks, in the case of weeks described in subparagraph (B) or (D)), may be treated as weeks of employment under this sentence.

(3) Such worker—

(A) was entitled to (or would be entitled to if the worker applied therefor) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) has exhausted all rights to any unemployment insurance, except additional compensation that is funded by a State and is not reimbursed from any Federal funds, to which the worker was entitled (or would be entitled if the worker applied therefor); and

(C) does not have an unexpired waiting period applicable to the worker for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

(5) Such worker—

(A)(i) is enrolled in a training program approved by the Secretary under section 2296(a) of this title, and

(ii) the enrollment required under clause (1) occurs no later than the latest of—

(1) in the case of a worker whose most recent total separation from adversely affected employment that meets the requirements of paragraphs (1) and (2) occurs after the date on which the Secretary issues a certification covering the worker, the last
day of the 26th week after such total separation,

(II) in the case of a worker whose most recent total separation from adversely affected employment that meets the requirements of paragraphs (1) and (2) occurs before the date on which the Secretary issues a certification covering the worker, the last day of the 26th week after the date of such certification,

(III) 45 days after the date specified in subclause (I) or (II), as the case may be, if the Secretary determines there are extenuating circumstances that justify an extension in the enrollment period,

(IV) in the case of a worker who fails to enroll by the date required by subclause (I), (II), or (III), as the case may be, due to the failure to provide the worker with timely information regarding the date specified in such subclause, the last day of a period determined by the Secretary, or

(V) the last day of a period determined by the Secretary to be approved for enrollment after the termination of a waiver issued pursuant to subsection (c) of this section,

(A) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 2296(a) of this title, or

(B) has received a written statement under subsection (c)(1) of this section after the date described in subparagraph (B).

(b) Withholding of trade readjustment allowance pending beginning or resumption of participation in training program; period of applicability

If—

(1) the Secretary determines that—

(A) the adversely affected worker—

(i) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5) of this section, or

(ii) has ceased to participate in such training program before completing such training program, and

(B) there is no justifiable cause for such failure or cessation, or

(2) the certification made with respect to such worker under subsection (c)(1) of this section is revoked under subsection (c)(2) of this section,

no trade readjustment allowance may be paid to the adversely affected worker under this division for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved under section 2296(a) of this title.

(c) Waivers of training requirements

(1) Issuance of waivers

The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (a)(5)(A) of this section if the Secretary determines that it is not feasible or appropriate for the worker, because of 1 or more of the following reasons:

(A) Recall

The worker has been notified that the worker will be recalled by the firm from which the separation occurred.

(B) Marketable skills

(i) In general

The worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 U.S.C. 503(j)), carried out in accordance with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

(ii) Marketable skills defined

For purposes of clause (i), the term "marketable skills" may include the possession of a postgraduate degree from an institution of higher education (as defined in section 1002 of title 20) or an equivalent institution, or the possession of an equivalent postgraduate certification in a specialized field.

(C) Retirement

The worker is within 2 years of meeting all requirements for entitlement to either—

(i) old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.) (except for application therefor); or

(ii) a private pension sponsored by an employer or labor organization.

(D) Health

The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(E) Enrollment unavailable

The first available enrollment date for the approved training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.

(F) Training not available

Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area career and technical education schools, as defined in section 2302 of title 20, and employers), no training that is suitable for the worker is available at a reasonable cost, or no training funds are available.
(2) Duration of waivers

(A) In general

Except as provided in paragraph (3)(B), a waiver issued under paragraph (1) shall be effective for not more than 6 months after the date on which the waiver is issued, unless the Secretary determines otherwise.

(B) Revocation

The Secretary shall revoke a waiver issued under paragraph (1) if the Secretary determines that the basis of a waiver is no longer applicable to the worker and shall notify the worker in writing of the revocation.

(3) Agreements under section 2311

(A) Issuance by cooperating States

An agreement under section 2311 of this title shall authorize a cooperating State to issue waivers as described in paragraph (1).

(B) Review of waivers

An agreement under section 2311 of this title shall require a cooperating State to review each waiver issued by the State under subparagraph (A), (B), (D), (E), or (F) of paragraph (1)—

(i) 3 months after the date on which the State issues the waiver; and

(ii) on a monthly basis thereafter.

(C) Submission of statements

An agreement under section 2311 of this title shall include a requirement that the cooperating State submit to the Secretary the written statements provided under paragraph (1) and a statement of the reasons for the waiver.

AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

REFERENCES IN TEXT


AMENDMENTS

2009—Subsec. (a). Pub. L. 111–5, §§1821(c)(1)(A), 1893, temporarily substituted “or on after the date of such certification” for “more than 60 days after the date on which the petition that resulted in such certification was filed under section 2271 of this title” in introductory provisions. See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (a)(5)(A)(ii)(1), (II). Pub. L. 111–5, §§1821(a)(1), 1893, temporarily added subcls. (I) and (II) and struck out former subcls. (I) and (II) which read as follows:

“(I) the last day of the 8th week after the week in which the Secretary issues a certification covering the worker.”;

See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (a)(5)(A)(ii)(III). Pub. L. 111–5, §§1821(a)(2)(A), 1893, temporarily substituted “date specified in subclause (I) or (II), as the case may be” for “later of the dates specified in subclause (I) or (II)’’. See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (b). Pub. L. 111–5, §§1821(c)(1)(B), 1893, temporarily struck out par. (1) designation before “If—”, redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, redesignated cls. (i) and (ii) of former par. (1)(A) as subpars. (A) and (B), respectively, redesignated subcls. (I) and (II) of former par. (1)(A)(i) as cls. (i) and (ii), respectively, and struck out former par. (2) which read as follows:

‘‘(A) after the date that is 60 days after the date on which the petition that results in the certification that covers the worker is filed under section 2271 of this title, and

‘‘(B) ...’’;

See Effective and Termination Dates of 2009 Amendment note below.
“(B) before the first week following the week in which such certification is made under subpart A of this part.

See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (c)(2)(A). Pub. L. 111–5, §§ 1821(b)(2), 1893, temporarily substituted “An agreement under section 2311 of this title shall authorize a” for “Pursuant to an agreement under section 2311 of this title, the Secretary may authorize a”. See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (c)(3)(B). Pub. L. 111–5, §§ 1821(b)(3)(B), (C), 1893, temporarily added subpar. (B) and redesignated former subpar. (B) as (C). See Effective and Termination Dates of 2009 Amendment note below.


2002—Subsec. (a)(3)(B). Pub. L. 107–210, § 114(a), inserted “except additional compensation that is funded by a State and is not reimbursed from any Federal funds,” after “any unemployment insurance”.

Subsec. (a)(5)(A). Pub. L. 107–210, § 114(b), designated existing provisions as cl. (i) and added cl. (ii).


Subc. (c). Pub. L. 107–210, § 210(a), inserted heading and amended text generally, substituting provisions relating to issuance and duration of waivers of training requirements for provisions relating to approval of training programs, written certifications, revocation, and reports.

1992—Subsec. (a)(2). Pub. L. 102–318 added subpar. (D) and substituted “paragraph (A) or (C), or both (and not more than 26 weeks in the case of weeks described in subparagraph (B) or (D))” for “paragraph (A) or (C), or both” in closing provisions.

1988—Subsec. (a)(5). Pub. L. 100–418, § 1423(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “Such worker, unless the Secretary has determined that no acceptable job search program is reasonably available—

“(A) is enrolled in a job search program approved by the Secretary under section 2297(c) of this title, or

“(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a job search program approved by the Secretary under section 2297(c) of this title.”

Subsec. (b). Pub. L. 100–418, § 1423(a)(2), amended subsec. (b) generally, substituting provisions relating to withholding of trade readjustment allowance pending beginning or resumption of participation in training program, and period of applicability, for provisions relating to mandatory training or job-search.

Subsec. (c). Pub. L. 100–418, § 1423(a)(3), amended subsec. (c) generally, substituting provisions relating to approval of training programs, written certifications, revocation of certification, and annual report, for provisions relating to withholding of trade readjustment allowance pending beginning or resumption of participation in job search program.


“(a) In General.—Except as provided in subsections (b) and (c), the amendments made by this part [part 1 (§§13001–13009) of subtitle A, amending this section, sections 2271, 2272, 2292, 2296, 2297, 2311, 2317, 2319, 2341 to 2344, and 2346 of this title, and provisions set out as a note preceding section 2271 of this title] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].

“(b) Job Search Program Requirements.—The amendments made by section 13005(a) [amending this section and section 2211 of this title] apply with respect to workers covered by petitions filed under section 221 of the Trade Act of 1974 [section 2271 of this title] on or after the date of the enactment of this Act [Apr. 7, 1986].

“(c) Extension and Authorization.—Sections 2 and 3 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) [parts 2 and 3 of this subchapter] shall be applied as if the amendments made by sections 13007 and 13008 [amending sections 2317 and 2346 of this title and provisions set out as a note preceding section 2271 of this title] had taken effect on December 18, 1985.


**Effective Date of 1981 Amendment and Transition Provisions**


1. Except as provided in paragraph (2), this sub-title [enacting section 2275 of this title, amending this section and sections 2272, 2274, 2292, 2293, 2296, 2297, 2298, 2311, 2313, 2315, 2317, and 2319 of this title, repealing section 2318 of this title, enacting provisions set out as a note under section 2292 of this title, and amending provisions set out as a note preceding section 2271 of this title and under section 3304 of Title 26, Internal Revenue Code] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

2. Except as provided in paragraph (2), (A) the amendments made by sections 2503, 2504, 2505, and 2511 [amending this section, sections 2292, 2293, and 2319 of this title, and provisions set out as a note under section 3304 of Title 26, Internal Revenue Code] shall apply with respect to trade readjustment allowances for weeks of unemployment which begin after September 30, 1981.

3. (C) The amendments made by sections 2506, 2507, and 2508 [amending sections 2296, 2297, and 2298 of this title] shall take effect with respect to determinations regarding training and applications for allowances under sections 236, 237, and 238 of the Trade Act of 1974 [sections 2296, 2297, and 2298 of this title] that are made or filed after September 30, 1981.

4. (D)(i) Except as otherwise provided in clause (ii), the provisions of sections 233(d) and 236(a)(2) of the Trade Act of 1974 (as amended by this Act) [former subsec. (d), now (c), of section 2293 of this title and section 2296(a)(2) of this title], and the provisions of section 204(a)(2)(C) of the Federal-State Extended Unemployment Compensation Act of 1970 (as added by this Act) [set out as a note under section 3304 of Title 26] shall apply to State unemployment compensation laws for purposes of certifications under section 3304(c) of the Internal Revenue Code of 1986 of the applicable State law and the Federal unemployment insurance law, except that in the case of an adversely affected worker who is participating in training under this part, such income shall not include earnings from work for such week that are equal to or less than the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance under the applicable State law and the Federal unemployment insurance law, except that in the case of an adversely affected worker who is participating in training under this part, such income shall not include earnings from work for such week that are equal to or less than the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 2291(a)(3)(B) of this title) reduced (but not below zero) by—

(1) any training allowance deductible under subsection (c) of this section; and

(2) income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law and the Federal unemployment insurance law, except that in the case of an adversely affected worker who is participating in training under this part, such income shall not include earnings from work for such week that are equal to or less than the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 2291(a)(3)(B) of this title).

(b) Adversely affected workers who are undergoing training

Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved by the Secretary shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) of this section or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if...
he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

(c) Deduction from total number of weeks of allowance entitlement

If a training allowance under any Federal law other than this chapter is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to any disqualification under section 2291(b)(2) of this title) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 2293(a) of this title when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If such training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

(d) Election of trade readjustment allowance or unemployment insurance

Notwithstanding section 2291(a)(3)(B) of this title, an adversely affected worker may elect to receive a trade readjustment allowance instead of unemployment insurance during any week with respect to which the worker—

(1) is entitled to receive unemployment insurance as a result of the establishment by the worker of a new benefit year under State law, based in whole or in part upon part-time or short-term employment in which the worker engaged after the worker’s most recent total separation from adversely affected employment; and

(2) is otherwise entitled to a trade readjustment allowance.


AMENDMENTS

2009—Subsec. (a). Pub. L. 111–5, §§ 1822(1)(A), (B), 1893, temporarily substituted “unemployment shall” for “total unemployment shall” and “subsections (b), (c), and (d)” for “subsections (b) and (c)” in introductory provisions. See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (a)(2). Pub. L. 111–5, §§ 1822(1)(C), 1893, temporarily inserted “, except that in the case of an adversely affected worker who is participating in training under this part, such income shall not include earnings from work for such week that are equal to or less than the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker’s first exhaustion of unemployment insurance (as determined for purposes of section 2291(a)(3)(B) of this title)” before period. See Effective and Termination Dates of 2009 Amendment note below.


1981—Subsec. (a). Pub. L. 97–35, title XIX, § 2904(a)(1), substituted “under section 2291(b)” for “under section 2291(c) or 2296(c)”.

1986—Subsec. (c). Pub. L. 99–272 substituted “under any Federal law other than this chapter” for “under any Federal law”, “section 2291(c) or 2296(c) of this title” for “section 2296(c) of this title”, and “and if such training allowance for ‘If the training allowance’”.

Effective and Termination Dates of 2009 Amendment

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 97–35, § 2504(a)(1), (2), substituted provisions setting forth amount of allowance as reduced (but not below zero) by training allowance and income deductions for provisions setting forth amount of allowance as computed by specified percentages of wages and reduced by paid remuneration.

Subsecs. (c), (d). Pub. L. 97–35, § 2504(a)(2)–(4), redesignated subsec. (d) as (c) and struck out references to unemployment insurance and to the inapplicability of former subsecs. (c) and (e) of this section. Former subsec. (c), which related to the computation of unemployment insurance, was struck out.

Subsec. (e). Pub. L. 97–35, § 2504(a)(2), struck out subsec. (e) which related to maximum total for all remuneration and allowances.


REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

Amendment by section 1423(b)(1) effective Aug. 23, 1988, and amendment by section 1423(b)(2) of Pub. L. 100–418 effective on the date that is 90 days after Aug. 23, 1988, see section 1490(a), (f) of Pub. L. 100–418, set out as an Effective Date note under section 2271 of this title.

Effective Date of 1981 Amendment and Transition Provisions


Termination Date

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided
§ 2293. Limitations on trade readjustment allowances

(a) Maximum allowance; deduction for unemployment insurance; additional payments for approved training periods

(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 2292(a) of this title), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker’s first benefit period described in section 2291(a)(3)(A) of this title.

(2) A trade readjustment allowance under paragraph (1) shall not be paid for any week occurring after the close of the 104-week period (or, in the case of an adversely affected worker who requires a program of prerequisite education or remedial education (as described in section 2296(a)(5)(D) of this title) in order to complete training approved for the worker under section 2296 of this title, the 130-week period) that begins with the first week following the period during which the worker was most recently totally separated from adversely affected employment—

(A) within the period which is described in section 2291(a)(1) of this title, and

(B) with respect to which the worker meets the requirements of section 2291(a)(2) of this title.

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete a training program approved for the worker under section 2296 of this title, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 78 additional weeks in the 91-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this part; or

(B) begins with the first week of such training, if such training begins after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 91-week period during which the individual is participating in such training.

(b) Adjustments of amounts payable

Amounts payable to an adversely affected worker under this division shall be subject to such adjustment on a week-to-week basis as may be required by section 2292(b) of this title.

(c) Special adjustments for benefit years ending with extended benefit periods

Notwithstanding any other provision of this chapter or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this division. For purposes of this paragraph, the terms “benefit year” and “extended benefit period” shall have the same respective meanings given to them in the Federal-State Extended Unemployment Compensation Act of 1970.

(d) Week during which worker received on-the-job training

No trade readjustment allowance shall be paid to a worker under this division for any week during which the worker is receiving on-the-job training.

(e) Workers treated as participating in training

For purposes of this part, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 30 days if—

(1) the worker was participating in a training program approved under section 2296(a) of this title before the beginning of such break in training, and

(2) the break is provided under such training program.

(f) Additional weeks to complete training

Notwithstanding any other provision of this section, in order to assist an adversely affected worker to complete training approved for the worker under section 2296 of this title which includes a program of prerequisite education or remedial education (as described in section 2296(a)(5)(D) of this title), and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that follows the last week of entitlement to trade readjustment allowances otherwise payable under this part.

(g) Special rule for calculating separation

Notwithstanding any other provision of this section, any period during which a judicial or administrative appeal is pending with respect to the denial by the Secretary of a petition under section 2273 of this title shall not be counted for purposes of calculating the period of separation under subsection (a)(2).

(h) Special rule for justifiable cause

If the Secretary determines that there is justifiable cause, the Secretary may extend the period during which trade readjustment allowances are payable to an adversely affected worker under paragraphs (2) and (3) of subsection (a) (but not the maximum amounts of such allowances that are payable under this section).

(i) Special rule with respect to military service

(1) In general

Notwithstanding any other provision of this part, the Secretary may waive any require-
ment of this part that the Secretary determines is necessary to ensure that an adversely affected worker who is a member of a reserve component of the Armed Forces and serves a period of duty described in paragraph (2) is eligible to receive a trade readjustment allowance, training, and other benefits under this part in the same manner and to the same extent as if the worker had not served the period of duty.

(2) Period of duty described
An adversely affected worker serves a period of duty described in this paragraph if—

(A) serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

(B) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under section 502(f) of title 32 for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

AMENDMENT OF SECTION
For termination of amendment by section 1306 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

REFERENCES IN TEXT

AMENDMENTS
2009—Subsec. (a)(2). Pub. L. 111–5, §§1821(c)(2), 1823(b)(1), 1829(b)(2), 1839, in introductory provisions, temporarily inserted "under paragraph (1)" after "trade readjustment allowance" and "prerequisite education or" after "requires a program of". See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (a)(3). Pub. L. 111–5, §§1821(c)(2), 1839, in introductory provisions, temporarily substituted "a training program approved for the worker" for "training approved for him" and "78 additional weeks in the 91-week" for "52 additional weeks in the 52-week", and, in concluding provisions, temporarily substituted "91-week" for "52-week". See Effective and Termination Dates of 2009 Amendment note below.

Subsecs. (b) to (e). Pub. L. 111–5, §§1821(c)(2), 1839, temporarily redesignated subsecs. (c) to (f) as (b) to (e), respectively, and struck out former subsec. (b) which read as follows: "A trade readjustment allowance shall not be paid for an additional week specified in subsection (a)(3) of this section if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 2296 of this title within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 420 days after the date of the worker's total or partial separation referred to in section 229(a)(1) of this title." See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (f). Pub. L. 111–5, §§1821(c)(2)(B), 1829(b)(2), 1839, temporarily redesignated subsec. (g) as (f) and inserted "prerequisite education or" after "includes a program of". Former subsec. (f) temporarily redesignated (e). See Effective and Termination Dates of 2009 Amendment note below.

Subsecs. (g) to (l). Pub. L. 111–5, §§1824, 1839, temporarily added subsecs. (g) to (l). Former subsec. (g) temporarily redesignated (f). See Effective and Termination Dates of 2009 Amendment note below.

2002—Subsec. (a)(2). Pub. L. 107–210, §116(a)(1), in introductory provisions inserted "or, in the case of an adversely affected worker who requires a program of remedial education (as described in section 2296(a)(5)(D) of this title) in order to complete training approved for the worker under section 2296 of this title, the 130-week period)" after "104-week period".


Subsec. (g). Pub. L. 107–210, §116(c), added subsec. (g).

1999—Subsec. (a)(2). Pub. L. 106–36, realigned margins par. (2) generally. Prior to amendment, par. (2) read as follows: "A trade readjustment allowance shall not be paid for any week after the 104-week period beginning with the first week following the first week in the period covered by the certification with respect to which the worker has exhausted (as determined for purposes of section 229(a)(3)(B) of this title) all rights to that part of his unemployment insurance that is regular compensation." See Effective and Termination Dates of 2002 Amendment note below.

Subsec. (a)(3). Pub. L. 100–418, §1423(c)(2), substituted "participating in such training" for "engaged in such training and has not been determined under section 2296(c) of this title to be failing to make satisfactory progress in the training" in last sentence.

Subsec. (a)(3)(B). Pub. L. 100–418, §1423(c)(1), substituted "begins" for "is approved" after "training".


1988—Subsec. (a)(2). Pub. L. 100–418, §1423(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "A trade readjustment allowance shall not be paid for any week after the 104-week period beginning with the first week following the first week in the period covered by the certification with respect to which the worker has exhausted (as determined for purposes of section 229(a)(3)(B) of this title) all rights to that part of his unemployment insurance that is regular compensation." See Effective and Termination Dates of 2002 Amendment note below.

Subsec. (a)(3). Pub. L. 100–418, §1423(c)(2), substituted "participating in such training" for "engaged in such training and has not been determined under section 2296(c) of this title to be failing to make satisfactory progress in the training" in last sentence.

Subsec. (a)(3)(B). Pub. L. 100–418, §1423(c)(1), substituted "begins" for "is approved" after "training".


1984—Subsec. (a)(3). Pub. L. 98–369 substituted "Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 2296 of this title, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

"(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this part; or

(B) begins with the first week of such training, if such training is approved after the last week described in subparagraph (A)."

for "Notwithstanding paragraph (1), in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26
additional weeks in the 26-week period following the last week of entitlement to trade readjustment allowances otherwise payable under this part in order to assist the adversely affected worker to complete training approved for the worker under section 2296 of this title."


Subsec. (b). Pub. L. 97–35 substituted provisions relating to payment for an additional week for provisions determining the appropriate week.

Subsecs. (c), (d). Pub. L. 97–35 added subsecs. (c) and (d).

**Effective and Termination Dates of 2009 Amendment**

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

**Effective Date of 2002 Amendment**

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

**Effective Date of 1988 Amendment**

Amendment by section 1423(a)(2) of Pub. L. 100–418 effective on date that is 90 days after Aug. 23, 1988, and amendment by section 1425(a) of Pub. L. 100–418 effective Aug. 23, 1988, but not applicable with respect to any total separation of a worker from adversely affected employment (within the meaning of section 2319 of this title) that occurs before Aug. 23, 1988, if the application of such amendment with respect to such total separation would reduce the period for which such worker would (but for such amendment) be allowed to receive trade readjustment allowances under this division, see section 1430(a)(1), (g) of Pub. L. 100–418, set out as an Effective Date note under section 2297 of this title.

**Effective Date of 1981 Amendment and Transition Provisions**

Amendment by Pub. L. 97–35 applicable to allowances payable for weeks of unemployment which begin after Sept. 30, 1981, with transition provisions applicable, and with the amendment of subsec. (d) of this section applicable, except as otherwise provided, to laws for certification purposes under section 3303(c) of title 26 on Oct. 31, of any taxable year after 1981, see section 2514 of Pub. L. 97–35, set out as a note under section 2291 of this title.

**Termination Date**

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

**Waiver of Certain Time Limitations**

Pub. L. 100–418, title I, § 1425(b), Aug. 23, 1988, 102 Stat. 1250, provided that:\n
"(1) The provisions of subsections (a)(2) and (b) of section 233 of the Trade Act of 1974 [19 U.S.C. 2293(a)(2), (b)] shall not apply with respect to any worker who became totally separated from adversely affected employment (within the meaning of section 247 of such Act [19 U.S.C. 2319]) during the period that began on August 13, 1961, and ended on April 7, 1966.

"(2)(A) Any worker who is otherwise eligible for payment of a trade readjustment allowance under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 [19 U.S.C. 2291 et seq.] by reason of paragraph (1) of this subsection may receive payments of such allowance only if such worker—

"(i) is enrolled in a training program approved by the Secretary under section 236(a) of such Act [19 U.S.C. 2296(a)], and

"(ii) has been unemployed continuously since the date on which the worker became totally separated from the adversely affected employment, not taking into account seasonal employment, odd jobs, or part-time, temporary employment.

"(B) If the Secretary of Labor determines that—

"(i) a worker—

"(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subparagraph (A), or

"(II) has ceased to participate in such training program before completing such training program, and

"(ii) there is no justifiable cause for such failure or cessation,

no trade readjustment allowance may be paid to the worker under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 for the week in which such failure or cessation occurred, or any succeeding week, until the worker begins or resumes participation in a training program approved under section 236(a) of such Act."

§ 2294. Application of State laws

(a) In general

Except where inconsistent with the provisions of this part and subject to such regulations as the Secretary may prescribe, the availability and disqualification provisions of the State law—

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated,

shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

(b) Special rule with respect to State laws and regulations on good cause for waiver of time limits or late filing of claims

Any law, regulation, policy, or practice of a cooperating State that allows for a waiver for good cause of any time limitation relating to the administration of the State unemployment insurance law shall, in the administration of the program under this part by the State, apply to any time limitation with respect to an application for a trade readjustment allowance or enrollment in training under this part.
§ 2295. Employment and case management services

The Secretary shall make available, directly or through agreements with States under section 2311 of this title, to adversely affected workers and adversely affected incumbent workers covered by a certification under subpart A of this part the following employment and case management services:

1. Comprehensive and specialized assessment of skill levels and service needs, including through—
   a. Diagnostic testing and use of other assessment tools; and
   b. In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

2. Development of an individual employment plan to identify employment goals and objectives, and appropriate training to achieve those goals and objectives.

3. Information on training available in local and regional areas, information on individual counseling to determine which training is suitable training, and information on how to apply for such training.

4. Information on how to apply for financial aid, including referring workers to educational opportunity centers described in section 402F of the Higher Education Act of 1965 (20 U.S.C. 1070a–16), where applicable, and notifying workers that the workers may request financial aid administrators at institutions of higher education (as defined in section 102 of such Act (20 U.S.C. 1002)) to use the administrators’ discretion under section 479A of such Act (20 U.S.C. 1087tt) to use current year income data, rather than preceding year income data, for determining the amount of need of the workers for Federal financial assistance under title IV of such Act (20 U.S.C. 1070 et seq.) and 42 U.S.C. 2751 et seq.).

5. Short-term prevocational services, including development of learning skills, communications skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for employment or training.

6. Individual career counseling, including job search and placement counseling, during the period in which the individual is receiving a trade adjustment allowance or training under this part, and after receiving such training for purposes of job placement.

7. Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—
   a. Job vacancy listings in such labor market areas;
   b. Information on jobs skills necessary to obtain jobs identified in job vacancy listings described in subparagraph (A);
   c. Information relating to local occupations that are in demand and earning potential of such occupations; and
   d. Skills requirements for local occupations described in subparagraph (C).

8. Information relating to the availability of supportive services, including services relating to child care, transportation, dependent care, housing assistance, and need-related payments that are necessary to enable an individual to participate in training.

References in Text


Amendments

2009—Pub. L. 111–5, § 1826(a), 1893, temporarily amended section generally. Prior to amendment, text read as follows: “The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subpart A of this part counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law, including the services provided through...
one-stop delivery systems described in section 2864(c) of title 29. The Secretary shall, whenever appropriate, procure such services through agreements with the States. See Effective and Termination Dates of 2009 Amendment note below.

2002—Pub. L. 107–210 inserted “; including the services provided through one-stop delivery systems described in section 2864(c) of title 29” before period at end of first sentence.

1988—Pub. L. 100–418 substituted “the States” for “co-operating State agencies”.

Effective and Termination Dates of 2009 Amendment

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 12, 2011, except as otherwise provided, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

Termination Date

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

§ 2295a. Funding for administrative expenses and employment and case management services

(a) Funding for administrative expenses and employment and case management services

(1) In general

In addition to any funds made available to a State to carry out section 2296 of this title for a fiscal year, the State shall receive for the fiscal year a payment in an amount that is equal to 15 percent of the amount of such funds.

(2) Use of funds

A State that receives a payment under paragraph (1) shall—

(A) use not more than ½ of such payment for the administration of the trade adjustment assistance for workers program under this part, including for—

(i) processing waivers of training requirements under section 2291 of this title;

(ii) collecting, validating, and reporting data required under this part; and

(iii) providing reemployment trade adjustment assistance under section 2318 of this title; and

(B) use not less than ½ of such payment for employment and case management services under section 2295 of this title.

(b) Additional funding for employment and case management services

(1) In general

In addition to any funds made available to a State to carry out section 2296 of this title and the payment under subsection (a)(1) for a fiscal year, the Secretary shall provide to the State for the fiscal year a payment in the amount of $350,000.

(2) Use of funds

A State that receives a payment under paragraph (1) shall use such payment for the purpose of providing employment and case management services under section 2295 of this title.

(3) Voluntary return of funds

A State that receives a payment under paragraph (1) may decline or otherwise return such payment to the Secretary.

§ 2296. Training

(a) In general

(1) If the Secretary determines, with respect to an adversely affected worker or an adversely affected incumbent worker, that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area career and technical education schools, as defined in section 2302 of title 20, and employers)1

(E) the worker is qualified to undertake and complete such training, and

1 So in original. Probably should be followed by a comma.
(F) such training is suitable for the worker and available at a reasonable cost,
the Secretary shall approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section) paid on the worker’s behalf by the Secretary directly or through a voucher system.

(2)(A) The total amount of payments that may be made under paragraph (1) shall not exceed—
(i) $75,000,000 for fiscal year 2010; and
(ii) $66,500,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011.

(B)(i) The Secretary shall, as soon as practicable after the beginning of each fiscal year, make an initial distribution of the funds made available to carry out this section for a fiscal year are distributed to the States by not later than July 15 of that fiscal year.

(ii) Subject to clause (iii), in determining how to apportion the initial distribution of funds pursuant to subparagraph (B)(i) in a fiscal year, the Secretary shall take into account, with respect to each State—

(I) the trend in the number of workers covered by certifications of eligibility under this part during the most recent 4 consecutive calendar quarters for which data are available;

(II) the trend in the number of workers participating in training under this section during the most recent 4 consecutive calendar quarters for which data are available;

(III) the number of workers estimated to be participating in training under this section during the fiscal year;

(IV) the amount of funding estimated to be necessary to provide training approved under this section to such workers during the fiscal year;

(V) such other factors as the Secretary considers appropriate relating to the provision of training under this section.

(iii) In no case may the amount of the initial distribution to a State pursuant to subparagraph (B)(i) in a fiscal year be less than 25 percent of the initial distribution to the State in the preceding fiscal year.

(D) The Secretary shall establish procedures for the distribution of the funds that remain available for the fiscal year after the initial distribution required under subparagraph (B)(i). Such procedures may include the distribution of funds pursuant to requests submitted by States in need of such funds.

(E) If, during a fiscal year, the Secretary estimates that the amount of funds necessary to pay the costs of training approved under this section will exceed the dollar amount limitation specified in subparagraph (A), the Secretary shall decide how the amount of funds made available to carry out this section that have not been distributed at the time of the estimate will be apportioned among the States for the remainder of the fiscal year.

(3) For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under paragraph (1).

(4)(A) If the costs of training an adversely affected worker or an adversely affected incumbent worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker or an adversely affected incumbent worker if such costs—

(i) have already been paid under any other provision of Federal law,

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker or adversely affected incumbent worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker or adversely affected incumbent worker.

(5) Except as provided in paragraph (10), the training programs that may be approved under paragraph (1) include, but are not limited to—

(A) employer-based training, including—

(i) on-the-job training,

(ii) customized training, and

(iii) apprenticeship programs registered under the Act of August 16, 1937 (commonly known as the ‘‘National Apprenticeship Act’’; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.),

(B) any training program provided by a State pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.],

(C) any training program approved by a private industry council established under section 102 of such Act,

(D) any program of remedial education,

(E) any program of prerequisite education or coursework required to enroll in training that may be approved under this section,

(F) any training program (other than a training program described in paragraph (7)) for which all, or any portion, of the costs of training the worker are paid—

(i) under any Federal or State program other than this chapter, or

(ii) from any other source other than this section,

(G) any other training program approved by the Secretary, and...
(H) any training program or coursework at an accredited institution of higher education (described in section 1002 of title 20), including a training program or coursework for the purpose of—

(i) obtaining a degree or certification; or

(ii) completing a degree or certification that the worker had previously begun at an accredited institution of higher education.

The Secretary may not limit approval of a training program under paragraph (1) to a program provided pursuant to title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(6)(A) The Secretary is not required under paragraph (1) to pay the costs of any training approved under paragraph (1) to the extent that such costs are paid—

(i) under any Federal or State program other than this part, or

(ii) from any source other than this section.

(B) Before approving any training to which subparagraph (A) may apply, the Secretary may require that the adversely affected worker or adversely affected incumbent worker enter into an agreement with the Secretary under which the Secretary will not be required to pay under this section the portion of the costs of such training that the worker has reason to believe will be paid under the program, or by the source, described in clause (i) or (ii) of subparagraph (A).

(7) The Secretary shall not approve a training program if—

(A) all or a portion of the costs of such training program are paid under any nongovernmental plan or program.

(B) the adversely affected worker or adversely affected incumbent worker has a right to obtain training or funds for training under such plan or program, and

(C) such plan or program requires the worker to reimburse the plan or program from funds provided under this part, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

(8) The Secretary may approve training for any adversely affected worker who is a member of a group certified under subpart A of this part at any time after the date on which the group is certified under subpart A of this part, without regard to whether such worker has exhausted all rights to any unemployment insurance to which the worker is entitled.

(9)(A) Subject to subparagraph (B), the Secretary shall prescribe regulations which set forth the criteria under each of the subparagraphs of paragraph (1) that will be used as the basis for making determinations under paragraph (1).

(B)(i) In determining under paragraph (1)(E) whether a worker is qualified to undertake and complete training, the Secretary may approve training for a period longer than the worker’s period of eligibility for trade readjustment allowances under division I if the worker demonstrates a financial ability to complete the training after the expiration of the worker’s period of eligibility for such trade readjustment allowances.

(ii) In determining the reasonable cost of training under paragraph (1)(F) with respect to a worker, the Secretary may consider whether other public or private funds are reasonably available to the worker, except that the Secretary may not require a worker to obtain such funds as a condition of approval of training under paragraph (1).

(10) In the case of an adversely affected incumbent worker, the Secretary may not approve—

(A) on-the-job training under paragraph (5)(A)(i); or

(B) customized training under paragraph (5)(A)(ii), unless such training is for a position other than the worker’s adversely affected employment.

(11) If the Secretary determines that an adversely affected incumbent worker for whom the Secretary approved training under this section is no longer threatened with a total or partial separation, the Secretary shall terminate the approval of such training.

(b) Supplemental assistance

The Secretary may, where appropriate, authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker’s regular place of residence. The Secretary may authorize—

(1) payments for subsistence that exceed whichever is the lesser of (A) the actual per diem expenses for subsistence, or (B) payments at 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations, or

(2) payments for travel expenses exceeding the prevailing mileage rate authorized under the Federal travel regulations.

(c) On-the-job training requirements

(1) In general

The Secretary may approve on-the-job training for any adversely affected worker if—

(A) the worker meets the requirements for training to be approved under subsection (a)(1); and

(B) the Secretary determines that on-the-job training—

(i) can reasonably be expected to lead to suitable employment with the employer offering the on-the-job training;

(ii) is compatible with the skills of the worker;

(iii) includes a curriculum through which the worker will gain the knowledge or skills to become proficient in the job for which the worker is being trained; and

(iv) can be measured by benchmarks that indicate that the worker is gaining such knowledge or skills; and

(C) the State determines that the on-the-job training program meets the requirements of clauses (iii) and (iv) of subparagraph (B).

(2) Monthly payments

The Secretary shall pay the costs of on-the-job training approved under paragraph (1) in monthly installments.
(3) Contracts for on-the-job training

(A) In general

The Secretary shall ensure, in entering into a contract with an employer to provide on-the-job training to a worker under this subsection, that the skill requirements of the job for which the worker is being trained, the academic and occupational skill level of the worker, and the work experience of the worker are taken into consideration.

(B) Term of contract

Training under any such contract shall be limited to the period of time required for the worker receiving on-the-job training to become proficient in the job for which the worker is being trained, but may not exceed 104 weeks in any case.

(4) Exclusion of certain employers

The Secretary shall not enter into a contract for on-the-job training with an employer that exhibits a pattern of failing to provide workers receiving on-the-job training from the employer with—

(A) continued, long-term employment as regular employees; and

(B) wages, benefits, and working conditions that are equivalent to the wages, benefits, and working conditions provided to regular employees who have worked a similar period of time and are doing the same type of work as workers receiving on-the-job training from the employer.

(5) Labor standards

The Secretary may pay the costs of on-the-job training, notwithstanding any other provision of this section, only if—

(A) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits),

(B) such training does not impair existing contracts for services or collective bargaining agreements,

(C) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained,

(D) no other individual is on layoff from the same, or any substantially equivalent, job for which such adversely affected worker is being trained,

(E) the employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created by hiring such adversely affected worker,

(F) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.

(G) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 2272 of this title.

(H) the employer is provided reimbursement of not more than 50 percent of the wage rate of the participant, for the cost of providing the training and additional supervision related to the training,

(I) the employer has not received payment under subsection (a)(1) of this section with respect to any other on-the-job training provided by such employer which failed to meet the requirements of subparagraphs (A), (B), (C), (D), (E), and (F), and

(J) the employer has not taken, at any time, any action which violated the terms of any certification described in subparagraph (H) made by such employer with respect to any other on-the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1) of this section.

(d) Eligibility

An adversely affected worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subpart—

(1) because the worker—

(A) is enrolled in training approved under subsection (a);

(B) left work—

(i) that was not suitable employment in order to enroll in such training; or

(ii) that the worker engaged in on a temporary basis during a break in such training or a delay in the commencement of such training;

(C) left on-the-job training not later than 30 days after commencing such training because the training did not meet the requirements of subsection (c)(1)(B); or

(2) because of the application to any such week in training of the provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work.

(e) “Suitable employment” defined

For purposes of this section the term “suitable employment” means, with respect to a worker, work of a substantially equal or higher skill level than the worker’s past adversely affected employment, and wages for such work at not less than 80 percent of the worker’s average weekly wage.

(f) “Customized training” defined

For purposes of this section, the term “customized training” means training that is—

(1) designed to meet the special requirements of an employer or group of employers;

(2) conducted with a commitment by the employer or group of employers to employ an individual upon successful completion of the training; and

(3) for which the employer pays for a significant portion (but in no case less than 50 percent) of the cost of such training, as determined by the Secretary.
(g) Regulations with respect to apportionment of training funds to States

(1) In general

Not later than 1 year after February 17, 2000, the Secretary shall issue such regulations as may be necessary to carry out the provisions of subsection (a)(2).

(2) Consultations

The Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not less than 90 days before issuing any regulation pursuant to paragraph (1).

(h) Part-time training

(1) In general

The Secretary may approve full-time or part-time training for a worker under subsection (a).

(2) Limitation

Notwithstanding paragraph (1), a worker participating in part-time training approved under subsection (a) may not receive a trade readjustment allowance under section 2291 of this title.


AMENDMENT OF SECTION 1893

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

REFERENCES IN TEXT


AMENDMENTS

2010—Subsec. (a)(2)(A). Pub. L. 111–344 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The total amount of payments that may be made under paragraph (1) shall not exceed—

(1) $143,750,000 for the fiscal year ending December 31, 2009, and $157,000,000 for the fiscal year ending December 31, 2010, and

(2) $575,000,000; and

(3) for each of the fiscal years 2009 and 2010, $757,000,000; and

(4) for the period beginning October 1, 2010, and ending December 31, 2010, $1,435,700,000.”


Subsec. (a)(4)(A). (B). Pub. L. 111–5, §§ 1830(a)(1)(B)(i), 1893, temporarily inserted “or an adversely affected incumbent worker” after “adversely affected worker” in concluding provisions, temporarily struck out last sentence which read as follows: “Insofar as possible, the Secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.” See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (a)(5). Pub. L. 111–5, §§ 1830(a)(1)(C), 1893, temporarily inserted “or adversely affected incumbent worker” after “adversely affected worker” in two concluding provisions, temporarily substituted “paragraph (1)” for “this paragraph (1)” in introductory provisions. See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (a)(8). Pub. L. 111–5, §§ 1830(a)(1)(F), 1893, temporarily substituted “except as provided in paragraph (10)”, “the training programs” for “the training programs” in introductory provisions. See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (c)(5). Pub. L. 111–5, §§ 1830(a)(1)(C), 1893, temporarily substituted “Except as provided in paragraph (10),” “the training programs” for “the training programs” in introductory provisions. See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (d)(5)(E) to (H). Pub. L. 111–5, §§ 1829(a)(2)(6), 1893, temporarily added subpars. (E) and (H) and redesignated former subpar. (E) as (F) and (G), respectively. See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (a)(9), Pub. L. 111–5, §§1828(b), 1993, temporarily designated existing provisions as subpar. (A), subpar. (subject to subparagraph (B), the Secretary)” for “The Secretary,” and added subpar. (B). See Effective and Termination Dates of 2009 Amendment note below.


Subsecs. (g), (h), Pub. L. 111–5, §§1831(a), 1993, temporarily inserted subsec. heading, added pars. (1) to (4), redesignated existing provisions as par. (5), and in par. (5), temporarily inserted par. heading, substituted “The Secretary may pay the costs of on-the-job training,” for “The Secretary shall pay the costs of on-the-job training of an adversely affected worker that is approved under subsection (a)(1) of this section in equal monthly installments, but the Secretary may pay such costs,” redesignated former pars. (1) to (10) as subpars. (A) to (J), respectively, in subpar. (I) substituted “subject to subparagraphs (A), (B), (C), (D), (E), and (F)” for “paragraphs (1), (2), (3), (4), (5), and (6)”, and in subpar. (J) substituted “subject to subparagraph (H)” for “paragraph (6)”. See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (d), Pub. L. 111–5, §§1832, 1993, temporarily amended subsec. (d) generally. Prior to amendment, text read as follows: “A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subpart because the worker is in training approved under subsection (a) of this section, because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under subsection (a) of this section and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.” See Effective and Termination Dates of 2009 Amendment note below.

Subsecs. (g), (h), Pub. L. 111–5, §§1826(c), 1830(b), 1993, temporarily added subsec. (g) and (h). See Effective and Termination Dates of 2009 Amendment note below.

2006—Subsec. (a)(1)(D), Pub. L. 109–270 substituted “area career and technical education schools, as defined in section 2302 of title 20” for “area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963”.

2002—Subsec. (a)(2)(A), Pub. L. 107–210, §117, substituted “$20,000,000” for “$95,000,000”, except that for fiscal year 1997, the total amount of payments made under paragraph (1) shall not exceed $70,000,000”.

Subsec. (a)(5)(A), Pub. L. 107–210, §118(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “on-the-job training,”.

Subsec. (c)(8), Pub. L. 107–210, §118(b), amended par. (8) generally. Prior to amendment, par. (8) read as follows: “the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker requires to continue such employment and the employer does not have due cause to terminate such employment,”.

Subsec. (f), Pub. L. 107–210, §118(c), added subsec. (f).


1993—Subsec. (a)(2)(A). Pub. L. 103–66 inserted before period at end “, except that for fiscal year 1997, the total amount of payments made under paragraph (1) shall not exceed $70,000,000”.

1988—Subsec. (a)(1), Pub. L. 100–418, §1424(a)(5)–(7), struck out “(to the extent appropriated funds are available)” after “the Secretary shall” in first sentence, and in second sentence inserted “subject to the limitations imposed by this section” after “costs of such training” and “directly or through a voucher system” after “by the Secretary”.

Subsec. (a)(1)(D), Pub. L. 100–418, §1424(a)(1), substituted “is reasonably available” for “is available”.

Subsec. (a)(2)(E), Pub. L. 100–418, §1424(a)(11), (12), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(2)(A), Pub. L. 100–418, §1424(b), directed the amendment of subpar. (A) by substituting “$120,000,000” for “$300,000,000”, which amendment did not become effective pursuant to section 1430(d) of Pub. L. 100–418, as amended, set out as an Effective Date note under section 2397 of this title.

Subsec. (a)(3), (4), Pub. L. 100–418, §1424(a)(11), redesignated pars. (2) and (3) as (3) and (4), respectively.

Former par. (4) redesignated (5).

Subsec. (a)(5), Pub. L. 100–418, §1424(a)(8)–(11), redesignated former par. (4) as (5), added subpars. (D) and (E), and redesignated former subpar. (D) as (F).

Subsec. (a)(6), Pub. L. 100–418, §1424(a)(13), added par. (6).

Subsec. (a)(6)(B), Pub. L. 100–418 substituted “in clause (i) or (ii) of subparagraph (A)” for “in subparagraph (A)”.

Subsec. (b)(7)(B), Pub. L. 100–418, §1424(c)(2), (3), redesignated subsec. (d) as (c), and struck out former subsec. (c) which related to refusal to accept or continue training, or failure to make satisfactory progress.

Subsec. (d)(2) to (4), Pub. L. 100–418, §1424(c)(2), (3), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

Former subsec. (d) redesignated (c).

1986—Subsec. (a)(1), Pub. L. 99–272, §13004(a)(2), substituted “shall (to the extent appropriated funds are available) approve” for “may approve” in first sentence.

Subsec. (a)(1)(A), Pub. L. 99–272, §13004(a)(1), substituted “for an adversely affected worker” for “for a worker”.

Subsec. (a)(2) to (4), Pub. L. 99–272, §13004(a)(6), added pars. (2) to (4). Former pars. (2) and (3) redesignated subsecs. (e) and (f), respectively.


Subsec. (e), Pub. L. 99–272, §13004(a)(3), (5), redesignated par. (2) of subsec. (a) as subsec. (e) and substituted “under subsection (a) of this section” for “under paragraph (1)” in two places.

Subsec. (f), Pub. L. 99–272, §13004(a)(4), (5), redesignated par. (3) of subsec. (a) as subsec. (f) and substituted “section this section” for “this subsection”.

1981—Subsec. (a). Pub. L. 97–35 redesignated existing provisions as par. (1), revised provisions, made changes in nomenclature, inserted provisions respecting availability, payment, and scope of training, and added pars. (2) and (3).

Subsec. (b), Pub. L. 97–35 substituted provisions limiting the maximum amount of travel expenses on the basis of amounts paid under Federal travel regulations
for provisions establishing specific maximum amounts for subsistence and transportation expenses.

Effective Date of 2010 Amendment

Effective and Termination Dates of 2009 Amendment
Pub. L. 111–5, div. B, title I, §1828(d), Feb. 17, 2009, 123 Stat. 382, provided that, “This section [amending this section] and the amendments made by this section shall take effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act [Feb. 17, 2009], except that—

(1) subparagraph (A) of section 236(a)(2) of the Trade Act of 1974 (19 U.S.C. 2296(a)(2)(A)), as amended by subsection (a) of this section, shall take effect on the date of the enactment of this Act; and

(2) subparagraphs (B), (C), and (D) of such section 236(a)(2) (19 U.S.C. 2296(a)(2)(B) to (D)) shall take effect on October 1, 2009.”

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Effective Date of 2002 Amendment
Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

Effective Date of 1998 Amendment

§ 2297. Job search allowances

(a) Job search allowance authorized

(1) In general

An adversely affected worker covered by a certification issued under subpart A of this part may file an application with the Secretary for payment of a job search allowance.

(2) Approval of applications

The Secretary may grant an allowance pursuant to an application filed under paragraph (1) when all of the following apply:

(A) Assist adversely affected worker

The allowance is paid to assist an adversely affected worker who has been totally separated in securing a job within the United States.

(B) Local employment not available

The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) Application

The worker has filed an application for the allowance with the Secretary before—

(I) the later of—

(i) the 365th day after the date of the certification under which the worker is certified as eligible; or

(ii) the date that is the 182d day after the date on which the worker concluded training.

(II) the 365th day after the date of the worker’s last total separation; or

(II) the date that is the 182d day after the date on which the worker concluded training.

(b) Amount of allowance

(1) In general

An allowance granted under subsection (a) of this section shall provide reimbursement to the worker of all necessary job search expenses as prescribed by the Secretary in regulations.

(2) Maximum allowance

Reimbursement under this subsection may not exceed $1,500 for any worker.

(3) Allowance for subsistence and transportation

Reimbursement under this subsection may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 2296(b) (1) and (2) of this title.

(c) Exception

Notwithstanding subsection (b) of this section, the Secretary shall reimburse any adversely af-
fected worker for necessary expenses incurred by the worker in participating in a job search program approved by the Secretary.


AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS

2009—Subsec. (a)(2)(C)(ii). Pub. L. 111–5, §§ 1833(a)(1), 1983, temporarily struck out “,” unless the worker received a waiver under section 2291(c) of this title before permanent relocation.


1981—Subsec. (a). Pub. L. 97–35, § 2507(1), amended provisions generally, increasing percent of reimbursement of cost of job search from 80 to 90 and maximum amount from $500 to $600, and striking out requirement of total separation.

Subsec. (b)(1). Pub. L. 97–35, § 2507(2)(A), inserted “who has been totally separated” after “to assist an adversely affected worker”.

Subsec. (b)(3). Pub. L. 97–35, § 2507(2)(B), amended par. (3) generally, substituting the 182-day period for a reasonable period of time and inserting provision relating to 365 days after certification.

EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITION PROVISIONS


TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 251 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2298. Relocation allowances

(a) Relocation allowance authorized

(1) In general

Any adversely affected worker covered by a certification issued under subpart A of this part may file an application for a relocation allowance with the Secretary, and the Secretary may grant the relocation allowance, subject to the terms and conditions of this section.

(2) Conditions for granting allowance

A relocation allowance may be granted if all of the following terms and conditions are met:

(A) Assist an adversely affected worker

The relocation allowance will assist an adversely affected worker in relocating within the United States.

(B) Local employment not available

The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) Total separation

The worker is totally separated from employment at the time relocation commences.

(D) Suitable employment obtained

The worker—

(i) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the worker wishes to relocate; or

(ii) has obtained a bona fide offer of such employment.

(E) Application

The worker filed an application with the Secretary before—

(i) the later of—

(I) the 425th day after the date of the certification under subpart A of this part; or

(II) the 425th day after the date of the worker’s last total separation; or

(ii) the date that is the 182d day after the date on which the worker concluded training.

(b) Amount of allowance

The relocation allowance granted to a worker under subsection (a) of this section includes—

(1) all reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 2296(b)(1) and (2) of this title specified in regulations prescribed by the Secretary) incurred in transporting the worker, the worker’s family, and household effects; and
(2) a lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,500.

(c) Limitations

A relocation allowance may not be granted to a worker unless—

(1) the relocation occurs within 182 days after the filing of the application for relocation assistance; or

(2) the relocation occurs within 182 days after the conclusion of training, if the worker entered a training program approved by the Secretary under section 2296(b)(1) and (2) of this title.


AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS

2009—Subsec. (a)(2)(E)(ii). Pub. L. 111–5, §§ 1833(b)(1), 1893, temporarily struck out “; unless the worker received a waiver under section 2291(c) of this title” before period. See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (c). Pub. L. 97–35, § 2506(3), substituted provisions respecting 182-day requirements for provisions respecting requirements involving entitlements for the week in which the application is filed and relocation occurring within a reasonable period of time.


Effective and Termination Dates of 2009 Amendment

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 17, 2009, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

Effective Date of 1981 Amendment and Transition Provisions


Termination Date

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 2672(b) of Pub. L. 111–5, set out as a note preceding section 2271 of this title.

Subpart C—General Provisions

§ 2311. Agreements with States

(a) Authority of Secretary to enter into agreements

The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subpart as “cooperating States” and “cooperating States agencies” respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, shall receive applications for, and shall provide, payments on the basis provided in this part, (2) in accordance with subsection (f), shall make available to adversely affected workers and adversely affected incumbent workers covered by a certification under subpart A the employment and case management services described in section 2291 of this title, (3) shall make any certifications required under section 2291(c)(2) of this title, and (4) shall otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this part.

(b) Amendment, suspension, and termination of agreements

Each agreement under this subpart shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Form and manner of data

Each agreement under this subpart shall—

(1) provide the Secretary with the authority to collect any data the Secretary determines necessary to meet the requirements of this part; and

(2) specify the form and manner in which any such data requested by the Secretary shall be reported.

(d) Unemployment insurance

Each agreement under this subpart shall provide that unemployment insurance otherwise

1See References in Text note below.
payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this part.

(e) Review

A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(f) Coordination of benefits and assistance

Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 2295 and 2296 of this title and under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.) upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this part.

(g) Advising and interviewing adversely affected workers

Each cooperating State agency shall, in carrying out subsection (a)(2) of this section—

(1) advise each worker who applies for unemployment insurance of the benefits under this part and the procedures and deadlines for applying for such benefits,

(2) facilitate the early filing of petitions under section 2271 of this title for any workers that the agency considers are likely to be eligible for benefits under this part,

(3) advise each adversely affected worker to apply for training under section 2296(a) of this title before, or at the same time, the worker applies for trade readjustment allowances under division I of subpart B of this part,

(4) perform outreach to, intake of, and orientation for adversely affected workers and adversely affected incumbent workers covered by a certification under subpart A with respect to assistance and benefits available under this part, and

(5) make employment and case management services described in section 2295 of this title available to adversely affected workers and adversely affected incumbent workers covered by a certification under subpart A and, if funds provided to carry out this part are insufficient to make such services available, make arrangements to make such services available through other Federal programs.

(h) Submission of information for coordination of workforce investment activities

In order to promote the coordination of workforce investment activities in each State with activities carried out under this part, any agreement entered into under this section shall provide that the State shall submit to the Secretary a description of the State’s rapid response activities under section 2271(a)(2)(A) of this title.

(i) Control measures

(1) In general

The Secretary shall require each cooperating State and cooperating State agency to implement effective control measures and to effectively oversee the operation and administration of the trade adjustment assistance program under this part, including by means of monitoring the operation of control measures to improve the accuracy and timeliness of the data being collected and reported.

(2) Definition

For purposes of paragraph (1), the term “control measures” means measures that—

(A) are internal to a system used by a State to collect data; and

(B) are designed to ensure the accuracy and verifiability of such data.

(j) Data reporting

(1) In general

Any agreement entered into under this section shall require the cooperating State or cooperating State agency to report to the Secretary on a quarterly basis comprehensive performance accountability data, to consist of—

(A) the core indicators of performance described in paragraph (2)(A);

(B) the additional indicators of performance described in paragraph (2)(B), if any; and

(C) a description of efforts made to improve outcomes for workers under the trade adjustment assistance program.

(2) Core indicators described

(A) In general

The core indicators of performance described in this paragraph are—

(i) the percentage of workers receiving benefits under this part who are employed during the second calendar quarter following the calendar quarter in which the workers cease receiving such benefits;

(ii) the percentage of such workers who are employed in each of the third and fourth calendar quarters following the calendar quarter in which the workers cease receiving such benefits; and

(iii) the earnings of such workers in each of the third and fourth calendar quarters following the calendar quarter in which the workers cease receiving such benefits.

(B) Additional indicators

The Secretary and a cooperating State or cooperating State agency may agree upon additional indicators of performance for the trade adjustment assistance program under this part, as appropriate.

(3) Standards with respect to reliability of data

In preparing the quarterly report required by paragraph (1), each cooperating State or cooperating State agency shall establish procedures that are consistent with guidelines to be issued by the Secretary to ensure that the data reported are valid and reliable.
(k) Verification of eligibility for program benefits

(1) In general

An agreement under this subpart shall provide that the State shall periodically reevaluate a worker receiving benefits under this subpart who is not a citizen or national of the United States remains in a satisfactory immigration status. Once satisfactory immigration status has been initially verified through the immigration status verification system described in section 1320b–7(d) of title 24 for purposes of establishing a worker's eligibility for unemployment compensation, the State shall reverify the worker's immigration status if the documentation provided during initial verification will expire during the period in which that worker is potentially eligible to receive benefits under this subpart. The State shall conduct such reevaluation in a timely manner, utilizing the immigration status verification system described in section 1320b–7(d) of title 24.

(2) Procedures

The Secretary shall establish procedures to ensure the uniform application by the States of the requirements of this subpart.

(3) Temporary redesignation

of Pub. L. 93–618, was executed to the subsec. (e) (now subsec. (f)) set out in this section and not the subsec. (e) that amended section 3302 of Title 26, Internal Revenue Code, to reflect the probable intent of Congress.

AMENDMENTS


Subsec. (a)(2). Pub. L. 111–5, §§ 1852(a)(1), 1893, temporarily amended cl. (2) generally. Prior to amendment, cl. (2) read as follows: “where appropriate, but in accordance with subsection (f) of this section, will afford adversely affected workers testing, counseling, referral to training and job search programs, and placement services.”. See Effective and Termination Dates of 2009 Amendment note below.


Subsecs. (c) to (f). Pub. L. 111–5, §§ 1852(b), 1893, temporarily added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively. Former subsec. (f) temporarily redesignated (g). See Codification note above and Effective and Termination Dates of 2009 Amendment note below.

Subsec. (g). Pub. L. 111–5, §§ 1852(b)(1), 1893, temporarily redesignated subsec. (f) as (g). Former subsec. (g) temporarily redesignated (h). See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (g)(4). Pub. L. 111–5, §§ 1852(c)(2), 1893, temporarily amended par. (4) generally. Prior to amendment, par. (4) read as follows: “as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 2296 of this title and review such opportunities with the worker.” See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (h). Pub. L. 111–5, §§ 1852(b)(1), (d), 1893, temporarily redesignated subsec. (g) as (h) and substituted “1996 (29 U.S.C. 2222(b)) and a description of the State's rapid response activities under section 2271(a)(2)(A) of this title.” for “1996,”. See Effective and Termination Dates of 2009 Amendment note below.

Subsecs. (i) to (k). Pub. L. 111–5, §§ 1852(e), 1893, 1893, temporarily added subsecs. (i) to (k). See Effective and Termination Dates of 2009 Amendment note below.


1988—Subsec. (a)(3). Pub. L. 100–418, § 1423(a)(4), amended cl. (3) generally. Prior to amendment, cl. (3) read as follows: “will make determinations and approvals regarding job search programs under sections 2291(c) and 2291(d) of this title, and”. Subsec. (e). Pub. L. 100–418, § 1424(d)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Agreements entered into under this section may be made with one or more State or local agencies including—

(1) the employment service agency of such State, 
(2) any State agency carrying out title III of the Job Training Partnership Act [29 U.S.C. 1651 et seq.], or
(3) any other State or local agency administering job training or related programs.”. See Codification note above.
Subsec. (f). Pub. L. 100–418, §1424(d)(2), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “Each cooperating State agency shall, in carrying out subsection (a)(2) of this section—

“(1) advise each adversely affected worker to apply for training under section 2296(a) of this title at the time the worker makes application for trade readjustment allowances (but failure of the worker to do so may not be treated as cause for denial of those allowances), and

“(2) within 60 days after application for training is made by the worker, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 2296 of this title and review such opportunities with the worker.”

1986—Subsec. (a), Pub. L. 99–272, §13004(c)(1), inserted “but in accordance with subsection (f) of this section,” in cl. (2).

Pub. L. 99–272, §13003(a)(3), substituted “training and job search programs” for “training” in cl. (2), added cl. (3), and redesignated former cl. (3) as (4).

Subsecs. (e), (f). Pub. L. 99–272, §13004(c)(2), added subsecs. (e) and (f).

1981—Subsec. (a), Pub. L. 97–35 struck out provisions respecting persons applying for payments under this part.

**Effective and Termination Dates of 2009 Amendment**

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1291 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 shall apply on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, if amendment by Pub. L. 111–5 had never been enacted, see section 1913 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

**Effective Date of 1998 Amendment**


**Effective Date of 1988 Amendment**

Amendment by section 1424(d)(1)(B), (2) of Pub. L. 100–418 effective Aug. 23, 1988, and amendment by section 1424(a)(4) of Pub. L. 100–418 effective on the date that is 90 days after Aug. 23, 1988, see section 1430(a), (f) of Pub. L. 100–418, set out as an Effective Date note under section 2297 of this title.

**Effective Date of 1986 Amendment**

Amendment by section 13003(a) of Pub. L. 99–272 applicable with respect to workers covered by petitions filed under section 2271 of this title on or after Apr. 7, 1986, and amendment by section 13004(c) of Pub. L. 99–272 effective on Apr. 7, 1986, see section 13004(a), (b) of Pub. L. 99–272, set out as a note under section 2291 of this title.

**Effective Date of 1981 Amendment and Transition Provisions**


**Termination Date**

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

**§ 2312. Administration absent State agreement**

**(a) Promulgation of regulations; fair hearing**

In any State where there is no agreement in force between a State or its agency under section 2311 of this title, the Secretary shall arrange under regulations prescribed by him for performance of all necessary functions under subpart B of this part, including provision for a fair hearing for any worker whose application for payments is denied.

**(b) Review of final determination**

A final determination under subsection (a) of this section with respect to entitlement to program benefits under subpart B of this part is subject to review by the courts in the same manner and to the same extent as is provided by section 405(g) of title 42.


**Termination Date**

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

**§ 2313. Payments to States**

**(a) Certification to Secretary of the Treasury for payment to cooperating States**

The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this part.

**(b) Utilization or return of money**

All money paid a State under this section shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subpart, to the Secretary of the Treasury.

**(c) Surety bonds**

Any agreement under this subpart may require any officer or employee of the State certifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this part.


**Amendments**

1981—Subsec. (a). Pub. L. 97–35 struck out provisions relating to payment to the State by the Secretary of the Treasury from the Adjustment Assistance Trust Fund prior to audit or settlement by the General Accounting Office.

Subsec. (b). Pub. L. 97–35 struck out provisions relating to crediting money returned to the Secretary of the Treasury to the Adjustment Assistance Trust Fund.
§ 2314. Liabilities of certifying and disbursing officers

(a) Certifying officer

No person designated by the Secretary, or designated pursuant to an agreement under this subpart, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this part.

(b) Disbursing officer

No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this part if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a) of this section.

Termination Date
No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 2514 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2315. Fraud and recovery of overpayments

(a) Repayment; deductions

(1) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that any person has received any payment under this part to which the person was not entitled, including a payment referred to in subsection (b) of this section, such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, except that the State agency or the Secretary shall waive such repayment if such agency or the Secretary determines that—

(A) the payment was made without fault on the part of such individual, and

(B) requiring such repayment would cause a financial hardship for the individual (or the individual’s household, if applicable) when taking into consideration the income and resources reasonably available to the individual (or household) and other ordinary living expenses of the individual (or household).

(2) Unless an overpayment is otherwise recovered, or waived under paragraph (1), the State agency or the Secretary shall recover the overpayment by deductions from any sums payable to such person under this part, under any Federal unemployment compensation law administered by the State agency or the Secretary, or under any other Federal law administered by the State agency or the Secretary which provides for the payment of assistance or an allowance with respect to unemployment, and, notwithstanding any other provision of State law or Federal law to the contrary, the Secretary may require the State agency to recover any overpayment under this part by deduction from any unemployment insurance payable to such person under the State law, except that no single deduction under this paragraph shall exceed 50 percent of the amount otherwise payable.

(b) False representation or nondisclosure of material fact

If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that an individual—

(1) knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this part to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this part.

(c) Notice of determination; fair hearing; finality

Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) of this section by the State agency or the Secretary, as the case may be, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(d) Recovered amount returned to Treasury

Any amount recovered under this section shall be returned to the Treasury of the United States.

Termination Date
No trade adjustment assistance, vouchers, allowances, or other payments under this part. See Effective and Termination Dates of 2009 Amendment note below.

AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–5, § 1855(1), 1893, in introductory provisions, temporarily substituted “shall waive” for “may waive” and struck out “. . . in accordance with guidelines prescribed by the Secretary,” before “that—”. See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (a)(1)(B). Pub. L. 111–5, §§ 1855(2), 1893, temporarily substituted “would cause a financial hardship for the individual (or the individual’s household, if applicable) when taking into consideration the income and resources reasonably available to the individual (or household) and other ordinary living expenses of the individual (or household)” for “would be contrary to equity and good conscience”. See Effective and Termination Dates of 2009 Amendment note below.
§ 2316 Penalties

Any person who—

(1) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for that person or for any other person any payment authorized to be furnished under this part or pursuant to an agreement under section 2311 of this title, shall be imprisoned for not more than one year, or fined not more than $1,000 or imprisoned for not more than one year, or both. See Effective and Termination Dates of 2009 Amendment note below.

Effective and Termination Dates of 2009 Amendment

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Effective Date of 1981 Amendment and Transition Provisions


Termination Date

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2317 Authorization of appropriations

(a) In general

There are authorized to be appropriated to the Department of Labor, for the period beginning October 1, 2001, and ending February 12, 2011, such sums as may be necessary to carry out the purposes of this part.

(b) Period of expenditure

Funds obligated for any fiscal year to carry out activities under sections 2295 through 2298 of this title may be expended by each State receiving such funds during that fiscal year and the succeeding two fiscal years.

2006—Subsec. (a), Pub. L. 109–280 struck out “, other than subparagraph D” before period at end.


Subsec. (b), Pub. L. 107–210, §120, amended heading and text, in subsec. (b) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to the Department of Labor, for the period beginning October 1, 2001, and ending September 30, 2007, such sums as may be necessary to carry out the purposes of subparagraph D of this part.”.


1990, and 1991” for “‘1982 through 1985’”.

1999—Subsec. (a), inserted heading and text of subsec. (b) after period at end. Prior to amendment, text read as follows: “The amendments made by the section [(amending this section and sections 2331 and 2346 of this title and provisions set out as a note preceding section 2271 of this title)] shall be effective as of July 1, 1999.”

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States (Jan. 1, 1994), see section 506(a) of Pub. L. 103–182, set out as a note under section 2271 of this title.

Amendment by Pub. L. 103–182 not applicable on or after Feb. 13, 2011, and this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of this title.

Effective Date of 1999 Amendment
Pub. L. 106–113, div. B, §1000(a)(5) [title VII, §702(e)], Nov. 29, 1999, 113 Stat. 1356, 1501A–319, provided that: “‘The amendments made by this section [(amending this section and sections 2331 and 2346 of this title and provisions set out as a note preceding section 2271 of this title)] shall be effective as of July 1, 1999.”

Effective Date of 1993 Amendment
Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States (Jan. 1, 1994), see section 506(a) of Pub. L. 103–182, set out as a note under section 2271 of this title.

Effective Date of 1986 Amendment
Parts 2 and 3 of this subchapter applicable as if the amendment of this section by Pub. L. 99–272 had taken effect Dec. 18, 1985, see section 1309(c) of Pub. L. 99–272, set out as a note under section 2281 of this title.

Effective Date of 1981 Amendment and Transition Provisions

Termination Date
No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§2318. Reemployment trade adjustment assistance program

(a) In general

(1) Establishment

The Secretary shall establish a reemployment trade adjustment assistance program that provides the benefits described in paragraph (2).

(2) Benefits

(A) Payments

A State shall use the funds provided to the State under section 2313 of this title to pay, for the eligibility period under subparagraph (A) or (B) of paragraph (4) (as the case may be), to a worker described in paragraph (3)(B), 50 percent of the difference between—

(i) the wages received by the worker at the time of separation; and

(ii) the wages received by the worker from reemployment.

(B) Health insurance

A worker described in paragraph (3)(B) participating in the program established under paragraph (1) is eligible to receive, for the eligibility period under subparagraph (A) or (B) of paragraph (4) (as the case may be), a credit for health insurance costs under section 35 of title 26.

(C) Training and other services

A worker described in paragraph (3)(B) participating in the program established...
under paragraph (1) is eligible to receive training approved under section 2296 of this title and employment and case management services under section 2296 of this title.

(3) Eligibility

(A) In general

A group of workers certified under subpart A as eligible for adjustment assistance under subpart A is eligible for benefits described in paragraph (2) under the program established under paragraph (1).

(B) Individual eligibility

A worker in a group of workers described in subparagraph (A) may elect to receive benefits described in paragraph (2) under the program established under paragraph (1) if the worker—

(i) at least 50 years of age;
(ii) earns not more than $55,000 each year in wages from reemployment;
(iii)(I) is employed on a full-time basis as defined by the law of the State in which the worker is employed and is not enrolled in a training program approved under section 2296 of this title; or
(II) is employed at least 20 hours per week and is enrolled in a training program approved under section 2296 of this title;
and
(iv) is not employed at the firm from which the worker was separated.

(4) Eligibility period for payments

(A) Worker who has not received trade readjustment allowance

In the case of a worker described in paragraph (3)(B) who has not received a trade readjustment allowance under division I of subpart B pursuant to the certification described in paragraph (3)(A), the worker may receive benefits described in paragraph (2) for a period not to exceed 2 years beginning on the earlier of—

(i) the date on which the worker exhausts all rights to unemployment insurance based on the separation of the worker from the adversely affected employment that is the basis of the certification; or
(ii) the date on which the worker obtains reemployment described in paragraph (3)(B).

(B) Worker who has received trade readjustment allowance

In the case of a worker described in paragraph (3)(B) who has received a trade readjustment allowance under division I of subpart B pursuant to the certification described in paragraph (3)(A), the worker may receive benefits described in paragraph (2) for a period not to exceed 2 years beginning on the date on which the worker obtains reemployment referred to in paragraph (3)(B)(iii)(II), to

(I) the total number of weeks in the eligibility period under paragraph (4)(B) with respect to the worker, to
(II) 104 weeks.

(5) Total amount of payments

(A) In general

The payments described in paragraph (2)(A) made to a worker may not exceed—

(i) $12,000 per worker during the eligibility period under paragraph (4)(A); or
(ii) the amount described in subparagraph (B) per worker during the eligibility period under paragraph (4)(B).

(B) Amount described

The amount described in this subparagraph is the amount equal to the product of—

(i) $12,000, and
(ii) the ratio of—

(I) the total number of weeks in the eligibility period under paragraph (4)(B) with respect to the worker, to
(II) 104 weeks.

(6) Calculation of amount of payments for certain workers

(A) In general

In the case of a worker described in paragraph (3)(B)(iii)(II), paragraph (2)(A) shall be applied by substituting the percentage described in subparagraph (B) for “50 percent”.

(B) Percentage described

The percentage described in this subparagraph is the percentage—

(i) equal to ½ of the ratio of—

(I) the number of weekly hours of employment of the worker referred to in paragraph (3)(B)(iii)(II), to
(II) the number of weekly hours of employment of the worker at the time of separation, but
(ii) in no case more than 50 percent.

(7) Limitation on other benefits

A worker described in paragraph (3)(B) may not receive a trade readjustment allowance under division I of subpart B pursuant to the certification described in paragraph (3)(A) during any week for which the worker receives a payment described in paragraph (2)(A).

(b) Termination

(1) In general

Except as provided in paragraph (2), no payments may be made by a State under the program established under subsection (a)(1) of this section after February 12, 2011.

(2) Exception

Notwithstanding paragraph (1), a worker receiving payments under the program established under subsection (a)(1) of this section on the termination date described in paragraph (1) shall continue to receive such payments if the worker meets the criteria described in subsection (a)(3) of this section.


AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.
PRIORITY PROVISIONS


AMENDMENTS


Subsec. (a)(1). Pub. L. 111-5, §§1841(a)(2)(A), 1893, temporarily substituted “The Secretary” for “Not later than 1 year after August 6, 2002, the Secretary” and “a reemployment trade adjustment assistance program” for “an alternative trade adjustment assistance program for older workers”. See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (a)(2)(A)(i), (ii). Pub. L. 111-5, §§1841(a)(2)(B)(i), (ii), 1893, temporarily added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) the wages received by the worker from reemployment; and

“(ii) the wages received by the worker at the time of separation.”

See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (a)(2)(B). Pub. L. 111-5, §§1841(a)(2)(B)(i), (ii), 1893, temporarily substituted “for the eligibility period under subparagraph (A) or (B) of paragraph (4) (as the case may be)” for “for a period not to exceed 2 years” in introductory provisions. See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (a)(3). Pub. L. 111-5, §§1841(a)(2)(C), (iii), 1893, temporarily added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) the wages received by the worker from reemployment; and

“(ii) the wages received by the worker at the time of separation.”

See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (b)(1). Pub. L. 111-5, §§1841(b), 1893, temporarily substituted “December 31, 2010,” for “the date that is 5 years after the date on which such program is implemented by the State.” See Effective and Termination Dates of 2009 Amendment note below.


Subsec. (b)(2). Pub. L. 108-429, §2004(a)(7)(C), substituted “if” for “provided that”.

EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT


EFFECTIVE DATE

Section applicable to petitions for certification filed under this part or part 3 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107-210, set out as an Effective Date of 2002 Amendment note preceding section 2271 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 285 of Pub. L. 93-618, set out as a note preceding section 2271 of this title.

§2319. Definitions

For purposes of this part—

(1) The term “adversely affected employment” means employment in a firm, if workers of such firm are eligible to apply for adjustment assistance under this part.

(2) The term “adversely affected worker” means an individual who, because of lack of work in adversely affected employment, has been totally or partially separated from such employment.

(3) Subject to section 2272(d)(5) of this title, the term “firm” means—

(A) a firm, including an agricultural firm, service sector firm, or public agency; or

(B) an appropriate subdivision thereof.

(4) The term “average weekly wage” means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual’s total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(5) The term “average weekly hours” means the average hours worked by the individual (excluding overtime) in the employment from
which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(6) The term “partial separation” means, with respect to an individual who has not been totally separated, that he has had—

(A) his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment,

(B) his wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

(7) The term “public agency” means a department or agency of a State or local government or of the Federal Government, or a subdivision thereof.

(8) The term “State” includes the District of Columbia and the Commonwealth of Puerto Rico; and the term “United States” when used in the geographical sense includes such Commonwealth.

(9) The term “State agency” means the agency of the State which administers the State law.

(10) The term “State law” means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of title 26.

(11) The term “total separation” means the layoff or severance of an individual from employment with a firm in which adversely affected employment exists.

(12) The term “unemployment insurance” means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5 and the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.]. The terms “regular compensation”, “additional compensation”, and “extended compensation” have the same respective meanings that are given them in section 265(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(13) The term “week” means a week as defined in the applicable State law.

(14) The term “week of unemployment” means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(15) The term “benefit period” means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation, or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(16) The term “on-the-job training” means training provided by an employer to an individual who is employed by the employer.

(17)(A) The term “job search program” means a job search workshop or job finding club.

(B) The term “job search workshop” means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

(C) The term “job finding club” means a job search workshop which includes a period (1 to 2 weeks) of structured, supervised activity in which participants attempt to obtain jobs.

(18) The term “service sector firm” means a firm engaged in the business of supplying services.

(19) The term “adversely affected worker” means a worker who—

(A) is a member of a group of workers who have been certified as eligible to apply for adjustment assistance under subpart A; (B) has not been totally or partially separated from adversely affected employment; and

(C) the Secretary determines, on an individual basis, is threatened with total or partial separation.

§ 2321. Subpoena power

(a) Subpoena by Secretary

The Secretary may require by subpoena the attendance of witnesses and the production of evidence necessary for the Secretary to make a determination under the provisions of this part.

(b) Court order

If a person refuses to obey a subpoena issued under subsection (a) of this section, a United States district court within the jurisdiction of which the relevant proceeding under this part is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpoena.

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this part.

Not later than 90 days before issuing a regulation under subsection (a), the Secretary shall consult with the Committee on Finance of the House of Representatives with respect to the regulation.


AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS


EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 255 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.


Par. (14). Pub. L. 97–35, § 2511(3), substituted provisions requiring determination under the applicable State law or Federal unemployment insurance law for provisions requiring computation applying percent of average weekly wage and time spent prior to separation.


EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

TERMINATION DATE

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 255 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2321. Subpoena power

(a) Subpoena by Secretary

The Secretary may require by subpoena the attendance of witnesses and the production of evidence necessary for the Secretary to make a determination under the provisions of this part.

(b) Court order

If a person refuses to obey a subpoena issued under subsection (a) of this section, a United States district court within the jurisdiction of which the relevant proceeding under this part is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpoena.
§ 2322. Office of Trade Adjustment Assistance

(a) Establishment

There is established in the Department of Labor an office to be known as the Office of Trade Adjustment Assistance (in this section referred to as the “Office”).

(b) Head of Office

The head of the Office shall be an administrator, who shall report directly to the Deputy Assistant Secretary for Employment and Training, who shall report directly to the Deputy Secretary of Labor an office to be known as the Office of Trade Adjustment Assistance (in this section referred to as the “Office”).

(c) Principal functions

The principal functions of the administrator of the Office shall be—

(1) to oversee and implement the administration of trade adjustment assistance program under this part; and

(2) to carry out functions delegated to the Secretary of Labor under this part, including—

(A) making determinations under section 2273 of this title;

(B) providing information under section 2275 of this title about trade adjustment assistance to workers and assisting such workers to prepare petitions or applications for program benefits;

(C) providing assistance to employers of groups of workers that have filed petitions under chapter 2271 of title II, prior to repeal by Pub. L. 111–5, div. B, title I, §1851(a), Feb. 17, 2009, 123 Stat. 389.)

(D) carry out such other duties with respect to this part as the Secretary specifies for purposes of this section.


TERMINATION OF SECTION

For termination of section by section 1893 of Pub. L. III–3, see Effective and Termination Dates note below.

PRIOR PROVISIONS

A prior section 2322, Pub. L. 93–618, title II, §249A, as added Pub. L. 103–182, title V, §503(c), Dec. 8, 1993, 107 Stat. 2151, prohibited assistance relating to a separation pursuant to certifications under subparts A and D of this part, prior to repeal by Pub. L. 107–210, div. A, title I, §123(b)(2), (c), Aug. 6, 2002, 116 Stat. 944, applicable with respect to petitions filed under this part on or after the date that was 90 days after Aug. 6, 2002, except with respect to certain workers.

Another prior section 2322, Pub. L. 93–618, title II, §250, Jan. 3, 1975, 88 Stat. 2029, provided for judicial review for workers or groups aggrieved by a final determination by the Secretary under section 2273 of this title, prior to repeal by Pub. L. 96–417, title VI, §612, title VII, §701(a), Oct. 10, 1980, 94 Stat. 1746, 1747, effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date. See section 2395 of this title.

EFFECTIVE AND TERMINATION DATES

Except as otherwise provided and subject to certain applicability provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

Except as otherwise provided, section not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if this section were a Termination Date of 2009 Amendment note preceding section 2271 of this title.

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 285 of Pub. L. 93–418, set out as a Termination Date note preceding section 2271 of this title.

§ 2323. Collection and publication of data and reports; information to workers

(a) In general

Not later than 180 days after February 17, 2009, the Secretary shall implement a system to collect and report the data described in subsections (b) and (c) as well as any other information that the Secretary considers appropriate to effectively carry out this part.

(b) Data to be included

The system required under subsection (a) shall include collection of and reporting on the following data for each fiscal year:

(1) Data on petitions filed, certified, and denied

(A) The number of petitions filed, certified, and denied under this part.

(B) The number of workers covered by petitions filed, certified, and denied.

(C) The number of petitions, classified by—

(i) the basis for certification, including increased imports, shifts in production, and other bases of eligibility; and
(c) The average time during which such workers receive each such type of benefit.

(3) Data on training
(A) The number of workers enrolled in training approved under section 2296 of this title, classified by major types of training, including classroom training, training through distance learning, on-the-job training, and customized training.
(B) The number of workers enrolled in full-time training and part-time training.
(C) The average duration of training.
(D) The number of training waivers granted under section 2291(c) of this title, classified by type of waiver.
(E) The number of workers who complete training and the duration of such training.
(F) The number of workers who do not complete training.

(4) Data on outcomes
(A) A summary of the quarterly reports required under section 2311(j) of this title.
(B) The sectors in which workers are employed after receiving benefits under this part.

(5) Data on rapid response activities
Whether rapid response activities were provided with respect to each petition filed under section 2271 of this title.

(e) Classification of data
To the extent possible, in collecting and reporting the data described in subsection (b), the Secretary shall classify the data by industry, State, and national totals.

(d) Report
Not later than December 15 of each year, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that includes—
(1) a summary of the information collected under this section for the preceding fiscal year;
(2) information on the distribution of funds to each State pursuant to section 2296(a)(2) of this title; and
(3) any recommendations of the Secretary with respect to changes in eligibility requirements, benefits, or training funding under this part based on the data collected under this section.

(e) Availability of data
(1) In general
The Secretary shall make available to the public, by publishing on the website of the Department of Labor and by other means, as appropriate—
(A) the report required under subsection (d);
(B) the data collected under this section, in a searchable format; and
(C) a list of cooperating States and cooperating State agencies that failed to submit the data required by this section to the Secretary in a timely manner.

(2) Updates
The Secretary shall update the data under paragraph (1) on a quarterly basis.

Termination of Section
For termination of section by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.

Effective and Termination Dates

Except as otherwise provided and subject to certain applicability provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

No trade adjustment assistance, vouchers, allowances, or other payments or benefits may be provided under this section after Feb. 12, 2011, except as otherwise provided, see section 285 of Pub. L. 93–618, set out as a Termination Date note preceding section 2271 of this title.

Subpart D—NAFTA Transitional Adjustment Assistance Program


Prior Provisions
A prior section 250 of Pub. L. 93–618, title II, Jan. 3, 1975, 88 Stat. 2029, provided for judicial review for workers or groups aggrieved by a final determination by the Secretary under section 2273 of this title, and was classified to section 2322 of this title, prior to repeal by Pub. L. 96–417.

Effective Date of Repeal
“(1) IN GENERAL.—The amendments made by this section [amending sections 2273 and 2306 of this title and repealing this subpart and section 2322 of this title] shall apply with respect to petitions filed under chapter 2 of title II of the Trade Act of 1974 [this part], on or
(2) Workers certified as eligible before effective date.—Notwithstanding subsection (a), a worker receiving benefits under chapter 2 of title II of the Trade Act of 1974 shall continue to receive (or be eligible to receive) benefits and services under chapter 2 of title II of the Trade Act of 1974, as in effect on the day before the amendments made by this section take effect under subsection (a), for any week for which the worker meets the eligibility requirements of such chapter 2 as in effect on such date.

**PART 3—ADJUSTMENT ASSISTANCE FOR FIRMS**

**Termination Date**

Except as otherwise provided, technical assistance and grants may not be provided under this part after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2771 of this title.

§ 2341. Petitions and determinations

(a) Filing of petition; receipt of petition; initiation of investigation

A petition for a certification of eligibility to apply for adjustment assistance under this part may be filed with the Secretary of Commerce (hereinafter in this part referred to as the “Secretary”) by a firm (including any agricultural firm or service sector firm) or its representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that the Secretary has received the petition and initiated an investigation.

(b) Public hearing

If the petitioner, or any other person, organization, or group found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary’s publication under subsection (a) of this section a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(c) Certification

(1) The Secretary shall certify a firm (including any agricultural firm or service sector firm) as eligible to apply for adjustment assistance under this part if the Secretary determines—

(A) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

(B) that—

(i) sales or production, or both, of the firm have decreased absolutely,

(ii) sales or production, or both, of an article or service that accounted for not less than 25 percent of the total sales or production of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely,

(iii) sales or production, or both, of the firm during the most recent 12-month period for which data are available have decreased compared to—

(I) the average annual sales or production for the firm during the 24-month period preceding that 12-month period, or

(II) the average annual sales or production for the firm during the 36-month period preceding that 12-month period, and

(iv) sales or production, or both, of an article or service that accounted for not less than 25 percent of the total sales or production of the firm during the most recent 12-month period for which data are available have decreased compared to—

(I) the average annual sales or production for the article or service during the 24-month period preceding that 12-month period, or

(II) the average annual sales or production for the article or service during the 36-month period preceding that 12-month period, and

(C) increases of imports of articles or services like or directly competitive with articles which are produced or services which are supplied by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

(2) For purposes of paragraph (1)(C)—

(A) The term “contributed importantly” means a cause which is important but not necessarily more important than any other cause.

(B)(i) Any firm which engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(ii) Any firm that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

(d) Allowable period for determination

A determination shall be made by the Secretary as soon as possible after the date on which the petition is filed under this section, but in any event not later than 40 days after that date.

(e) Basis for Secretary’s determinations

For purposes of subsection (c)(1)(C), the Secretary may determine that there are increased imports of like or directly competitive articles or services, if customers accounting for a significant percentage of the decrease in the sales or production of the firm certify to the Secretary that such customers have increased their imports of such articles or services from a foreign country, either absolutely or relative to their acquisition of such articles or services from suppliers located in the United States.

(f) Notification to firms of availability of benefits

Upon receiving notice from the Secretary of Labor under section 2275 of this title of the identity of a firm that is covered by a certification issued under section 2273 of this title, the Secretary of Commerce shall notify the firm of the availability of adjustment assistance under this part.

§ 2342. Approval of adjustment proposals

(a) Application for adjustment assistance

A firm certified under section 2341 of this title as eligible to apply for adjustment assistance may, at any time within 2 years after the date of such certification, file an application with the Secretary for adjustment assistance under this part. Such application shall include a proposal for the economic adjustment of such firm.

(b) Technical assistance

(1) Adjustment assistance under this part consists of technical assistance. The Secretary shall approve a firm’s application for adjustment assistance only if the Secretary determines that the firm’s adjustment proposal—

(A) is reasonably calculated to materially contribute to the economic adjustment of the firm.

(B) gives adequate consideration to the interests of the workers of such firm, and

(C) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.

(2) The Secretary shall make a determination as soon as possible after the date on which an application is filed under this section, but in no event later than 60 days after such date.

(c) Termination of certification of eligibility

Whenever the Secretary determines that any firm no longer requires assistance under this part, he shall terminate the certification of eligibility of such firm and promptly have notice of such termination published in the Federal Register. Such termination shall take effect on the termination date specified by the Secretary.
AMENDMENTS

1986—Subsec. (b)(1). Pub. L. 99–272, §13006(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Adjustment assistance under this part consists of technical assistance and financial assistance, which may be furnished singly or in combination. The Secretary shall approve a firm’s application for adjustment assistance only if he determines—

(A) that the firm has no reasonable access to financing through the private capital market, and

(B) that the firm’s adjustment proposal—

(1) is reasonably calculated materially to contribute to the economic adjustment of the firm,

(2) gives adequate consideration to the interests of the workers of such firm, and

(3) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.”

Subsecs. (c), (d), Pub. L. 99–272, §13006(a)(2), redesignated subsec. (d) as (c) and struck out former subsec. (c) which authorized the Secretary to assist an eligible firm in the preparation of a viable adjustment proposal.

TERMINATION DATE

Except as otherwise provided, technical assistance and grants may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2771 of this title.

§ 2343. Technical assistance

(a) Discretion of Secretary; types of assistance

The Secretary may provide a firm, on terms and conditions as the Secretary determines to be appropriate, with such technical assistance as in his judgment will carry out the purposes of this part with respect to the firm. The technical assistance furnished under this part may consist of one or more of the following:

(1) Assistance to a firm in preparing its petition for certification of eligibility under section 2341 of this title.

(2) Assistance to a certified firm in developing a proposal for its economic adjustment.

(3) Assistance to a certified firm in the implementation of such a proposal.

(b) Utilization of existing agencies, private individuals, etc., in furnishing assistance; grants to intermediary organizations

(1) The Secretary shall furnish technical assistance under this part through existing agencies and through private individuals, firms, or institutions (including private consulting services), or by grants to intermediary organizations (including Trade Adjustment Assistance Centers).

(2) In the case of assistance furnished through private individuals, firms, or institutions (including private consulting services), the Secretary may share the cost thereof (but not more than 75 percent of such cost for assistance described in paragraph (2) or (3) of subsection (a) of this section may be borne by the United States).

(3) The Secretary may make grants to intermediary organizations in order to defray up to 100 percent of administrative expenses incurred in providing such technical assistance to a firm.


AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS

2009—Subsec. (a)(3). Pub. L. 111–5, §§1867(b), 1893, which directed the temporary substitution of “to a certified firm” for “of a certified firm”, could not be executed because “of a certified firm” did not appear. See Effective and Termination Dates of 2009 Amendment note below.

1986—Subsec. (b)(2). Pub. L. 99–272 substituted “such cost for assistance described in paragraph (2) or (3) of subsection (a) of this section” for “such cost.”

1981—Subsec. (a). Pub. L. 97–35 amended subsec. (a) generally, incorporating provisions formerly contained in subsec. (b) and, in those provisions, substituted discretionary language for non-discretionary language relating to the assistance furnished and allowed the giving of assistance to firms in the preparation of their petitions for certification of eligibility under section 2341 of this title.

Subsec. (b). Pub. L. 97–35 amended subsec. (b) generally, incorporating provisions formerly contained in this section and transfers to subsec. (b). Subsec. (b)(1) redesignated subsec. (b) as (c) and struck out former subsec. (c) which authorized the Secretary to assist an eligible firm in the preparation of a viable adjustment proposal.

EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1893 of Pub. L. 111–5, set out as a note under section 2771 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had not been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2771 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2329 of Pub. L. 97–35 provides that:

“(a) Subject to subsection (b), the amendments made by this subtitle (subsection B (§§2521–2529) of title XXV of Pub. L. 97–35, enacting section 2355 of this title, amending this section and sections 2341 to 2347 of this title, and repealing section 2353 of this title) shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

“(b) Applications for adjustment assistance under chapter 3 of title II of the Trade Act of 1974 [this part] which the Secretary of Commerce accepted for processing before the date of the enactment of this Act [Aug. 13, 1981] shall continue to be processed in accordance with the requirements of such chapter as in effect before such date of enactment.”

TERMINATION DATE

Except as otherwise provided, technical assistance and grants may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2771 of this title.

§ 2344. Oversight and administration

(a) In general

The Secretary shall, to such extent and in such amounts as are provided in appropriations Acts, provide grants to intermediary organizations (referred to in section 2343(b)(1) of this section...
title) throughout the United States pursuant to agreements with such intermediary organizations. Each such agreement shall require the intermediary organization to provide benefits to firms certified under section 2341 of this title. The Secretary shall, to the maximum extent practicable, provide by October 1, 2010, that contracts entered into with intermediary organizations for a 12-month period and that all such contracts have the same beginning date and the same ending date.

(b) Distribution of funds

(1) In general

Not later than 90 days after February 17, 2009, the Secretary shall develop a methodology for the distribution of funds among the intermediary organizations described in subsection (a).

(2) Prompt initial distribution

The methodology described in paragraph (1) shall ensure the prompt initial distribution of funds and establish additional criteria governing the apportionment and distribution of the remainder of such funds among the intermediary organizations.

(3) Criteria

The methodology described in paragraph (1) shall include criteria based on the data in the annual report on the trade adjustment assistance for firms program described in section 2356 of this title.

(c) Requirements for contracts

An agreement with an intermediary organization described in subsection (a) shall require the intermediary organization to contract for the supply of services to carry out grants under this part in accordance with terms and conditions that are consistent with guidelines established by the Secretary.

(d) Consultations

(1) Consultations regarding methodology

The Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives—

(A) not less than 30 days before finalizing the methodology described in subsection (b); and

(B) not less than 60 days before adopting any changes to such methodology.

(2) Consultations regarding guidelines

The Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not less than 60 days before finalizing the guidelines described in subsection (c) or adopting any subsequent changes to such guidelines.


TERMINATION OF SECTION AND REPEAL

For termination of section and of repeal of former section 2344 by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.
ment of Commerce to administer the provisions of this part. Of such funds the Secretary shall make available to the Economic Development Administration such sums as may be necessary to establish the position of Director of Adjustment Assistance for Firms and such other full-time positions as may be appropriate to administer the provisions of this part.


**Termination of Section and Repeal**

For termination of section and of repeal of former section 2345 by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.

**Prior Provisions**


As except as otherwise provided and subject to certain applicability provisions, repeal effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1864(a) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

As except as otherwise provided, repeal of this section not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if the repeal had never been enacted, except that subsec. (b) shall be applied and administered by substituting “the 1-year period beginning February 13, 2011, and ending February 12, 2012,” for “each of fiscal years 2003 through 2007, and $1,000,000 for the 3-month period beginning on October 1, 2007,” see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

**Effective Date of 2010 Amendment**


**Effective and Termination Dates**

Section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1864(a) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

Except as otherwise provided, repeal of this section not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if the repeal had never been enacted, except that subsec. (b) shall be applied and administered by substituting “the 1-year period beginning February 13, 2011, and ending February 12, 2012,” for “each of fiscal years 2003 through 2007, and $1,000,000 for the 3-month period beginning on October 1, 2007,” see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

**Termination Date**

Except as otherwise provided, technical assistance and grants may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.


DEPOSIT OF RECEIPTS FROM TRANSACTIONS UNDER THIS PART INTO ECONOMIC DEVELOPMENT REVERTING FUND


§ 2348. Protective provisions

(a) Recordkeeping

Each recipient of adjustment assistance under this part shall keep records which fully disclose the amount and disposition by such recipient of the proceeds, if any, of such adjustment assistance, and which will facilitate an effective audit. The recipient shall also keep such other records as the Secretary may prescribe.

(b) Audit and examination

The Secretary and the Comptroller General of the United States shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient pertaining to adjustment assistance under this part.

(c) Certifications

No adjustment assistance under this part shall be extended to any firm unless the owners, partners, or officers certify to the Secretary—

(1) the names of any attorneys, agents, and other persons engaged by or on behalf of the firm for the purpose of expediting applications for such adjustment assistance; and

(2) the fees paid or to be paid to any such person.

Amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1893 of Pub. L. 111–5, set out as an Effective and Termination Dates note under section 2344 of this title.

Exception as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

§ 2349. Penalties

Any person who—

(1) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or willfully overvalues any security, for the purpose of influencing in any way a determination under this part, or for the purpose of obtaining money, property, or anything of value under this part, or

(2) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, when providing information to the Secretary during an investigation of a petition under this part, shall be imprisoned for not more than 2 years, or fined under title 18, or both.

Amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 12, 2011, see section 265 of Pub. L. 111–5, set out as a note preceding section 2271 of this title.
lows: ‘‘Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or whoever willfully overvalues any security, for the purpose of influencing in any way a determination under this part, or for the purpose of obtaining money, property, or anything of value under this part, shall be fined not more than $5,000 or imprisoned for not more than 2 years, or both.’’ See Effective and Termination Dates of 2009 Amendment note below.

**Effective and Termination Dates of 2009 Amendment**

Amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1864(e) of Pub. L. 111–5, set out as an Effective and Termination Dates note under section 2344 of this title.

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

**Termination Date**

Except as otherwise provided, technical assistance and grants may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

**§ 2350. Civil actions**

In providing technical assistance under this part the Secretary may sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against him or his property. Nothing in this section shall be construed to except the activities pursuant to section 2343 of this title from the application of sections 516, 547, and 2679 of title 28.


**Amendment of Section**

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

**Prior Provisions**

A prior section 258 of Pub. L. 93–618 was temporarily renumbered section 256 and is classified to section 2348 of this title.

**Amendments**

2009—Pub. L. 111–5, §§ 1864(c)(2)(B), 1893, in last sentence, temporarily substituted ‘‘section 2343 of this title’’ for ‘‘sections 2343 and 2344 of this title’’ and made technical amendment to reference in original act which appears in text as reference to ‘‘title 28’’. See Effective and Termination Dates of 2009 Amendment note below. Pub. L. 111–5, §§ 1864(c)(2)(A), 1893, in first sentence, temporarily struck out ‘‘and financial’’ before ‘‘assist-
§ 2352. Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this part.


RENUMBERING OF SECTION

For termination of renumbering of section by section 1893 of Pub. L. 111–5, see Termination Date of 2009 Amendment note set out preceding section 2271 of this title.

PRIOR PROVISIONS

A prior section 260 of Pub. L. 93–618 was temporarily renumbered section 258 and is classified to section 2350 of this title.


EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 13, 1981, except as otherwise provided with respect to applications for adjustment assistance, see section 2529 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2343 of this title.

§ 2354. Study by Secretary of Commerce when International Trade Commission begins investigation

(a) Subject matter of study

Whenever the Commission begins an investigation under section 2252 of this title with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of firms in the domestic industry producing the like or directly competitive article which have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the orderly adjustment of such firms to the import competition may be facilitated through the use of existing programs.

(b) Report; publication

The report of the Secretary of the study under subsection (a) of this section shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 2252(f) of this title. Upon making its report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(c) Information to firms

Whenever the Commission makes an affirmative finding under section 2252(b) of this title that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall make available, to the extent feasible, full information to the firms in such industry about programs which may facilitate the orderly adjustment to import competition of such firms, and he shall provide assistance in the preparation and processing of petitions and applications of such firms for program benefits.


RENUMBERING OF SECTION

For termination of renumbering of section by section 1893 of Pub. L. 111–5, see Termination Date of 2009 Amendment note set out preceding section 2271 of this title.

PRIOR PROVISIONS

A prior section 261 of Pub. L. 93–618 was temporarily renumbered section 259 and is classified to section 2351 of this title.

§ 2355. Assistance to industry; authorization of appropriations

(a) Technical assistance

The Secretary may provide technical assistance, on such terms and conditions as the Sec-
§ 2356. Annual report on trade adjustment assistance for firms

(a) In general

Not later than December 15, 2009, and each year thereafter, the Secretary of Commerce shall prepare a report containing data regarding the trade adjustment assistance for firms program provided for in chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.) for the preceding fiscal year. The data shall include the following:

(1) The number of firms that inquired about the program.

(2) The number of petitions filed for adjustment assistance under section 2273 or 2341 of this title.

(b) Expenditures

Expenditures for technical assistance under this section may be up to $10,000,000 annually per industry and shall be made under such terms and conditions as the Secretary deems appropriate.

(c) Report to Congress; publication

The Secretary of Commerce shall—

(1) submit the report described in subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives; and

(2) publish the report in the Federal Register and on the website of the Department of Commerce.

(d) Protection of confidential information

The Secretary of Commerce may not release information described in subsection (a) that the Secretary considers to be confidential business information unless the person submitting the confidential business information would be released by the Secretary, or such person subsequently consents to the release of the information. Nothing in this subsection shall be construed to prohibit the Secretary from providing such confidential business information to a court in camera or to another party under a protective order issued by a court.

References in Text

Section was enacted as part of the American Recovery and Reinvestment Act of 2009, and also as part of the American Recovery and Reinvestment Tax Act of 2009, and also as part of the Trade and Globalization Adjustment Assistance Act of 2009, and not as part of the Trade Act of 1974 which comprises this chapter.

**Effective Date**
Except as otherwise provided and subject to certain applicability provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

**Part 4—Trade Adjustment Assistance for Communities**

**Amendments**


**Termination of Part**

For termination of general amendment of this part by section 1893 of Pub. L. 111–5, see Termination Date of 2009 Amendment note set out preceding section 2271 of this title.

**Termination Date**

Except as otherwise provided, technical assistance and grants may not be provided under this part after Feb. 13, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

**Subpart A—Trade Adjustment Assistance for Communities**

§ 2371. Definitions

In this subpart:

(1) *Agricultural commodity producer*

The term “agricultural commodity producer” has the meaning given that term in section 2401 of this title.

(2) *Community*

The term “community” means a city, county, or other political subdivision of a State or a consortium of political subdivisions of a State.

(3) *Community impacted by trade*

The term “community impacted by trade” means a community described in section 2371b(b)(2) of this title.

(4) *Eligible community*

The term “eligible community” means a community that the Secretary has determined under section 2371b(b)(1) of this title is eligible to apply for assistance under this subpart.

(5) *Secretary*

The term “Secretary” means the Secretary of Commerce.


**Termination of Section**

For termination of section by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.

**Prior Provisions**


**Effective and Termination Dates**

Except as otherwise provided and subject to certain applicability provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

Except as otherwise provided, this section and the general amendment of this part not applicable on or after Feb. 13, 2011, and this part to be applied and administered beginning Feb. 13, 2011, as if this section and the general amendment of this part had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Except as otherwise provided, technical assistance and grants may not be provided under this section after Feb. 13, 2011, see section 285 of Pub. L. 93–618, set out as a Termination Date note preceding section 2271 of this title.

**Purpose**

Pub. L. 111–5, div. B, title I, §1871, Feb. 17, 2009, 123 Stat. 401, provided that: “The purpose of the amendments made by this part [part III (§§1871–1873) of sub-title I of title I of div. B of Pub. L. 111–5, enacting this part and amending section 2395 of this title and section 1851 of Title 28, Judiciary and Judicial Procedure] is to assist communities impacted by trade with economic adjustment through the coordination of Federal, State, and local resources, the creation of community-based development strategies, and the development and provision of programs that meet the training needs of workers covered by certifications under section 223 [probably means section 223 of Pub. L. 93–618, which is classified to section 2273 of this title].”

§ 2371a. Establishment of trade adjustment assistance for communities program

Not later than August 1, 2009, the Secretary shall establish a trade adjustment assistance for communities program at the Department of Commerce under which the Secretary shall—

(1) provide technical assistance under section 2371c of this title to communities impacted by trade to facilitate the economic adjustment of those communities; and

(2) award grants to communities impacted by trade to carry out strategic plans developed under section 2371e of this title.


**Termination of Section**

For termination of section by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.

**Prior Provisions**

A prior section 272 of Pub. L. 93–618 was classified to section 2372 of this title prior to the general amendment of this part by Pub. L. 111–5.

**Effective and Termination Dates**

Except as otherwise provided and subject to certain applicability provisions, section effective upon the ex-
§ 2371b  TITLE 19—CUSTOMS DUTIES  Page 568

Acted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Except as otherwise provided, this section and the general amendment of this part not applicable on or after Feb. 13, 2011, and this part to be applied and administered beginning Feb. 13, 2011, as if this section and the general amendment of this part had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Except as otherwise provided, technical assistance and grants may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as an Effective and Termination Dates note below.

§ 2371b. Eligibility; notification

(a) Petition

(1) In general

A community may submit a petition to the Secretary for an affirmative determination under subsection (b)(1) that the community is eligible to apply for assistance under this subpart if—

(A) on or after August 1, 2009, one or more certifications described in subsection (b)(3) are made with respect to the community; and

(B) the community submits the petition not later than 180 days after the date of the most recent certification.

(2) Special rule with respect to certain communities

In the case of a community with respect to which one or more certifications described in subsection (b)(3) were made on or after January 1, 2007, and before August 1, 2009, the community may submit not later than February 1, 2010, a petition to the Secretary for an affirmative determination under subsection (b)(1).

(b) Affirmative determination

(1) In general

The Secretary shall make an affirmative determination that a community is eligible to apply for assistance under this subpart if the Secretary determines that the community is a community impacted by trade.

(2) Community impacted by trade

A community is a community impacted by trade if—

(A) one or more certifications described in paragraph (3) are made with respect to the community; and

(B) the Secretary determines that the community is significantly affected by the threat to, or the loss of, jobs associated with any such certification.

(3) Certification described

A certification described in this paragraph is a certification—

(A) by the Secretary of Labor that a group of workers in the community is eligible to apply for assistance under section 2273 of this title;

(B) by the Secretary of Commerce that a firm located in the community is eligible to apply for adjustment assistance under section 2341 of this title; or

(C) by the Secretary of Agriculture that a group of agricultural commodity producers in the community is eligible to apply for adjustment assistance under section 2401b of this title.

(c) Notifications

(1) Notification to the Governor

The Governor of a State shall be notified promptly—

(A) by the Secretary of Labor, upon making a determination that a group of workers in the State is eligible for assistance under section 2273 of this title;

(B) by the Secretary of Commerce, upon making a determination that a firm in the State is eligible for assistance under section 2341 of this title; and

(C) by the Secretary of Agriculture, upon making a determination that a group of agricultural commodity producers in the State is eligible for assistance under section 2401b of this title.

(2) Notification to community

Upon making an affirmative determination under subsection (b)(1) that a community is eligible to apply for assistance under this subpart, the Secretary shall promptly notify the community and the Governor of the State in which the community is located—

(A) of the affirmative determination;

(B) of the applicable provisions of this subpart; and

(C) of the means for obtaining assistance under this subpart and other appropriate economic assistance that may be available to the community.


Termination of Section

For termination of section by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.

Prior Provisions

A prior section 273 of Pub. L. 93–618 was classified to section 2373 of this title prior to the general amendment of this part by Pub. L. 111–5.

Effective and Termination Dates

Except as otherwise provided and subject to certain applicability provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates note under section 2271 of this title.

Except as otherwise provided, this section and the general amendment of this part not applicable on or after Feb. 13, 2011, and this part to be applied and administered beginning Feb. 13, 2011, as if this section and the general amendment of this part had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Except as otherwise provided, technical assistance and grants may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a Termination Date note preceding section 2271 of this title.
§ 2371c. Technical assistance

(a) In general

The Secretary shall provide comprehensive technical assistance to an eligible community to assist the community to—

(1) diversify and strengthen the economy in the community;
(2) identify significant impediments to economic development that result from the impact of trade on the community; and
(3) develop a strategic plan under section 2371e of this title to address economic adjustment and workforce dislocation in the community, including unemployment among agricultural commodity producers.

(b) Coordination of Federal response

The Secretary shall coordinate the Federal response to an eligible community by—

(1) identifying Federal, State, and local resources that are available to assist the community in responding to economic distress; and
(2) assisting the community in accessing available Federal assistance and ensuring that such assistance is provided in a targeted, integrated manner.

(c) Interagency Community Assistance Working Group

(1) In general

The Secretary shall establish an interagency Community Assistance Working Group, to be chaired by the Secretary or the Secretary’s designee, which shall assist the Secretary with the coordination of the Federal response pursuant to subsection (b).

(2) Membership

The Working Group shall consist of representatives of any Federal department or agency with responsibility for providing economic adjustment assistance, including the Department of Defense, the Department of Education, the Department of Labor, the Department of Housing and Urban Development, the Department of Health and Human Services, the Small Business Administration, the Department of the Treasury, and any other Federal, State, or regional public department or agency the Secretary determines to be appropriate.


TERMINATION OF SECTION

For termination of section by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.

PRIOR PROVISIONS

A prior section 274 of Pub. L. 93–618 was classified to section 2374 of this title prior to the general amendment of this part by Pub. L. 111–5.

EFFECTIVE AND TERMINATION DATES

Except as otherwise provided and subject to certain applicability provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

Except as otherwise provided, this section and the general amendment of this part not applicable on or after Feb. 13, 2011, and this part to be applied and administered beginning Feb. 13, 2011, as if this section and the general amendment of this part had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

§ 2371d. Grants for eligible communities

(a) In general

The Secretary may award a grant under this section to an eligible community to assist the community in carrying out any project or program that is included in a strategic plan developed by the community under section 2371e of this title.

(b) Application

(1) In general

An eligible community seeking to receive a grant under this section shall submit a grant application to the Secretary that contains—

(A) the strategic plan developed by the community under section 2371e(a)(1)(A) of this title and approved by the Secretary under section 2271e(a)(1)(B) of this title; and

(B) a description of the project or program included in the strategic plan with respect to which the community seeks the grant.

(2) Coordination among grant programs

If an entity in an eligible community is seeking or plans to seek a Community College and Career Training Grant under section 2372 of this title or a Sector Partnership Grant under section 2373 of this title while the eligible community is seeking a grant under this section, the eligible community shall include in the grant application a description of how the eligible community will integrate any projects or programs carried out using a grant under this section with any projects or programs that may be carried out using such other grants.

(c) Limitation

An eligible community may not be awarded more than $5,000,000 under this section.

(d) Cost-sharing

(1) Federal share

The Federal share of a project or program for which a grant is awarded under this section may not exceed 5% percent of the cost of such project or program.

(2) Community share

The Secretary shall require, as a condition of awarding a grant to an eligible community under this section, that the eligible community contribute not less than an amount equal to 5 percent of the amount of the grant toward the cost of the project or program for which the grant is awarded.
§ 2371e  TITLE 19—CUSTOMS DUTIES

(e) Grants to small- and medium-sized communities

The Secretary shall give priority to grant applications submitted under this section by eligible communities that are small- and medium-sized communities.

(f) Annual report

Not later than December 15 in each of the calendar years 2009 through and annually thereafter, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report—

(1) describing each grant awarded under this section during the preceding fiscal year; and

(2) assessing the impact on the eligible community of each such grant awarded in a fiscal year before the fiscal year referred to in paragraph (1).


TERMINATION OF SECTION

For termination of section by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.

AMENDMENTS


EFFECTIVE DATE OF 2010 AMENDMENT


EFFECTIVE AND TERMINATION DATES

Except as otherwise provided and subject to certain applicability provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

Except as otherwise provided, this section and the general amendment of this part not applicable on or after Feb. 13, 2011, and this part to be applied and administered beginning Feb. 13, 2011, as if this section and the general amendment of this part had never been enacted, see section 1891 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Except as otherwise provided, technical assistance and grants may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a Termination Date note preceding section 2271 of this title.

§ 2371e. Strategic plans

(a) In general

(1) Development

An eligible community that intends to apply for a grant under section 2371d of this title shall—

(A) develop a strategic plan for the community’s economic adjustment to the impact of trade; and

(B) submit the plan to the Secretary for evaluation and approval.

(2) Involvement of private and public entities

(A) In general

To the extent practicable, an eligible community shall consult with entities described in subparagraph (B) in developing a strategic plan under paragraph (1).

(B) Entities described

Entities described in this subparagraph are public and private entities within the eligible community, including—

(i) local, county, or State government agencies serving the community;

(ii) firms, including small- and medium-sized firms, within the community;

(iii) local workforce investment boards established under section 2833 of title 29;

(iv) labor organizations, including State labor federations and labor-management initiatives, representing workers in the community; and

(v) educational institutions, local educational agencies, or other training providers serving the community.

(b) Contents

The strategic plan shall, at a minimum, contain the following:

(1) A description and analysis of the capacity of the eligible community to achieve economic adjustment to the impact of trade.

(2) An analysis of the economic development challenges and opportunities facing the community as well as the strengths and weaknesses of the economy of the community.

(3) An assessment of the commitment of the eligible community to the strategic plan over the long term and the participation and input of members of the community affected by economic dislocation.

(4) A description of the role and the participation of the entities described in subsection (a)(2)(B) in developing the strategic plan.

(5) A description of the projects to be undertaken by the eligible community under the strategic plan.

(6) A description of how the strategic plan and the projects to be undertaken by the eligible community will facilitate the community’s economic adjustment.

(7) A description of the educational and training programs available to workers in the eligible community and the future employment needs of the community.

(8) An assessment of the cost of implementing the strategic plan, the timing of funding required by the eligible community to implement the strategic plan, and the method of financing to be used to implement the strategic plan.

(9) A strategy for continuing the economic adjustment of the eligible community after the completion of the projects described in paragraph (5).

(c) Grants to develop strategic plans

(1) In general

The Secretary, upon receipt of an application from an eligible community, may award a
grant to the community to assist the community in developing a strategic plan under subsection (a)(1). A grant awarded under this paragraph shall not exceed 75 percent of the cost of developing the strategic plan.

(2) Funds to be used

Of the funds appropriated pursuant to section 2371f(c) of this title, the Secretary may make available, to provide grants to eligible communities under paragraph (1), not more than—

(A) $25,000,000 for fiscal year 2010; and
(B) $2,900,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011.

(2010—Subsec. (c)(2). Pub. L. 111–344 amended par. (2) generally. Prior to amendment, text read as follows: ‘‘Of the funds appropriated pursuant to section 2371f(c) of this title, the Secretary may make available not more than $25,000,000 for each of the fiscal years 2009 and 2010, and $6,250,000 for the period beginning October 1, 2010, and ending December 31, 2010, to provide grants to eligible communities under paragraph (1).’’

Effective Date of 2010 Amendment


Effective and Termination Dates

Except as otherwise provided and subject to certain applicability provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

Except as otherwise provided, this section and the general amendment of this part not applicable on or after Feb. 13, 2011, as if this section and the amendment were never enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date note preceding section 2271 of this title.

§ 2371f. General provisions

(a) Regulations

(1) In general

The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this subpart, including—

(A) establishing specific guidelines for the submission and evaluation of strategic plans under section 2371d of this title; and

(C) administering the grant programs established under sections 2371d and 2371e of this title.

(2) Consultations

The Secretary shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not less than 90 days prior to promulgating any final rule or regulation pursuant to paragraph (1).

(b) Personnel

The Secretary shall designate such staff as may be necessary to carry out the responsibilities described in this subpart.

(c) Authorization of appropriations

(1) In general

There are authorized to be appropriated to the Secretary to carry out this subpart—

(A) $150,000,000 for fiscal year 2010; and
(B) $17,300,000 for the 6-week period beginning January 1, 2011 and ending February 12, 2011.

(2) Availability

Amounts appropriated pursuant to this subpart—

(A) shall be available to provide adjustment assistance to communities that have been approved for assistance pursuant to this part on or before February 12, 2011; and

(B) shall otherwise remain available until expended.

(3) Supplement not supplant

Funds appropriated pursuant to this subpart shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide economic development assistance for communities.

(2010—Subsec. (c)(1). Pub. L. 111–344, § 101(c)(7)(A), amended par. (1) generally. Prior to amendment, text read as follows: ‘‘There are authorized to be appropriated to the Secretary $150,000,000 for each of the fiscal years 2009 and 2010, and $37,500,000 for the period beginning October 1, 2010, and ending December 31, 2010, to carry out this subpart.’’


Effective Date of 2010 Amendment


Effective and Termination Dates

Except as otherwise provided and subject to certain applicability provisions, section effective upon the ex-
§ 2372. Community College and Career Training Grant Program

(a) Grants authorized

(1) In general

Beginning August 1, 2009, the Secretary may award Community College and Career Training Grants to eligible institutions for the purpose of developing, offering, or improving educational or career training programs for workers eligible for training under section 2296 of this title.

(2) Limitations

An eligible institution may not be awarded—
(A) more than one grant under this section; or
(B) a grant under this section in excess of $1,000,000.

(b) Definitions

In this section:

(1) Eligible institution

The term “eligible institution” means an institution of higher education (as defined in section 1002 of title 20), but only with respect to a program offered by the institution that can be completed in not more than 2 years.

(2) Secretary

The term “Secretary” means the Secretary of Labor.

(c) Grant proposals

(1) In general

An eligible institution seeking to receive a grant under this section shall submit a grant proposal to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) Guidelines

Not later than June 1, 2009, the Secretary shall—
(A) promulgate guidelines for the submission of grant proposals under this section; and
(B) publish and maintain such guidelines on the website of the Department of Labor.

(3) Assistance

The Secretary shall offer assistance in preparing a grant proposal to any eligible institution that requests such assistance.

(4) General requirements for grant proposals

(A) In general

A grant proposal submitted to the Secretary under this section shall include a detailed description of—
(i) the specific project for which the grant proposal is submitted, including the manner in which the grant will be used to develop, offer, or improve an educational or career training program that is suited to workers eligible for training under section 2296 of this title;
(ii) the extent to which the project for which the grant proposal is submitted will meet the educational or career training needs of workers in the community served by the eligible institution who are eligible for training under section 2296 of this title;
(iii) the extent to which the project for which the grant proposal is submitted fits within any overall strategic plan developed by an eligible community under section 2371e of this title;
(iv) the extent to which the project for which the grant proposal is submitted relates to any project funded by a Sector Partnership Grant awarded under section 2373 of this title; and
(v) any previous experience of the eligible institution in providing educational or career training programs to workers eligible for training under section 2296 of this title.

(B) Absence of experience

The absence of any previous experience in providing educational or career training programs described in subparagraph (A)(v) shall not automatically disqualify an eligible institution from receiving a grant under this section.

(5) Community outreach required

In order to be considered by the Secretary, a grant proposal submitted by an eligible institution under this section shall—
(A) demonstrate that the eligible institution—
(i) reached out to employers, and other entities described in section 2371e(a)(2)(B) of this title to identify—
(I) any shortcomings in existing educational and career training opportunities available to workers in the community; and
(II) any future employment opportunities within the community and the educational and career training skills required for workers to meet the future employment demand;
(ii) reached out to other similarly situated institutions in an effort to benefit from any best practices that may be shared with respect to providing educational or career training programs to workers eligible for training under section 2296 of this title; and
(iii) reached out to any eligible partnership in the community that has sought or received a Sector Partnership Grant under section 2373 of this title to enhance the ef-
fectiveness of each grant and avoid duplication of efforts; and

(B) include a detailed description of—

(i) the extent and outcome of the outreach conducted under subparagraph (A);

(ii) the extent to which the project for which the grant proposal is submitted will contribute to meeting any shortcomings identified under subparagraph (A)(i)(I) or any educational or career training needs identified under subparagraph (A)(i)(II); and

(iii) the extent to which employers, including small- and medium-sized firms within the community, have demonstrated a commitment to employing workers who would benefit from the project for which the grant proposal is submitted.

(d) Criteria for award of grants

(1) In general

Subject to the appropriation of funds, the Secretary shall award a grant under this section based on—

(A) a determination of the merits of the grant proposal submitted by the eligible institution to develop, offer, or improve educational or career training programs to be made available to workers eligible for training under section 2396 of this title;

(B) an evaluation of the likely employment opportunities available to workers who complete an educational or career training program that the eligible institution proposes to develop, offer, or improve; and

(C) an evaluation of prior demand for training programs by workers eligible for training under section 2296 of this title in the community served by the eligible institution, as well as the availability and capacity of existing training programs to meet future demand for training programs.

(2) Priority for certain communities

In awarding grants under this section, the Secretary shall give priority to an eligible institution that serves a community that the Secretary of Commerce has determined under section 2371b of this title is eligible to apply for assistance under subpart A within the 5-year period preceding the date on which the grant proposal is submitted to the Secretary under this section.

(3) Matching requirements

A grant awarded under this section may not be used to satisfy any private matching requirement under any other provision of law.

(e) Annual report

Not later than December 15 in each of the calendar years 2009 through and annually thereafter, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report—

(1) describing each grant awarded under this section during the preceding fiscal year; and

(2) assessing the impact of each award of a grant under this section in a fiscal year preceding the fiscal year referred to in paragraph (1) on workers receiving training under section 2296 of this title.


Termination of Section

For termination of section by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.

Prior Provisions


Amendments


Effective Date of 2010 Amendment


Effective and Termination Dates

Except as otherwise provided and subject to certain applicable provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

Except as otherwise provided, this section and the general amendment of this part not applicable on or after Feb. 15, 2011, and this part to be applied and administered beginning Feb. 13, 2011, as if this section and the general amendment of this part had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Except as otherwise provided, technical assistance and grants may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a Termination Date note preceding section 2271 of this title.

§ 2372a. Authorization of appropriations

(a) Authorization of appropriations

There are authorized to be appropriated to the Secretary of Labor $40,000,000 for each of the fiscal years 2009 and 2010, and $10,000,000 for the period beginning October 1, 2010, and ending December 31, 2010, to fund the Community College and Career Training Grant Program. Funds appropriated pursuant to this section shall remain available until expended.

(b) Additional funds; minimum allocation to States

There are appropriated $500,000,000 for each of fiscal years 2011, 2012, 2013, and 2014 to carry out this subpart, except that the limitations contained in section 2372(a)(2) of this title shall not apply to such funds and each State shall receive not less than 0.5 percent of the amount appropriated pursuant to this subsection for each such fiscal year.
§ 2373  TITLE 19—CUSTOMS DUTIES  Page 574


TERMINATION OF SECTION
For termination of section by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.

AMENDMENTS
2010—Subsec. (b). Pub. L. 111–152 struck out heading which read “Supplement not supplant” and in text substituted “There are” for “Funds” and “$500,000,000 for each of fiscal years 2011, 2012, 2013, and 2014 to carry out this subpart, except that the limitations contained in section 2372(a)(2) of this title shall not apply to such funds and each State shall receive not less than 0.5 percent of the amount appropriated pursuant to this subsection for each such fiscal year.” for “pursuant to this section shall be used to supplement and not supplant other Federal, State, and local public funds expended to support community college and career training programs.”

EFFECTIVE AND TERMINATION DATES
Except as otherwise provided and subject to certain applicability provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1893 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

Except as otherwise provided, this section and the general amendment of this part not applicable on or after Feb. 13, 2011, and this part to be applied and administered beginning Feb. 13, 2011, as if this section and the general amendment of this part had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Except as otherwise provided, technical assistance and grants may not be provided under this part after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a Termination Date note preceding section 2271 of this title.

SUBPART C—INDUSTRY OR SECTOR PARTNERSHIP GRANT PROGRAM FOR COMMUNITIES IMPACTED BY TRADE
§ 2373. Industry or Sector Partnership Grant program for communities impacted by trade

(a) Purpose
The purpose of this subpart is to facilitate efforts by industry or sector partnerships to strengthen and revitalize industries and create employment opportunities for workers in communities impacted by trade.

(b) Definitions
In this subpart:
(1) Community impacted by trade
The term “community impacted by trade” has the meaning given that term in section 2271 of this title.
(2) Dislocated worker
The term “dislocated worker” means a worker who has been totally or partially separated, or is threatened with total or partial separation, from employment in an industry or sector in a community impacted by trade.
(3) Eligible partnership
The term “eligible partnership” means a voluntary partnership composed of public and private persons, firms, or other entities within a community impacted by trade, that shall include representatives of—
(A) an industry or sector within the community, including an industry association;
(B) local, county, or State government;
(C) multiple firms in the industry or sector, including small- and medium-sized firms, within the community;
(D) local workforce investment boards established under section 2832 of title 29;
(E) labor organizations, including State labor federations and labor-management initiatives, representing workers in the community; and
(F) educational institutions, local educational agencies, or other training providers serving the community.

(4) Lead entity
The term “lead entity” means—
(A) an entity designated by the eligible partnership to be responsible for submitting a grant proposal under subsection (e) and serving as the eligible partnership’s fiscal agent in expending any Sector Partnership Grant awarded under this section; or
(B) a State agency designated by the Governor of the State to carry out the responsibilities described in subparagraph (A).

(5) Secretary
The term “Secretary” means the Secretary of Labor.

(6) Targeted industry or sector
The term “targeted industry or sector” means the industry or sector represented by an eligible partnership.

(c) Sector Partnership Grants authorized
Beginning on August 1, 2009, and subject to the appropriation of funds, the Secretary shall award Sector Partnership Grants to eligible partnerships to assist the eligible partnerships in carrying out projects, over periods of not more than 3 years, to strengthen and revitalize industries and sectors and create employment opportunities for dislocated workers.

(d) Use of Sector Partnership grants
An eligible partnership may use a Sector Partnership Grant to carry out any project that the Secretary determines will further the purpose of this subpart, which may include—
(1) identifying the skill needs of the targeted industry or sector and any gaps in the available supply of skilled workers in the community impacted by trade, and developing strategies for filling the gaps, including by—
(A) developing systems to better link firms in the targeted industry or sector to available skilled workers;
(B) helping firms in the targeted industry or sector to obtain access to new sources of qualified job applicants;
(C) retraining dislocated and incumbent workers; or
(D) facilitating the training of new skilled workers by aligning the instruction provided by local suppliers of education and training services with the needs of the targeted industry or sector;
(2) analyzing the skills and education levels of dislocated and incumbent workers and developing training to address skill gaps that prevent such workers from obtaining jobs in the targeted industry or sector;
(3) helping firms, especially small- and medium-sized firms, in the targeted industry or sector increase their productivity and the productivity of their workers;
(4) helping such firms retain incumbent workers;
(5) developing learning consortia of small- and medium-sized firms in the targeted industry or sector with similar training needs to enable the firms to combine their purchases of training services, and thereby lower their training costs;
(6) providing information and outreach activities to firms in the targeted industry or sector regarding the activities of the eligible partnership and other local service suppliers that could assist the firms in meeting needs for skilled workers;
(7) seeking, applying, and disseminating best practices learned from similarly situated communities impacted by trade in the development and implementation of economic growth and revitalization strategies; and
(8) identifying additional public and private resources to support the activities described in this subsection, which may include the option to apply for a community grant under section 2371d of this title or a Community College and Career Training Grant under section 2372 of this title (subject to meeting any additional requirements of those sections).

(e) Grant proposals

(1) In general
The lead entity of an eligible partnership seeking to receive a Sector Partnership Grant under this section shall submit a grant proposal to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) General requirements of grant proposals
A grant proposal submitted under paragraph (1) shall, at a minimum—

(A) identify the members of the eligible partnership;

(B) identify the targeted industry or sector for which the eligible partnership intends to carry out projects using the Sector Partnership Grant;

(C) describe the goals that the eligible partnership intends to achieve to promote the targeted industry or sector;

(D) describe the projects that the eligible partnership will undertake to achieve such goals;

(E) demonstrate that the eligible partnership has the organizational capacity to carry out the projects described in subparagraph (D);

(F) explain—

(i) whether—

(I) the community impacted by trade has sought or received a community grant under section 2371d of this title;

(II) an eligible institution in the community has sought or received a Community College and Career Training Grant under section 2372 of this title; or

(III) any other entity in the community has received funds pursuant to any other federally funded training project; and

(ii) how the eligible partnership will coordinate its use of a Sector Partnership Grant with the use of such other grants or funds in order to enhance the effectiveness of each grant and any such funds and avoid duplication of efforts; and

(G) include performance measures, developed based on the performance measures issued by the Secretary under subsection (g)(2), and a timeline for measuring progress toward achieving the goals described in subparagraph (C).

(f) Award of grants

(1) In general
Upon application by the lead entity of an eligible partnership, the Secretary may award a Sector Partnership Grant to the eligible partnership to assist the partnership in carrying out any of the projects in the grant proposal that the Secretary determines will further the purposes of this subpart.

(2) Limitations
An eligible partnership may not be awarded—

(A) more than one Sector Partnership Grant; or

(B) a total grant award under this subpart in excess of—

(i) except as provided in clause (ii), $2,500,000; or

(ii) in the case of an eligible partnership located within a community impacted by trade that is not served by an institution receiving a Community College and Career Training Grant under section 2372 of this title, $3,000,000.

(g) Administration by the Secretary

(1) Technical assistance and oversight

(A) In general
The Secretary shall provide technical assistance to, and oversight of, the lead entity of an eligible partnership in applying for and administering Sector Partnership Grants awarded under this section.

(B) Technical assistance

Technical assistance provided under subparagraph (A) shall include providing conferences and such other methods of collecting and disseminating information on best practices developed by eligible partnerships as the Secretary determines appropriate.

(C) Grants or contracts for technical assistance

The Secretary may award a grant or contract to one or more national or State organizations to provide technical assistance to foster the planning, formation, and implementation of eligible partnerships.

(2) Performance measures

The Secretary shall issue a range of performance measures, with quantifiable bench-
marks, and methodologies that eligible partnerships may use to measure progress toward the goals described in subsection (e). In developing such measures, the Secretary shall consider the benefits of the eligible partnership and its activities for workers, firms, industries, and communities.

(h) Reports

(1) Progress report

Not later than 1 year after receiving a Sector Partnership Grant, and 3 years thereafter, the lead entity shall submit to the Secretary, on behalf of the eligible partnership, a report containing—

(A) a detailed description of the progress made toward achieving the goals described in subsection (e)(2)(C), using the performance measures required under subsection (e)(2)(G);

(B) a detailed evaluation of the impact of the grant award on workers and employers in the community impacted by trade; and

(C) a detailed description of all expenditures of funds awarded to the eligible partnership under the Sector Partnership Grant approved by the Secretary under this subpart.

(2) Annual report

Not later than December 15 in each of the calendar years 2009 through and annually thereafter,³ the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report—

(A) describing each Sector Partnership Grant awarded to an eligible partnership under the Sector Partnership Grant program and grants may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a Termination Date note preceding section 2271 of this title.

(b) Supplement not supplant

Funds appropriated pursuant to this section shall remain available until expended.

(c) Administrative costs

The Secretary may retain not more than 5 percent of the funds appropriated pursuant to this section for each fiscal year to administer the Sector Partnership Grant program under section 2373 of this title.

(d) Reports

There are authorized to be appropriated to the Secretary of Labor $40,000,000 for fiscal year 2010; and

§ 2373a. Authorization of appropriations

(a) In general

(1) Authorization

There are authorized to be appropriated to the Secretary of Labor to carry out the Sector Partnership Grant program under section 2373 of this title—

(A) $40,000,000 for fiscal year 2010; and

(B) $4,600,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011.

(2) Availability of appropriations

Funds appropriated pursuant to this section shall remain available until expended.
§ 2374. Rule of construction

Nothing in this part prevents a worker from receiving trade adjustment assistance under part 2 of this subchapter at the same time the worker is receiving assistance in any manner from—

(1) a community receiving a community grant under subpart A;

(2) an eligible institution receiving a Community College and Career Training Grant under subpart B; or

(3) an eligible partnership receiving a Sector Partnership Grant under subpart C.


§ 2374a. GAO study and report

(a) Adjustment assistance programs

The Comptroller General of the United States shall conduct a study of the adjustment assistance programs established under parts 2, 3, and 4 of this subchapter and shall report the results of such study to the Congress no later than January 31, 1980. Such report shall include an evaluation of—

(1) the effectiveness of such programs in aiding workers, firms, and communities to adjust to changed economic conditions resulting from changes in the patterns of international trade; and

(2) the coordination of the administration of such programs and other Government programs which provide unemployment compensation and relief to depressed areas.

(b) Assistance from Labor and Commerce Departments

In carrying out his responsibilities under this section, the Comptroller General shall, to the extent practical, avail himself of the assistance of the Departments of Labor and Commerce. The Secretaries of Labor and Commerce shall make available to the Comptroller General any assistance necessary for an effective evaluation of the adjustment assistance programs established under this subchapter.


§ 2392. Adjustment Assistance Coordinating Committee

There is established the Adjustment Assistance Coordinating Committee to consist of a Deputy United States Trade Representative as Chairman, and the officials charged with adjustment assistance responsibilities of the Departments of Labor and Commerce and the Small Business Administration. It shall be the function of the Committee to coordinate the adjustment assistance policies, studies, and programs of the various agencies involved and to promote the efficient and effective delivery of adjustment assistance benefits.


CHANGE OF NAME

"Deputy United States Trade Representative" substituted in text for "Deputy Special Trade Representative", meaning Deputy Special Representative for Trade Negotiations, pursuant to Reorg. Plan No. 3 of 1979, §1(c), 44 F.R. 69274, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. See, also, section 2171 of this title as amended by Pub. L. 97–456.

§ 2393. Trade monitoring and data collection

(a) Monitoring programs

The Secretary of Commerce and the Secretary of Labor shall establish and maintain a program to monitor imports of articles and services into the United States which will reflect changes in
the volume of such imports, the relation of such imports to changes in domestic production and domestic supply of services, changes in employment within domestic industries producing articles or supplying services like or directly competitive with such imports, and the extent to which such changes in production, or supply of services, and employment are concentrated in specific geographic regions of the United States. A summary of the information gathered under this section shall be published regularly and provided to the Adjustment Assistance Coordinating Committee, the International Trade Commission, and to the Congress.

(b) Collection of data and reports on service sector

(1) Secretary of Labor

Not later than 90 days after February 17, 2009, the Secretary of Labor shall implement a system to collect data on adversely affected workers employed in the service sector that includes the number of workers by State and industry, and by the cause of the dislocation of each worker, as identified in the certification.

(2) Secretary of Commerce

Not later than 1 year after February 17, 2009, the Secretary of Commerce shall, in consultation with the Secretary of Labor, conduct a study and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on ways to improve the timeliness and coverage of data on trade in services, including methods to identify increased imports due to the relocation of United States firms to foreign countries, and increased imports due to United States firms acquiring services from firms in foreign countries.

§ 2394. Firms relocating in foreign countries

Before moving productive facilities from the United States to a foreign country, every firm should—

(1) provide notice of the move to its employees who are likely to be totally or partially separated as a result of the move at least 60 days before the date of such move, and

(2) provide notice of the move to the Secretary of Labor and the Secretary of Commerce on the same day it notifies employees under paragraph (1).

(b)1 It is the sense of the Congress that every such firm should—

(1) apply for and use all adjustment assistance for which it is eligible under this subchapter,

(2) offer employment opportunities in the United States, if any exist, to its employees who are totally or partially separated workers as a result of the move, and

(3) assist in relocating employees to other locations in the United States where employment opportunities exist.

§ 2395. Judicial review

(a) Petition for review; time and place of filing

A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 2273 of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 2341 of this title, an agricultural commodity producer (as defined in section 2401(2) of this title) aggrieved by a determination of the Secretary of Agriculture under section 2401b or 2401e of this title, or a community or authorized representative of a community aggrieved by a final determination of the Secretary of Commerce under section 2371b of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination.

The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor, the Secretary of Commerce, or the Secretary of Agriculture, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

1 So in original. The first paragraph was not designated subsec. (a).
(b) Findings of fact by Secretary; conclusiveness; new or modified findings

The findings of fact by the Secretary of Labor, the Secretary of Commerce, or the Secretary of Agriculture, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Determination; review by Supreme Court

The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor, the Secretary of Commerce, or the Secretary of Agriculture, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for the Federal Circuit as prescribed by the rules of such court. The judgment of the Court of Appeals for the Federal Circuit shall be subject to review by the Supreme Court of the United States upon a showing of extraordinary circumstances. The judgment of the Supreme Court of the United States shall be subject to review by the Court of International Trade as prescribed by the rules of such court. The findings of fact by the Secretary of Labor, the Secretary of Agriculture, or the Secretary of Commerce under section 2401b of this title, as modified by section 2341 of this title, if supported by substantial evidence, shall be conclusive. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for the Federal Circuit as prescribed by the rules of such court. The judgment of the Court of Appeals for the Federal Circuit shall be subject to review by the Supreme Court of the United States upon a showing of extraordinary circumstances.

AMENDMENT OF SECTION

For termination of amendment by section 2331(c) of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

REFERENCES IN TEXT


AMENDMENTS


2002—Subsec. (a). Pub. L. 107–210, § 122(a)(1), as amended by Pub. L. 108–429, § 2004(a)(11)(A), inserted “an agricultural commodity producer (as defined in section 2401(2) of this title) aggrieved by a determination of the Secretary of Agriculture under section 2401b of this title,” after “section 2341 of this title,” in first sentence and substituted “the Secretary of Commerce, or the Secretary of Agriculture” for “or the Secretary of Commerce” in second sentence.

2001—Subsec. (b). Pub. L. 107–210, § 123(b)(4), struck out “or section 2331(c) of this title” after “section 2273 of this title”.

Subsecs. (b), (c). Pub. L. 107–210, § 142(a)(1)(B), as amended by Pub. L. 108–429, § 2004(a)(11)(A)(i), substituted “the Secretary of Commerce, or the Secretary of Agriculture” for “or the Secretary of Commerce”.


EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 123(b)(4) of Pub. L. 107–210 applicable with respect to petitions filed under this part on or after the date that is 90 days after Aug. 6, 2002, except with respect to certain workers, see section 123(c) of Pub. L. 107–210, set out as an Effective Date of Repeal note under section 2331 of this title.

Amendment by section 142(a) of Pub. L. 107–210 effective on the date that is 180 days after Aug. 6, 2002, see section 141(b) of Pub. L. 107–210, set out as an Effective Date note under section 2401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 506(a) of Pub. L. 103–182, set out as a note under section 2271 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT


EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after Nov. 1, 1988, see section 701(b)(3) of Pub. L. 97–164 set out as an Effective Date of 1980 Amendment note under section 251 of Title 28, Judiciary and Judicial Procedure.

$ 2396. Omitted

Section, Pub. L. 93–618, title II, § 286, as added by Pub. L. 100–418, title I, § 1427(a), Aug. 23, 1988, 102 Stat. 1231, which established the Trade Adjustment Assistance Trust Fund, did not become effective pursuant to section 1450(c) of Pub. L. 101–546, as amended, set out as an Effective Date note under section 2297 of this title.

$ 2397. Omitted

Section, Pub. L. 93–618, title II, § 287, as added Pub. L. 100–418, title I, § 1428(b), Aug. 23, 1988, 102 Stat. 1255,
which imposed an additional fee, did not become effect-

tive pursuant to section 1430(b) of Pub. L. 100–418, as

amended, set out below.

**Effective Date**

Section 1430 of Pub. L. 100–418, as amended by Pub. L. 100–647, title IX, §9001(a)(21), Nov. 10, 1988, 102 Stat. 3808, published that:

"(a) In General.—Except as otherwise provided by this section, the amendments made by this part (part 3 (§§1421–1430) of subtitle D of title I of Pub. L. 100–148, enacting this section and sections 2218 and 2296 of this title, amending sections 2272, 2275, 2291 to 2293, 2295, 2296, 2311, 2317, 2341, and 2346 of this title, and amending provisions set out as a note preceding section 2271 of this title) shall take effect on the date of enactment of this Act [Aug. 23, 1988]."

"(b) Additional Fee.—

"(1) Except as otherwise provided in this subsection, the amendment made by section 1428(b) [enacting this section] shall apply (if at all) to any article, entered, or withdrawn from warehouse for consumption, after the date that is 30 days after the earlier of:

"(A) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(A) [set out as a note below] that is 2 years after the date of enactment of this Act."

"(2) If the President determines on the date that is 2 years after the date of enactment of this Act that the fee imposed by the amendment made by section 1428(b) is not in the national economic interest, subparagraph (B) of paragraph (1) shall not be taken into account in applying the provisions of paragraph (1). [See Determination of President of the United States, No. 90–34, set out below.]"

"(3) The amendment made by section 1428(b) shall apply (if at all) to the products of any foreign country described in section 1428(a)(1)(B) [set out as a note below] that are entered, or withdrawn from warehouse for consumption, after the later of:

"(A) the first date on which the fee imposed by such amendment applies with respect to products of foreign countries that are not described in section 1428(a)(1)(B), or

"(B) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(B) [set out as a note below] certifying the consent of such foreign country to the imposition of the fee."

"(c) Trust Fund.—The amendments made by section 1427 [enacting section 2386 of this title] shall take effect on the first date on which the amendment made by section 1428(b) [enacting this section] applies with respect to any articles.

"(d) Eligibility of Workers and Firms.—The amendments made by sections 1423(b) and 1424(b) [amending sections 2272, 2296, and 2341 of this title] shall take effect on the date that is 1 year after the first date on which the amendment made by section 1428(b) [enacting this section] applies with respect to any articles.

"(e) Notification Requirements.—The amendments made by section 1422 [amending section 2275 of this title] shall take effect on the date that is 30 days after the date of enactment of this Act [Aug. 23, 1988]."

"(f) Training Requirement.—The amendments made by subsections (a), (b)(2), and (c)(2) of section 1423 and by paragraphs (2) and (3) of section 1424(c) [amending sections 2291 to 2293, 2296, and 2311 of this title] shall take effect on the date that is 90 days after the date of enactment of this Act [Aug. 23, 1988]."

"(g) Limitation on Period for Which Trade Readjustment Allowances May Be Made.—The amendment made by section 1425(a) [amending section 2293 of this title] shall not apply with respect to any total separ-

ation of a worker from adversely affected employ-

ment (within the meaning of section 247 of such Act [19 U.S.C. 2319]) that occurs before the date of enactment of this Act [Aug. 23, 1988] if the application of such amendment with respect to such total separation would reduce the period for which such worker would (but for such amendment) be allowed to receive trade readjustment allow-


**Imposition of Small Uniform Fee on All Imports**

Section 1428(a) of Pub. L. 100–418 provided that:

"(1) The President shall—

"(A) undertake negotiations necessary to achieve changes in the General Agreement on Tariffs and Trade that would allow any country to impose a small uniform fee of not more than 0.15 percent on all imports to such country for the purpose of using the revenue from such fee to fund programs which di-

rectly assist adjustment to import competition, and

"(B) undertake negotiations with any foreign coun-

try that has entered into a free trade agreement with

the United States under subtitle A (¶¶1101 to 1125, of title I of Pub. L. 100–418, see Tables for classification) or under section 102 of the Trade Act of 1974 [19 U.S.C. 2112] to obtain the consent of such country to the im-

position of such a fee by the United States.

"(2) In the report that is submitted under section 163 of the Trade Act of 1974 [19 U.S.C. 2213] for 1989 and 1990, the President shall include a statement on the progress of negotiations conducted under paragraph (1).

"(3) (A) On the first day after the date of enactment of this Act [Aug. 23, 1988] on which the General Agree-

ment on Tariffs and Trade allows any country to im-

pose a fee described in paragraph (1), the President

shall submit to the Congress, and publish in the Fed-

eral Register, a written statement certifying such al-

lowance.

"(B) On the first day after the date of enactment of

this Act on which any foreign country described in

paragraph (1)(B) consents to the imposition of such a fee by the United States, the President shall submit to the Congress, and publish in the Federal Register, a written statement certifying such con-

sent.

"(4) If—

"(A) the President does not submit to the Congress

the written statement described in paragraph (3)(A)

before the date that is 2 years after the date of en-

actment of this Act [Aug. 23, 1988], and

"(B) the President determines on such date that the fee imposed by the amendment made by subsection (b) [enacting this section] is not in the national eco-

nomics interest,

the President shall submit to the Congress, and publish in the Federal Register, written notice of such deter-

mination on such date. [See Determination of President of the United States, No. 90–34, set out below.]

"(5) (A) Any disapproval resolution that is introduced in the Senate or House of Representatives within the 90-day period beginning on the date that is 2 years after the date of enactment of this Act [Aug. 23, 1988] shall, for purposes of section 152 of the Trade Act of 1974 (19 U.S.C. 2192), be treated as a joint resolution described in section 152(a)(1)(A) of such Act.

"(B) For purposes of this part, [see Effective Date note above], the term ‘disapproval resolution’ means a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows:

‘That Congress disapproves of the determination made by the President under section 1428(a)(4)(A) of the Omnibus Trade and Competitiveness Act of 1988 [sub-

sec. (a)(4)(A) of this note].’"

**Determination That Certain Import Fees Are Not in the National Economic Interest**

Determination by President of United States, No. 90–34, Aug. 23, 1990, 55 F.R. 34889, provided:

Pursuant to section 1428(a)(4)(B) of the Omnibus Trade and Competitiveness Act of 1988 [Pub. L. 100–418,
§ 2397a. Sense of Congress

It is the sense of Congress that the Secretaries of Labor, Commerce, and Agriculture should apply the provisions of part 2 (relating to adjustment assistance for workers), part 3 (relating to adjustment assistance for firms), part 4 (relating to adjustment assistance for communities), and part 6 (relating to adjustment assistance for farmers), respectively, with the utmost regard for the interests of workers, firms, communities, and farmers petitioning for benefits under such parts.


Termination of Section

For termination of section by section 1893 of Pub. L. 111–5, see Effective and Termination Dates note below.

Effective and Termination Dates

Except as otherwise provided and subject to certain applicability provisions, section effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of this title.

Except as otherwise provided, section not applicable on or after Jan. 1, 2011, and this part to be applied and administered beginning Jan. 1, 2011, as if this section had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Part 6—Adjustment Assistance for Farmers

Termination Date

Except as otherwise provided, technical assistance and financial assistance may not be provided under this part after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2401. Definitions

In this part:

(1) Agricultural commodity

The term “agricultural commodity” includes—

(A) any agricultural commodity (including livestock) in its raw or natural state;

(B) any class of goods within an agricultural commodity; and

(C) in the case of an agricultural commodity producer described in paragraph (2)(B), wild-caught aquatic species.

(2) Agricultural commodity producer

The term “agricultural commodity producer” means—

(A) a person that shares in the risk of producing an agricultural commodity and that is entitled to a share of the commodity for marketing, including an operator, a sharecropper, or a person that owns or rents the land on which the commodity is produced; or

(B) a person that reports gain or loss from the trade or business of fishing on the person’s annual Federal income tax return for the taxable year that most closely corresponds to the marketing year with respect to which a petition is filed under section 2401a of this title.

(3) Contributed importantly

(A) In general

The term “contributed importantly” means a cause which is important but not necessarily more important than any other cause.

(B) Determination of contributed importantly

The determination of whether imports of articles like or directly competitive with an agricultural commodity with respect to which a petition under this part was filed contributed importantly to a decline in the price of the agricultural commodity shall be made by the Secretary.

(4) Duly authorized representative

The term “duly authorized representative” means an association of agricultural commodity producers.

(5) National average price

The term “national average price” means the national average price paid to an agricultural commodity producer for an agricultural commodity in a marketing year as determined by the Secretary.

(6) Secretary

The term “Secretary” means the Secretary of Agriculture.

(7) Marketing year

The term “marketing year” means—

(A) a marketing year designated by the Secretary with respect to an agricultural commodity; or

(B) in the case of an agricultural commodity with respect to which the Secretary does not designate a marketing year, a calendar year.


Amendment of Section

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

Codification


Amendments

2009—Par. (1). Pub. L. 111–5, §§1881(1), 1893, temporarily amended par. (1) generally. Prior to amendment,
text read as follows: "The term 'agricultural commodity' means any agricultural commodity (including livestock) in its raw or natural state." See Effective and Termination Dates of 2009 Amendment note below.

Par. (2). Pub. L. 111–5, §1881(2), 1893, temporarily amended par. (2) generally. Prior to amendment, text read as follows: "The term 'agricultural commodity producer' has the same meaning as the term 'person' as prescribed by regulations promulgated under section 1308(e) of title 7 (before the amendment made by section 1703(a) of the Food, Conservation, and Energy Act of 2008)." See Effective and Termination Dates of 2009 Amendment note below.


2008—Par. (2). Pub. L. 110–246, §1603(g)(6), inserted "(before the amendment made by section 1703(a) of the Food, Conservation, and Energy Act of 2008)" before period at end.

2006—Par. (2). Pub. L. 109–280 substituted "1308(e)" for "1308(5)".

**Effective and Termination Dates of 2009 Amendment**

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note under section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

**Effective Date of 2008 Amendment**


**Effective Date of 2006 Amendment**

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 58c of this title.

**Effective Date**


**Termination Date**

Except as otherwise provided, technical assistance and financial assistance may not be provided under this section after Feb. 12, 2011, see section 286 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2401a. Petitions; group eligibility

(a) In general

A petition for a certification of eligibility to apply for adjustment assistance under this part may be filed with the Secretary by a group of agricultural commodity producers or by their duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that the Secretary has received the petition and initiated an investigation.

(b) Hearings

If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary’s publication under subsection (a) of this section a request for a hearing, the Secretary shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

(c) Group eligibility requirements

The Secretary shall certify a group of agricultural commodity producers as eligible to apply for adjustment assistance under this part if the Secretary determines that—

1. (A) the national average price of the agricultural commodity produced by the group during the most recent marketing year for which data are available is less than 85 percent of the average of the national average price for the commodity in the 3 marketing years preceding such marketing year;

2. (B) the quantity of production of the agricultural commodity produced by the group during the most recent marketing year is less than 85 percent of the average of the quantity of production of the commodity produced by the group in the 3 marketing years preceding such marketing year;

3. (C) the value of production of the agricultural commodity produced by the group during the most recent marketing year is less than 85 percent of the average value of production of the commodity produced by the group in the 3 marketing years preceding such marketing year; or

4. (D) the cash receipts for the agricultural commodity produced by the group during the most recent marketing year are less than 85 percent of the average of the cash receipts for the commodity produced by the group in the 3 marketing years preceding such marketing year;

(2) the volume of imports of articles like or directly competitive with the agricultural commodity produced by the group in the marketing year with respect to which the group files the petition increased compared to the average volume of such imports during the 3 marketing years preceding such marketing year;

(3) the increase in such imports contributed importantly to the decrease in the national average price, quantity of production, or value of production of, or cash receipts for, the agricultural commodity, as described in paragraph (1).

(d) Eligibility of certain other producers

An agricultural commodity producer or group of producers that resides outside of the State or region identified in the petition filed under subsection (a) may file a request to become a party to that petition not later than 15 days after the date the notice is published in the Federal Register under subsection (a) with respect to that petition.
(e) Treatment of classes of goods within a commodity

In any case in which there are separate classes of goods within an agricultural commodity, the Secretary shall treat each class as a separate commodity in determining under subsection (c—

(1) group eligibility;

(2) the national average price, quantity of production, or value of production, or cash receipts; and

(3) the volume of imports.


AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS

2009—Subsecs. (c) to (e). Pub. L. 111–5, §§1882(a), 1893, temporarily added subsecs. (c) to (e) and struck out former subsecs. (c) to (e), which related to eligibility requirements for groups of agricultural commodity producers to apply for adjustment assistance, a special rule for such groups after the first year of certification, and determination of qualified year and commodity, respectively. See Effective and Termination Dates of 2009 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, set out under section 2271 of this title. Amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this amendment to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a note under section 2271 of this title.

TERMINATION DATE

Except as otherwise provided, technical assistance and financial assistance may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2401b. Determinations by Secretary of Agriculture

(a) In general

As soon as practicable after the date on which a petition is filed under section 2401a of this title, but in any event not later than 40 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 2401a(c) of this title and, if the group meets the requirements, issue a certification of eligibility to apply for assistance under this part covering agricultural commodity producers in any group that meets the requirements. Each certification shall specify the date on which eligibility under this part begins.

(b) Notice

Upon making a determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register, together with the Secretary’s reasons for making the determination.

(c) Termination of certification

Whenever the Secretary determines, with respect to any certification of eligibility under this part, that the decrease in the national average price, quantity of production, or value of production of, or cash receipts for, the agricultural commodity covered by the certification is no longer attributable to the conditions described in section 2401a of this title, the Secretary shall terminate such certification and promptly cause notice of such termination to be published in the Federal Register, together with the Secretary’s reasons for making such determination.

(d) Report by the Secretary

Not later than January 30, 2010, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report containing the following information with respect to adjustment assistance provided under this part during the preceding fiscal year:

(1) A list of the agricultural commodities covered by a certification under this part.

(2) The States or regions in which such commodities are produced and the aggregate amount of such commodities produced in each such State or region.

(3) The total number of agricultural commodity producers, by congressional district, receiving benefits under this part.

(4) The total number of agricultural commodity producers, by congressional district, receiving technical assistance under this part.


AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–5, §§1882(b)(1), 1893, temporarily substituted “section 2401a(c) of this title” for “section 2401a(c) or (d) of this title, as the case may be,”. See Effective and Termination Dates of 2009 Amendment note below.


EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as a note preceding section 2271 of this title.
section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Termination Date
Except as otherwise provided, technical assistance and financial assistance may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2401c. Study by Secretary of Agriculture when International Trade Commission begins investigation

(a) In general
Whenever the International Trade Commission (in this part referred to as the "Commission") begins an investigation under section 2252 of this title with respect to an agricultural commodity, the Commission shall immediately notify the Secretary of the investigation. Upon receipt of the notification, the Secretary shall immediately conduct a study of—

(1) the number of agricultural commodity producers producing a like or directly competitive agricultural commodity who have been or are likely to be certified as eligible for adjustment assistance under this part, and
(2) the extent to which the adjustment of such producers to the import competition may be facilitated through the use of existing programs.

(b) Report
Not later than 15 days after the day on which the Commission makes its report under section 2252(f) of this title, the Secretary shall submit a report to the President setting forth the findings of the study described in subsection (a) of this section. Upon making the report to the President, the Secretary shall also promptly make the report public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of the report published in the Federal Register.


Termination Date
Except as otherwise provided, technical assistance and financial assistance may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2401e. Qualifying requirements and benefits for agricultural commodity producers

(a) In general

(1) Requirements
(A) In general
Benefits under this part shall be available to an agricultural commodity producer covered by a certification under this part who files an application for such benefits not later than 90 days after the date on which the Secretary makes a determination and issues a certification of eligibility under section 2401b of this title, if the producer submits to the Secretary sufficient information to establish that—

(i) the producer produced the agricultural commodity covered by the application filed under this subsection in the marketing year with respect to which the petition is filed and in at least 1 of the 3 marketing years preceding that marketing year;
(ii)(I) the quantity of the agricultural commodity that was produced by the producer in the marketing year with respect to which the petition is filed has decreased compared to the most recent marketing year preceding that marketing year for which data are available; or
(II)(aa) the price received for the agricultural commodity by the producer during the marketing year with respect to which the petition is filed has decreased compared to the average price for the commodity received by the producer in the 3 marketing years preceding that marketing year; or

(b) Notice of benefits
(1) In general
The Secretary shall mail written notice of the benefits available under this part to each agricultural commodity producer that the Secretary has reason to believe is covered by a certification made under this part.

(2) Other notice
The Secretary shall publish notice of the benefits available under this part to agricultural commodity producers that are covered by each certification made under this part in newspapers of general circulation in the areas in which such producers reside.

(3) Other Federal assistance
The Secretary shall also provide information concerning procedures for applying for and receiving all other Federal assistance and services available to workers facing economic distress.


Termination Date
Except as otherwise provided, technical assistance and financial assistance may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2401d. Benefit information to agricultural commodity producers

(a) In general
The Secretary shall provide full information to agricultural commodity producers about the benefit allowances, training, and other employment services available under this subchapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training, and services. The Secretary shall provide whatever assistance is necessary to enable groups to prepare petitions or applications for program benefits under this subchapter.
(bb) the county level price maintained by the Secretary for the agricultural commodity on the date on which the petition is filed has decreased compared to the average county level price for the commodity in the 3 marketing years preceding the date on which the petition is filed; and

(iii) the producer is not receiving—

(I) cash benefits under part 2 or 3; or

(II) benefits based on the production of an agricultural commodity covered by another petition filed under this part.

(B) Special rule with respect to crops not grown every year

For purposes of subparagraph (A)(ii)(I)(aa), if a petition is filed with respect to an agricultural commodity that is not produced by the producer every year, an agricultural commodity producer producing that commodity may establish the average price received for the commodity by the producer in the 3 marketing years preceding the year with respect to which the petition is filed by using average price data for the 3 most recent marketing years in which the producer produced the commodity and for which data are available.

(2) Limitations based on adjusted gross income

(A) In general

Notwithstanding any other provision of this part, an agricultural commodity producer shall not be eligible for assistance under this part in any year in which the average adjusted gross income (as defined in section 1308–3a(a) of title 7) of the producer exceeds the level set forth in subparagraph (A) or (B) of section 1308–3a(b)(1) of title 7, whichever is applicable.

(B) Demonstration of compliance

An agricultural commodity producer shall provide to the Secretary such information as the Secretary determines necessary to demonstrate that the producer is in compliance with the limitation under subparagraph (A).

(C) Counter-cyclical and acre payments

The total amount of payments made to an agricultural commodity producer under this part in any year in which the producer was certified under this part, an agricultural commodity producer producing that commodity may establish the average county level price for the commodity on the date on which the petition is filed has decreased compared to the average county level price maintained by the Secretary for the agricultural commodity for that agricultural commodity.

(B) Transportation and subsistence expenses

(i) In general

The Secretary may authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses incurred by an agricultural commodity producer in connection with initial technical assistance under subparagraph (A) if such assistance is provided at facilities that are not within normal commuting distance of the regular place of residence of the producer.

(ii) Exceptions

The Secretary may not authorize payments to an agricultural commodity producer under clause (i)—

(I) for subsistence expenses that exceed the lesser of—

(aa) the actual per diem expenses for subsistence incurred by the producer; or

(bb) the prevailing per diem allowance rate authorized under Federal travel regulations; or

(II) for travel expenses that exceed the prevailing mileage rate authorized under the Federal travel regulations.

(2) Intensive technical assistance

A producer that has completed initial technical assistance under paragraph (1) shall be eligible to participate in intensive technical assistance. Such assistance shall consist of—

(A) a series of courses to further assist the producer in improving the competitiveness of the producer in producing—

(i) the agricultural commodity with respect to which the producer was certified under this part; or

(ii) another agricultural commodity; and

(B) assistance in developing an initial business plan based on the courses completed under subparagraph (A).

(3) Initial business plan

(A) Approval by Secretary

The Secretary shall approve an initial business plan developed under paragraph (2)(B) if the plan—

(i) reflects the skills gained by the producer through the courses described in paragraph (2)(A); and

(ii) demonstrates how the producer will apply those skills to the circumstances of the producer.

(B) Financial assistance for implementing initial business plan

Upon approval of the producer's initial business plan by the Secretary under subparagraph (A), a producer shall be entitled to an amount not to exceed $4,000 to—

(i) implement the initial business plan; or

(ii) develop a long-term business adjustment plan under paragraph (4).
(4) Long-term business adjustment plan

(A) In general

A producer that has completed intensive technical assistance under paragraph (2) and whose initial business plan has been approved under paragraph (3)(A) shall be eligible for, in addition to the amount under subparagraph (C), assistance in developing a long-term business adjustment plan.

(B) Approval of long-term business adjustment plans

The Secretary shall approve a long-term business adjustment plan developed under subparagraph (A) if the Secretary determines that the plan—

(i) includes steps reasonably calculated to materially contribute to the economic adjustment of the producer to changing market conditions;

(ii) takes into consideration the interests of the workers employed by the producer; and

(iii) demonstrates that the producer will have sufficient resources to implement the business plan.

(C) Plan implementation

Upon approval of the producer’s long-term business adjustment plan under subparagraph (B), a producer shall be entitled to an amount not to exceed $8,000 to implement the long-term business adjustment plan.

(c) Maximum amount of assistance

An agricultural commodity producer may receive not more than $12,000 under paragraphs (3) and (4) of subsection (b) in the 36-month period following certification under section 2401b of this title.

(d) Limitations on other assistance

An agricultural commodity producer that receives benefits under this part (other than initial technical assistance under subsection (b)(1)) shall not be eligible for cash benefits under part 2 or 3.

(2) Recovery of overpayment

Unless an overpayment is otherwise recovered, or waived under paragraph (1), the Secretary shall recover the overpayment by deductions from any sums payable to such person under this part.

(b) False statement

A person shall, in addition to any other penalty provided by law, be ineligible for any further payments under this part—

(1) if the Secretary, or a court of competent jurisdiction, determines that the person—

(A) knowingly has made, or caused another to make, a false statement or representation of a material fact; or

(B) knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) as a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this part to which the person was not entitled.
subsection (a)(1) of this section by the Secretary has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the person concerned, and the determination has become final.

(d) Payment to Treasury

Any amount recovered under this section shall be returned to the Treasury of the United States.

(e) Penalties

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this part shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.


AMENDMENT OF SECTION

For termination of amendment by section 1893 of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment note below.

AMENDMENTS


2006—Subsec. (a). Pub. L. 110–89, §1(c), Sept. 28, 2006, inserted “or has expended funds received under this part for a purpose that was not approved by the Secretary,” after “entitled,” in introductory provisions. See Effective and Termination Dates of 2009 Amendment note below.

2005—Subsec. (a)(1). Pub. L. 114–175 added a new subsec. (a)(1) which provided for a $9,000,000 appropriation.


 EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1893 of Pub. L. 111–5, set out as a note preceding section 2271 of this title.

Except as otherwise provided, amendment by Pub. L. 111–5 not applicable on or after Feb. 13, 2011, and this section to be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111–5 had never been enacted, see section 1893 of Pub. L. 111–5, set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title.

Termination Date

Except as otherwise provided, technical assistance and financial assistance may not be provided under this section after Feb. 12, 2011, see section 285 of Pub. L. 93–618, set out as a note preceding section 2271 of this title.

§ 2401g. Authorization of appropriations

(a) In general

There are authorized to be appropriated and there are appropriated to the Department of Agriculture not to exceed $10,400,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011, to carry out the purposes of this part, including administrative costs, and salaries and expenses of employees of the Department of Agriculture.

(b) Proportionate reduction

If in any year the amount appropriated under this part is insufficient to meet the require-
§2411. Actions by United States Trade Representative

(a) Mandatory action

(1) If the United States Trade Representative determines under section 2414(a)(1) of this title that—
   (A) the rights of the United States under any trade agreement are being denied; or
   (B) an act, policy, or practice of a foreign country—
      (i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or
      (ii) is unjustifiable and burdens or restricts United States commerce;
   the Trade Representative shall take action authorized in subsection (c) of this section, subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice. Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.

(2) The Trade Representative is not required to take action under paragraph (1) in any case in which—
   (A) the Dispute Settlement Body (as defined in section 3331(5) of this title) has adopted a report, or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds that—
      (i) the rights of the United States under a trade agreement are being denied, or
      (ii) the act, policy, or practice—
         (I) is not a violation of, or inconsistent with, the rights of the United States, or
         (II) does not deny, nullify, or impair benefits to the United States under any trade agreement; or
   (B) the Trade Representative finds that—
      (i) the foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement,
      (ii) the foreign country has—
         (I) agreed to eliminate or phase out the act, policy, or practice,
         (II) agreed to an imminent solution to the burden or restriction on United States commerce that is satisfactory to the Trade Representative,
      (iii) it is impossible for the foreign country to achieve the results described in clause (i) or (ii), as appropriate, but the foreign country agrees to provide to the United States compensatory trade benefits that are satisfactory to the Trade Representative,
      (iv) in extraordinary cases, where the taking of action under this subsection would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, taking into account the impact of not taking such action on the credibility of the provisions of this subchapter, or
      (v) the taking of action under this subsection would cause serious harm to the national security of the United States.

(3) Any action taken under paragraph (1) to eliminate an act, policy, or practice shall be devised so as to affect goods or services of the foreign country in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States commerce.

(b) Discretionary action

If the Trade Representative determines under section 2414(a)(1) of this title that—

(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

(2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c) of this section, subject to the specific direction, if any, of the President regarding any such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice. Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.

(c) Scope of authority

(1) For purposes of carrying out the provisions of subsection (a) or (b) of this section, the Trade Representative is authorized to—
   (A) suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country referred to in such subsection;
   (B) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as the Trade Representative determines appropriate;
   (C) in a case in which the act, policy, or practice also fails to meet the eligibility criteria for receiving duty-free treatment under subsections (b) and (c) of section 2462 of this title, subsections (b) and (c) of section 2702 of this title, subsections (c) and (d) of section 3202 of this title, withdraw, limit, or suspend such treatment under such provisions, notwithstanding the provisions of subsection (a)(3) of this section; or
   (D) enter into binding agreements with such foreign country that commit such foreign country to—
      (i) eliminate, or phase out, the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b) of this section,
      (ii) eliminate any burden or restriction on United States commerce resulting from such act, policy, or practice, or
(iii) provide the United States with compensatory trade benefits that—
(I) are satisfactory to the Trade Representative, and
(II) meet the requirements of paragraph (4).

(2)(A) Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in paragraph (1), the Trade Representative may, for purposes of carrying out the provisions of subsection (a) or (b) of this section—
(i) restrict, in the manner and to the extent the Trade Representative determines appropriate, the terms and conditions of any such authorization, or
(ii) deny the issuance of any such authorization.

(B) Actions described in subparagraph (A) may only be taken under this section with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—
(i) a petition is filed under section 2412(a) of this title, or
(ii) a determination to initiate an investigation is made by the Trade Representative under section 2412(b) of this title.

(C) Before the Trade Representative takes any action under this section involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(3) The actions the Trade Representative is authorized to take under subsection (a) or (b) of this section may be taken against any goods or economic sector—
(A) on a nondiscriminatory basis or solely against the foreign country described in such subsection, and
(B) without regard to whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action.

(4) Any trade agreement described in paragraph (1)(D)(iii) shall provide compensatory trade benefits that benefit the economic sector which includes the domestic industry that would have been harmed by the act, policy, or practice, or any combination of acts, policies, or practices, which—
(A) the provision of such trade benefits is not feasible, or
(B) trade benefits that benefit any other economic sector would be more satisfactory than such trade benefits.

(5) If the Trade Representative determines that actions to be taken under subsection (a) or (b) of this section are to be in the form of import restrictions, the Trade Representative shall—
(A) give preference to the imposition of duties over the imposition of other import restrictions, and
(B) if an import restriction other than a duty is imposed, consider substituting, on an incremental basis, an equivalent duty for such other import restriction.

(6) Any action taken by the Trade Representative under this section with respect to export targeting shall, to the extent possible, reflect the full benefit level of the export targeting to the beneficiary over the period during which the action taken has an effect.

(d) Definitions and special rules

For purposes of this subchapter—
(1) The term "commerce" includes, but is not limited to—
(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and
(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) An act, policy, or practice of a foreign country that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3)(A) An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

(B) Acts, policies, and practices that are unreasonable include, but are not limited to, any combination of acts, policies, or practices, which—
(i) denies fair and equitable—
(I) opportunities for the establishment of an enterprise,
(II) provision of adequate and effective protection of intellectual property rights notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 3511(d)(15) of this title,
(III) nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection, or
(IV) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by enterprises or among enterprises in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods or services to a foreign market,
(ii) constitutes export targeting, or
(iii) constitutes a persistent pattern of conduct that—
(I) denies workers the right of association,
(II) denies workers the right to organize and bargain collectively,
(III) permits any form of forced or compulsory labor,
§ 2411

Title 19—Customs Duties

Page 590

(IV) fails to provide a minimum age for the employment of children, or
(V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.

(C)(i) Acts, policies, and practices of a foreign country described in subparagraph (B)(iii) shall not be treated as being unreasonable if the Trade Representative determines that—
(I) the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing throughout the foreign country (including any designated zone within the foreign country) the rights and other standards described in the subclauses of subparagraph (B)(iii), or
(II) such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.

(ii) The Trade Representative shall publish in the Federal Register any determination made under clause (i), together with a description of the facts on which such determination is based.

(D) For purposes of determining whether any act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into account, to the extent appropriate.

(E) The term "export targeting" means any government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.

(F)(i) For the purposes of subparagraph (B)(iv)(II), adequate and effective protection of intellectual property rights includes adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such country to secure, exercise, and enforce rights and enjoy commercial benefits relating to patents, trademarks, copyrights and related rights, mask works, trade secrets, and plant breeder's rights.

(ii) For purposes of subparagraph (B)(iv)(IV), the denial of fair and equitable nondiscriminatory market access opportunities includes restrictions on market access related to the use, exploitation, or enjoyment of commercial benefits derived from exercising intellectual property rights in protected works or fixations or products embodying protected works.

(4)(A) An act, policy, or practice is unjustifiable if the act, policy, or practice is in violation of or inconsistent with, the international legal rights of the United States.

(B) Acts, policies, and practices that are unjustifiable include, but are not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment or the right of establishment or protection of intellectual property rights.

(5) Acts, policies, and practices that are discriminatory include, when appropriate, any act, policy, and practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) The term "service sector access authorization" means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services access to the United States market in a service sector concerned.

(7) The term "foreign country" includes any foreign instrumentality. Any possession or territory of a foreign country that is administered separately for customs purposes shall be treated as a separate foreign country.

(8) The term "Trade Representative" means the United States Trade Representative.

(9) The term "interests", only for purposes of sections 2412(a)(4)(B), 2414(b)(1)(A), 2416(c)(2), and 2417(a)(2) of this title, includes, but is not limited to, domestic firms and workers, representatives of consumer interests, United States product exporters, and any industrial user of any goods or services that may be affected by actions taken under subsection (a) or (b) of this section.

“(II) provision of adequate and effective protection of intellectual property rights, or
“(III) market opportunities, including the toleration by the govern-ment of systematic anticompetitive activities by private firms or among private firms in the foreign country that have the effect of restricting, on a basis that is consistent with commercial considerations, access of United States goods to purchasing by such firms.’’.


1986—Pub. L. 100–418 amended section generally, substituting provisions relating to actions by United States Trade Representative for provisions relating to determinations and action by President.

1984—Subsec. (a). Pub. L. 98–573, § 304(a), amended subsec. (a) generally, which prior to amendment provided that if the President determines that action by the United States is appropriate (1) to enforce the rights of the United States under any trade agreement; or (2) to respond to any act, policy, or practice of a foreign country or instrumentality that (A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce; the President shall take all appropriate and feasible action with his power to enforce such rights or to obtain the elimination of such act, policy, or practice and that action under this section may be taken on a nondiscriminatory basis or solely against the products or services of a foreign country or instrumentality involved.


Subsec. (b)(2). Pub. L. 98–573, § 304(b)(2), (3), inserted ‘‘notwithstanding any other provision of law’’ and substituted ‘‘goods’’ for ‘‘products’’.

Subsecs. (c), (d). Pub. L. 98–573, § 304(c), added subsec. (c) and redesignated existing subsec. (c) as (d) and (e), respectively.

Subsec. (e). Pub. L. 98–573, § 304(c), (f), redesignated subsec. (d) as (e), inserted ‘‘For purposes of this section’’—before par. (1), in par. (1) substituted provisions defining ‘‘commerce’’ as including, but not limited to services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and foreign direct investment by United States persons with implications for trade in goods or services for provision defining ‘‘commerce’’ as including, but not limited to, services associated with international trade, whether or not such services are related to specific products, and added pars. (3) to (6).

Effective Date of 1994 Amendment
Amendment by section 314(a)–(c) of Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 316(a) of Pub. L. 103–465, set out as an Effective Date note under section 3581 of this title. Amendment by section 621(a)(9) of Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 621(b) of Pub. L. 103–465, set out as a note under section 1677k of this title.

Effective Date of 1988 Amendment
Section 1301(c) of Pub. L. 100–418 provided that: ‘‘The amendments made by this section [enacting sections 2417 to 2419 of this title and amending this section and sections 2412 to 2416 of this title] shall apply to—

(1) petitions filed, and investigations initiated, under section 301 of the Trade Act of 1974 [19 U.S.C. 2412] on or after the date of the enactment of this Act [Aug. 23, 1988]; and

(2) petitions filed, and investigations initiated, before the date of enactment of this Act, if by that date no decision had been made under section 301 (19 U.S.C. 2414) regarding the petition or investigation.’’

Section 903 of Pub. L. 96–39 provided that: ‘‘The amendments made by sections 901 and 902 [enacting this subchapter and amending sections 1872, 2192, and 2194 of this title] shall take effect on the date of the enactment of this Act [July 26, 1979]. Any petition for review filed with the Special Representative for Trade Negotiations under section 301 of the Trade Act of 1974 (as in effect on the day before such date of enactment) [former section 2411 of this title] and pending on such date of enactment shall be treated as an investigation initiated on such date of enactment under section 302(b)(2) of the Trade Act of 1974 (as added by section 901 of this Act) [section 2412(b)(2) of this title] and any information developed by, or submitted to, the Special Representative before such date of enactment under the review shall be treated as part of the information developed during such investigation.’’

Ex. Ord. No. 13155, Access to HIV/AIDS Pharmaceuticals and Medical Technologies
Ex. Ord. No. 13155, May 10, 2000, 65 F.R. 30521, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 141 and chapter 1 of title III of the Trade Act of 1974, as amended (19 U.S.C. 2171, 2411–2420), section 307 of the Public Health Service Act (42 U.S.C. 2421), and section 184 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151b), and in accordance with executive branch policy on health-related intellectual property matters to promote access to essential medicines, it is hereby ordered as follows:

Section 1. Policy. (a) In administering sections 301–310 of the Trade Act of 1974 (19 U.S.C. 2411–2420), the United States shall not seek, through negotiation or otherwise, the revocation or revision of any intellectual property law or policy of a beneficiary sub-Saharan African country, as determined by the President, that regulates HIV/AIDS pharmaceuticals or medical technologies if the law or policy of the country:

(1) promotes access to HIV/AIDS pharmaceuticals or other technologies for affected populations in that country; and

(2) provides adequate and effective intellectual property protection consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)).

(b) The United States shall encourage all beneficiary sub-Saharan African countries to implement policies designed to address the underlying causes of the AIDS crisis by, among other things, making efforts to encourage practices that will prevent further transmission and infection and to stimulate development of the infrastructure necessary to deliver adequate health services, and by encouraging policies that provide an incentive for public and private research on, and development of, vaccines and other medical innovations that will combat the HIV/AIDS epidemic in Africa.

Sinc. 2. Rationale: (a) This order finds that:

(1) since the onset of the worldwide HIV/AIDS epidemic, approximately 34 million people living in sub-Saharan Africa have been infected with the disease;

(2) of those infected, approximately 11.5 million have died;

(3) the deaths represent 83 percent of the total HIV/AIDS-related deaths worldwide; and

(4) access to effective therapeutics for HIV/AIDS is determined by issues of price, health system infrastructure for delivery, and sustainable financing.

(b) In light of these findings, this order recognizes that:

(1) it is in the interest of the United States to take all reasonable steps to prevent further spread of infectious diseases, particularly HIV/AIDS;

(2) there is critical need for effective incentives to develop new pharmaceuticals, vaccines, and therapies to
combat the HIV/AIDS crisis, including effective global intellectual property standards designed to foster pharmaceutical and medical innovation;

(3) the overriding priority for responding to the crisis of HIV/AIDS in sub-Saharan Africa should be to improve public education and to encourage practices that will prevent further transmission and infection, and to stimulate development of the infrastructure necessary to deliver adequate health care services;

(4) the United States should work with individual countries in sub-Saharan Africa to assist them in development of effective public education campaigns aimed at the prevention of HIV/AIDS transmission and infection, and to improve their health care infrastructure to promote improved access to quality health care for their citizens in general, and particularly with respect to the HIV/AIDS epidemic;

(5) an effective United States response to the crisis in sub-Saharan Africa must focus in the short term on preventive programs designed to reduce the frequency of new infections and remove the stigma of the disease, and should place a priority on basic health services that can be used to treat opportunistic infections, sexually transmitted infections, and complications associated with HIV/AIDS so as to prolong the duration and improve the quality of life of those with the disease;

(6) an effective United States response to the crisis must also focus on the development of HIV/AIDS vaccines to prevent the spread of the disease;

(7) the innovative capacity of the United States in the commercial and public pharmaceutical research sectors is unmatched in the world, and the participation of both these sectors will be a critical element in any successful program to respond to the HIV/AIDS crisis in sub-Saharan Africa;

(8) the TRIPS Agreement recognizes the importance of promoting effective and adequate protection of intellectual property rights and the right of countries to adopt measures necessary to protect public health;

(9) individual countries should have the ability to take measures to address the HIV/AIDS epidemic, provided that such measures are consistent with their international obligations; and

(10) successful initiatives will require effective partnerships and cooperation among governments, international organizations, nongovernmental organizations, and the private sector, and greater consideration should be given to financial, legal, and other incentives that will promote improved prevention and treatment actions.

§ 2412. Initiation of investigations

(a) Petitions

(1) Any interested person may file a petition with the Trade Representative requesting that action be taken under section 2411 of this title and setting forth the allegations in support of the request.

(2) The Trade Representative shall review the allegations in any petition filed under paragraph (1) and, not later than 45 days after the date on which the Trade Representative received the petition, shall determine whether to initiate an investigation.

(3) If the Trade Representative determines not to initiate an investigation with respect to a petition, the Trade Representative shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(4) If the Trade Representative makes an affirmative determination under paragraph (2) with respect to a petition, the Trade Representative shall initiate an investigation regarding the issues raised in the petition. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the 30-day period beginning on the date of the affirmative determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition, or

(B) at such other time if a timely request therefor is made by the petitioner or by any interested person.

(b) Initiation of investigation by means other than petition

(1)(A) If the Trade Representative determines that an investigation should be initiated under this subchapter with respect to any matter in order to determine whether the matter is actionable under section 2411 of this title, the Trade Representative shall publish such determination in the Federal Register and shall initiate such investigation.

(B) The Trade Representative shall, before making any determination under subparagraph (A), consult with appropriate committees established pursuant to section 2235 of this title.

(2)(A) By no later than the date that is 30 days after the date on which a country is identified under section 2242(a)(2) of this title, the Trade Representative shall initiate an investigation under this subchapter with respect to—

(i) was the basis for such identification, and

(ii) is not at that time the subject of any other investigation or action under this subchapter.

(B) The Trade Representative is not required under subparagraph (A) to initiate an investiga-
tion under this subchapter with respect to any act, policy, or practice of a foreign country if the Trade Representative determines that the initiation of the investigation would be detrimental to United States economic interests.

(C) If the Trade Representative makes a determination under subparagraph (B) not to initiate an investigation, the Trade Representative shall submit to the Congress a written report setting forth, in detail—

(i) the reasons for the determination, and

(ii) the United States economic interests that would be adversely affected by the investigation.

(D) The Trade Representative shall, from time to time, consult with the Register of Copyrights, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and other appropriate officers of the Federal Government, during any investigation initiated under this subchapter by reason of subparagraph (A).

(c) Discretion

In determining whether to initiate an investigation under subsection (a) or (b) of this section of any act, policy, or practice that is enumerated in any provision of section 2411(d) of this title, the Trade Representative shall have discretion to determine whether action under section 2411 of this title would be effective in addressing such act, policy, or practice.


PRIOR PROVISIONS

A prior section 302 of Pub. L. 93–618, title III, Jan. 3, 1975, 88 Stat. 2043, which related to the procedure for Congressional disapproval of certain actions taken by the President to eliminate foreign import restrictions and export subsidies and which was classified to this section, was omitted in the general revision of chapter 1 of title III of Pub. L. 93–618 by Pub. L. 96–39, title IX, §901, July 26, 1979, 93 Stat. 295.

AMENDMENTS


1988—Pub. L. 100–418 amended section generally, substituting provisions relating to initiating investigations with or without petitions and discretion of Trade Representative for provisions relating to filing and determinations on petitions for investigations and investigations initiated by Trade Representative.

1984—Pub. L. 98–573 amended section generally, substituting “United States Trade Representative” and “Trade Representative” for “Special Representative for Trade Negotiations” and “Special Representative”, respectively, substituting “the reasons” for “his reasons” in subsec. (b)(1), substituting “a summary” for “the text” in subsec. (b)(2), striking out the comma after “petitioner” in subsec. (b)(2)(A), and inserting “or by any interested person” after “petitioner” in subsec. (b)(2)(B).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 33, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to petitions filed, and investigations initiated, under this section on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2141 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as a note under section 2111 of this title.

§2413. Consultation upon initiation of investigation

(a) In general

(1) On the date on which an investigation is initiated under section 2412 of this title, the Trade Representative, on behalf of the United States, shall request consultations with the foreign country concerned regarding the issues involved in such investigation.

(2) If the investigation initiated under section 2412 of this title involves a trade agreement and a mutually acceptable resolution is not reached before the earlier of—

(A) the close of the consultation period, if any, specified in the trade agreement, or

(B) the 150th day after the day on which consultation was commenced,

the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement.

(3) The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate committees established pursuant to section 2155 of this title in preparing United States presentations for consultations and dispute settlement proceedings.

(b) Delay of request for consultations

(1) Notwithstanding the provisions of subsection (a) of this section—

(A) the United States Trade Representative may, after consulting with the petitioner (if any), delay for up to 90 days any request for consultations under subsection (a) of this section for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 2411 of this title shall be extended for the period of such delay.

(2) The Trade Representative shall—

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required under section 2419(a)(3) of this title.


AMENDMENTS

§ 2414 Determinations by Trade Representative

(a) In general

(1) On the basis of the investigation initiated under section 2412 of this title and the consultations (and the proceedings, if applicable) under section 2413 of this title, the Trade Representative shall—

(A) determine whether—

(i) the rights to which the United States is entitled under any trade agreement are being denied, or

(ii) any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 2411 of this title exists, and

(B) if the determination made under subparagraph (A) is affirmative, determine what action, if any, the Trade Representative should take under subsection (a) or (b) of section 2411 of this title.

(2) The Trade Representative shall make the determinations required under paragraph (1) on or before—

(A) in the case of an investigation involving a trade agreement, except an investigation initiated pursuant to section 2412(b)(2)(A) of this title involving rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 3511(d)(15) of this title) or the GATT 1994 (as defined in section 3501(1)(B) of this title) relating to products subject to intellectual property protection, the earlier of—

(i) the date that is 30 days after the date on which the dispute settlement procedure is concluded, or

(ii) the date that is 18 months after the date on which the investigation is initiated, or

(B) in all cases not described in subparagraph (A) or paragraph (3), the date that is 12 months after the date on which the investigation is initiated.

(3)(A) If an investigation is initiated under this subchapter by reason of paragraph 2412(b)(2) of this title and—

(i) the Trade Representative considers that rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights or the GATT 1994 relating to products subject to intellectual property protection are involved, the Trade Representative shall make the determination required under paragraph (1) not later than 30 days after the date on which the dispute settlement procedure is concluded; or

(ii) the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation not later than the date that is 6 months after the date on which such investigation is initiated.

(B) If the Trade Representative determines with respect to an investigation initiated by reason of section 2412(b)(2) of this title (other than an investigation involving a trade agreement) that—

(i) complex or complicated issues are involved in the investigation that require additional time,

(ii) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or

(iii) such foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights,

the Trade Representative shall publish in the Federal Register notice of such determination and shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 9 months after the date on which such investigation is initiated.

(4) In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement, the Trade Representative, within 15 days after the close of such dispute settlement period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum dispute settlement period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement at any stage.

(b) Consultation before determinations

(1) Before making the determinations required under subsection (a)(1) of this section, the Trade Representative, unless expeditious action is required—

(A) shall provide an opportunity (after giving not less than 30 days notice thereof) for the presentation of views by interested persons, including a public hearing if requested by any interested person.

(B) shall obtain advice from the appropriate committees established pursuant to section 2155 of this title, and
(C) may request the views of the United States International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to any goods or service.

(2) If the Trade Representative does not comply with the requirements of subparagraphs (A) and (B) of paragraph (1) because expeditious action is required, the Trade Representative shall, after making the determinations under subsection (a)(1) of this section, comply with such subparagraphs.

(c) Publication

The Trade Representative shall publish in the Federal Register any determination made under subsection (a)(1) of this section, together with a description of the facts on which such determination is based.


AMENDMENTS

2004—Subsec. (a)(2)(A). Pub. L. 108–429, § 2201(a), in introductory provisions, inserted "except an investigation initiated pursuant to section 2412(b)(2)(A) of this title involving rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 3511(d)(15) of this title) or the GATT 1994 (as defined in section 3501(b)(1) of this title) relating to products subject to intellectual property protection," after "agreement,"

Subsec. (a)(3)(A). Pub. L. 108–429, § 2201(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "If an investigation is initiated under this subchapter by reason of section 2412(b)(2) of this title and the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 3511(d)(15) of this title), is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 6 months after the date on which such investigation is initiated."


1994—Subsec. (a)(2)(A). Pub. L. 103–465, § 314(d)(1), struck out "(other than the agreement on subsidies and countervailing measures described in section 2503(c)(5) of this title)" after "trade agreement".

Subsec. (a)(3)(A). Pub. L. 103–465, § 314(d)(2)(A), inserted "does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property (referred to in section 3511(d)(15) of this title), is involved or" after "Trade Representative" the first place appearing.

Subsec. (a)(3)(B). Pub. L. 103–465, § 314(d)(2)(B), in introductory provisions, substituted "an investigation initiated by reason of section 2412(b)(2) of this title (other than an investigation involving a trade agreement)" for "any investigation initiated by reason of section 2412(b)(2) of this title":

Subsec. (a)(4). Pub. L. 103–465, § 314(d)(3), struck out "(other than the agreement on subsidies and countervailing measures described in section 2503(c)(5) of this title)" after "in a trade agreement".

1988—Pub. L. 100–418 amended section generally, substituting provisions relating to determinations by Trade Representative for provisions relating to recommendations by Trade Representative.


Subsec. (b)(2). Pub. L. 98–573, § 306(c)(2)(C)(ii), struck out "private sector" after "appropriate".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 316(a) of Pub. L. 103–465, set out as an Effective Date note under section 3581 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under this section regarding the petition or investigation, see section 316(a) of Pub. L. 100–418, set out as a note under section 2411 of this title.

§ 2415. Implementation of actions

(a) Actions to be taken under section 2411

(1) Except as provided in paragraph (2), the Trade Representative shall implement the action the Trade Representative determines under section 2414(a)(1)(B) of this title to take under section 2411 of this title, subject to the specific direction, if any, of the President regarding any such action, by no later than the date that is 90 days after the date on which such determination is made.

(2)(A) Except as otherwise provided in this paragraph, the Trade Representative may delay, by more than 180 days, the implementation of any action that is to be taken under section 2411 of this title—

(i) if—

(I) in the case of an investigation initiated under section 2412(a) of this title, the petitioner requests a delay, or

(II) in the case of an investigation initiated under section 2412(b)(1) of this title or to which section 2414(a)(3)(B) of this title applies, a delay is requested by a majority of the representatives of the domestic industry that would benefit from the action, or

(ii) if the Trade Representative determines that substantial progress is being made, or that a delay is necessary or desirable, to obtain United States rights or a satisfactory solution with respect to the acts, policies, or practices that are the subject of the action.

(B) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 2411 of this title with respect to any investigation to which section 2414(a)(3)(A) of this title applies.

(c) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 2411 of this title with respect to any investigation to which section 2414(a)(3)(B) of this title applies by more than 90 days.
(b) Alternative actions in certain cases of export targeting

(1) If the Trade Representative makes an affirmative determination under section 2414(a)(1)(A) of this title involving export targeting by a foreign country and determines to take no action under section 2411 of this title with respect to such affirmation determination, the Trade Representative—

(A) shall establish an advisory panel to recommend measures which will promote the competitiveness of the domestic industry affected by the export targeting,

(B) on the basis of the report of such panel submitted under paragraph (2)(B) and subject to the specific direction, if any, of the President, may take any administrative actions authorized under any other provision of law, and, if necessary, propose legislation to implement any other actions, that would restore or improve the international competitiveness of the domestic industry affected by the export targeting, and

(C) shall, by no later than the date that is 30 days after the date on which the report of such panel is submitted under paragraph (2)(B), submit a report to the Congress on the administrative actions taken, and legislative proposals made, under subparagraph (B) with respect to the domestic industry affected by the export targeting.

(2) (A) The advisory panels established under paragraph (1)(A) shall consist of individuals appointed by the Trade Representative who—

(i) earn their livelihood in the private sector of the economy, including individuals who represent management and labor in the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 2414(a)(1)(A) of this title, and

(ii) by education or experience, are qualified to serve on the advisory panel.

(B) By no later than the date that is 6 months after the date on which an advisory panel is established under paragraph (1)(A), the advisory panel shall submit to the Trade Representative and to the Congress a report on measures that the advisory panel recommends be taken by the United States to promote the competitiveness of the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 2414(a)(1)(A) of this title.


Amendments


(ii) Exception

The Trade Representative is not required to revise the retaliation list or the action described in clause (i) with respect to a country, if—

(I) the Trade Representative determines that implementation of a recommendation made pursuant to a dispute settlement proceeding described in clause (i) by the country is imminent; or

(II) the Trade Representative together with the petitioner involved in the initial investigation under this subchapter (or if no petition was filed, the affected United States industry) agree that it is unnecessary to revise the retaliation list.

(C) Schedule for revising list or action

The Trade Representative shall, 120 days after the date the retaliation list or other section 2411(a) action is first taken, and every 180 days thereafter, review the list or action taken and revise, in whole or in part, the list or action to affect other goods of the subject country or countries.

(D) Standards for revising list or action

In revising any list or action against a country or countries under this subsection, the Trade Representative shall act in a manner that is most likely to result in the country or countries implementing the recommendations adopted in the dispute settlement proceeding or in achieving a mutually satisfactory solution to the issue that gave rise to the dispute settlement proceeding. The Trade Representative shall consult with the petitioner, if any, involved in the initial investigation under this subchapter.

(E) Retaliation list

The term “retaliation list” means the list of products of a foreign country or countries that have failed to comply with the report of the panel or Appellate Body of the WTO and with respect to which the Trade Representative is imposing duties above the level that would otherwise be imposed under the Harmonized Tariff Schedule of the United States.

(F) Requirement to include reciprocal goods on retaliation list

The Trade Representative shall include on the retaliation list and on any revised lists, reciprocal goods of the industries affected by the failure of the foreign country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, except in cases where existing retaliation and its corresponding preliminary retaliation list do not already meet this requirement.

(c) Consultations

Before making any determination under subsection (b) of this section, the Trade Representative shall—

(1) consult with the petitioner, if any, involved in the initial investigation under this subchapter and with representatives of the domestic industry concerned; and

(2) provide an opportunity for the presentation of views by interested persons.


References in Text

The Harmonized Tariff Schedule of the United States, referred to in subsection (b), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

Amendments

2000—Subsec. (b)(2). Pub. L. 106-200 designated existing provisions as subpar. (A), inserted heading, and added subpars. (B) to (F).


1994—Subsecs. (a), (b). Pub. L. 103-465, as amended by Pub. L. 104-295, amended subsec. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

“(a) In General.—The Trade Representative shall monitor the implementation of each measure undertaken, or agreement of a kind described in clause (i), (ii), or (iii) of section 2411(a)(2)(B) of this title that is entered into under subsection (a) or (b) of section 2411 of this title, by a foreign country—

“(1) to enforce the rights of the United States under any trade agreement, or

“(2) to eliminate any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 2411 of this title.

“(b) Further Action.—If, on the basis of the monitoring carried out under subsection (a) of this section, the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a) of this section, the Trade Representative shall determine what further action the Trade Representative shall undertake under section 2411(a) of this title. For purposes of section 2411 of this title, any such determination shall be treated as a determination made under section 2411(a)(1) of this title.”

1988—Pub. L. 100-418 amended section generally, substituting provisions relating to monitoring of foreign compliance for provisions relating to administration. See section 2419 of this title.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103-465 effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 316(a) of Pub. L. 103-465, set out as an Effective Date note under section 3581 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100-418 applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1303(c) of Pub. L. 100-418, set out as a note under section 2411 of this title.

§ 2417. Modification and termination of actions

(a) In general

(1) The Trade Representative may modify or terminate any action, subject to the specific di-
rejection, if any, of the President with respect to such action, that is being taken under section 2411 of this title if—

(A) any of the conditions described in section 2411(a)(2) of this title exist,

(B) the burden or restriction on United States commerce of the denial rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased, or

(C) such action is being taken under section 2411(b) of this title and is no longer appropriate.

(2) Before taking any action under paragraph (1) to modify or terminate any action taken under section 2411 of this title, the Trade Representative shall consult with the petitioner, if any, and with representatives of the domestic industry concerned, and shall provide opportunity for the presentation of views by other interested persons affected by the proposed modification or termination concerning the effects of the modification or termination and whether any modification or termination of the action is appropriate.

(b) Notice; report to Congress

The Trade Representative shall promptly publish in the Federal Register notice of, and report in writing to the Congress with respect to, any modification or termination of any action taken under section 2411 of this title and the reasons therefor.

(c) Review of necessity

(1) If—

(A) a particular action has been taken under section 2411 of this title during any 4-year period, and

(B) neither the petitioner nor any representative of the domestic industry which benefits from such action has submitted to the Trade Representative during the last 60 days of such 4-year period a written request for the continuation of such action,

such action shall terminate at the close of such 4-year period.

(2) The Trade Representative shall notify by mail the petitioner and representatives of the domestic industry described in paragraph (1)(B) of any termination of action by reason of paragraph (1) at least 60 days before the date of such termination.

(3) If a request is submitted to the Trade Representative under paragraph (1)(B) to continue taking a particular action under section 2411 of this title, the Trade Representative shall conduct a review of—

(A) the effectiveness in achieving the objectives of section 2411 of this title of—

(i) such action, and

(ii) other actions that could be taken (including actions against other products or services), and

(B) the effects of such actions on the United States economy, including consumers.

(Effective Date

Section applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 2411 of this title.

§ 2418. Request for information

(a) In general

Upon receipt of written request therefrom from any person, the Trade Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign country with respect to particular goods, services, investment, or intellectual property rights, to the extent that such information is available to the Trade Representative or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) If information not available

If information that is requested by a person under subsection (a) of this section is not available to the Trade Representative or other Federal agencies, the Trade Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for refusal.

(c) Certain business information not made available

(1) Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of title 5), no information requested and received by the Trade Representative in aid of any investigation under this subchapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) such information is business confidential,

(ii) the disclosure of such information would endanger trade secrets or profitability, and

(iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) The Trade Representative may—

(A) use such information, or make such information available (in his own discretion) to
any employee of the Federal Government for use, in any investigation under this subchapter, or
(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

**Effective Date**

Section applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 2411 of this title.

§ 2419. Administration

The Trade Representative shall—
(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this subchapter;
(2) keep the petitioner regularly informed of all determinations and developments regarding the investigation conducted with respect to the petition under this subchapter, including the reasons for any undue delays, and
(3) submit a report to the House of Representatives and the Senate semiannually describing—
(A) the petitions filed and the determinations made (and reasons therefor) under section 2412 of this title,
(B) developments in, and the current status of, each investigation or proceeding under this subchapter,
(C) the actions taken, or the reasons for no action, by the Trade Representative under section 2411 of this title with respect to investigations conducted under this subchapter, and
(D) the commercial effects of actions taken under section 2411 of this title.

**Effective Date**

Section applicable to petitions filed, and investigations initiated, under section 2412 of this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 2411 of this title.

§ 2420. Identification of trade expansion priorities

(a) Identification

(1) Within 180 days after the submission in calendar year 1995 of the report required by section 2411(b) of this title, the Trade Representative shall—
(A) review United States trade expansion priorities,
(B) identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent, and
(C) submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and publish in the Federal Register a report on the priority foreign country practices identified.
(2) In identifying priority foreign country practices under paragraph (1) of this section, the Trade Representative shall take into account all relevant factors, including—
(A) the major barriers and trade distorting practices described in the National Trade Estimate Report required under section 2241(b) of this title;
(B) the trade agreements to which a foreign country is a party and its compliance with those agreements;
(C) the medium- and long-term implications of foreign government procurement plans; and
(D) the international competitive position and export potential of United States products and services.
(3) The Trade Representative may include in the report, if appropriate—
(A) a description of foreign country practices that may in the future warrant identification as priority foreign country practices; and
(B) a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, by existing bilateral trade agreements, or as part of trade negotiations with other countries and progress is being made toward the elimination of such practices.

(b) Initiation of investigations

By no later than the date which is 21 days after the date on which a report is submitted to the appropriate congressional committees under subsection (a)(1) of this section, the Trade Representative shall initiate under section 2412(b)(1) of this title investigations under this subchapter with respect to all of the priority foreign country practices identified.

(c) Agreements for elimination of barriers

In the consultations with a foreign country that the Trade Representative is required to request under section 2413(a) of this title with respect to an investigation initiated by reason of subsection (b) of this section, the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly as possible or, if elimination of the practices is not feasible, an agreement that provides for compensatory trade benefits.

(d) Reports

The Trade Representative shall include in the semiannual report required by section 2419 of this title a report on the status of any investigations initiated pursuant to subsection (b) of this section and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.
§ 2420  TITLE 19—CUSTOMS DUTIES


AMENDMENTS


EX. ORD. NO. 12901. IDENTIFICATION OF TRADE EXPANSION PRIORITIES


By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 141 and 301–310 of the Trade Act of 1974, as amended (the "Act") (19 U.S.C. 2411–2420), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

SECTION 1. Identification. (a) Within 6 months of the submission of the National Trade Estimate Report (required by section 181(b) of the Act (19 U.S.C. 2241)) for 1996 and 1997, the United States Trade Representative ("Trade Representative") shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. The Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish in the Federal Register, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

(1) the major barriers and trade distorting practices described in the National Trade Estimate Report;

(2) the trade agreements to which a foreign country is a party and its compliance with those agreements;

(3) the medium-term and long-term implications of foreign government procurement plans; and

(4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the reports appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

SNC. 2. Initiation of Investigation. Within 21 days of the submission of the report required by paragraph (a) of section 1, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations under title III, chapter 1, of the Act (19 U.S.C. 2411 et seq.) with respect to all of the priority foreign country practices identified.

SNC. 3. Agreements for the Elimination of Barriers. In the consultations with a foreign country that the Trade Representative is required to request under section 2(b)(1) of the Act (19 U.S.C. 2241(b)) with respect to an investigation initiated by reason of section 2 of this order, the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly as possible or, if that is not feasible, provides for compensatory trade benefits. The Trade Representative shall monitor any agreement entered into under this section pursuant to the provisions of section 306 of the Act (19 U.S.C. 2416).

SNC. 4. Reports. The Trade Representative shall include in the semiannual report required by section 309 of the Act (19 U.S.C. 2419) a report on the status of any investigation initiated pursuant to section 2 of this order and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.

SNC. 5. Presidential Direction. The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

WILLIAM J. CLINTON.

EX. ORD. NO. 13116. IDENTIFICATION OF TRADE EXPANSION PRIORITIES AND DISCRIMINATORY PROCUREMENT PRACTICES

Ex. Ord. No. 13116, Mar. 31, 1999, 64 F.R. 16333, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title III of the Act of March 3, 1993 (as amended (former) 41 U.S.C. 10d) (see 41 U.S.C. 8301 et seq.), sections 141 and 301–310 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2171, 2411–2420), title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

PART I: IDENTIFICATION OF TRADE EXPANSION PRIORITIES

SECTION 1. Identification and Annual Report. (a) Within 30 days of the submission of the National Trade Estimate Report required by section 181(b) of the Act (19 U.S.C. 2241(b)) for 1999, 2000, and 2001, the United States Trade Representative (Trade Representative) shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. The Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish in the Federal Register, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

(1) the major barriers and trade distorting practices described in the National Trade Estimate Report;

(2) the trade agreements to which a foreign country is a party and its compliance with those agreements;

(3) the medium-term and long-term implications of foreign government procurement plans; and

(4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the reports appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.
Sic. 2. Resolution. Upon submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall, with respect to any priority foreign country practice identified therein, engage the country concerned for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with a trade agreement or the elimination of the practice as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

Sic. 3. Initiation of Investigations. Within 90 days of the submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to all of the priority foreign country practices identified, unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

PART II: IDENTIFICATION OF DISCRIMINATORY GOVERNMENT PROCUREMENT PRACTICES

SECTION 1. Identification and Annual Report. (a) Within 30 days of the submission of the National Trade Estimate Report for 1999, 2000, and 2001, the Trade Representative shall submit to the Committees on Finance and on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committees on Ways and Means and Government Reform and Oversight [now Committee on Oversight and Government Reform] of the House of Representatives, and shall publish in the Federal Register a report on the extent to which foreign countries discriminate against U.S. products or services in making government procurements.

(b) In the report, the Trade Representative shall identify countries that:

(1) are not in compliance with their obligations under the World Trade Organization Agreement on Government Procurement (the GPA), or other agreements relating to government procurement (procurement agreements) to which that country and the United States are parties; or

(2) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses and whose products or services are acquired in significant amounts by the United States Government.

Sic. 2. Considerations in Making Identifications. In making the identifications required by section 1 of this part, the Trade Representative shall:

(a) consider the requirements of the GPA, NAFTA, or other procurement agreements, government procurement practices, and the effects of such practices on U.S. businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for U.S. products or services;

(b) take into account, among other factors, whether and to what extent countries that are parties to the GPA, NAFTA, or other procurement agreements, and other countries described in section 1 of this part;

(1) use sole-sourcing or otherwise noncompetitive procedures for procurement that could have been conducted using competitive procedures;

(2) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the value threshold of the GPA, NAFTA, or other procurement agreements, or to make the procurement less attractive to U.S. businesses;

(3) announce procurement opportunities with inadequate time intervals for U.S. businesses to submit bids; and

(4) use specifications in such a way as to limit the ability of U.S. suppliers to participate in procurements;

(c) consider information included in the National Trade Estimate Report, and any other additional criteria deemed appropriate, including, to the extent such information is available, the failure to apply transparent and competitive procedures or maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

Sic. 3. Impact of Noncompliance and Denial of Comparable Treatment. The Trade Representative shall take into account, in identifying countries in the annual report and in any action required by this part, the relative impact of any noncompliance with the GPA, NAFTA, or other procurement agreements, or of other discrimination on U.S. commerce, and the extent to which such noncompliance or discrimination has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

Sic. 4. Resolution. Upon submission of the report required by section 1 of this part, the Trade Representative shall engage any country identified therein for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with the GPA, NAFTA, or other procurement agreements or the elimination of the discriminatory procurement practices as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

Sic. 5. Initiation of Investigations. (a) Within 90 days of the submission of the report required by section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to any practice that:

(1) was the basis for the identification of a country under section 1; and

(2) is not at that time the subject of any other investigation or action under title III, chapter 1, of the Act (19 U.S.C. 2411 et seq.), unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

(b) For investigations initiated under paragraph (a) of this section (other than an investigation involving the GPA or NAFTA), the Trade Representative shall apply the time limits and procedures in section 302(a)(3)(B) of the Act (19 U.S.C. 2412(a)(3)(B)). The time limits in subsection 302(a)(3)(B) of the Act (19 U.S.C. 2412(a)(3)(B)) shall apply if the Trade Representative determines that:

(1) complex or complicated issues are involved in the investigation that require additional time;

(2) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will end the discriminatory procurement practice; or

(3) such foreign country is implementing enforcement measures to end the discriminatory procurement practice.

PART III: DIRECTION

SECTION 1. Presidential Direction. The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

Sic. 2. Consultations and Advice. In developing the annual reports required by part I and part II of this order, the Trade Representative shall consult with executive agencies and seek information and advice from U.S. businesses in the United States and in the countries involved in the practices under consideration.

WILLIAM J. CLINTON.

SUBCHAPTER IV—TRADE RELATIONS WITH COUNTRIES NOT RECEIVING NON-DISCRIMINATORY TREATMENT

PART I—TRADE RELATIONS WITH CERTAIN COUNTRIES

§ 2431. Exception of products of certain countries or areas

Except as otherwise provided in this subchapter, the President shall continue to deny
nondiscriminatory treatment to the products of any country, the products of which were not eligible for the rates set forth in rate column number 1 of the Tariff Schedules of the United States on January 3, 1975.


REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in text, to be treated as a reference to the Harmonized Tariff Schedule pursuant to section 302 of this title. The Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

REPORT ON EFFECT OF SUBCHAPTER; RECOMMENDATIONS

Pub. L. 95–501, title VI, §604, Oct. 21, 1978, 92 Stat. 1692, which provided that within six months after Oct. 21, 1978, the Secretary of Agriculture submit to Congress a report detailing the effect on United States agriculture of this subchapter, including a recommendation as to whether the provisions of this subchapter should be repealed or amended, was omitted in the general revision of Pub. L. 95–501 by Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3688. See chapter 87 (§§5601 et seq.) of Title 7, Agriculture.

§ 2432. Freedom of emigration in East-West trade

(a) Actions of nonmarket economy countries making them ineligible for normal trade relations, programs of credits, credit guarantees, or investment guarantees, or commercial agreements

To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after January 3, 1975, products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (normal trade relations), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to emigrate;

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice,

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) Presidential determination and report to Congress that nation is not violating freedom of emigration

After January 3, 1975, (A) products of a nonmarket economy country may be eligible to receive nondiscriminatory treatment (normal trade relations), (B) such country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a) of this section. Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such treatment is received, such credits or guarantees are extended, or such agreement is in effect.

(c) Waiver authority of President

(1) During the 18-month period beginning on January 3, 1975, the President is authorized to waive by Executive order the application of subsections (a) and (b) of this section with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) of this section with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d) of this section, and if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d) of this section. The President may, at any time, terminate by Executive order any waiver granted under this subsection.

(d) Extension of waiver authority

(1) If the President determines that the further extension of the waiver authority granted under subsection (c) of this section will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall—

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c) of
Title 19—Customs Duties

§ 2432

This section is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

If the President recommends the further extension of such authority, such authority shall continue in effect until the end of the 12-month period following the end of the previous 12-month extension with respect to any country (except for any country with respect to which such authority has not been extended under this subsection), unless a joint resolution described in section 2193(a) of this title is enacted into law pursuant to the provisions of paragraph (2).

(2)(A) The requirements of this paragraph are met if the joint resolution is enacted under the procedures set forth in section 2193 of this title, and—

(i) the Congress adopts and transmits the joint resolution to the President before the end of the 60-day period beginning on the date the waiver authority would expire but for an extension under paragraph (1), and

(ii) if the President vetoes the joint resolution, each House of Congress votes to override such veto on or before the later of the last day of the 60-day period referred to in clause (i) or the last day of the 15-day period (excluding any day described in section 2194(b) of this title) beginning on the date the Congress receives the veto message from the President.

(B) If a joint resolution is enacted into law under the provisions of this paragraph, the waiver authority applicable to any country with respect to which the joint resolution disapproves the extension of such authority shall cease to be effective as of the day after the 60-day period beginning on the date of the enactment of the joint resolution.

(C) A joint resolution to which this subsection and section 2193 of this title apply may be introduced at any time on or after the date the President transmits to the Congress the document described in paragraph (1)(B).

(e) Countries not covered

This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on January 3, 1975.

References in Text


Amendments

1990—Subsec. (d)(1). Pub. L. 101–382, §132(a)(1), (2)(A), (B), redesignated par. (5) as (1), and substituted “If the President determines that the further extension of the waiver authority granted under subsection (c) of this section will” for “If the waiver authority granted by subsection (c) of this section has been extended under paragraph (3) or (4) for any country for the 12-month period referred to in such paragraph, and the President determines that the further extension of such authority will” in introductory provisions, substituted “subsections (a) and (b) of this section” for “subsections (a) and (b) of this section” in provisions preceding subpar. (A).

1998—Subsec. (a), (b). Pub. L. 105–206, §132(a)(2)(A), added par. (2) and struck out former par. (2) which authorized extension of waiver authority for 12-month period upon recommendation of President and adoption of concurrent resolution approving extension of authority and not excluding country, and provided procedures if such resolution was not adopted.

References in Text


Effective Date of 1990 Amendment

Section 132(d) of Pub. L. 101–382 provided that—

“(1) In general.—Except as provided in paragraph (2), the amendments made by this section (amending this
section and sections 2191 to 2194, 2435, and 2437 of this title] take effect on the date of the enactment of this Act [Aug. 20, 1990].

“(2) Extension of waiver authority.—

“(A) The amendments made by subsections (a) and (c)(4) and (5) (amending this section and sections 2192 and 2193 of this title) apply with respect to recommendations made under section 402(d) of the Trade Act of 1974 [subsec. (d) of this section] by the President after May 23, 1990.

“(B) Solely for purposes of applying the applicable provisions of the Trade Act of 1974 [this chapter] with respect to the recommendations made by the President to the House of Representatives and the Senate under subsection (d) of section 402 of the Trade Act of 1974 after May 23, 1990, and on or before the date of the enactment of this Act—

“(i) paragraph (2)(A)(i) of subsection (d) of such section 402 (as amended by subsection (a)), the date on which the waiver authority granted under subsection (c) of such section 402 would expire but for an extension under paragraph (1) of such subsection (d) is the date of the enactment of this Act;

“(ii) paragraph (2)(A)(ii) of subsection (d) of such section 402 (as amended by subsection (a)) shall be treated as reading as follows:

‘‘(ii) if the President vetoes the joint resolution, each House of Congress votes to override such veto on or before the last day of the 60-day period referred to in clause (i);’;

“(iii) if the waiver authority granted under such subsection (c) is extended after application of clauses (i) and (ii), the expiration date for such authority is July 3, 1991; and

“(iv) only joint resolutions described in section 1(a) of the Trade Act of 1974 [section 2193(a) of this title] (as amended by subsection (a)) that are introduced in the House of Representatives or the Senate on or after the date of the enactment of this Act may be considered by either body.

Section 402(d) of the Trade Act of 1974 [this section] is hereby amended by inserting at the end the following:

‘‘(2) Effective date of 1979 Amendment

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

Delegation of Functions

Functions of President under subsection (d)(1) of this section delegated to Secretary of State by section 1(a)(1) of Ex. Ord. No. 13346, July 3, 1992, 57 F.R. 24325, set out as a note under section 301 of Title 3, The President.

For delegation of congressional reporting functions of President under subsection (b) of this section, see section 1 of Ex. Ord. No. 13313, July 31, 2003, 68 F.R. 46073, set out as a note under section 301 of Title 3, The President.

Waiver of Subsections (a) and (b) by Executive Order

The following Executive orders waived the application of subsections (a) and (b) of this section for the countries listed:


Presidential Determinations Relating to Waivers

The following Presidential Determinations related to waivers or continuation of waivers for the countries listed:


Determination No. 92–30, June 3, 1992, 57 F.R. 24929.—Albania, Armenia, Azerbaijan, Bulgaria, Byelorussia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Ukraine, and Uzbekistan.

Determination No. 92–31, June 3, 1992, 57 F.R. 24931.—Turkmenistan and Turkmenistan.


Determination No. 93–25, June 2, 1993, 58 F.R. 33005.—Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.


Determination No. 94–27, June 2, 1994, 59 F.R. 31105.—Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.


Determination No. 95–24, June 2, 1995, 60 F.R. 31049.—Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.


riods during which such country is not in arrears on its obligations under such agreement.

(c) Suspension or withdrawal of extensions of nondiscriminatory treatment

The President may at any time suspend or withdraw any extension of nondiscriminatory treatment to any country pursuant to subsection (a) of this section and thereby cause all duties set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States.


REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (c), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS


1979—Subsec. (c). Pub. L. 96–39 struck out the comma after “subsection (a) of this section”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1221(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF UKRAINE

Pub. L. 109–205, Mar. 23, 2006, 120 Stat. 313, provided that:

“SECTION 1. FINDINGS.

“Congress finds as follows:

“(1) Ukraine allows its citizens the right and opportunity to emigrate, free of any heavy tax on emigration or on the visas or other documents required for emigration and free of any tax, levy, fine, fee, or other charge on any citizens as a consequence of the desire of such citizens to emigrate to the country of their choice.

“(2) Ukraine has received normal trade relations treatment since 1992 and has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) since 1997.

“(3) Since the establishment of an independent Ukraine in 1991, Ukraine has made substantial progress toward the creation of democratic institutions and a free-market economy.

“(4) Ukraine has committed itself to ensuring freedom of religion, respect for rights of minorities, and eliminating intolerance and has been a paragon of inter-ethnic cooperation and harmony, as evidenced by the annual human rights reports of the Organization of Security and Cooperation in Europe (OSCE) and the United States Department of State.

“(5) Ukraine has taken major steps toward global security by ratifying the Treaty on the Reduction and Limitation of Strategic Offensive Weapons (START I) and the Treaty on the Non-Proliferation of Nuclear Weapons, subsequently turning over the last of its Soviet-era nuclear warheads on June 1, 1996, and agreeing, in 1998, not to assist Iran with the completion of a program to develop and build nuclear breeding reactors, and has fully supported the United States in nullifying the Anti-Ballistic Missile (ABM) Treaty.

“(6) At the Madrid Summit in 1997, Ukraine became a member of the North Atlantic Cooperation Council of the North Atlantic Treaty Organization (NATO), and has been a participant in the Partnership for Peace (PfP) program since 1994.

“(7) Ukraine is a peaceful state which established exemplary relations with all neighboring countries, and consistently pursues a course of European integration with a commitment to ensuring democracy and prosperity for its citizens.

“(8) Ukraine has built a broad and durable relationship with the United States, and has been unwavering in the struggle against international terrorism that has taken place since the attacks against the United States that occurred on September 11, 2001.

“(9) Ukraine has concluded a bilateral trade agreement with the United States that entered into force on June 23, 1992, and is in the process of acceding to the World Trade Organization (WTO). On March 6, 2006, the United States and Ukraine signed a bilateral market access agreement as a part of the WTO accession process.

“SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO THE PRODUCTS OF UKRAINE.

“(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

“(1) determine that such title should no longer apply to Ukraine; and

“(2) after making a determination under paragraph (1) with respect to Ukraine, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

“(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date under subsection (a) of the extension of nondiscriminatory treatment to the products of Ukraine (Nondiscriminatory treatment extended Mar. 31, 2006, see Proc. No. 7995, listed in the table of presidential documents below.) title IV of the Trade Act of 1974 shall cease to apply to that country.”

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF ARMENIA


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

“(1) Armenia has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.).


“(3) Since declaring its independence from the Soviet Union in 1991, Armenia has made considerable progress in enacting free-market reforms.

“(4) Armenia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has concluded many bilateral treaties and agreements with the United States.

“(5) Total United States-Armenia bilateral trade for 2002 amounted to more than $134,200,000.

“(b) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

“(1) determine that such title should no longer apply to Armenia; and

“(2) after making a determination under paragraph (1) with respect to Armenia, proclaim the extension
of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

"(c) Termination of Application of Title IV.—On and after the effective date of the extension under subsection (b)(2) of nondiscriminatory treatment to the products of Armenia (nondiscriminatory treatment extended Jan. 7, 2005, see Proc. No. 7660, listed in the table of presidential documents below.), title IV of the Trade Act of 1974 shall cease to apply to that country.

**EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF VIETNAM**


"SEC. 4001. FINDINGS.

"(a) Congress finds that—

"(1) Vietnam has taken cooperative steps with the United States under the United States Joint POW/MIA Accounting Command (formerly the Joint Task Force-Full Accounting) established in 1992 by President George H.W. Bush to provide the fullest possible accounting of MIA and POW cases.

"(2) In July 1995, President Bill Clinton announced the formal normalization of diplomatic relations between the United States and Vietnam.

"(3) In 2000, the United States and Vietnam concluded a bilateral trade agreement that included commitments on goods, services, intellectual property rights, and investment. The agreement was approved by joint resolution enacted pursuant to section 405(c) of the Trade Act of 1974 (19 U.S.C. 2435(c)), and entered into force in December 2001.

"(4) Since 2001, normal trade relations treatment has consistently been extended to Vietnam pursuant to title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.].

"(5) Vietnam has undertaken significant market-based economic reforms, including the reduction of government subsidies, tariffs and nontariff barriers, and extensive legal reform. These measures have dramatically improved Vietnam’s business and investment climate.

"(6) Vietnam has completed its negotiations to join the World Trade Organization (WTO). On May 31, 2006, the United States and Vietnam signed a comprehensive bilateral agreement providing greater market access for goods and services and other trade liberalizing commitments. On November 7, 2006, the WTO General Council approved Vietnam’s membership. Vietnam’s National Assembly ratified Vietnam’s WTO accession commitments on November 28, 2006, and Vietnam will become the 150th Member of the WTO 30 days thereafter.

"(7) On November 13, 2006, the Department of State removed Vietnam from its list of Countries of Particular Concern (CPC) for severe violations of religious freedom. In reaching this determination, the Department of State cited significant improvements in Vietnam toward advancing religious freedom, though problems remain that merit immediate attention and important work remains to be done to fully protect religious freedom in Vietnam.

"SEC. 4002. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO VIETNAM.

"(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

"(1) determine that such title should no longer apply to Vietnam; and

"(2) after making a determination under paragraph (1) with respect to Vietnam, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

"(b) TERMINATION OF EXTENTILITY OF TITLE IV.—On and after the effective date of the extension of nondiscriminatory treatment to the products of Vietnam under subsection (a) [nondiscriminatory treatment extended Dec. 29, 2006, see Proc. No. 8996, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.


"That the Congress approves the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of Vietnam transmitted by the President to the Congress on June 8, 2001.”

**EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF GEORGIA**

Pub. L. 106–476, title III, Nov. 9, 2000, 114 Stat. 2175, provided that:

"SEC. 3001. FINDINGS.

"(a) Congress finds that Georgia has—

"(1) made considerable progress toward respecting fundamental human rights consistent with the objectives of title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.];

"(2) adopted administrative procedures that accord its citizens the right to emigrate, travel freely, and to return to their country without restriction;

"(3) been found to be in full compliance with the freedom of emigration provisions in title IV of the Trade Act of 1974;

"(4) made progress toward democratic rule and creating a free market economic system since its independence from the Soviet Union;

"(5) demonstrated strong and effective enforcement of internationally recognized core labor standards and a commitment to continue to improve effective enforcement of its laws reflecting such standards;

"(6) committed to developing a system of governance in accordance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (also known as the ‘Helsinki Final Act’) regarding human rights and humanitarian affairs;

"(7) endeavored to address issues related to its national and religious minorities and, as a member state of the Organization for Security and Cooperation in Europe (OSCE), committed to adopting special measures for ensuring that persons belonging to national minorities have full equality individually as well as in community with other members of their group;

"(8) also committed to enacting legislation to provide protection against incitement to violence against persons or groups based on national, racial, ethnic, or religious discrimination, hostility, or hatred, including anti-Semitism;

"(9) continued to return communal properties confiscated from national and religious minorities during the Soviet period, facilitating the reemergence of these communities in the national life of Georgia and establishing the legal framework for completion of this process in the future;

"(10) concluded a bilateral trade agreement with the United States in 1993 and a bilateral investment treaty in 1994;

"(11) demonstrated a strong desire to build a friendly and cooperative relationship with the United States; and

"(12) acceded to the World Trade Organization on June 14, 2000, and the extension of unconditional normal trade relations treatment to the products of Georgia will enable the United States to avail itself of all rights under the World Trade Organization with respect to Georgia.

"SEC. 3002. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO GEORGI.

"(a) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

"(1) determine that such title should no longer apply to Georgia; and
"(2) after making a determination under paragraph (1) with respect to Georgia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

"(b) Termination of Application of Title IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Georgia [Nondiscriminatory treatment extended Dec. 29, 2000, see Proc. No. 7386, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country."

Extension of Nondiscriminatory Treatment to Products of People's Republic of China


"(a) Presidential Determinations and Extension of Nondiscriminatory Treatment.—Notwithstanding any provision of chapter I of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) [this part], as designated by section 101(a) shall be effective no earlier than the effective date of the accession of the People's Republic of China to the World Trade Organization [Dec. 11, 2001].

"(b) Termination of Applicability of Title IV.—On and after the effective date under subsection (a) of the extension of nondiscriminatory treatment to the products of the People's Republic of China [Nondiscriminatory treatment extended Jan. 1, 2002, see Proc. No. 7516, listed in the table of presidential documents below.], chapter I of title IV of the Trade Act of 1974 [this part] (as designated by section 103(a)(2) of this Act) shall cease to apply to that country."

Extension of Nondiscriminatory Treatment to Products of Albania

Pub. L. 106–200, title III, §301, May 18, 2000, 114 Stat. 289, provided that:

"(a) Findings.—Congress makes the following findings:

"(1) Albania has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.).

"(2) Since its emergence from communism, Albania has made progress toward democratic rule and toward creating a free-market economy.

"(3) Albania has concluded a bilateral investment treaty with the United States.

"(4) Albania has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has been very cooperative with NATO and the international community during and after the Kosova crisis.

"(5) The extension of unconditional normal trade relations treatment to the products of Albania will enable the United States to avail itself of all rights under the World Trade Organization with respect to Albania when that country becomes a member of the World Trade Organization.

"(b) Termination of Application of Title IV of the Trade Act of 1974 to Albania.—

"(1) Presidential determinations and extensions of nondiscriminatory treatment.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

"(A) determine that such title should no longer apply to Albania; and

"(B) after making a determination under subparagraph (A) with respect to Albania, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

"(2) Termination of Application of Title IV.—On or after the effective date of the extension under paragraph (1) of nondiscriminatory treatment to the products of Albania [Nondiscriminatory treatment extended June 29, 2000, see Proc. No. 7526, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country."

Extension of Nondiscriminatory Treatment to Products of Kyrgyzstan

Pub. L. 106–200, title III, §302, May 18, 2000, 114 Stat. 289, provided that:

"(a) Findings.—Congress makes the following findings:

"(1) Kyrgyzstan has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.).

"(2) Since its independence from the Soviet Union in 1991, Kyrgyzstan has made great progress toward democratic rule and toward creating a free-market economic system.

"(3) Kyrgyzstan concluded a bilateral investment treaty with the United States in 1994.

"(4) Kyrgyzstan has demonstrated a strong desire to build a friendly and cooperative relationship with the United States.

"(5) The extension of unconditional normal trade relations treatment to the products of Kyrgyzstan will enable the United States to avail itself of all rights under the World Trade Organization with respect to Kyrgyzstan.

"(b) Termination of Application of Title IV of the Trade Act of 1974 to Kyrgyzstan.—

"(1) Presidential determinations and extensions of nondiscriminatory treatment.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

"(A) determine that such title should no longer apply to Kyrgyzstan; and

"(B) after making a determination under subparagraph (A) with respect to Kyrgyzstan, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

"(2) Termination of Application of Title IV.—On or after the effective date of the extension under paragraph (1) of nondiscriminatory treatment to the products of Kyrgyzstan [Nondiscriminatory treatment extended June 29, 2000, see Proc. No. 7526, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country."

Extension of Nondiscriminatory Treatment to Products of Mongolia

“(a) FINDINGS.—The Congress finds that Mongolia—
“(1) has received normal trade relations treatment since 1991 and has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.];
“(2) has emerged from nearly 70 years of communism and dependence upon the former Soviet Union, approving a new constitution in 1992 which has established a modern parliamentary democracy charged with guaranteeing fundamental human rights, freedom of expression, and an independent judiciary;
“(3) has held four national elections under the new constitution, two presidential and two parliamentary, thereby solidifying the nation’s transition to democracy;
“(4) has undertaken significant market-based economic reforms, including privatization, the reduction of government subsidies, the elimination of most price controls and virtually all import tariffs, and the closing of insolvent banks;
“(5) has concluded a bilateral trade treaty with the United States in 1991, and a bilateral investment treaty in 1994;
“(6) has acceded to the Agreement Establishing the World Trade Organization, and extension of unconditional normal trade relations treatment to the products of Mongolia would enable the United States to avail itself of all rights under the World Trade Organization with respect to Mongolia; and
“(7) has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

“(b) TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO MONGOLIA.—
“(1) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—
“(A) determine that such title should no longer apply to Mongolia; and
“(B) after making a determination under subparagraph (A) with respect to Mongolia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

“(2) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under paragraph (1), the President may—
“(A) determine that such title should no longer apply to Mongolia; and
“(B) after making a determination under paragraph (1), proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

“(3) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Romania [Nondiscriminatory treatment extended Nov. 12, 1996, see Proc. No. 6951, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF ROMANIA
Pub. L. 104-171, Aug. 3, 1996, 110 Stat. 1539, provided that:

“SEC. 1. FINDINGS.
“The Congress finds that—
“(1) Romania emerged from years of brutal Communist dictatorship in 1989 and approved a new Constitution and elected a Parliament by 1991, laying the foundation for a modern parliamentary democracy charged with guaranteeing fundamental human rights, freedom of expression, and respect for private property;
“(2) local elections, parliamentary elections, and presidential elections have been held in Romania, and 1996 will mark the second nationwide presidential election under the new Constitution;
“(3) Romania has undertaken significant economic reforms, including the establishment of a two-tier banking system, the introduction of a modern tax system, the freeing of most prices and elimination of most subsidies, the adoption of a tariff-based trade regime, and the rapid privatization of industry and nearly all agriculture;
“(4) Romania concluded a bilateral investment treaty with the United States in 1993, and both United States investment in Romania and bilateral trade are increasing rapidly;
“(5) Romania has received most-favored-nation treatment since 1993, and has been found by the President to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.];
“(6) Romania is a member of the World Trade Organization and extension of unconditional most-favored-nation treatment to the products of Romania would enable the United States to avail itself of all rights under the World Trade Organization with respect to Romania; and
“(7) Romania has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

“SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ROMANIA.
“(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—
“(1) determine that such title should no longer apply to Romania; and
“(2) after making a determination under paragraph (1), proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

“(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Romania [Nondiscriminatory treatment extended Nov. 12, 1996, see Proc. No. 6951, listed in the table of presidential documents below.], title IV of the Trade Act of 1974 shall cease to apply to that country.

Withdrawal of most-favored-nation status from Serbia and Montenegro

“(a) FINDINGS.—The Congress finds that Serbia or Montenegro are not complying with the provisions of the Final Act of the Conference on Security and Cooperation in Europe (also known as the ‘Helsinki Final Act’), particularly the provisions regarding human rights and humanitarian affairs and are not respecting minority rights in Kosovo and Vojvodina.

“(b) WITHDRAWAL OF MFN STATUS.—Except as provided in subsection (c), nondiscriminatory treatment shall not apply with respect to any goods that—
“(1) are the product of Serbia or Montenegro; and
“(2) are entered into the customs territory of the United States on or after the 15th day after the date of the enactment of this Act [Oct. 16, 1992].

“(c) RESTORATION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding subsection (b), the President may restore nondiscriminatory treatment to goods that are the product of Serbia or Montenegro, as the case may be—
“(1) has ceased its armed conflict with the other ethnic peoples of the region formerly comprising the Socialist Federal Republic of Yugoslavia;
“(2) has agreed to respect the borders of the 6 republics that comprised the Socialist Federal Republic of Yugoslavia under the 1974 Yugoslav Constitution; and
“(3) has ceased all support of Serbian forces inside Bosnia-Hercegovina.”

EXTENSION OF NONDISCRIMINATORY TREATMENT TO PRODUCTS OF REPUBLIC OF ALBANIA


(4) The Congress finds that the President in anticipation of the enactment of section 2, has directed the United States to extend nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

(5) In 1951, the Congress approved the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of those countries, for such time as those countries remained under Soviet occupation or control.

(6) In 1990, the Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(7) The Congress notes that the President in anticipation of the enactment of section 2, has directed the United States to extend nondiscriminatory treatment (most-favored-nation treatment) to the products of those countries.

(8) The Congress notes that the President in anticipation of the enactment of section 2, has directed the United States to extend nondiscriminatory treatment (most-favored-nation treatment) to the products of those countries.

(9) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(10) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(11) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(12) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(13) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(14) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(15) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(16) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(17) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(18) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(19) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].

(20) The Congress finds that the President in anticipation of the enactment of this Act [Dec. 4, 1991].
"SEC. 104. SENSE OF THE CONGRESS REGARDING PROMPT PROVISION OF GSP TREATMENT TO THE PRODUCTS OF ESTONIA, LATVIA, AND LITHUANIA."

"(a) CONGRESSIONAL FINDINGS.—The Congress finds that:

(1) has received most-favored-nation treatment since 1991 and has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 [19 U.S.C. 2431 et seq.] since 1993;

(2) has reversed many years of Communist dictatorship and instituted a constitutional republic ruled by a democratically elected government as well as basic market-oriented reforms, including privatization;

(3) is in the process of acceding to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), and extension of unconditional most-favored-nation treatment would enable the United States to avail itself of all rights under the GATT and the WTO with respect to Bulgaria; and

(4) has demonstrated a strong desire to build friendly relationships and to cooperate fully with the United States on trade matters.

"(b) SUPPLEMENTAL ACTION.—The Congress notes that the United States Trade Representative intends to negotiate with Bulgaria in order to preserve the commitments of that country under the bilateral commercial agreement in effect between that country and the United States that are consistent with the GATT and the WTO.

"SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO BULGARIA.

"(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may:

(1) determine that such title should no longer apply to Bulgaria; and

(2) after making a determination under paragraph (1) with respect to Bulgaria, proclaim the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of that country.

"(b) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Bulgaria (Nondiscriminatory treatment extended Oct. 1, 1996, see Proc. No. 6222, listed in the table of presidential documents below), title IV of the Trade Act of 1974 shall cease to apply to that country."


"That the Congress approves the extension of nondiscriminatory treatment to the products of Mongolia's Republic transmitted by the President to the Congress on June 25, 1991."
§ 2435. Commercial agreements

(a) Presidential authority

Subject to the provisions of subsections (b) and (c) of this section, the President may authorize the entry into force of bilateral commercial agreements providing nondiscriminatory treatment to the products of countries heretofore denied such treatment whenever he determines that such agreements with such countries will promote the purposes of this chapter and are in the national interest.

(b) Terms of agreements

Any such bilateral commercial agreement shall—

(1) be limited to an initial period specified in the agreement which shall be no more than 3 years from the date the agreement enters into force; except that it may be renewable for additional periods, each not to exceed 3 years; if—

(A) a satisfactory balance of concessions in trade and services has been maintained during the life of such agreement, and

(B) the President determines that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the bilateral agreement;

(2) provide that it is subject to suspension or termination at any time for national security reasons, or that the other provisions of such agreement shall not limit the rights of any party to take any action for the protection of its security interests;

(3) include safeguard arrangements (A) providing for prompt consultations whenever either actual or prospective imports cause or threaten to cause, or significantly contribute to, market disruption and (B) authorizing the imposition of such import restrictions as may be appropriate to prevent such market disruption;

(4) if the other party to the bilateral agreement is not a party to the Paris Convention for the Protection of Industrial Property, provide rights for United States nationals with respect to patents and trademarks in such country not less than the rights specified in such convention;

(5) if the other party to the bilateral agreement is not a party to the Universal Copyright Convention, provide rights for United States nationals with respect to copyrights in such country not less than the rights specified in such convention;

(6) in the case of an agreement entered into or renewed after January 3, 1975, provide arrangements for the protection of industrial rights and processes;

(7) provide arrangements for the settlement of commercial differences and disputes;

(8) in the case of an agreement entered into or renewed after January 3, 1975, provide arrangements for the promotion of trade, which may include arrangements for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits, and the sending of trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

(9) provide for consultations for the purpose of reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party; and

(10) provide such other arrangements of a commercial nature as will promote the purposes of this chapter.

(c) Congressional action

An agreement referred to in subsection (a) of this section, and a proclamation referred to in section 2434(a) of this title implementing such
agreement, shall take effect only if a joint resolution described in section 2191(b)(3) of this title that approves of the agreement referred to in subsection (a) of this section is enacted into law.

(Pub. L. 93–618, title IV, §405, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

§ 2436. Market disruption

(a) Investigation by International Trade Commission; report; publication

(1) Upon the filing of a petition by an entity described in section 2252(a) of this title, upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereinafter in this section referred to as the “Commission”) shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of subsections (a)(3), (b)(4), and (c)(4) of section 2252 of this title shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the President its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b) Affirmative determination

With respect to any affirmative determination of the Commission under subsection (a) of this section—

(1) such determination shall be treated as an affirmative determination made under section 2251(b) of this title (as in effect on the day before the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988); and

(2) sections 2252 and 2253 of this title (as in effect on the day before the date of the enactment of such Act of 1988), rather than the provisions of part 1 of subchapter II of this chapter as amended by section 1401 of such Act of 1988, shall apply with respect to the taking of subsequent action, if any, by the President in response to such affirmative determination; except that—

(A) the President may take action under such sections 2252 and 2253 of this title only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made; and

(B) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

(c) Products of Communist countries

If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a) of this section. If the President further finds that emergency action is necessary, he may take action under sections 2252 and 2253 of this title referred to in subsection (b) of this section as if an affirmative determination of the Commission had been made under subsection (a) of this section. Any action taken by the President under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) of this section with respect to imports of such article, on the day on which the Commission’s report of such determination is submitted to the Presi-
dent, or (2) if an affirmative determination is made by the Commission under subsection (a) of this section with respect to imports of such article, on the day on which the action taken by the President pursuant to such determination becomes effective.

(d) Petitions to initiate consultations as provided for by safeguard arrangements

(1) A petition may be filed with the President by an entity described in section 2251(a)(1) of this title requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 2435 of this title with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

(e) Definitions; factors determining existence of market disruption

For purposes of this section:

(1) The term “Communist country” means any country dominated or controlled by communism.

(2)(A) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

(B) For purposes of subparagraph (A):

(i) Imports of an article shall be considered to be increasing rapidly if there has been a significant increase in such imports (either actual or relative to domestic production) during a recent period of time.

(ii) The term “significant cause” refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

(C) The Commission, in determining whether market disruption exists, shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation;

(ii) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(iii) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(iv) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.


REFERENCES IN TEXT

Subsection (b)(4) of section 2252 of this title, referred to in subsection (a)(2), was repealed by Pub. L. 103–465, title III, §301(c), Dec. 8, 1994, 108 Stat. 4932. See section 2252(b)(3) of this title.

The date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, referred to in subsection (b), is the date of enactment of Pub. L. 100–418, which was approved Aug. 23, 1988.

Section 1401 of such Act of 1988, referred to in subsection (b)(2), is section 1401 of Pub. L. 100–418, known as the Omnibus Trade and Competitiveness Act of 1988, which enacted section 2254 of this title, amended sections 1330, 2133, 2251 to 2253, 2274, 2354, and 2706 of this title, enacted a provision set out as a note under section 2251 of this title, and amended a provision set out as a note under section 2112 of this title.

AMENDMENTS


1988—Subsec. (a)(1). Pub. L. 100–418, §1411(b)(1), substituted “section 2252(a)” for “section 2251(a)(1)”.

Subsec. (a)(2). Pub. L. 100–418, §1411(b)(2), substituted “subsections (a)(3), (b)(4), and (c)(4) of section 2252” for “subsections (a)(2), (b)(3), and (c) of section 2251”.

Subsec. (b). Pub. L. 100–418, §1411(a)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “For purposes of sections 2252 and 2253 of this title, an affirmative determination of the Commission under subsection (a) of this section shall be treated as an affirmative determination under section 225(b) of this title, except that—

“(1) the President may take action under sections 2252 and 2253 of this title only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made, and

“(2) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.”

Subsec. (c). Pub. L. 100–418, §1411(a)(2), inserted “referred to in subsection (b) of this section” after “sections 2252 and 2253 of this title”.

Subsec. (e)(2). Pub. L. 100–418, §1411(a)(3), designated existing provisions as subpars. (A) and added subpars. (B) and (C).

CHANGE OF NAME


Section 1411(c) of Pub. L. 100–418 provided that: “The amendments made by subsections (a) and (b) [amending this section] apply with respect to investigations initiated under section 406(a) of the Trade Act of 1974 [19 U.S.C. 2436(a)] or on or after the date of the enactment of this Act [Aug. 23, 1988].”

§2437. Procedure for Congressional approval or disapproval of extension of nondiscriminatory treatment and Presidential reports

(a) Transmission of nondiscriminatory treatment documents to Congress

Whenever the President issues a proclamation under section 2434 of this title extending nondiscriminatory treatment to the products of any foreign country, he shall promptly transmit to the House of Representatives and to the Senate
a document setting forth the proclamation and the agreement the proclamation proposes to implement, together with his reasons therefor.  
(b) Transmission of freedom of emigration documents to Congress

The President shall transmit to the House of Representatives and the Senate a document containing the initial report submitted by him under section 2432(b) or 2439(b) of this title with respect to a nonmarket economy country. On or before December 31 of each year, the President shall transmit to the House of Representatives and the Senate, a document containing the report required by section 2432(b) or 2439(b) of this title as the case may be, to be submitted on or before such December 31.  
(c) Effective date of proclamations and agreements; disapproval of reports

(1) In the case of a document referred to in subsection (a) of this section, the proclamation and the agreement set forth in the document may become effective and the agreement set forth in the document may enter into force and effect only if a joint resolution described in section 2191(b)(3) of this title that approves of the extension of nondiscriminatory treatment to the products of the country concerned is enacted into law.

(2) In the case of a document referred to in subsection (b) of this section which contains a report submitted by the President under section 2432(b) or 2439(b) of this title with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, a joint resolution described in section 2192(a)(1)(B) of this title is enacted into law that disapproves of the report submitted by the President with respect to such country, then, beginning with the day after the end of the 60-day period beginning with the date of the enactment of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products of such country and the products of such country shall be dutiable at the rates set forth in the Harmonized Tariff Schedule of the United States, (B) such country may not participate in any program of the Government of the United States which extends credit or credit guarantees or investment guarantees, and (C) no commercial agreement may thereafter be concluded with such country under this subchapter. If the President vetoes the joint resolution, the joint resolution shall be treated as enacted into law before the end of the 90-day period under this paragraph if both Houses of Congress vote to override such veto on or before the later of the last day of such 90-day period or the last day of the 15-day period (excluding any day described in section 2194(b) of this title) beginning on the date the Congress receives the veto message from the President.  


REFERENCES IN TEXT


AMENDMENTS

1990—Subsec. (c)(1). Pub. L. 101–382, § 132(b)(3)(A), added par. (1) and struck out former par. (1) which read as follows: “In the case of a document referred to in subsection (a) of this section (other than a document to which paragraph (2) applies), the proclamation set forth therein may become effective and the agreement set forth therein may enter into force and effect only if the House of Representatives and the Senate adopt, by an affirmative vote of a majority of those present and voting in each House, a concurrent resolution of approval (under the procedures set forth in section 2191 of this title) of the extension of nondiscriminatory treatment to the products of the country concerned.”

Subsec. (c)(2). Pub. L. 101–382 struck out par. (2) and redesignated par. (3) as (2), and substituted “a joint resolution described in section 2192(a)(1)(B) of this title is enacted into law that disapproves” for “either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval (under the procedures set forth in section 2192 of this title)” and “the end of the 60-day period beginning with the date of the enactment” for “the date of the adoption” and inserted at end “If the President vetoes the joint resolution, the joint resolution shall be treated as enacted into law before the end of the 90-day period under this paragraph if both Houses of Congress vote to override such veto on or before the later of the last day of such 90-day period or the last day of the 15-day period (excluding any day described in section 2194(b) of this title) beginning on the date the Congress receives the veto message from the President.”


EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

§ 2438. Payment by Czechoslovakia of amounts owed United States citizens and nationals

(a) Renegotiation of 1974 agreement

The arrangement initiated on July 5, 1974, with respect to the settlement of the claims of citizens and nationals of the United States against the Government of Czechoslovakia shall be renegotiated and shall be submitted to the Congress as part of any agreement entered into under this subchapter with Czechoslovakia.

(b) Provisional retention of gold

The United States shall not release any gold belonging to Czechoslovakia and controlled directly or indirectly by the United States pursuant to the provisions of the Paris Reparations Agreement of January 24, 1946, or otherwise, until such agreement has been approved by the Congress.
§ 2439. Freedom to emigrate to join a very close relative in United States

(a) Sanctions for emigration restrictions

To assure the continued dedication of the United States to the fundamental human rights and welfare of its own citizens, and notwithstanding any other provision of law, on or after January 3, 1975, no nonmarket economy country shall participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to join permanently through emigration, a very close relative in the United States, such as a spouse, parent, child, brother, or sister;
(2) imposes more than a nominal tax on the visas or other documents required for emigration described in paragraph (1); or
(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate as described in paragraph (1), and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) Report to Congress concerning emigration policies

After January 3, 1975, (A) a nonmarket economy country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (B) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a) of this section. Such report with respect to such country shall include information as to the nature and implementation of its laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate to the United States to join close relatives. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter, so long as such credits or guarantees are extended or such agreement is in effect.

(c) Exemption from application of section

This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on January 3, 1975.

(d) Additional exemption from application of section

During any period that a waiver is in effect with respect to any nonmarket economy country under section 2432(c) of this title, the provisions of subsections (a) and (b) of this section shall not apply with respect to such country.

1 So in original.
or threaten to cause market disruption to the domestic producers of like or directly competitive products.

(2) The limitations on investigations set forth in section 2232(h)(1) of this title shall apply to investigations conducted under this section.

(3) The provisions of subsections (a)(8) and (i) of section 2252 of this title, relating to treatment of confidential business information, shall apply to investigations conducted under this section.

(4) Whenever a petition is filed, or a request or resolution is received, under this subsection, the Commission shall transmit a copy thereof to the President, the Trade Representative, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, except that in the case of confidential business information, the copy may include only nonconfidential summaries of such information.

(5) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties an opportunity to present, to present evidence, to respond to the presentations of other parties, and otherwise to be heard.

(c) Market disruption

(1) For purposes of this section, market disruption exists whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

(2) For purposes of paragraph (1), the term “significant cause” refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

(d) Factors in determination

In determining whether market disruption exists, the Commission shall consider objective factors, including—

(1) the volume of imports of the product which is the subject of the investigation;

(2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and

(3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.

The presence or absence of any factor under paragraph (1), (2), or (3) is not necessarily dispositive of whether market disruption exists.

(e) Time for Commission determinations

The Commission shall make and transmit to the President and the Trade Representative its determination under subsection (b)(1) of this section at the earliest practicable time, but in no case later than 60 days (or 90 days in the case of a petition requesting relief under subsection (i) of this section) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, under subsection (b) of this section. If the Commissioners voting are equally divided with respect to its determination, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(f) Recommendations of Commission on proposed remedies

If the Commission makes an affirmative determination under subsection (b) of this section, or a determination which the President or the Trade Representative may consider as affirmative under subsection (e) of this section, the Commission shall propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determination under subsection (b) of this section are eligible to vote on the proposed action to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (g) of this section, separate views regarding what action, if any, should be taken to prevent or remedy market disruption.

(g) Report by Commission

(1) Not later than 20 days after a determination under subsection (b) of this section is made, the Commission shall submit a report to the President and the Trade Representative.

(2) The Commission shall include in the report required under paragraph (1) the following:

(A) The determination made under subsection (b) of this section and an explanation of the basis for the determination.

(B) If the determination under subsection (b) of this section is affirmative, or may be considered by the President or the Trade Representative as affirmative under subsection (e) of this section, the recommendations of the Commission on proposed remedies under subsection (f) of this section and an explanation of the basis for each recommendation.

(C) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).

(D) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection (f) of this section is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where production facilities of such industry are located, and on other domestic industries.

(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (but shall not include confidential business information) and cause a summary thereof to be published in the Federal Register.
(h) Opportunity to present views and evidence on proposed measure and recommendation to the President

(1) Within 20 days after receipt of the Commission’s report under subsection (g) of this section (or 15 days in the case of an affirmative preliminary determination under subsection (i)(1)(B) of this section), the Trade Representative shall publish in the Federal Register notice of any measure proposed by the Trade Representative to be taken pursuant to subsection (a) of this section and of the opportunity, including a public hearing, if requested, for importers, exporters, and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest.

(2) Within 55 days after receipt of the report under subsection (g) of this section (or 35 days in the case of an affirmative preliminary determination under subsection (i)(1)(B) of this section), the Trade Representative, taking into account the views and evidence received under paragraph (1) on the measure proposed by the Trade Representative, shall make a recommendation to the President concerning what action, if any, to take to prevent or remedy the market disruption.

(i) Critical circumstances

(1) When a petition filed under subsection (b) of this section alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to the product identified in the petition, the Commission shall, not later than 45 days after the petition containing the request is filed—

(A) determine whether delay in taking action under this section would cause damage to the relevant domestic industry which would be difficult to repair; and

(B) if the determination under subparagraph (A) is affirmative, make a preliminary determination of whether imports of the product which is the subject of the investigation have caused or threatened to cause market disruption.

If the Commissioners voting are equally divided with respect to either of its determinations, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(2) On the date on which the Commission completes its determinations under paragraph (1), the Commission shall transmit a report on the determinations to the President and the Trade Representative, including the reasons for its determinations. If the determinations under paragraph (1) are affirmative, or may be considered by the President or the Trade Representative as affirmative under paragraph (1), the Commission shall include in its report its recommendations on proposed provisional measures to be taken to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determinations under paragraph (1) are eligible to vote on the proposed provisional measures to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determinations may submit, in the report, dissenting or separate views regarding the determination and any recommendation of provisional measures referred to in this paragraph.

(3) If the determinations under paragraph (1) are affirmative, or may be considered by the President or the Trade Representative as affirmative under paragraph (1), the Trade Representative shall, within 10 days after receipt of the Commission’s report, determine the amount or extent of provisional relief that is necessary to prevent or remedy the market disruption and shall provide a recommendation to the President on what provisional measures, if any, to take.

(4)(A) The President shall determine whether to provide provisional relief and proclaim such relief, if any, within 10 days after receipt of the recommendation from the Trade Representative.

(B) Such relief may take the form of—

(i) the imposition of or increase in any duty;

(ii) any modification, or imposition of any quantitative restriction on the importation of an article into the United States; or

(iii) any combination of actions under clauses (i) and (ii).

(C) Any provisional action proclaimed by the President pursuant to a determination of critical circumstances shall remain in effect not more than 200 days.

(D) Provisional relief shall cease to apply upon the effective date of relief proclaimed under subsection (a) of this section, upon a decision by the President not to provide such relief, or upon a negative determination by the Commission under subsection (b) of this section.

(j) Agreements with the People’s Republic of China

(1) The Trade Representative is authorized to enter into agreements for the People’s Republic of China to take such action as necessary to prevent or remedy market disruption, and should seek to conclude such agreements before the expiration of the 60-day consultation period provided for under the product-specific safeguard provision of the Protocol of Accession of the People’s Republic of China to the WTO, which shall commence not later than 5 days after the Trade Representative receives an affirmative determination provided for in subsection (e) of this section or a determination which the Trade Representative considers to be an affirmative determination pursuant to subsection (e) of this section.

(2) If no agreement is reached with the People’s Republic of China pursuant to consultations under paragraph (1), or if the President determines that an agreement reached pursuant to such consultations is not preventing or remediating the market disruption at issue, the President shall provide import relief in accordance with subsection (a) of this section.

(k) Standard for Presidential action

(1) Within 15 days after receipt of a recommendation from the Trade Representative under subsection (h) of this section on the appropriate action, if any, to take to prevent or remedy the market disruption.
market disruption, the President shall provide import relief for such industry pursuant to subsection (a) of this section, unless the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action pursuant to subsection (a) of this section would cause serious harm to the national security of the United States.

(2) The President may determine under paragraph (1) that providing import relief is not in the national economic interest of the United States only if the President finds that the taking of such action would have an adverse impact on the United States economy clearly greater than the benefits of such action.

(l) Publication of decision and reports

(1) The President’s decision, including the reasons therefor and the scope and duration of any action taken, shall be published in the Federal Register.

(2) The Commission shall promptly make public any report transmitted under this section, but shall not make public any information which the Commission determines to be confidential, and shall publish notice of such report in the Federal Register.

(m) Effective date of relief

Import relief under this section shall take effect not later than 15 days after the President’s determination to provide such relief.

(n) Modifications of relief

(1) At any time after the end of the 6-month period beginning on the date on which relief under subsection (m) of this section first takes effect, the President may request that the Commission provide a report on the probable effect of the modification, reduction, or termination of the relief provided on the relevant industry. The Commission shall transmit such report to the President within 60 days of the request.

(2) The President may, after receiving a report from the Commission under paragraph (1), take such action to modify, reduce, or terminate relief that the President determines is necessary to continue to prevent or remedy the market disruption at issue.

(3) Upon the granting of relief under subsection (k) of this section, the Commission shall collect such data as is necessary to allow it to respond rapidly to a request by the President under paragraph (1).

(o) Extension of action

(1) Upon request of the President, or upon petition of the industry concerned filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any relief provided under subsection (k) of this section is to terminate, the Commission shall investigate to determine whether action under this section continues to be necessary to prevent or remedy market disruption.

(2) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(3) The Commission shall transmit to the President a report on its investigation and determination under this subsection not later than 60 days before the action under subsection (m) of this section is to terminate.

(4) The President, after receiving an affirmative determination from the Commission under paragraph (3), may extend the effective period of any action under this section if the President determines that the action continues to be necessary to prevent or remedy the market disruption.


AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–429 made technical amendment to references in original act which appear in text as references to “this part”.

§ 2451a. Action in response to trade diversion

(a) Monitoring by Customs Service

In any case in which a WTO member other than the United States requests consultations with the People’s Republic of China under the product-specific safeguard provision of the Protocol of Accession of the People’s Republic of China to the World Trade Organization, the Trade Representative shall inform the United States Customs Service, which shall monitor imports into the United States of those products of Chinese origin that are the subject of the consultation request. Data from such monitoring shall promptly be made available to the Commission upon request by the Commission.

(b) Initiation of investigation

(1) Upon the filing of a petition by an entity described in section 2252(a) of this title, upon the request of the President or the Trade Representative, upon resolution of either of the Committees, or on its own motion, the Commission shall promptly make an investigation to determine whether an action described in subsection (c) of this section has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States.

(2) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties an opportunity to be present, to present evidence, to respond to the presentations of other parties, and otherwise to be heard.

(3) The provisions of subsections (a)(8) and (i) of section 2252 of this title, relating to treatment of confidential business information, shall apply to investigations conducted under this section.

(c) Actions described

An action is described in this subsection if it is an action—
(1) by the People’s Republic of China to prevent or remedy market disruption in a WTO member other than the United States;

(2) by a WTO member other than the United States to withdraw concessions under the WTO Agreement or otherwise to limit imports to prevent or remedy market disruption;

(3) by a WTO member other than the United States to apply a provisional safeguard within the meaning of the product-specific safeguard provision of the Protocol of Accession of the People’s Republic of China to the WTO; or

(4) any combination of actions described in paragraphs (1) through (3).

(d) Basis for determination of significant diversion

(1) In determining whether significant diversion or the threat thereof exists for purposes of this section, the Commission shall take into account, to the extent such evidence is reasonably available—

(A) the monitoring conducted under subsection (a) of this section;

(B) the actual or imminent increase in United States market share held by such imports from the People’s Republic of China;

(C) the actual or imminent increase in volume of such imports into the United States;

(D) the nature and extent of the action taken or proposed by the WTO member concerned;

(E) the extent of exports from the People’s Republic of China to that WTO member and to the United States;

(F) the actual or imminent changes in exports to that WTO member due to the action taken or proposed;

(G) the actual or imminent diversion of exports from the People’s Republic of China to countries other than the United States;

(H) cyclical or seasonal trends in import volumes into the United States of the products at issue; and

(I) conditions of demand and supply in the United States market for the products at issue.

The presence or absence of any factor under any of subparagraphs (A) through (I) is not necessarily dispositive of whether a significant diversion of trade or the threat thereof exists.

(2) For purposes of making its determination, the Commission shall examine changes in imports into the United States from the People’s Republic of China since the time that the WTO member commenced the investigation that led to a request for consultations described in subsection (a) of this section.

(3) If more than one action by a WTO member or WTO members against a particular product is identified in the petition, request, or resolution under subsection (b) of this section or during the investigation, the Commission may cumulatively assess the actual or likely effects of such actions jointly in determining whether a significant diversion of trade or threat thereof exists.

(e) Commission determination; agreement authority

(1) The Commission shall make and transmit to the President and the Trade Representative its determination under subsection (b) of this section at the earliest practicable time, but in no case later than 45 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, under subsection (b) of this section. If the Commissioners voting are equally divided with respect to its determination, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(2) The Trade Representative is authorized to enter into agreements with the People’s Republic of China or the other WTO members concerned to take such action as necessary to prevent or remedy significant trade diversion or threat thereof into the domestic market of the United States, and should seek to conclude such agreements before the expiration of the 60-day consultation period provided for under the product-specific safeguard provision of the Protocol of Accession of the People’s Republic of China to the WTO, which shall commence no later than 5 days after the Trade Representative receives an affirmative determination provided for in paragraph (1) or a determination which the Trade Representative considers to be an affirmative determination pursuant to paragraph (1).

(3) REPORT BY COMMISSION.—

(A) Not later than 10 days after a determination under subsection (b) of this section is made, the Commission shall transmit a report to the President and the Trade Representative.

(B) The Commission shall include in the report required under subparagraph (A) the following:

(i) The determination made under subsection (b) of this section and an explanation of the basis for the determination.

(ii) If the determination under subsection (b) of this section is affirmative, or may be considered by the President or the Trade Representative as affirmative under subsection (e)(1) of this section, the recommendations of the Commission on increased tariffs or other import restrictions to be imposed to prevent or remedy the trade diversion or threat thereof, and explanations of the bases for such recommendations. Only those members of the Commission who agreed to the affirmative determination under subsection (b) of this section are eligible to vote on the proposed action to prevent or remedy the trade diversion or threat thereof.

(iii) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in clauses (i) and (ii).

(iv) A description of—

(I) the short- and long-term effects that implementation of the action recommended under clause (ii) is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(II) the short- and long-term effects of not taking the recommended action on the

1 So in original. The comma probably should not appear.
petitioning domestic industry, its workers and the communities where production facilities of such industry are located, and on other domestic industries.

(C) The Commission, after submitting a report to the President under subparagraph (A), shall promptly make it available to the public (with the exception of confidential business information) and cause a summary thereof to be published in the Federal Register.

(f) Public comment

If consultations fail to lead to an agreement with the People’s Republic of China or the WTO member concerned within 60 days, the Trade Representative shall promptly publish notice in the Federal Register of any proposed action to prevent or remedy the trade diversion, and provide an opportunity for interested persons to present views and evidence on whether the proposed action is in the public interest.

(g) Recommendation to the President

Within 20 days after the end of consultations pursuant to subsection (e) of this section, the Trade Representative shall make a recommendation to the President on what action, if any, should be taken to prevent or remedy the trade diversion or threat thereof.

(h) Presidential action

Within 20 days after receipt of the recommendation from the Trade Representative, the President shall determine what action to take to prevent or remedy the trade diversion or threat thereof.

(i) Duration of action

Action taken under subsection (h) of this section shall be terminated not later than 30 days after expiration of the action taken by the WTO member or members involved against imports from the People’s Republic of China.

(j) Review of circumstances

The Commission shall review the continued need for action taken under subsection (h) of this section if the WTO member or members involved notify the Committee on Safeguards of the WTO of any modification in the action taken by them against the People’s Republic of China pursuant to consultation referred to in subsection (a) of this section. The Commission shall, not later than 60 days after such notification, determine whether a significant diversion of trade continues to exist and report its determination to the President. The President shall determine, within 15 days after receiving the Commission’s report, whether to modify, withdraw, or keep in place the action taken under subsection (h) of this section.

Subchapter V—Generalized System of Preferences

§ 2461. Authority to extend preferences

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and


REFERENCES IN TEXT

The date of entry into force of the Protocol of Accession of the People’s Republic of China to the WTO, referred to in subsec. (c), is Dec. 11, 2001.
(4) the extent of the beneficiary developing country’s competitiveness with respect to eligible articles.


PRIOR PROVISIONS


EFFECTIVE DATE

Section 1953 of Pub. L. 104–188 provided that:

“(a) IN GENERAL.—The amendments made by this subtitle [subtitle J (§§2461–2464) of title I of Pub. L. 104–188, enacting this subchapter, amending sections 2702, 3011, 3202, 3331, and 3551 of this title, section 1444–2 of Title 7, Agriculture, section 4711 of Title 15, Commerce and Trade, sections 262p–4 and 2191a of Title 22, Foreign Relations and Intercourse, and section 871 of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 2101 of this title] apply to articles entered on or after October 1, 1996.

(b) RETROACTIVE APPLICATION.—

“(1) GENERAL RULE.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to subsection (c)—

“(i) any article that was entered—

“(A) after July 31, 1995, and

“(B) before January 1, 1996, and

“(ii) before January 1, 1996, and

“to which duty-free treatment under title V of the Trade Act of 1974 [this subchapter] would have applied if the entry had been made on July 31, 1995, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry, and

“(B) any article that was entered—

“(i) after December 31, 1995, and

“(ii) before October 1, 1996, and

“to which duty-free treatment under title V of the Trade Act of 1974 [this subchapter] would have applied if the entry had been made on after October 1, 1996, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

“(2) LIMITATION ON REFUNDS.—No refund shall be made pursuant to this subsection before October 1, 1996.

“(3) ENTRY.—As used in this subsection, the term ‘entry’ includes a withdrawal from warehouse for consumption.

“(c) REQUESTS.—Liquidation or reliquidation may be made under subsection (b) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act [Aug. 20, 1996], that contains sufficient information to enable the Customs Service—

“(1) to locate the entry; or

“(2) to reconstruct the entry if it cannot be located.”

§2462. Designation of beneficiary developing countries

(a) Authority to designate countries

(1) Beneficiary developing countries

The President is authorized to designate countries as beneficiary developing countries for purposes of this subchapter.

(2) Least-developed beneficiary developing countries

The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this subchapter, based on the considerations in section 2461 of this title and subsection (c) of this section.

(b) Countries ineligible for designation

(1) Specific countries

The following countries may not be designated as beneficiary developing countries for purposes of this subchapter:

(A) Australia.

(B) Canada.

(C) European Union member states.

(D) Iceland.

(E) Japan.

(F) Monaco.

(G) New Zealand.

(H) Norway.

(I) Switzerland.

(2) Other bases for ineligibility

The President shall not designate any country a beneficiary developing country under this subchapter if any of the following applies:

(A) Such country is a Communist country, unless—

(i) the products of such country receive nondiscriminatory treatment,

(ii) such country is a WTO Member (as such term is defined in section 3501(10) of this title) and a member of the International Monetary Fund, and

(iii) such country is not dominated or controlled by international communism.

(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

(ii) to cause serious disruption of the world economy.

(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

(D)(i) Such country—

(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(III) has imposed or enforced taxes or other exactions, restrictive maintenance
or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless clause (ii) applies.

(ii) This clause applies if the President determines that—

(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i), or

(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens, corporations, partnerships, or associations which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 2405(j)(1)(A) of title 50, Appendix or such country has not taken steps to support the efforts of the United States to combat terrorism.

(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in that country (including any designated zone in that country).

(H) Such country has not implemented its commitments to eliminate the worst forms of child labor.

Subparagraphs (D), (E), (F), (G), and (H) (to the extent described in section 2467(6)(D) of this title) shall not prevent the designation of any country as a beneficiary developing country under this subchapter if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

(c) Factors affecting country designation

In determining whether to designate any country as a beneficiary developing country under this subchapter, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

(3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(d) Withdrawal, suspension, or limitation of country designation

(1) In general

The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this subchapter with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 2461 of this title and subsection (c) of this section.

(2) Changed circumstances

The President shall, after complying with the requirements of subsection (f)(2) of this section, withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2) of this section. Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this subchapter.

(3) Advice to Congress

The President shall, as necessary, advise the Congress on the application of section 2461 of this title and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately
take the actions described in subsection (c) of this section.

(e) Mandatory graduation of beneficiary developing countries

If the President determines that a beneficiary developing country has become a "high income" country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this subchapter, effective on January 1 of the second year following the year in which such determination is made.

(f) Congressional notification

(1) Notification of designation

(A) In general

Before the President designates any country as a beneficiary developing country under this subchapter, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

(B) Designation as least-developed beneficiary developing country

At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

(2) Notification of termination

If the President has designated any country as a beneficiary developing country under this subchapter, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

Prior Provisions


Amendments

2002—Subsec. (b)(2)(F). Pub. L. 107–210 inserted "or such country has not taken steps to support the efforts of the United States to combat terrorism" before period at end.

2000—Subsec. (b)(2), Pub. L. 106–200, §421(a), in concluding provisions substituted "(G), and (H) (to the extent described in section 2467(d)(2) of this title)" for "(G)".

1996—Subsec. (b)(2)(F). Pub. L. 104–295, amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism."

Effective Date of 1996 Amendment

Section 35(b) of Pub. L. 104–295 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1996."

Delegation of Functions

Proc. No. 6942, Oct. 17, 1996, 61 F.R. 54719, provided in par. (5) that powers of the President granted in subsec. (f)(2) of this section to notify a country of the President's intention to terminate that country's status as a beneficiary developing country for purposes of the Generalized System of Preferences were delegated to the United States Trade Representative.

§ 2463. Designation of eligible articles

(a) Eligible articles

(1) Designation

(A) In general

Except as provided in subsection (b) of this section, the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this subchapter by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section.

(B) Least-developed beneficiary developing countries

Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) of this section and articles described in paragraphs (2) and (3) of subsection (b) of this section, the President may, in carrying out section 2462(d)(1) of this title and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 2462(a)(2) of this title if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

(C) Three-year rule

If, after receiving the advice of the International Trade Commission under subsection (e) of this section, an article has been formally considered for designation as an eligible article under this subchapter and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.
(2) Rule of origin

(A) General rule

The duty-free treatment provided under this subchapter shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

(i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

(ii) the sum of—

(I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 2467(2) of this title, plus

(II) the direct costs of processing operations performed in such beneficiary developing country or such member countries,

is not less than 35 percent of the appraised value of such article at the time it is entered.

(B) Exclusions

An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone—

(i) simple combining or packaging operations, or

(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(C) Regulations

The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this subchapter, an article—

(A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or

(B) must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country.

(b) Articles that may not be designated as eligible articles

(1) Import-sensitive articles

The President may not designate any article as an eligible article under subsection (a) of this section if such article is within one of the following categories of import-sensitive articles:

(A) Except as provided in paragraph (4), textile and apparel articles which were not eligible articles for purposes of this subchapter on January 1, 1994, as this subchapter was in effect on such date.

(B) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions.

(C) Import-sensitive electronic articles.

(D) Import-sensitive steel articles.

(E) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this subchapter on January 1, 1995, as this subchapter was in effect on such date.

(F) Import-sensitive semimanufactured and manufactured glass products.

(G) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(b) Withdrawal, suspension, or limitation of duty-free treatment; competitive need limitation

(1) In general

The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this subchapter with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this subchapter. In taking any action under this subsection, the President shall consider the factors set forth in sections 2461 and 2462(c) of this title.

(2) Competitive need limitation

(A) Basis for withdrawal of duty-free treatment

(i) In general

Except as provided in clause (ii) and subsection (d) of this section, whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United
States during any calendar year beginning after December 31, 1995—

(i) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or

(ii) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during any calendar year,

the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country.

(ii) Annual adjustment of applicable amount

For purposes of applying clause (i), the applicable amount is—

(I) for 1996, $75,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $5,000,000.

(B) “Country” defined

For purposes of this paragraph, the term “country” does not include an association of countries which is treated as one country under section 2467(2) of this title, but does include a country which is a member of any such association.

(C) Redesignations

A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of subparagraph (A) may, subject to the considerations set forth in sections 2461 and 2462 of this title, be redesignated a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

(D) Least-developed beneficiary developing countries and beneficiary sub-Saharan African countries

Subparagraph (A) shall not apply to any least-developed beneficiary developing country or any beneficiary sub-Saharan African country.

(E) Articles not produced in the United States excluded

Subparagraph (A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

(F) De minimis waivers

(i) In general

The President may disregard subparagraph (A)(i)(II) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount for such preceding calendar year.

(ii) Applicable amount

For purposes of applying clause (i), the applicable amount is—

(I) for calendar year 1996, $13,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $500,000.

(d) Waiver of competitive need limitation

(1) In general

The President may waive the application of subsection (c)(2) of this section with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) of this section was made with respect to such eligible article, the President—

(A) receives the advice of the International Trade Commission under section 1332 of this title on whether any industry in the United States is likely to be adversely affected by such waiver,

(B) determines, based on the considerations described in sections 2461 and 2462(c) of this title and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

(C) publishes the determination described in subparagraph (B) in the Federal Register.

(2) Considerations by the President

In making any determination under paragraph (1), the President shall give great weight to—

(A) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

(3) Other bases for waiver

The President may waive the application of subsection (c)(2) of this section if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) of this section was made with respect to a beneficiary developing country, the President determines that—

(A) there has been a historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce, and the President publishes that determination in the Federal Register.

(4) Limitations on waivers

(A) In general

The President may not exercise the waiver authority under this subsection with respect
to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which equals or exceeds 30 percent of the aggregate appraised value of all articles that entered duty-free under this subchapter during the preceding calendar year.

(B) Other waiver limits

(i) The President may not exercise the waiver authority provided under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which exceeds 15 percent of the aggregate appraised value of all articles that have entered duty-free under this subchapter during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year—

(I) had a per capita gross national product (calculated on the basis of the best available information, including that of the International Bank for Reconstruction and Development) of $5,000 or more; or

(II) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this subchapter that had an aggregate appraised value of more than 10 percent of the aggregate appraised value of all articles that entered duty-free under this subchapter during that year.

(ii) Not later than July 1 of each year, the President should revoke any waiver that has then been in effect with respect to an article for 5 years or more if the beneficiary developing country has exported to the United States (directly or indirectly) during the preceding calendar year a quantity of the article—

(I) having an appraised value in excess of 1.5 times the applicable amount set forth in subsection (c)(2)(A)(i) for that calendar year; or

(II) exceeding 75 percent of the appraised value of the total imports of that article into the United States during that calendar year.

(C) Calculation of limitations

There shall be counted against the limitations imposed under subparagraphs (A) and (B) for any calendar year only that value of any eligible article of any country that—

(i) entered duty-free under this subchapter during such calendar year; and

(ii) is in excess of the value of that article that would have been so entered during such calendar year if the limitations under subsection (c)(2)(A) of this section applied.

(5) Effective period of waiver

Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(e) International Trade Commission advice

Before designating articles as eligible articles under subsection (a)(1) of this section, the President shall publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this subchapter. The provisions of sections 2151, 2152, 2153, and 2154 of this title shall be complied with as though action under section 2461 of this title and this section were action under section 2133 of this title to carry out a trade agreement entered into under section 2133 of this title.

(f) Special rule concerning Puerto Rico

No action under this subchapter may affect any tariff duty imposed on coffee imported into Puerto Rico pursuant to section 1319 of this title.


REFERENCES IN TEXT


PRIOR PROVISIONS


AMENDMENTS

2004—Subsec. (d)(4)(B). Pub. L. 109–432 redesignated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subscls. (I) and (II), respectively, and added cl. (II).


1995—Subsec. (c)(2)(D). Pub. L. 106–200 amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: “Subparagraph (A) shall not apply to any least-developed beneficiary developing country.”

1994—Subsec. (a)(2)(A)(i). Pub. L. 108–38 added subcl. (II) and concluding provisions and struck out former subcl. (II) which read as follows: “the direct costs of processing operations performed in such beneficiary developing country or such member countries, is not less than 35 percent of the appraised value of such article at the time it is entered.”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–429, title I, § 1555(c), Dec. 3, 2004, 118 Stat. 2579, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply to any article entered, or withdrawn from warehouse for consumption, on or after the date on which the President makes a designation with respect to the article under section 503(b)(4) of the Trade Act of 1974 [subsec. (b)(4) of this section], as added by subsection (a).”

§ 2464. Review and report to Congress

The President shall submit an annual report to the Congress on the status of internationally
recognized worker rights within each beneficiary developing country, including the findings of the Secretary of Labor with respect to the beneficiary country’s implementation of its international commitments to eliminate the worst forms of child labor.


PRIOR PROVISIONS


AMENDMENTS

2000—Pub. L. 106–200 inserted before period at end ‘‘including the findings of the Secretary of Labor with respect to the beneficiary country’s implementation of its international commitments to eliminate the worst forms of child labor’’.

§ 2465. Date of termination

No duty-free treatment provided under this subchapter shall remain in effect after December 31, 2010.


PRIOR PROVISIONS


AMENDMENTS


EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 508(b), Dec. 17, 1999, 113 Stat. 2323, provided that:

‘‘(1) IN GENERAL.—The amendment made by this section [amending this section] applies to articles entered on or after the date of the enactment of this Act [Dec. 17, 1999].’’

‘‘(2) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

‘‘(A) GENERAL RULE.—Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other provision of law, and subject to paragraph (3), any entry—

(i) of an article to which duty-free treatment under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.] would have applied if such entry had been made on July 1, 1999, and such title had been in effect on July 1, 1999; and

(ii) that was made—

‘‘(I) after June 30, 1999; and

‘‘(II) before the date of the enactment of this Act [Dec. 17, 1999],

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

‘‘(B) ENTRY.—As used in this paragraph, the term ‘entry’ includes a withdrawal from warehouse for consumption.

‘‘(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (2) with respect to an entry only if a request therefore is filed with the Customs Service, within 180 days after the date of the enactment of this Act [Dec. 17, 1999], that contains sufficient information to enable the Customs Service—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.’’

EFFECTIVE DATE OF 1998 AMENDMENT


‘‘(1) IN GENERAL.—The amendments made by this section [amending this section] apply to articles entered on or after the date of the enactment of this Act [Oct. 21, 1998].’’

‘‘(2) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

‘‘(A) GENERAL RULE.—Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other provision of law, and subject to paragraph (3), any entry—

(i) of an article to which duty-free treatment under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.] would have applied if such entry had been made on July 1, 1998, and such title had been in effect on July 1, 1998; and

(ii) that was made—

‘‘(I) after June 30, 1998; and

‘‘(II) before the date of the enactment of this Act, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

‘‘(B) ENTRY.—As used in this paragraph, the term ‘entry’ includes a withdrawal from warehouse for consumption.

‘‘(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (2) with respect to an entry only if a request therefore is filed with the Customs Service, within 180 days after the date of enactment of this Act, that contains sufficient information to enable the Customs Service—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.’’

RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS


‘‘(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other provision
§ 2466a. Designation of sub-Saharan African countries for certain benefits

(a) Authority to designate

(1) In general

Notwithstanding any other provision of law, the President is authorized to designate a country listed in section 107 of the African Growth and Opportunity Act [19 U.S.C. 3706] as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b) of this section—

(A) if the President determines that the country meets the eligibility requirements set forth in section 104 of that Act [19 U.S.C. 3703], as such requirements are in effect on May 18, 2000; and

(B) subject to the authority granted to the President under subsections (a), (d), and (e) of section 2462 of this title, if the country otherwise meets the eligibility criteria set forth in section 2462 of this title.

(2) Monitoring and review of certain countries

The President shall monitor, review, and report to Congress annually on the progress of each country listed in section 107 of the African Growth and Opportunity Act in meeting the requirements described in paragraph (1) in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country for purposes of this section. The President’s determinations, and explanations of such determinations, with specific analysis of the eligibility requirements described in paragraph (1) of section 2462 of this title, if the country otherwise meets the eligibility criteria set forth in section 2462 of this title.

(3) Continuing compliance

If the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements described in paragraph (1), the President shall terminate the designation of that country as a beneficiary sub-Saharan African country for purposes of this section, effective on January 1 of the year following the year in which such determination is made.

(b) Preferential tariff treatment for certain articles

(1) In general

The President may provide duty-free treatment for any article described in section 2463(b)(1)(B) through (G) of this title that is—

...
the growth, product, or manufacture of a beneficiary sub-Saharan African country described in subsection (a) of this section, if, after receiving the advice of the International Trade Commission in accordance with section 2463(c) of this title, the President determines that the article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.

(2) Rules of origin

The duty-free treatment provided under paragraph (1) shall apply to any article described in that paragraph that meets the requirements of section 2463(a)(2) of this title, except that—

(A) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered is not attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 2463(a)(2) of this title; and

(B) the cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries shall be applied in determining such percentage.

(c) Beneficiary sub-Saharan African countries, etc.

For purposes of this subchapter—

(1) the terms “beneficiary sub-Saharan African country” and “beneficiary sub-Saharan African countries” mean a country or countries listed in section 107 of the African Growth and Opportunity Act [19 U.S.C. 3706] that the President has determined is eligible under subsection (a) of this section.

(2) the term “former beneficiary sub-Saharan African country” means a country that, after being designated as a beneficiary sub-Saharan African country under the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.], ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States.


References in Text


Amendments


§2466b. Termination of benefits for sub-Saharan African countries

In the case of a beneficiary sub-Saharan African country, as defined in section 2466a(c) of this title, duty-free treatment provided under this subchapter shall remain in effect through September 30, 2015.


Amendments


§2467. Definitions

For purposes of this subchapter:

(1) Beneficiary developing country

The term “beneficiary developing country” means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this subchapter.

(2) Country

The term “country” means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under section 2462(b) of this title shall be treated as one country for purposes of this subchapter.

(3) Entered

The term “entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) Internationally recognized worker rights

The term “internationally recognized worker rights” includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children, and a prohibition on the worst forms of child labor, as defined in paragraph (6); and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(5) Least-developed beneficiary developing country

The term “least-developed beneficiary developing country” means a beneficiary developing country that is designated as a least-developed beneficiary developing country under section 2462(a)(2) of this title.
(6) Worst forms of child labor

The term “worst forms of child labor” means—

(A) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes;

(C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and

(D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

The work referred to in subparagraph (D) shall be determined by the laws, regulations, or competent authority of the beneficiary developing country involved.


TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER VI—GENERAL PROVISIONS

§ 2481. Definitions

For purposes of this chapter—

(1) The term “duty” includes the rate and form of any import duty, including but not limited to tariff-rate quotas.

(2) The term “other import restriction” includes a limitation, prohibition, charge, or other action other than duty, imposed on importation or imposed for the regulation of importation. The term does not include any orderly marketing agreement.

(3) The term “ad valorem” includes ad valorem rate. The ad valorem equivalent shall be determined by the President on the basis of the value of imports of the article concerned during the most recent representative period. In determining the value of imports, the President shall utilize, to the maximum extent practicable, the standards of valuation contained in section 1401a or 1402 of this title (as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in section 1401a of this title (as in effect on the effective date of such title II amendments) whichever is applicable to the article concerned during such representative period.

(4) An imported article is “directly competitive with” a domestic article at an earlier or later stage of processing, and a domestic article is “directly competitive with” an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article. For purposes of this paragraph, the unprocessed article is at an earlier stage of processing.

(5) The term “modification”, as applied to any duty or other import restriction, includes the elimination of any duty or other import restriction.

(6) The term “existing” means (A) when used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this chapter, existing on the day on which such trade agreement is entered into or such other action is taken; and (B) when used with respect to a rate of duty, the nonpreferential rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) set forth in rate column numbered 1 of chapters 1 through 97 of the Harmonized Tariff Schedule of the United States on the date specified or (if no date is specified) on the day referred to in clause (A).

(7) The term “commerce” includes services associated with international trade.

(8) A product of a country or area is an article which is the growth, produce, or manufacture of such country or area.

(9) The term “nondiscriminatory treatment” means trade treatment based on normal trade relations (known under international law as most-favored-nation treatment).

(10) The term “commerce” includes services associated with international trade.

REFERENCES IN TEXT

Section 1402 of this title, referred to in par. (4), was repealed by Pub. L. 96–39, title II, §201(b), July 26, 1979, 90 Stat. 201.

The effective date of the amendments made by title II of the Trade Agreements Act of 1979, referred to in in

1 See References in Text note below.
par. (4), is July 1, 1980. See section 204(a) of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title. The Harmonized Tariff Schedule of the United States, referred to in par. (7), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS

1998—Par. (9). Pub. L. 105-206 substituted “trade treatment based on normal trade relations (known under international law as ‘most-favored-nation treatment’)” for “‘most-favored-nation treatment’”.

1988—Par. (7). Pub. L. 100-418 substituted “chapters 1 through 9 of the Harmonized Tariff Schedule of the United States” for “‘schedules 1 through 7 of the Tariff Schedules of the United States’”.

1979—Par. (2). Pub. L. 96-39, §1106(h)(1), substituted “or on or after such date, see section 202(c)(1), substituted “section 1401a or 1402 of this title (as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in sections 1401a of this title (as in effect on the effective date of such title II amendments) whichever is applicable’” for “section 1401a or 1402 of this title applicable’. 

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(h)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 202(c)(1) of Pub. L. 96-39 effective July 1, 1980, see section 204(a) of Pub. L. 96-39, set out as a note under section 1401a of this title.

Savings Provision

Pub. L. 105-206, title V, §5003(c), July 22, 1998, 112 Stat. 789, provided that: “Nothing in this section [amending this section, sections 1881, 2432, 3332 and 3555 of this title, and sections 5401 and 5713 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 2112 of this title] shall affect the meaning of any provision of law, Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States relating to the principle of ‘most-favored-nation’ or ‘most-favored nation’ treatment. Any Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States that has been issued, made, granted, or allowed to become effective and that is in effect on the effective date of this Act [July 22, 1998], or was to become effective on or after the effective date of this Act, shall continue in effect according to its terms until modified, terminated, superseded, set aside, or revoked in accordance with law.”

Clarification of Designation of Normal Trade Relations

Pub. L. 105-206, title V, §5003(a), July 22, 1998, 112 Stat. 789, provided that: “(I) FINDINGS.—The Congress makes the following findings:

(A) Since the 18th century, the principle of non-discrimination among countries with which the United States has trade relations, commonly referred to as ‘most-favored-nation’ treatment, has been a cornerstone of United States trade policy.

(B) Although the principle remains firmly in place as a fundamental concept in United States trade relations, the term ‘most-favored-nation’ is a misnomer which has led to public misunderstanding.

(C) It is neither the purpose nor the effect of the most-favored-nation principle to treat any country as ‘most favored’. To the contrary, the principle reflects the intention to confer on a country the same trade benefits that are conferred on any other country, that is, the intention not to discriminate among trading partners.

(D) The term ‘normal trade relations’ is a more accurate description of the principle of non-discrimination as it applies to the tariffs applicable generally to imports from United States trading partners, that is, the general rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States.

(2) Policy.—It is the sense of the Congress that—

(A) the language used in United States laws, treaties, agreements, executive orders, directives, and regulations should more clearly and accurately reflect the underlying principles of United States trade policy; and

(B) accordingly, the term ‘normal trade relations’ should, where appropriate, be substituted for the term ‘most-favored-nation’.”

§2482. Exercise of functions of International Trade Commission

(a) Preliminary investigation

In order to expedite the performance of its functions under this chapter, the International Trade Commission may conduct preliminary investigations, determine the scope and manner of its proceedings, and consolidate proceedings before it.

(b) Use of authority granted under other provisions

In performing its functions under this chapter, the Commission may exercise any authority granted to it under any other Act.

(c) Gathering of current information

The Commission shall at all times keep informed concerning the operation and effect of provisions relating to duties or other import restrictions of the United States contained in trade agreements entered into under the trade agreements program.


REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original “‘this Act’, meaning Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

§2483. Consequential changes in Tariff Schedules of the United States

The President shall from time to time, as appropriate, embody in the Harmonized Tariff Schedule of the United States the substance of the relevant provisions of this chapter, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

The Harmonized Tariff Schedule of the United States, referred to in text, is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

AMENDMENTS


EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

DELEGATION OF FUNCTIONS

Authority of President under this section to embody rectifications, technical or conforming changes, or similar modifications in the Harmonized Tariff Schedule delegated to the United States Trade Representative by par. (4) of Proc. No. 6909, Jan. 27, 1997, 62 F.R. 4417.

PROC. NO. 6914. TO MODIFY THE ALLOCATION OF TARIFF-RATE QUOTAS FOR CERTAIN CHEESES

Proc. No. 6914, Aug. 26, 1996, 61 F.R. 45651, provided:

1. On January 1, 1995, Austria, Finland, and Sweden acceded to the European Communities (EC), and the EC customs union of 12 member countries (“EC-12”) was enlarged to a customs union of 15 member countries (“EC-15”). At that time, the EC-12, Austria, Finland, and Sweden withdrew their tariff schedules under the World Trade Organization and applied the common external tariff of the EC-12 to imports into the EC-15. The United States and the EC then entered into negotiations under Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade 1994 to negotiate the United States for the resulting increase in some tariffs on U.S. exports to Austria, Finland, and Sweden.

2. On July 22, 1996, the United States and the EC signed an agreement concluding the negotiations on compensation. To recognize the membership of Austria, Finland, and Sweden in the EC-15, the tariff-rate quota (TRQ) allocations for cheeses from these countries will be part of the total TRQ allocations for cheeses from the EC-15, but will be reserved for use by these countries through 1997.

3. Section 404(d)(3) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas and to modify any allocation as the President determines appropriate. Pursuant to section 404(d)(3) of the URAA, I have determined that it is appropriate to modify the TRQ allocations for cheeses by providing that the TRQ allocations for cheeses from Austria, Finland, and Sweden will become part of the total TRQ allocations for cheeses from the EC-15, but will be reserved for use by these countries through 1997.

4. Section 604 of the Trade Act of 1974, as amended (“Trade Act”) (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction. The modification of the TRQ allocations for cheeses is such an action.

5. In paragraph (3) of Proclamation 6783 of December 23, 1994, I delegated my authority under section 404(d)(3) of the Trade Act (probably means section 404(d)(3) of the URAA, 19 U.S.C. 3601(d)(3)) to the United States Trade Representative (USTR). I have determined that it is appropriate to authorize the USTR to exercise my authority under section 604 of the Trade Act (19 U.S.C. 2483) to embody in the HTS the substance of any action taken by the USTR under section 404(d)(3) of the URAA.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 301 of title 3, United States Code, section 404(d)(3) of the URAA, and section 604 of the Trade Act do proclaim that:

(1) Additional U.S. notes to chapter 4 of the HTS are modified as specified in the Annex to this proclamation.

(2) The USTR is authorized to exercise my authority under section 604 of the Trade Act (19 U.S.C. 2483) to embody in the HTS the substance of any actions taken by USTR under section 404(d)(3) of the URAA (19 U.S.C. 3601(d)(3)).

(3) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(4) This proclamation is effective on the date of signature of this proclamation, and the modifications to the HTS made by the Annex to this proclamation shall be effective on the dates that are specified in that Annex.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

WILLIAM J. CLINTON.

ANNEX

The Annex of Proclamation 6914, which amended the Harmonized Tariff Schedule of the United States, is not set out under this section because the Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

§ 2484. International drug control

The President shall submit a report to Congress at least once each calendar year listing those foreign countries in which narcotic drugs and other controlled substances (as listed under section 812 of title 21) are produced, processed, or transported for unlawful entry into the United States. Such report shall include a description of the measures such countries are taking to prevent such production, processing, or transport.


§ 2485. Voluntary limitations on exports of steel to United States

No person shall be liable for damages, penalties, or other sanctions under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or the Antitrust Acts (as defined in section 4 of the Federal Trade Commission Act (15 U.S.C. 41)), or under any similar State law, on account of his negotiating, entering into, participating in, or
implementing an arrangement providing for the voluntary limitation on exports of steel and steel products to the United States, or any modification or renewal of such an arrangement, if such arrangement or such modification or renewal—

(1) was undertaken prior to January 3, 1975, at the request of the Secretary of State or his delegate, and

(2) ceases to be effective not later than January 1, 1975.


REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

§ 2486. Trade relations with North American countries

(a) Negotiations for free trade area with Canada

It is the sense of the Congress that the United States should enter into a trade agreement with Canada which will guarantee continued stability to the economies of the United States and Canada. In order to promote such economic stability, the President may initiate negotiations for a trade agreement with Canada to establish a free trade area covering the United States and Canada. Nothing in this section shall be construed as prior approval of any legislation which may be necessary to implement such a trade agreement.

(b) Regional study

The President shall study the desirability of entering into trade agreements with countries in the northern portion of the western hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions within 2 years after July 26, 1979. The study shall include an examination of competitive opportunities and conditions of competition between such countries and the United States in the agricultural, energy, and other appropriate sectors.


AMENDMENTS

1979—Pub. L. 96–39 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2381 of this title.


SUBCHAPTER VII—TARIFF TREATMENT OF PRODUCTS OF, AND OTHER SANCTIONS AGAINST, UNCOORDERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

§ 2491. Short title

This subchapter may be cited as the “Narcotics Control Trade Act”.


§ 2492. Tariff treatment of products of uncooperative major drug producing or drug-transit countries

(a) Required action by President

Subject to subsection (b) of this section, for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March 1 of each succeeding year, to the extent considered necessary by the President to achieve the purposes of this subchapter—

(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.], or any other law providing preferential tariff treatment;

(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent ad valorem;

(4) take the steps described in subsection (d)(1) or (d)(2) of this section, or both, to curtail air transportation between the United States and that country;

(5) withdraw the personnel and resources of the United States from participation in any arrangement with that country for the clearance of customs by visitors between the United States and that country;

(6) take any combination of the actions described in paragraphs (1) through (5).

(b) Certifications; Congressional action

(1)(A) Subject to paragraph (3), subsection (a) of this section shall not apply with respect to a country if the President determines and certifies to the Congress, at the time of the submission of the report required by section 2291h of title 22, that—

(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own—

(I) in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States (as described in paragraph (B)) or a multilateral agreement which achieves the objectives of paragraph (B)

(II) in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the
The President may make a certification under subparagraph (A)(i) with respect to a major drug producing country or drug-transit country which is also a producer of licit opium only if the President determines that such country has taken steps to prevent significant diversion of its licit cultivation and production into the illicit market, maintains production and stockpiles at levels no higher than those consistent with licit market demand, and prevents illicit cultivation and production. (2) In determining whether to make the certification required by paragraph (1) with respect to a country, the President shall consider the following:

(A) Have the actions of the government of that country resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to section 229(e)(4) of title 22? In the case of a major drug producing country, the President shall give foremost consideration, in determining whether to make the certification required by paragraph (1), to whether the government of that country has taken actions which have resulted in such reductions.

(B) Has that government taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacturing of and trafficking in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States?

(C) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related moneys, as evidenced by—

(i) the enactment and enforcement by that government of laws prohibiting such conduct,

(ii) that government entering into, and cooperating under the terms of, mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

(iii) the degree to which that government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts?

(D) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, bribery and other forms of public corruption which facilitate the illicit production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts; or

(ii) for a country that would not otherwise qualify for certification under clause (i), the vital national interests of the United States require that subsection (a) of this section not be applied with respect to that country.

(B) A bilateral narcotics agreement referred to in subparagraph (A)(i)(I) is an agreement between the United States and a foreign country in which the foreign country agrees to take specific activities, including, where applicable, efforts to—

(i) reduce drug production, drug consumption, and drug trafficking within its territory, including activities to address illicit crop eradication and crop substitution;

(ii) increase drug interdiction and enforcement;

(iii) increase drug education and treatment programs;

(iv) increase the identification and elimination of illicit drug laboratories;

(v) increase the identification and elimination of the trafficking of essential precursor chemicals for the use in production of illegal drugs;

(vi) increase cooperation with United States drug enforcement officials; and

(vii) where applicable, increase participation in extradition treaties, mutual legal assistance agreements directed at money laundering, sharing of evidence, and other initiatives for cooperative drug enforcement.

(C) A country which in the previous year was designated as a major drug producing country or a major drug-transit country may not be determined to be cooperating fully under subparagraph (A)(i) unless it has in place a bilateral narcotics agreement with the United States or a multilateral agreement which achieves the objectives of subparagraph (B).

(D) If the President makes a certification with respect to a country pursuant to subparagraph (A)(ii), he shall include in such certification—

(i) a full and complete description of the vital national interests placed at risk if action is taken pursuant to subsection (a) of this section with respect to that country; and

(ii) a statement weighing the risk described in clause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combating narcotics or to take adequate steps to combat narcotics on its own.

(E) The President may make a certification under subparagraph (A)(i) with respect to a major drug producing country or drug-transit country which is also a producer of licit opium only if the President determines that such country has taken steps to prevent significant diversion of its licit cultivation and production into the illicit market, maintains production and stockpiles at levels no higher than those consistent with licit market demand, and prevents illicit cultivation and production.

Note: A full and complete description of the vital national interests placed at risk if action is taken pursuant to subsection (a) of this section with respect to that country; and a statement weighing the risk described in clause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combating narcotics or to take adequate steps to combat narcotics on its own.
(F) Does any senior official of that government engage in, encourage, or facilitate the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(G) Has the government investigated aggressively all cases in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has been the victim of acts or threats of violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof, and has energetically sought to bring the perpetrators of such offenses or offenses to justice?

(H) Having been requested to do so by the United States Government, does that government fail to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aircraft smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country?

(I) Has the government made necessary changes in legal codes in order to enable law enforcement officials to move more effectively against narcotics traffickers, such as new conspiracy laws and new asset seizure laws?

(J) Has the government expeditiously processed United States extradition requests relating to narcotics trafficking?

(K) Has the government refused to protect or give haven to any known drug traffickers, and has it expeditiously processed extradition requests relating to narcotics trafficking made by other countries?

(3) Subsection (a) of this section shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, within 45 days of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

(4) If the President takes action under subsection (a) of this section, that action shall remain in effect until—

(A) the President makes the certification under paragraph (1) a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving the determination contained in that certification.

(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4),

(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

(c) Duration of action

The action taken by the President under paragraph (1), (2), or (3) of subsection (a) of this section shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that such action is in effect.

(d) Presidential action regarding aviation

(1)(A) The President is authorized to notify the government of a country against which is imposed the sanction described in subsection (a)(4) of this section of his intention to suspend the authority of foreign air carriers owned or controlled by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(B) Within 10 days after the date of notification of a government under subparagraph (A), the Secretary of Transportation shall take all steps necessary to suspend at the earliest possible date the authority of any foreign air carrier owned or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States, notwithstanding any agreement relating to air services.

(C) The President may also direct the Secretary of Transportation to take such steps as may be necessary to suspend the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(2)(A) The President may direct the Secretary of State to terminate any air service agreement between the United States and a country against which the sanction described in subsection (a)(4) of this section is imposed in accordance with the provisions of that agreement.

(B) Upon termination of an agreement under this paragraph, the President may also direct the Secretary of Transportation to revoke at the earliest possible date the right of any foreign air carrier owned, or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(C) The Secretary of Transportation may provide for such exceptions from paragraphs (1) and (2) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(4) For purposes of this subsection, the terms "air transportation", "air carrier", "foreign air carrier" and "foreign air transportation" have the meanings such terms have under section 40102(a) of title 49.

(e) Standards and guidelines for determining major drug-transit countries

For each calendar year, the Secretary of State, after consultation with the appropriate
committees of the Congress, shall establish numerical standards and other guidelines for determining which countries will be considered to be major drug-transit countries under section 2495(3)(A) and (B) of this title.


REFERENCES IN TEXT


CODIFICATION


AMENDMENTS


1988—Subsec. (b)(1). Pub. L. 100–690, §408(a), amended par. (1) generally, Prior to amendment, par. (1) read as follows: “(A) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies;”.

Subsec. (b)(2). Pub. L. 100–690, §408(a), amended par. (2) generally, Prior to amendment, par. (2) read as follows: “(C) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, corruption by government officials, with particular emphasis on the elimination of bribery.”

Subsec. (b)(3). (4). Pub. L. 100–690, §4408(b), substituted “45 days” for “30 days” wherever appearing.

Subsec. (e). Pub. L. 100–690, §4408(c), added subsec. (e).

1967—Subsec. (a)(4) to (6), Pub. L. 100–204, §806(a)(1), added paras. (4) and (5) and redesignated former par. (4) as (6) and amended it generally. Prior to amendment, par. (6) read as follows: “take any combination of the actions described in paragraphs (1), (2), and (3).”

Subsec. (b). Pub. L. 100–204, §806(a)(2), inserted “corruption by government officials and” after “preventing and punishing” in par. (1) and added par. (2)(C).

Subsec. (c). Pub. L. 100–204, §806(a)(3), inserted “paragraph (1), (2), or (3) of” after “under”.


§2493. Sugar quota

Notwithstanding any other provision of law, the President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 2492(b) of this title as determined by the President.


§2494. Progress reports

The President shall include as a part of the annual report required under section 2291h of title 22 an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 2492(b) of this title.


AMENDMENTS

1999—Pub. L. 106–36 substituted “section 2291h of title 22” for “section 2291(e) of title 22”.

§2495. Definitions

For purposes of this subchapter—
(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

(2) the term “major drug producing country” means a country that illicitly produces during a fiscal year 5 metric tons or more of opium or opium derivative, 500 metric tons or more of coca, or 500 metric tons or more of marijuana;

(3) the term “major drug-transit country” means a country—

(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

(B) through which are transported such drugs or substances; or

(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

(4) the term “narcotic and psychotropic drugs and other controlled substances” has the same meaning as is given by any applicable international narcotics control agreement, or domestic law of the country or countries concerned.

The term “adjusted actual production history yield” means the weighted average of the actual production history for the eligible producer without regard to any yields established under that section; and

(A) in the case of an eligible producer on a farm that has at least 4 years of actual production history yields for an insurable commodity that are established other than pursuant to section 508(g)(4)(B) of the Federal Crop Insurance Act (7 U.S.C. 1508(g)(4)(B)), the actual production history for the eligible producer without regard to any yields established under that section;

(B) in the case of an eligible producer on a farm that has less than 4 years of actual production history yields for an insurable commodity, of which 1 or more were established pursuant to section 508(g)(4)(B) of that Act [7 U.S.C. 1508(g)(4)(B)], the actual production history for the eligible producer as calculated without including the lowest of the yields established pursuant to section 508(g)(4)(B) of that Act; and

(C) in all other cases, the actual production history of the eligible producer on a farm.

(4) Adjusted noninsured crop disaster assistance program yield

The term “adjusted noninsured crop disaster assistance program yield” means—

(A) in the case of an eligible producer on a farm that has at least 4 years of production history under the noninsured crop disaster assistance program that are not replacement yields, the noninsured crop disaster assistance program yield without regard to any replacement yields;

(B) in the case of an eligible producer on a farm that has less than 4 years of production history under the noninsured crop disaster assistance program that are not replacement yields, the noninsured crop disaster assistance program yield as calculated without including the lowest of the replacement yields; and

(C) in all other cases, the production history of the eligible producer on the farm under the noninsured crop disaster assistance program.

(5) Counter-cyclical program payment yield

The term “counter-cyclical program payment yield” means—

(A) in the case of an eligible producer on a farm that has at least 4 years of production history under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), the actual production history for the eligible producer without regard to any yields established under that Act;

(B) in the case of an eligible producer on a farm that has less than 4 years of production history under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), the actual production history for the eligible producer as calculated without including the lowest of the replacement yields; and

(C) in all other cases, the uniform meaning given the term by the Secretary for purposes of subsections (a)(1)(B) and (g)(6).

(7) Disaster county

(A) In general

The term “disaster county” means a county included in the geographic area covered by a qualifying natural disaster declaration.

(B) Inclusion

The term “disaster county” includes—
(i) a county contiguous to a county described in subparagraph (A); and
(ii) any farm in which, during a calendar year the actual production on the farm is less than 50 percent of the normal production on the farm.

(8) Eligible producer on a farm

(A) In general

The term “eligible producer on a farm” means an individual or entity described in subparagraph (B) that, as determined by the Secretary, assumes the production and market risks associated with the agricultural production of crops or livestock.

(B) Description

An individual or entity referred to in subparagraph (A) is—

(i) a citizen of the United States;
(ii) a resident alien;
(iii) a partnership of citizens of the United States; or
(iv) a corporation, limited liability corporation, or other farm organizational structure organized under State law.

(9) Farm

(A) In general

The term “farm” means, in relation to an eligible producer on a farm, the sum of all crop acreage in all counties that is planted or intended to be planted for harvest for sale or on-farm livestock feeding (including native grassland intended for haying) by the eligible producer.

(B) Aquaculture

In the case of aquaculture, the term “farm” means, in relation to an eligible producer on a farm, all fish being produced in all counties that are intended to be harvested for sale by the eligible producer.

(C) Honey

In the case of honey, the term “farm” means, in relation to an eligible producer on a farm, all bees and beehives in all counties that are intended to be harvested for a honey crop for sale by the eligible producer.

(10) Farm-raised fish

The term “farm-raised fish” means any aquatic species that is propagated and reared in a controlled environment.

(11) Insurable commodity

The term “insurable commodity” means an agricultural commodity (excluding livestock) for which the producer on a farm is eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(12) Livestock

The term “livestock” includes—

(A) cattle (including dairy cattle);
(B) bison;
(C) poultry;
(D) sheep;
(E) swine;
(F) horses; and
(G) other livestock, as determined by the Secretary.

(13) Noninsurable commodity

The term “noninsurable commodity” means a crop for which the eligible producers on a farm are eligible to obtain assistance under the noninsured crop assistance program.

(14) Noninsured crop assistance program

The term “noninsured crop assistance program” means the program carried out under section 7333 of title 7.

(15) Normal production on the farm

The term “normal production on the farm” means the sum of the expected revenue for all crops on the farm, as determined under subsection (b)(6)(A).

(16) Qualifying natural disaster declaration

The term “qualifying natural disaster declaration” means a natural disaster declared by the Secretary for production losses under section 1961(a) of title 7.

(17) Secretary

The term “Secretary” means the Secretary of Agriculture.

(18) Socially disadvantaged farmer or rancher

The term “socially disadvantaged farmer or rancher” has the meaning given the term in section 2279(e) of title 7.

(19) State

The term “State” means—

(A) a State;
(B) the District of Columbia;
(C) the Commonwealth of Puerto Rico; and
(D) any other territory or possession of the United States.

(20) Trust Fund

The term “Trust Fund” means the Agricultural Disaster Relief Trust Fund established under section 2497a of this title.

(21) United States

The term “United States” when used in a geographical sense, means all of the States.

(b) Supplemental revenue assistance payments

(1) Payments

(A) In general

The Secretary shall use such sums as are necessary from the Trust Fund to make crop disaster assistance payments to eligible producers on farms in disaster counties that have incurred crop production losses or crop quality losses, or both, during the crop year.

(B) Crop loss

To be eligible for crop loss assistance under this subsection, the actual production on the farm for at least 1 crop of economic significance shall be reduced by at least 10 percent due to disaster, adverse weather, or disaster-related conditions.

(2) Amount

(A) In general

Subject to subparagraph (B), the Secretary shall provide crop disaster assistance pay-
ments under this section to an eligible producer on a farm in an amount equal to 60 percent of the difference between—

(i) the disaster assistance program guarantee, as described in paragraph (3); and

(ii) the total farm revenue for a farm, as described in paragraph (4).

(B) Limitation

The disaster assistance program guarantee for a crop used to calculate the payments for a farm under subparagraph (A)(i) may not be greater than 90 percent of the sum of the expected revenue, as described in paragraph (5) for each of the crops on a farm, as determined by the Secretary.

(C) Exclusion of subsequently planted crops

In calculating the disaster assistance program guarantee under paragraph (3) and the total farm revenue under paragraph (4), the Secretary shall not consider the value of any crop that—

(i) is produced on land that is not eligible for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) or assistance under the noninsured crop assistance program; or

(ii) is subsequently planted on the same land during the same crop year as the crop for which disaster assistance is provided under this subsection, except in areas in which double-cropping is a normal practice, as determined by the Secretary.

(3) Supplemental revenue assistance program guarantee

(A) In general

Except as otherwise provided in this paragraph, the supplemental assistance program guarantee shall be the sum obtained by adding—

(i) for each insurable commodity on the farm, 115 percent of the product obtained by multiplying—

(I) a payment rate for the commodity that is equal to the price election for the commodity elected by the eligible producer;

(II) the payment acres for the commodity that is equal to the number of acres planted, or prevented from being planted, to the commodity;

(III) the payment yield for the commodity that is equal to the percentage of the crop insurance yield elected by the producer of the higher of—

(aa) the adjusted noninsured crop assistance program yield; or

(bb) the counter-cyclical program payment yield for each crop; and

(ii) for each noninsurable commodity on a farm, 120 percent of the product obtained by multiplying—

(I) a payment rate for the commodity that is equal to 100 percent of the noninsured crop assistance program established price for the commodity;

(II) the payment acres for the commodity that is equal to the number of acres planted, or prevented from being planted, to the commodity; and

(III) the payment yield for the commodity that is equal to 50 percent of the higher of—

(aa) the adjusted noninsured crop assistance program yield; or

(bb) the counter-cyclical program payment yield for each crop.

(B) Adjustment insurance guarantee

Notwithstanding subparagraph (A), in the case of an insurable commodity for which a plan of insurance provides for an adjustment in the guarantee, such as in the case of prevented planting, the adjusted insurance guarantee shall be the basis for determining the disaster assistance program guarantee for the insurable commodity.

(C) Adjusted assistance level

Notwithstanding subparagraph (A), in the case of a noninsurable commodity for which the noninsured crop assistance program provides for an adjustment in the level of assistance, such as in the case of unharvested crops, the adjusted assistance level shall be the basis for determining the disaster assistance program guarantee for the noninsurable commodity.

(D) Equitable treatment for non-yield based policies

The Secretary shall establish equitable treatment for non-yield based policies and plans of insurance, such as the Adjusted Gross Revenue Lite insurance program.

(4) Farm revenue

(A) In general

For purposes of this subsection, the total farm revenue for a farm,\(^3\) shall equal the sum obtained by adding—

(i) the estimated actual value for each crop produced on a farm by using the product obtained by multiplying—

(I) the actual production by crop on a farm for purposes of determining losses under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) or the noninsured crop assistance program; and

(II) subject to subparagraphs (B) and (C), to the extent practicable, the national average market price received for the marketing year, as determined by the Secretary;

(ii) 15 percent of amount of any direct payments made to the producer under sections 1103 and 1303 of the Food, Conservation, and Energy Act of 2008 [7 U.S.C. 8713, 8753] or successor sections;

(iii) the total amount of any counter-cyclical payments made to the producer under sections 1104 and 1304 of the Food, Conservation, and Energy Act of 2008 [7 U.S.C. 8714, 8754] or successor sections or of any average crop revenue election payments made to the producer under section 1105 of that Act [7 U.S.C. 8715];

(iv) the total amount of any loan deficiency payments, marketing loan gains,

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\(^3\)So in original. The comma probably should not appear.
and marketing certificate gains made to
the producer under subtitles B and C of the
Food, Conservation, and Energy Act of
2008 or successor subtitles;
(v) the amount of payments for pre-
vented planting on a farm;
(vi) the amount of crop insurance indem-
nities received by an eligible producer on a
farm for each crop on a farm;
(vii) the amount of payments an eligible
producer on a farm received under the non-
insured crop assistance program for each
crop on a farm; and
(viii) the value of any other natural dis-
aster assistance payments provided by the
Federal Government to an eligible pro-
ducer on a farm for each crop on a farm for
the same loss for which the eligible pro-
ducer is seeking assistance.

(B) Adjustment
The Secretary shall adjust the average
market price received by the eligible pro-
ducer on a farm—
(i) to reflect the average quality dis-
counts applied to the local or regional
market price of a crop or mechanically
harvested forage due to a reduction in the
intrinsic characteristics of the production
resulting from adverse weather, as deter-
mined annually by the State office of the
Farm Service Agency;
(ii) to account for a crop the value of
which is reduced due to excess moisture
resulting from a disaster-related condi-
tion; and
(iii) as the Secretary determines appro-
priate, to reflect regional variations in a
manner consistent with the operation of
the Federal crop insurance program under
the Federal Crop Insurance Act (7 U.S.C.
1501 et seq.) and the noninsured crop as-
sistance program.

(C) Maximum amount for certain crops
With respect to a crop for which an eligi-
ble producer on a farm receives assistance
under the noninsured crop assistance pro-
gram, the national average market price re-
ceived during the marketing year shall be an
amount not more than 100 percent of the
price of the crop established under the non-
insured crop assistance program.

(5) Expected revenue
The expected revenue for each crop on a
farm shall equal—
(A) for each insurable commodity, the
product obtained by multiplying—
(I) the greater of—
(I) the adjusted actual production his-
tory yield of the eligible producer on a
farm; and
(II) the counter-cyclical program pay-
ment yield;
(ii) the acreage planted or prevented
from being planted for each crop; and
(iii) 100 percent of the price election for
the commodity used to calculate an in-
demnity for an applicable policy of insur-
ance if an indemnity is triggered; and
(B) for each noninsurable crop, the product
obtained by multiplying—
(i) 100 percent of the adjusted noninsured
crop assistance program yield;
(ii) the acreage planted or prevented
from being planted for each crop; and
(iii) 100 percent of the noninsured crop as-
sistance program price for each of the
crops on a farm.

(6) Production on the farm
(A) Normal production on the farm
The normal production on the farm shall
equal the sum of the expected revenue for
each crop on a farm as determined under
paragraph (5).

(B) Actual production on the farm
The actual production on the farm shall
equal the sum obtained by adding—
(i) for each insurable commodity on the
farm, the product obtained by multiply-
ing—
(I) 100 percent of the price election for
the commodity used to calculate an in-
demnity for an applicable policy of insur-
ance if an indemnity is triggered; and
(II) the quantity of the commodity
produced on the farm, adjusted for qual-
ity losses; and
(ii) for each noninsurable commodity on
a farm, the product obtained by multiply-
ing—
(I) 100 percent of the noninsured crop
assistance program established price for
the commodity; and
(II) the quantity of the commodity
produced on the farm, adjusted for qual-
ity losses.

(c) Livestock indemnity payments
(1) Payments
The Secretary shall use such sums as are
necessary from the Trust Fund to make live-
stock indemnity payments to eligible produc-
ers on farms that have incurred livestock
death losses in excess of the normal mortality
due to adverse weather, as determined by the
Secretary, during the calendar year, including
losses due to hurricanes, floods, blizzards, dis-
ease, wildfires, extreme heat, and extreme
cold.

(2) Payment rates
Indemnity payments to an eligible producer
on a farm under paragraph (1) shall be made at
a rate of 75 percent of the market value of the
applicable livestock on the day before the date
of death of the livestock, as determined by the
Secretary.

(d) Livestock forage disaster program
(1) Definitions
In this subsection:

(A) Covered livestock
(i) In general
The term “covered livestock” means
livestock of an eligible livestock producer

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4See References in Text note below.
that, during the 60 days prior to the beginning date of a qualifying drought or fire condition, as determined by the Secretary, the eligible livestock producer—

(I) owned;

(II) leased;

(III) purchased;

(IV) entered into a contract to purchase;

(V) is a contract grower; or

(VI) sold or otherwise disposed of due to qualifying drought conditions during—

(aa) the current production year; or

(bb) subject to paragraph (3)(B)(ii), 1 or both of the 2 production years immediately preceding the current production year.

(ii) Exclusion

The term “covered livestock” does not include livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire condition, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary.

(B) Drought monitor

The term “drought monitor” means a system for classifying drought severity according to a range of abnormally dry to exceptional drought, as defined by the Secretary.

(C) Eligible livestock producer

(i) In general

The term “eligible livestock producer” means an eligible producer on a farm that—

(I) is an owner, cash or share lessee, or contract grower of covered livestock that provides the pastureland or grazing land, including cash-leased pastureland or grazing land, for the livestock;

(II) provides the pastureland or grazing land for covered livestock, including cash-leased pastureland or grazing land that is physically located in a county affected by drought;

(III) certifies grazing loss; and

(IV) meets all other eligibility requirements established under this subsection.

(ii) Exclusion

The term “eligible livestock producer” does not include an owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis.

(D) Normal carrying capacity

The term “normal carrying capacity”, with respect to each type of grazing land or pastureland in a county, means the normal carrying capacity, as determined under paragraph (3)(D)(i), that would be expected from the grazing land or pastureland for livestock during the normal grazing period, in the absence of a drought or fire that diminishes the production of the grazing land or pastureland.

(E) Normal grazing period

The term “normal grazing period”, with respect to a county, means the normal grazing period during the calendar year for the county, as determined under paragraph (3)(D)(i).

(2) Program

The Secretary shall use such sums as are necessary from the Trust Fund to provide compensation for losses to eligible livestock producers due to grazing losses for covered livestock due to—

(A) a drought condition, as described in paragraph (3); or

(B) fire, as described in paragraph (4).

(3) Assistance for losses due to drought conditions

(A) Eligible losses

(i) In general

An eligible livestock producer may receive assistance under this subsection only for grazing losses for covered livestock due to haying or grazing under the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.).

(ii) Exclusions

An eligible livestock producer may not receive assistance under this subsection for grazing losses that occur on land used for haying or grazing under the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.).

(B) Monthly payment rate

(i) In general

Except as provided in clause (ii), the payment rate for assistance under this paragraph for 1 month shall be equal to 60 percent of the lesser of—

(I) the monthly feed cost for all covered livestock owned or leased by the eligible livestock producer, as determined under subparagraph (C); or

(II) the monthly feed cost calculated by using the normal carrying capacity of the eligible grazing land of the eligible livestock producer.

(ii) Partial compensation

In the case of an eligible livestock producer that sold or otherwise disposed of covered livestock due to drought conditions in 1 or both of the 2 production years immediately preceding the current production year, as determined by the Secretary, the payment rate shall be 80 percent of the payment rate otherwise calculated in accordance with clause (i).

(C) Monthly feed cost

(i) In general

The monthly feed cost shall equal the product obtained by multiplying—
(I) 30 days;  
(II) a payment quantity that is equal to the feed grain equivalent, as determined under clause (ii); and 
(III) a payment rate that is equal to the corn price per pound, as determined under clause (iii).

(ii) Feed grain equivalent

For purposes of clause (i)(I), the feed grain equivalent shall equal— 
(I) in the case of an adult beef cow, 15.7 pounds of corn per day; or 
(II) in the case of any other type of weight of livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed the livestock.

(iii) Corn price per pound

For purposes of clause (i)(II), the corn price per pound shall equal the quotient obtained by dividing— 
(I) the higher of— 
(aa) the national average corn price per bushel for the 12-month period immediately preceding March 1 of the year for which the disaster assistance is calculated; or 
(bb) the national average corn price per bushel for the 24-month period immediately preceding that March 1; by 
(II) 56.

(D) Normal grazing period and drought monitor intensity

(i) FSA county committee determinations

(I) In general

The Secretary shall determine the normal carrying capacity and normal grazing period for each type of grazing land or pastureland in the county served by the applicable committee.

(II) Changes

No change to the normal carrying capacity or normal grazing period established for a county under subclause (I) shall be made unless the change is requested by the appropriate State and county Farm Service Agency committees.

(ii) Drought intensity

(I) D2

An eligible livestock producer that owns or leases grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having a D2 (severe drought) intensity in any area of the county for at least 8 consecutive weeks during the normal grazing period for the county, as determined by the Secretary, shall be eligible to receive assistance under this paragraph in an amount equal to 1 monthly payment using the monthly payment rate determined under subparagraph (B).

(II) D3

An eligible livestock producer that owns or leases grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the county, as determined by the Secretary, shall be eligible to receive assistance under this paragraph in an amount equal to 2 monthly payments using the monthly payment rate determined under subparagraph (B); or

(A) In general

An eligible livestock producer may receive assistance under this paragraph only if— 
(i) the grazing losses occur on rangeland that is managed by a Federal agency; and 
(ii) the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire.

(B) Payment rate

The payment rate for assistance under this paragraph shall be equal to 50 percent of the monthly feed cost for the total number of livestock covered by the Federal lease of the eligible livestock producer, as determined under paragraph (3)(C).

(C) Payment duration

(I) In general

Subject to clause (ii), an eligible livestock producer shall be eligible to receive assistance under this paragraph for the period— 
(I) beginning on the date on which the Federal agency excludes the eligible livestock producer from using the managed rangeland for grazing; and 
(II) ending on the last day of the Federal lease of the eligible livestock producer.

(ii) Limitation

An eligible livestock producer may only receive assistance under this paragraph for losses that occur on not more than 180 days per year.

(5) Minimum risk management purchase requirements

(A) In general

Except as otherwise provided in this paragraph, a livestock producer shall only be eligible for assistance under this subsection if the livestock producer—
(i) obtained a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) for the grazing land incurring the losses for which assistance is being requested; or
(ii) filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the grazing land incurring the losses for which assistance is being requested.

(B) Waiver for socially disadvantaged, limited resource, or beginning farmer or rancher

In the case of an eligible livestock producer that is a socially disadvantaged farmer or rancher or limited resource or beginning farmer or rancher, as determined by the Secretary, the Secretary may—
(i) waive subparagraph (A); and
(ii) provide disaster assistance under this subsection at a level that the Secretary determines to be equitable and appropriate.

(C) Waiver for 2008 calendar year

In the case of an eligible livestock producer that suffered losses on grazing land during the 2008 calendar year but does not meet the requirements of subparagraph (A), the Secretary shall waive subparagraph (A) if the eligible livestock producer pays a fee in an amount equal to the applicable noninsured crop assistance program fee or catastrophic risk protection plan fee required under subparagraph (A) to the Secretary not later than 90 days after the date of enactment of this subchapter.4

(D) Equitable relief

(i) In general

The Secretary may provide equitable relief to an eligible livestock producer that is otherwise ineligible or unintentionally fails to meet the requirements of subparagraph (A) for the grazing land incurring the loss on a case-by-case basis, as determined by the Secretary.

(ii) 2008 calendar year

In the case of an eligible livestock producer that suffered losses on grazing land during the 2008 calendar year, the Secretary shall take special consideration to provide equitable relief in cases in which the eligible livestock producer failed to meet the requirements of subparagraph (A) for the grazing land incurring the loss on a case-by-case basis, as determined by the Secretary.

(E) Nursery tree grower

The term “nursery tree grower” means a person who produces nursery, ornamental, fruit, nut, or Christmas trees for commercial sale, as determined by the Secretary.

(F) Tree assistance program

(1) Definitions

In this subsection:
(A) Eligible orchardist

The term “eligible orchardist” means a person that produces annual crops from trees for commercial purposes.

(B) Natural disaster

The term “natural disaster” means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other occurrence, as determined by the Secretary.

(C) Tree

The term “tree” includes a tree, bush, and vine.

(2) Eligibility

(A) Loss

Subject to subparagraph (B), the Secretary shall use such sums as are necessary from the Trust Fund to provide assistance—
(i) under paragraph (3) to eligible orchardists and nursery tree growers that planted trees for commercial purposes but lost the trees as a result of a natural disaster, as determined by the Secretary; and
(ii) under paragraph (3)(B) to eligible orchardists and nursery tree growers that have a production history for commercial purposes on planted or existing trees but lost the trees as a result of a natural disaster, as determined by the Secretary.

(B) Limitation

An eligible orchardist or nursery tree grower shall qualify for assistance under
(3) Assistance

Subject to paragraph (4), the assistance provided by the Secretary to eligible orchardists and nursery tree growers for losses described in paragraph (2) shall consist of—

(A)(i) reimbursement of 70 percent of the cost of replanting trees lost due to a natural disaster, as determined by the Secretary, in excess of 15 percent mortality (adjusted for normal mortality); or

(ii) at the option of the Secretary, sufficient seedlings to reestablish a stand; and

(B) reimbursement of 50 percent of the cost of pruning, removal, and other costs incurred by an eligible orchardist or nursery tree grower to salvage existing trees or, in the case of tree mortality, to prepare the land to replant trees as a result of damage or tree mortality due to a natural disaster, as determined by the Secretary, in excess of 15 percent damage or mortality (adjusted for normal tree damage and mortality).

(4) Limitations on assistance

(A) Definitions of legal entity and person

In this paragraph, the terms “legal entity” and “person” have the meaning given those terms in section 1001(a) of the Food Security Act of 1985 (7 U.S.C. 1308(a)) (as amended by section 1603 of the Food, Conservation, and Energy Act of 2008).

(B) Amount

The total amount of payments received, directly or indirectly, by a person or legal entity (excluding a joint venture or general partnership) under this subsection may not exceed $100,000 for any crop year, or an equivalent value in tree seedlings.

(C) Acres

The total quantity of acres planted to trees or tree seedlings for which a person or legal entity shall be entitled to receive payments under this subsection may not exceed 500 acres.

(g) Risk management purchase requirement

(1) In general

Except as otherwise provided in this section, the eligible producers on a farm shall not be eligible for assistance under this section (other than subsections (c) and (d)) if the eligible producers on the farm—

(A) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, did not obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) (excluding a crop insurance pilot program under that Act); or

(B) in the case of each noninsurable commodity of the eligible producers on the farm, did not file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program.

(2) Minimum

To be considered to have obtained insurance under paragraph (1)(A), an eligible producer on a farm shall have obtained a policy or plan of insurance with not less than 50 percent yield coverage at 55 percent of the insurable price for each crop planted or intended to be planted for harvest on a whole farm.

(3) Waiver for socially disadvantaged, limited resource, or beginning farmer or rancher

With respect to eligible producers that are socially disadvantaged farmers or ranchers or limited resource or beginning farmers or ranchers, as determined by the Secretary, the Secretary may—

(A) waive paragraph (1); and

(B) provide disaster assistance under this section at a level that the Secretary determines to be equitable and appropriate.

(4) Waivers for certain crop years

(A) 2008 crop year

In the case of an eligible producer that suffered losses in an insurable commodity or noninsurable commodity during the 2008 crop year but does not meet the requirements of paragraph (1), the Secretary shall waive paragraph (1) if the eligible producer pays a fee in an amount equal to the applicable noninsured crop assistance program fee or catastrophic risk protection plan fee required under paragraph (1) to the Secretary not later than 90 days after the date of enactment of this subchapter.

(B) 2009 crop year

In the case of an insurable commodity or noninsurable commodity for the 2009 crop year that does not meet the requirements of paragraph (1) and the relevant crop insurance program sales closing date or noninsured crop assistance program fee payment date was prior to August 14, 2008, the Secretary shall waive paragraph (1) if the eligible producer of the insurable commodity or noninsurable commodity pays a fee in an amount equal to the applicable noninsured crop assistance program fee or catastrophic risk protection plan fee required under paragraph (1) to the Secretary not later than 90 days after October 13, 2008.

(5) Equitable relief

(A) In general

The Secretary may provide equitable relief to eligible producers on a farm that are otherwise ineligible or unintentionally fail to meet the requirements of paragraph (1) for 1 or more crops on a farm on a case-by-case basis, as determined by the Secretary.

(B) 2008 crop year

In the case of eligible producers on a farm that suffered losses in an insurable commodity or noninsurable commodity during the 2008 crop year, the Secretary shall take spe-
special consideration to provide equitable relief in cases in which the eligible producers failed to meet the requirements of paragraph (1) due to the enactment of this subchapter after the closing date of sales periods for crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) and the non-insured crop assistance program.

(6) De minimis exception

(A) In general

For purposes of assistance under subsection (b), at the option of an eligible producer on a farm, the Secretary shall waive subsection (b)—

(i) in the case of a portion of the total acreage of a farm of the eligible producer that is not of economic significance on the farm, as established by the Secretary; or

(ii) in the case of a crop for which the administrative fee required for the purchase of noninsured crop disaster assistance coverage exceeds 10 percent of the value of that coverage.

(B) Treatment of acreage

The Secretary shall not consider the value of any crop exempted under subparagraph (A) in calculating the supplemental revenue assistance program guarantee under subsection (b)(3) and the total farm revenue under subsection (b)(4).

(7) 2008 transition assistance

(A) In general

Eligible producers on a farm described in subparagraph (A) of paragraph (4) that failed to timely pay the appropriate fee described in that subparagraph shall be eligible for assistance under this section in accordance with subparagraph (B) if the eligible producers on the farm—

(i) pay the appropriate fee described in paragraph (4)(A) not later than 90 days after February 17, 2009; and

(ii)(I) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, agree to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) (excluding a crop insurance pilot program under that Act) for the next insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

(II) in the case of each noninsurable commodity of the eligible producers on the farm, agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the non-insured crop assistance program for the next year for which a policy is available.

(B) Amount of assistance

Eligible producers on a farm that meet the requirements of subparagraph (A) shall be eligible to receive assistance under this section as if the eligible producers on the farm—

(i) in the case of each insurable commodity of the eligible producers on the farm, had obtained a policy or plan of insurance for the 2008 crop year at a level of coverage not to exceed 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

(ii) in the case of each noninsurable commodity of the eligible producers on the farm, had filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the non-insured crop assistance program for the 2008 crop year, except that in determining the level of coverage, the Secretary shall use 70 percent of the applicable yield.

(C) Equitable relief

Except as provided in subparagraph (D), eligible producers on a farm that met the requirements of paragraph (1) before the deadline described in paragraph (4)(A) and are eligible to receive, a disaster assistance payment under this section for a production loss during the 2008 crop year shall be eligible to receive an amount equal to the greater of—

(i) the amount that would have been calculated under subparagraph (B) if the eligible producers on the farm had paid the appropriate fee under that subparagraph; or

(ii) the amount that would have been calculated under subparagraph (A) of subsection (b)(3) if—

(I) in clause (i) of that subparagraph, “120 percent” is substituted for “115 percent”; and

(II) in clause (ii) of that subparagraph, “125” is substituted for “120 percent”.

(D) Limitation

For amounts made available under this paragraph, the Secretary may make such adjustments as are necessary to ensure that no producer receives a payment under this paragraph for an amount in excess of the assistance received by a similarly situated producer that had purchased the same or higher level of crop insurance prior to February 17, 2009.

(E) Authority of the Secretary

The Secretary may provide such additional assistance as the Secretary considers appropriate to provide equitable treatment for eligible producers on a farm that suffered production losses in the 2008 crop year that result in multiyear production losses, as determined by the Secretary.

(F) Lack of access

Notwithstanding any other provision of this section, the Secretary may provide assistance (including multiyear assistance) under this section to eligible producers on a farm that—

(i) suffered a production loss or multiyear production losses due to a natural cause during the 2008 crop year; and

6So in original. Probably should be “125 percent.”
(ii) as determined by the Secretary—
(I)(aa) except as provided in item (bb), lack access to a policy or plan of insurance under subtitle A; or
(bb) do not qualify for a written agreement because 1 or more farming practices, which the Secretary has determined are good farming practices, of the eligible producers on the farm differ significantly from the farming practices used by producers of the same crop in other regions of the United States; and
(II) are not eligible for the uninsured crop disaster assistance program established by section 7333 of title 7.

(h) Payment limitations

(1) Definitions of legal entity and person
In this subsection, the terms "legal entity" and "person" have the meaning given those terms in section 1001(a) of the Food Security Act of 1985 (7 U.S.C. 1308(a)) (as amended by section 1603 of the Food, Conservation, and Energy Act of 2008).

(2) Amount
The total amount of disaster assistance payments received, directly or indirectly, by a person or legal entity (excluding a joint venture or general partnership) under this section (excluding payments received under subsection (f)) may not exceed $100,000 for any crop year.

(3) AGI limitation
Section 1001D of the Food Security Act of 1985 (7 U.S.C. 1308-3a) or any successor provision shall apply with respect to assistance provided under this section.

(4) Direct attribution
Subsections (e) and (f) of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) or any successor provisions relating to direct attribution shall apply with respect to assistance provided under this section.

(5) Transition rule

(i) Period of effectiveness
This section shall be effective only for losses that are incurred as the result of a disaster, adverse weather, or other environmental condition that occurs on or before September 30, 2011, as determined by the Secretary.

(j) No duplicative payments
In implementing any other program which makes disaster assistance payments (except for indemnities made under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.)) and section 7333 of title 7, the Secretary shall prevent duplicative payments with respect to the same loss for which a person receives a payment under subsection (b), (c), (d), (e), or (f).

References in Text


The date of enactment of this subchapter, referred to in subsecs. (d)(3)(C) and (g)(4)(A), was in the original "the date of enactment of this subchapter", and was translated as meaning the date of enactment of title IX of Pub. L. 93-618, as added by Pub. L. 110-246, which was approved June 19, 2008, to reflect the probable intent of Congress.

Section 1001(a) of the Food Security Act of 1985 (as amended by section 1603 of the Food, Conservation, and Energy Act of 2008), referred to in subsecs. (f)(4)(A) and (h)(1), means section 1001(a) of Pub. L. 99-198, as amended by section 1603 of Pub. L. 110-246, which is classified to section 1308(a) of Title 7, Agriculture. Subtitle A, referred to in subsec. (g)(7)(F)(1)(aa), probably means subtitle A of title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, known as the Federal Crop Insurance Act, which is classified generally to subchapter I (7 U.S.C. 1501 et seq.) of chapter 36 of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Codification

Amendments


Subsec. (g)(7)(F)(1). Pub. L. 111-80, §745(b)(2), inserted "or multyear production losses" after "a production loss".


Subsec. (a)(3)(B). Pub. L. 110-398, §2(b)(1)(A), inserted "has" after "on a farm that".


Pub. L. 110-398, §2(b)(1)(B), substituted "under—" for "section 7912 of title 7, section 1102 of the Food, Con-
servation, and Energy Act of 2008, or a successor section,” and added cls. (i) to (iii).


Subsec. (a)(5)(B)(ii), Pub. L. 110–398, § 2(b)(1)(C), substituted “the actual production on the farm is less than 50 percent of the normal production on the farm,” for “the total loss of production of the farm relating to weather is greater than 50 percent of the normal production of the farm, as determined by the Secretary.”


Subsec. (a)(7)(A), Pub. L. 110–398, § 2(b)(1)(D), inserted “for sale or on-farm livestock feeding (including native grassland intended for haying)” after “harvest”.


Subsec. (a)(8)(B), Pub. L. 110–398, § 2(b)(1)(E), redesignated par. (6) to (12) as (8) to (14), respectively. Former par. (15) and (14) redesignated (16) and (17), respectively.


Subsec. (b)(3)(A)(ii)(III)(aa), Pub. L. 110–398, § 2(b)(2)(C)(i)(I), added subcl. (I) and struck out former subcl. (I) which read as follows: “the actual crop acreage harvested by an eligible producer on a farm.”


Subsec. (b)(5)(A), Pub. L. 110–398, § 2(b)(2)(E)(ii)(I), substituted “for each insurable commodity, the product” for “the product” in introductory provisions.


Subsec. (b)(5)(A)(iii), Pub. L. 110–398, § 2(b)(2)(E)(ii)(II), substituted “of the price election for the commodity used to calculate an indemnity for an applicable policy of insurance if an indemnity is triggered; and” for “of the insurance price guarantee; and”.


Subsec. (f)(2)(A), Pub. L. 110–398, § 2(b)(4), substituted “the Secretary shall use such sums as are necessary from the Trust Fund to provide” for “the Secretary shall provide” in introductory provisions.

Subsec. (g)(1), Pub. L. 110–398, § 2(b)(5)(A)(i), substituted “other than subsection (c)” for “other than subsection (c)” in introductory provisions.
ricultural Disaster Relief Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to:

(A) any provision of law which is not contained or referenced in this subchapter or in a revenue Act, and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

(c) Administration

(1) Reports

The Secretary of the Treasury shall be the trustee of the Agricultural Disaster Relief Trust Fund and shall submit an annual report to Congress each year on the financial condition and the results of the operations of such Trust Fund during the preceding fiscal year and on its expected condition and operations during the 4 fiscal years succeeding such fiscal year. Such report shall be printed as a House document of the session of Congress to which the report is made.

(2) Investment

(A) In general

The Secretary of the Treasury shall invest such portion of the Agricultural Disaster Relief Trust Fund as is not in his judgment required to meet current withdrawals. Such investments may be made only in interest bearing obligations of the United States. For such purpose, such obligations may be acquired—

(i) on original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price.

(B) Sale of obligations

Any obligation acquired by the Agricultural Disaster Relief Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) Interest on certain proceeds

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Agricultural Disaster Relief Trust Fund shall be credited to and form a part of such Trust Fund.

(d) Expenditures from Trust Fund

Amounts in the Agricultural Disaster Relief Trust Fund shall be available for the purposes of making expenditures to meet those obligations of the United States incurred under section 2497 of this title or section 1531 of title 7 (as such sections are in effect on the date of the enactment of the Food, Conservation, and Energy Act of 2008).

(e) Authority to borrow

(1) In general

There are authorized to be appropriated, and are appropriated, to the Agricultural Disaster Relief Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

(2) Repayment of advances

(A) In general

Advances made to the Agricultural Disaster Relief Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in such Trust Fund.

(B) Rate of interest

Interest on advances made pursuant to this subsection shall be—

(i) at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding, and

(ii) compounded annually.


REFERENCES IN TEXT


The date of the enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (d), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

Codification


§ 2497b. Jurisdiction

Legislation in the Senate of the United States amending section 2497 or 2497a of this title shall be referred to the Committee on Finance of the Senate.


Codification


CHAPTER 13—TRADE AGREEMENTS ACT OF 1979

Sec. 2501. Short title.
2502. Congressional statement of purposes.
2503. Approval of trade agreements.
2504. Relationship of trade agreements to United States law.

SUBCHAPTER I—GOVERNMENT PROCUREMENT

2511. General authority to modify discriminatory purchasing requirements.
2512. Authority to encourage reciprocal competitive procurement practices.
2513. Waiver of discriminatory purchasing requirements with respect to purchases of civil aircraft.
2514. Expansion of the coverage of the Agreement.
2515. Monitoring and enforcement.
§ 2501. Short title

This Act may be cited as the "Trade Agreements Act of 1979".

(Pub. L. 96-39, §1(a), July 26, 1979, 93 Stat. 144.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96-39, July 26, 1979, 93 Stat. 144, which enacted this chapter and sections 1516a, 1671 to 1671f, 1673 to 1673i, 1675, 1677 to 1677g, and 2413 to 2416 of this title, amended the Tariff Schedules, and sections 1303, 1311, 1315, 1332, 1396, 1397, 1397a, 1401a, 1466, 1500, 1504 to 1506, 1562, 2083, 2112, 2119, 2131, 2155, 2192, 2194, 2211, 2251, 2253, 2411, 2412, 2432, 2434, 2435, 2462 to 2464, 2481, and 2496 of this title, section 5315 of Title 5, Government Organization and Employees, section 301 of Title 13, Census, sections 995, 5001 to 5008, 5043, 5061, 5066, 5066, 5116, 5171 to 5173, 5175 to 5178, 5180, 5181, 5201 to 5206, 5207, 5211 to 5215, 5215 to 5223, 5221, 5222, 5235, 5241, 5273, 5291, 5301, 5302, 5361 to 5363, 5365, 5381, 5391, 5551, 5601, 5604, 5610, 5612, 5613, 5663, 5681, 5682, and 5691 of Title 26, Internal Revenue Code, and sections 1541, 1582, 2632, and 2633, and 2637 of Title 28, Judici ary and Judicial Procedure, repealed sections 180 to 171 and 1402 of this title and sections 5009, 5021 to 5026, 5081 to 5084, 5174, 5233, 5234, 5251, 5252, 5264, and 5521 to 5523 of Title 26, enacted provisions set out as notes under sections 169, 1202, 1303, 1303, 1311, 1401a, 1516a, 1671, 2111, 2112, 2119, 2135, 2464, 2511, 2531, and 2581 of this title, section 301 of Title 13, and sections 1, 5001, 5061, 5171, and 5173 of Title 26, and amended provisions set out as notes in the Tariff Schedules and under section 2101 of this title. For complete classification of this Act to the Code, see Tables.

§ 2502. Congressional statement of purposes

The purposes of this Act are—

(1) to approve and implement the trade agreements negotiated under the Trade Act of 1974 [19 U.S.C. 2101 et seq.];
(2) to foster the growth and maintenance of an open world trading system;
(3) to expand opportunities for the commerce of the United States in international trade; and
(4) to improve the rules of international trade and to provide for the enforcement of such rules, and for other purposes.

(Pub. L. 96-39, §1(c), July 26, 1979, 93 Stat. 146.)

REFERENCES IN TEXT


§ 2503. Approval of trade agreements

(a) Approval of agreements and statements of administrative action

In accordance with the provisions of sections 2112 and 2191 of this title, the Congress approves the trade agreements described in subsection (c) of this section submitted to the Congress on June 19, 1979, and the statements of administrative action proposed to implement such trade agreements submitted to the Congress on that date.

(b) Acceptance of agreements by the President

(1) In general

The President may accept for the United States the final legal instruments or texts em-
bodying each of the trade agreements approved by the Congress under subsection (a) of this section. The President shall submit a copy of each final instrument or text to the Congress on the date such text or instrument is available, together with a notification of any changes in the instruments or texts, including their annexes, if any, as accepted and the texts of such agreements as submitted to the Congress under subsection (a) of this section. Such final legal instruments or texts shall be deemed to be the agreements submitted to and approved by the Congress under subsection (a) of this section if such changes are—

(A) only rectifications of a formal character or minor technical or clerical changes which do not affect the substance or meaning of the texts as submitted to the Congress on June 19, 1979, or

(B) changes in annexes to such agreements, and the President determines that the balance of United States rights and obligations under such agreements is maintained.

(2) Application of agreement between the United States and other countries

No agreement accepted by the President under paragraph (1) shall apply between the United States and any other country unless the President determines that such country—

(A) has accepted the obligations of the agreement with respect to the United States, and

(B) should not otherwise be denied the benefits of the agreement with respect to the United States because such country has not accorded adequate benefits, including substantially equal competitive opportunities for the commerce of the United States to the extent required under section 2136(c) of this title, to the United States.

(3) Limitation on acceptance concerning major industrial countries

The President may not accept an agreement described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of subsection (c) of this section, unless he determines that each major industrial country (as defined in section 2136(d) of this title) is also accepting the agreement. Notwithstanding the preceding sentence, the President may accept such an agreement, if he determines that only one major industrial country is not accepting that agreement and the acceptance of that agreement by that country is not essential to the effective operation of the agreement, and if—

(A) that country is not a major factor in trade in the products covered by that agreement,

(B) the President has authority to deny the benefits of the agreement to that country and has taken steps to deny the benefits of the agreement to that country, or

(C) a significant portion of United States trade would benefit from the agreement, notwithstanding such nonacceptance, and the President determines and reports to the Congress that it is in the national interest of the United States to accept the agreement.

For purposes of this paragraph, the acceptance of an agreement by the European Communities on behalf of its member countries shall also be treated as acceptance of that agreement by each member country, and acceptance of an agreement by all the member countries of the European Communities shall also be treated as acceptance of that agreement by the European Communities.

(c) Trade agreements to which this Act applies

The trade agreements to which subsection (a) of this section applies are the following:


(2) The Agreement on Government Procurement.

(3) The Agreement on Import Licensing Procedures.

(4) The Agreement on Technical Barriers to Trade (relating to product standards).

(5) The Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures).

(6) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

(7) The International Dairy Arrangement.

(8) Certain bilateral agreements on cheese, other dairy products, and meat.

(9) The Arrangement Regarding Bovine Meat.

(10) The Agreement on Trade in Civil Aircraft.

(11) Texts Concerning a Framework for the Conduct of World Trade.

(12) Certain Bilateral Agreements to Eliminate the Wine-Gallon Method of Tax and Duty Assessment.

(13) Certain other agreements to be reflected in Schedule XX of the United States to the General Agreement on Tariffs and Trade, including Agreements—

(A) to Modify United States Watch Marking Requirements, and to Modify United States Tariff Nomenclature and Rates of Duty for Watches,

(B) to Provide Duty-Free Treatment for Agricultural and Horticultural Machinery, Equipment, Implements, and Parts Thereof, and

(C) to Modify United States Tariff Nomenclature and Rates of Duty for Ceramic Tableware.

(14) The Agreement with the Hungarian People’s Republic.

(Pub. L. 96–39, § 2, July 26, 1979, 93 Stat. 147.)

References in Text

Section 2136(c) of this title, referred to in subsec. (b)(2)(B), was repealed, and section 2136(d) of this title, referred to in subsec. (b)(3), which defined the term “major industrial country” was redesignated section 2136(c), by Pub. L. 100–328, title XIV, § 1401(b)(1), Nov. 10, 1988, 112 Stat. 3294. This Act, referred to in subsec. (c), is Pub. L. 96–39, July 26, 1979, 93 Stat. 144, known as the Trade Agree-
§ 2503  TITLE 19—CUSTOMS DUTIES  Page 652

ments Act of 1979. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of this title and Tables.

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (b) of this section delegated to the United States Trade Representative, see section 1-103(b) of Ex. Ord. No. 12158, Jan. 2, 1969, 45 F.R. 998, set out as a note under section 2171 of this title.

APPROVAL AND IMPLEMENTATION OF PROTOCOL TO THE TRADE AGREEMENT RELATING TO CUSTOMS VALUATION

Pub. L. 96-490, §1, Dec. 2, 1980, 94 Stat. 2556, provided that:

“(a) APPROVAL OF PROTOCOL.—In accordance with the provisions of sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the MTN agreements were submitted to Congress for its approval. Section 2 of the Trade Agreements Act of 1979 (93 Stat. 147) [this section] approves the MTN agreements and authorizes the President to accept each of the MTN agreements provided that the President determines that all, or but all one, of the major industrial countries (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d)) is also accepting the agreement. If the President determines that only one major industrial country is not accepting an agreement, the President may nevertheless accept such an agreement if he determines that the acceptance of that agreement by that country is not essential to the effective operation of the agreement, and if:

(A) that country is not a major factor in trade in the products covered by the agreement;

(B) the President has authority to deny the benefits of the agreement to that country and has taken steps to deny the benefits of the agreement to that country; or

(C) a significant portion of United States trade would benefit from the agreement, notwithstanding such nonacceptance, and the President determines and reports to Congress that it is in the national interest of the United States to accept the agreement.

3. Section 2 of the Trade Agreements Act of 1979 [this section] also provides that no agreement accepted by the President shall apply between the United States and any other country unless the President determines that such country:

(A) has accepted the obligations of the agreement with respect to the United States, and

(B) should not otherwise be denied the benefits of the agreement with respect to the United States because such country has not accorded adequate benefits, including substantially equal competitive opportunities for the commerce of the United States to the extent required under section 126(c) of the Trade Act of 1974 (19 U.S.C. 2336(c)), to the United States.

4. Section 701 of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151) [19 U.S.C. 1671], provides that the President must determine that certain conditions must be met before a country can be considered a country under the Agreement and, therefore, entitled to the injury determination provided for in section 705(a) and 705(b) of the Tariff Act of 1990 (93 Stat. 152 and 159) [19 U.S.C. 1671b(a) and 1671d(b)].

5. Section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267) authorizes the President to proclaim certain modifications in the Tariff Schedules of the United States if the President determines that the conditions under section 2(b) of the Trade Agreements Act of 1979 (93 Stat. 147) [subsec. (b) of this section] on acceptance of the Agreement on Trade in Civil Aircraft have been fulfilled.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under and by virtue of the authority vested in me as President, and in conformity with the provisions of sections 2 [this section] and 601(a) of the Trade Agreements Act of 1979 (93 Stat. 147 and 267), herein referred to as “the Act”, section 701 of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151) [19 U.S.C. 1671], and section 301 of title 3 of the United States Code do hereby

1. Determine that:

a. With respect to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, the Agreement on Application of Articles VI and XXIII of the General Agreement on Tariffs and Trade, the Agreement on Import Licensing Procedures, and the Agreement on Trade in Civil Aircraft,
§ 2504. Relationship of trade agreements to United States law

(a) United States statutes to prevail in conflict

No provision of any trade agreement approved by the Congress under section 2503(a) of this title, nor the application of any such provision to any person or circumstance, which is in conflict with any statute of the United States shall be given effect under the laws of the United States.

(b) Implementing regulations

Regulations necessary or appropriate to carry out actions proposed in any statement of proposed administrative action submitted to the Congress under section 2112 of this title to implement each agreement approved under section 2503(a) of this title shall be issued within 1 year after the date of the entry into force of such agreement with respect to the United States.

(c) Changes in statutes to implement a requirement, amendment, or recommendation

(1) Presidential determination

Whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation under such an agreement, he shall submit to the Congress a draft of a bill to accomplish the amendment, repeal, or enactment and a statement of any administrative action proposed to implement the requirement, amendment, or recommendation.
(2) Conditions for taking effect under United States law

No such amendment shall enter into force with respect to the United States, and no such requirement, amendment, or recommendation shall be implemented under United States law, unless—

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

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

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

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

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

(3) Recommendations as to application

The President may make the same type of recommendations, in the same manner and subject to the same conditions, to the Congress with respect to the application of any such requirement, amendment, or recommendation as he may make, under section 2112(f) of this title, with respect to a trade agreement.

(4) Congressional procedures applicable

The bill submitted by the President shall be introduced in accordance with the provisions of subsection (c)(1) of section 2191 of this title, and the provisions of subsections (d), (e), (f), and (g) of such section shall apply to the consideration of the bill. For the purpose of applying section 2191 of this title to such bill—

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

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

(d) Unspecified private remedies not created

Neither the entry into force with respect to the United States of any agreement approved under section 2503(a) of this title, nor the enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

(Pub. L. 96–39, § 3(a)–(c), (f), July 26, 1979, 93 Stat. 148–150.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d), is Pub. L. 96–39, July 26, 1979, 93 Stat. 144, known as the Trade Agreements Act of 1979. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of this title and Tables.

CODIFICATION

As originally enacted section 3 of Pub. L. 96–39 consisted of subsecs. (a) to (c), (e) and (f), without a provision designated as (d). Subsec. (e) amended section 2111(b)(1) of this title and subsec. (f) has been redesignated as (d) for the purposes of codification of this section.

UNITED STATES–CANADA FREE-TRADE AGREEMENT

Subsec. (c) of this section applicable as if United States–Canada Free-Trade Agreement, which entered into force on Jan. 1, 1989, were an agreement approved under section 2503(a) of this title, see section 102(e) of Pub. L. 100–449, set out in a note under section 2112 of this title.

SUBCHAPTER I—GOVERNMENT PROCUREMENT

§ 2511. General authority to modify discriminatory purchasing requirements

(a) Presidential waiver of discriminatory purchasing requirements

Subject to subsection (f) of this section, the President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b) of this section, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) Designation of eligible countries and instrumentalities

The President may designate a foreign country or instrumentality for purposes of subsection (a) of this section only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement or the North American Free Trade Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

(2) is a country or instrumentality, other than a major industrial country, which (A) will otherwise assume the obligations of the Agreement, and (B) will provide such opportunities to such products and suppliers;

(3) is a country or instrumentality, other than a major industrial country, which will provide such opportunities to such products and suppliers; or

(4) is a least developed country.

(c) Modification or withdrawal of waivers and designations

The President may modify or withdraw any waiver granted pursuant to subsection (a) of this section or designation made pursuant to subsection (b) of this section.
(d) Omitted

(e) Procurement procedures by certain Federal agencies

Notwithstanding any other provision of law, the President may direct any agency of the United States listed in Annex 1001.1a–2 of the North American Free Trade Agreement to procure eligible products in compliance with the procedural provisions of chapter 10 of such Agreement.

(f) Small business and minority preferences

The authority of the President under subsection (a) of this section to waive any laws, regulation, procedure, or practice regarding Government procurement does not authorize the waiver of any small business or minority preference.


AMENDMENTS


1988—Subsec. (b)(1). Pub. L. 103–182, §381(a)(2), inserted “or the North American Free Trade Agreement” after “the Agreement”.

Subsecs. (e), (f). Pub. L. 103–182, §381(a)(3), added subsec. (f) of this section.

1986—Subsec. (d). Pub. L. 100–418, §§7004, 7005(e), temporarily added subsec. (d) which read as follows: “The authority of the President under subsection (a) of this section to waive any laws, regulation, procedure, or practice shall be effective notwithstanding any other provision of law hereby enacted (excluding the provisions of amendments made by the Buy American Act of 1988) unless such other provision specifically refers to and amends this section.” See Effective and Termination Dates of 1988 Amendment note below.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 381(e) of title III of Pub. L. 103–182 provided that: “The amendments made by this title [see Tables for classification] shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979 (former 19 U.S.C. 2515(k)), and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.”

Pub. L. 100–418, title VII, §7005(f), Aug. 23, 1988, 102 Stat. 1553, provided that: “The amendments made by this section [amending this section and sections 10a, 10b, 10c, and 10d of Title 41, Public Contracts] shall take effect upon enactment [Aug. 23, 1988].”

EFFECTIVE DATE

Section 309 of title III of Pub. L. 96–39 provided that: “The provisions of this title [this subchapter] shall be effective on the date of enactment of this Act [July 26, 1979], except that—

“(1) the authority of the President to grant waivers under section 303 [section 2513 of this title] shall be effective on January 1, 1980; and

“(2) the authority of the President to grant waivers under section 301 [this section] shall be effective on January 1, 1981.”

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, see section 1–201 of Ex. Ord. No. 12260, set out as a note below.

EX. ORD. NO. 12260. AGREEMENT ON GOVERNMENT PROCUREMENT


By the authority vested in me as President by the Constitution and statutes of the United States of America, including Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511–2518), and Section 301 of Title 3 of the United States Code, and in order to implement the Agreement on Government Procurement, as defined in 19 U.S.C. 2516(1), it is hereby ordered as follows:

1–1. RESPONSIBILITIES

1–101. The obligations of the Agreement on Government Procurement (Agreement on Government Procurement, General Agreement on Tariffs and Trade, 12 April 1979, Geneva (GATT 1979)) apply to any procurement of eligible products by the Executive agencies listed in the Annex to this Order (eligible products are defined in Section 308 of the Trade Agreements Act of 1979; 19 U.S.C. 2516(4)). Such procurement shall be in accord with the policies and procedures of the Office of Federal Procurement Policy (former 41 U.S.C. 401 et seq.).

1–102. The United States Trade Representative, hereinafter referred to as the Trade Representative, shall be responsible for interpretation of the Agreement. The Trade Representative shall seek the advice of the interagency organization established under Section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 172(2)) and consult with affected Executive agencies, including the Office of Federal Procurement Policy.

1–103. The interpretation of Article VIII:1 of the Agreement shall be subject to the concurrence of the Secretary of Defense.

1–104. The Trade Representative shall determine, from time to time, the dollar equivalent of 150,000 Special Drawing Right units and shall publish that determination in the Federal Register. Procurement of less than 150,000 Special Drawing Right units is not subject to the Agreement or this Order (Article I:1(b) of the Agreement).

1–105. In order to ensure coordination of international trade policy with regard to the implementation of the Agreement, agencies shall consult in advance with the Trade Representative about negotiations with foreign governments or instrumentalities which concern government procurement.

1–2. DELEGATIONS AND AUTHORIZATION

1–201. The functions vested in the President by Sections 301, 302, 304, 305(c), and 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2511, 2512, 2514, 2515(c) and 2516) are delegated to the Trade Representative.

1–202. Notwithstanding the delegation in Section 1–201, the Secretary of Defense is authorized, in accord with Section 302(b)(3) of the Trade Agreements Act of 1979 (19 U.S.C. 2512(b)(3)), to waive the prohibitions specified therein.

ANNEX

1. ACTION

2. Administrative Conference of the United States
3. American Battle Monuments Commission
4. Board for International Broadcasting
5. Civil Aeronautics Board
6. Commission on Civil Rights
7. Commodity Futures Trading Commission
8. Consumer Product Safety Commission
9. Department of Agriculture (The Agreement on Government Procurement and Tariffs and Trade Agreement on Government Procurement (GATT Code) and are an important step toward an expanded GATT Code;
WHEREAS, as a result of these commitments, U.S. businesses will obtain increased access to EC member state procurement for U.S. goods and services;
WHEREAS, I have determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act, as amended (former 41 U.S.C. 10a-10d) [see 41 U.S.C. 8301 et seq.], to procurement covered by the Agreement;
NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518), and in order to implement the Agreement, it is hereby ordered as follows:
SECTION 1. In applying the provisions of the Buy American Act, the heads of the agencies listed in Annex 1, Parts A and B, of this order are requested, as of the date of this order, to apply no price differential between articles, materials, or supplies of U.S. origin and those originating in the member states of the EC.
Sect. 2. For purposes of this order, the rule of origin specified in section 308 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2518), shall apply in determining whether goods originate in the member states of the EC.
Sect. 3. This order shall apply only to solicitations, issued by agencies listed in Annex 1, Parts A and B, of this order, above the threshold amounts set forth in Annex 2.
Sect. 4. This order shall apply to solicitations outstanding on the date of this order, except for those for which the initial deadline for receipt of bids or proposals has passed, and to all solicitations issued after the date of this order.
Sect. 5. Except for procurements by the Department of Defense, the United States Trade Representative (USTR) shall be responsible for interpretation of the Agreement. The USTR shall seek the advice of the interagency organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and consult with affected agencies, including the Office of Federal Procurement Policy.
Sect. 6. This Executive order is effective immediately. Although regulatory implementation of this order must await revisions to the Federal Acquisition Regulation (FAR), it is expected that agencies listed in Annex 1, Parts A and B, of this order will take appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.
Sect. 7. Pursuant to section 25 of the Office of Federal Procurement Policy Act, as amended (former 41 U.S.C. 421(a)) [now 41 U.S.C. 1302, 1303], the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 30 days from the date this order is issued.

WILLIAM J. CLINTON.

ANNEX 1A

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy (Not including national security procurement made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act [42 U.S.C. 2011 et seq.]; and oil purchases related to the Strategic Petroleum Reserve)
§ 2512. Authority to encourage reciprocal competitive procurement practices

(a) Authority to bar procurement from non-designated countries

(1) In general

Subject to paragraph (2), the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(A) shall, with respect to procurement covered by the Agreement, prohibit the procurement, after the date on which any waiver under section 2511(a) of this title first takes effect, of products—

(i) which are products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, and

(ii) which would otherwise be eligible products; and

(B) may, with respect to procurement covered by the Agreement, take such other actions within the President's authority as the President deems necessary.

(2) Exception

Paragraph (1) shall not apply in the case of procurements for which—

(A) there are no offers of products or services of the United States or of eligible products; or

(B) the offers of products or services of the United States or of eligible products are insufficient to fulfill the requirements of the United States Government.

(b) Deferrals and waivers

Notwithstanding subsection (a) of this section, but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) waive the prohibition required by subsection (a)(1) of this section on procurement of products of a foreign country or instrumentality which has not yet become a party to the Agreement but—

(A) has agreed to apply transparent and competitive government procurement equivalent to those in the United States or of eligible products; and

(B) maintains and enforces effective prohibitions on bribery and other corrupt practices in connection with its government procurement;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 1872(a) of this title, such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and general policy guidance by the organization established under section 1872(a) of this title, such prohi-
bition for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

Before exercising the waiver authority under paragraph (1), the President shall consult with the appropriate private sector advisory committees established under section 2155 of this title and with the appropriate committees of the Congress.

(c) Report on impact of restrictions

(1) Impact on the economy

On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and equipment in appropriate product sectors.

(2) Recommendations for attaining reciprocity

The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of chapter 83 of title 41. The report shall include an analysis of the effect of such alternative means on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 2514(a) and (b) of this title, other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) Consultation

In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 2155 of this title.

(d) Proposed action

(1) Presidential report

On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) of this section a report which describes the actions he deems appropriate to establish reciprocity with major industrialized countries in the area of Government procurement.

(2) Procedure

(A) Presidential determination

If the President determines that any changes in existing law or new statutory authority are required to authorize or to implement any action proposed in the report submitted under paragraph (1), he shall, on or after January 1, 1982, submit to the Congress a bill to accomplish such changes or provide such new statutory authority. Prior to submitting such a bill, the President shall consult with the appropriate committees of the Congress having jurisdiction over legislation involving subject matters which would be affected by such action, and shall submit to such committees a proposed draft of such bill.

(B) Congressional consideration

The appropriate committee of each House of the Congress shall give a bill submitted pursuant to subparagraph (A) prompt consideration and shall make its best efforts to take final committee action on such bill in an expeditious manner.

1994—Subsec. (a). Pub. L. 103–465, § 343(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(1) shall prohibit the procurement, after the date on which any waiver under section 2511(a) of this title first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, and (B) which are products covered under the Agreement for procurement by the United States; and

(2) may take such other actions within his authority as he deems necessary."


Subsec. (b)(1). Pub. L. 103–465, § 343(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "delay, for a period not to exceed two years, the prohibition of procurement, required pursuant to subsection (a)(1) of this section, of products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, except that no such delay shall be granted with respect to the procurement of products of any major industrial country;"

1999—Subsec. (a)(1). Pub. L. 103–182 substituted "are products covered under the Agreement for procurement by the United States" for "would otherwise be eligible products".
CHANGE OF NAME
Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Effective Date of 1994 Amendment
Section 344 of title III of Pub. L. 103–465 provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle E (§§341–344 of title III of Pub. L. 103–465, amending this section and sections 2513 to 2518, 2520, and 2521 of this title, repealing section 2516 of this title, and amending provisions set out as a note under section 963 of Title 7, Agriculture] take effect on the date on which the Agreement on Government Procurement referred to in section 101(d)(17) [19 U.S.C. 3511(d)(17)] enters into force with respect to the United States [Jan. 1, 1995]."

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 381(c) of Pub. L. 103–182, set out as a note under section 2511 of this title.

Delegation of Functions
Functions of President under this section delegated to United States Trade Representative, see section 1–103(b) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2751 of this title.

§ 2514. Expansion of the coverage of the Agreement
(a) Overall negotiating objective
The President shall seek in the renegotiations provided for in article XXIV(7) of the Agreement more open and equitable market access abroad, and the harmonization, reduction, or elimination of devices which distort trade or commerce related to Government procurement, with the overall goal of maximizing the economic benefit to the United States through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, the development of fair and equitable market opportunities, and open and nondiscriminatory world trade. In carrying out the provisions of this subsection, the President shall consider the assessment made in the report required under section 2516(a)1 of this title.

(b) Sector negotiating objectives
The President shall seek, consistent with the overall objective set forth in subsection (a) of this section and to the maximum extent feasible, with respect to appropriate product sectors, competitive opportunities for the export of United States products to the developed countries of the world equivalent to the competitive opportunities afforded by the United States, taking into account all barriers to, and other distortions of, international trade affecting that sector.

(c) Independent verification objective
The President shall seek to establish in the renegotiation provided for in article XXIV(7) of the Agreement a system for independent verification of information provided by parties to the Agreement to the Committee on Government Procurement pursuant to article XIX(5) of the Agreement.

1 See References in Text note below.
(d) Reports on negotiations

(1) Report in the event of inadequate progress

If, during the renegotiations of the Agreement, the President at any time determines that the renegotiations are not progressing satisfactorily and are not likely to result, within twelve months of the commencement thereof, in an expansion of the Agreement to cover purchases by the entities of the governments of developed countries which are the principal purchasers of goods and equipment in appropriate product sectors, he shall so report to the congressional committees referred to in section 2512(c) of this title. Taking into account the objectives set forth in subsections (a) and (b) of this section and the factors required to be analyzed under section 2512(c) of this title, the President shall further report to such committees appropriate actions to seek reciprocity in such product sectors with such countries in the area of government procurement.

(2) Legislative recommendations

Taking into account the factors required to be analyzed under section 2512(c) of this title, the President may recommend to the Congress legislation (with respect to entities of the Government which are not covered by the Agreement) which may prohibit such entities from purchasing products of such countries.

(3) Annual reports

Each annual report of the President under section 163(a) of the Trade Act of 1974 [19 U.S.C. 2213(a)] made after July 26, 1979 shall report the actions, if any, the President deemed appropriate to establish reciprocity in appropriate product sectors with major industrial countries in the area of government procurement.

(e) Extension of nondiscrimination and national treatment

Before exercising the waiver authority in section 2511 of this title for procurement not covered by the Agreement on the date it enters into force with respect to the United States, the President shall follow the consultation provisions of section 135 [19 U.S.C. 2155] and chapter 6 of title I of the Trade Act of 1974 [19 U.S.C. 2211 et seq.] for private sector and congressional consultations.


References in text


Subsec. (c). Pub. L. 104–295, §20(c)(11)(B), struck out comma after “XXIV(7)” and “XIX(5)”.


Subsec. (c). Pub. L. 103–465, §342(b)(1), (2), substituted “article XXIV(7)” for “part IX, paragraph 6” and “article XIX(5)” for “part VI, paragraph 9”.

Subsec. (e). Pub. L. 103–465, §342(b)(3), substituted “the date it enters into force with respect to the United States” for “July 26, 1979”.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States [Jan. 1, 1995], see section 344(a) of Pub. L. 103–465, set out as a note under section 2512 of this title.

Delegation of Functions

Functions of President under this section delegated to United States Trade Representative, see section 1–201 of Ex. Ord. No. 12290, Dec. 31, 1980, 46 F.R. 1653, set out as a note under section 2511 of this title.

§2515. Monitoring and enforcement

(a) Monitoring and enforcement structure recommendations

In the preparation of the recommendations for the reorganization of trade functions, the President shall ensure that careful consideration is given to monitoring and enforcing the requirements of the Agreement and this subchapter, with particular regard to the tendering procedures required by the Agreement or otherwise agreed to by a country or instrumentality likely to be designated pursuant to section 2511(b) of this title.

(b) Rules of origin

(1) Advisory rulings and final determinations

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

(2) Penalties for fraudulent conduct

In addition to any other provisions of law which may be applicable, section 1001 of title 18 shall apply to fraudulent conduct with respect to the origin of products for purposes of qualifying for a waiver under section 2511 of this title or avoiding a prohibition under section 2512 of this title.

(c) Report to Congress on rules of origin

(1) Domestic administrative practices

As soon as practicable after the close of the two-year period beginning on the date on which any waiver under section 2511(a) of this title first takes effect, the President shall prepare and transmit to Congress a report con-
The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce, including an assessment of such practices on the exports of the United States.

(2) Foreign administrative practices

The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce, including an assessment of such practices on the exports of the United States.

Page 662

TITLE 19—CUSTOMS DUTIES  § 2515

containing an evaluation of administrative practices under any provision of law which requires determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce. Such evaluation shall be accompanied by the President's recommendations for legislative and executive measures required to improve and simplify and to make more uniform and consistent such practices. Such evaluation and recommendations shall take into account the special problems affecting insular possessions of the United States with respect to such practices.

(2) Foreign administrative practices

The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce, including an assessment of such practices on the exports of the United States.


AMENDMENTS

1996—Subsec. (d)(2)(B), (C). Pub. L. 104–295, §20(c)(10), struck out “or” at end of subpar. (B) and substituted semicolon for period at end of subpar. (C).

Subsec. (g)(1). Pub. L. 104–295, §20(c)(13)(A), in introductory provisions, substituted “of subsection (d)(2) of this section” for “of such subsection” and inserted “of subsection (d)(2) of this section” after “(as the case may be)”.

Subsec. (g)(3). Pub. L. 104–295, §20(c)(13)(B), substituted “eliminated the practices” for “eliminated the the practices” and inserted “of subsection (d)(2) of this section” after “(as the case may be)”.


Subsec. (d)(2)(D), (E). Pub. L. 103–465, §341(c)(1), added subpars. (D) and (E) which read as follows:

“(D) or (E) are not signatories to the Agreement;
“(ii) fail to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement; and
“(iii) whose products or services are acquired in significant amounts by the United States Government; or
“(E)(i) are not signatories to the Agreement; and
“(ii) fail to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement; and
“(iii) whose products or services are acquired in significant amounts by the United States Government.”

Subsec. (d)(3)(C). Pub. L. 103–465, §341(c)(2), inserted before period at end “, including the failure to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement”.


Subsec. (f)(2)(B) to (D). Pub. L. 103–465, §341(a)(2)(4), struck out “or” at end of subpar. (B), redesignated subpar. (C) as (D), and added a new subpar. (C) which read as follows: “the procedures result in a determination providing a specific period of time for the other participant to bring its practices into compliance with the Agreement.”

Subsec. (f)(3). Pub. L. 103–465, §341(b)(1), amended heading and text of par. (3) to read as follows:

“(3) SANCTIONS AFTER DISPUTE RESOLUTION FAILS.—
“(A) FAILURES RESULTING IN SANCTIONS.—If—
“(i) within 18 months from the date dispute settlement procedures are initiated with a signatory country pursuant to this section—
“(II) the President shall revoke the waiver of discriminatory purchasing requirements granted to the signatory country pursuant to section 2511(a) of this title.
“(II) the period of time provided for pursuant to paragraph (2)(C) has expired and procedures for suspending concessions under the Agreement have been completed, then the sanctions described in subparagraph (B) shall be imposed.

“(B) SANCTIONS.—
“(1) I

(2) In general.—If subparagraph (A) applies to any signatory country—
“(i) the signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 10b–1 of title 41 shall apply to such country, and
“(ii) the President shall revoke the waiver of discriminatory purchasing requirements granted to the signatory country pursuant to section 2511(a) of this title.

“(ii) TIME SANCTIONS ARE IMPOSED.—Any san-

“(i) described in clause (i)(I) shall apply from the date that is the last day of the 18-month period described in subparagraph (A)(i) or, in the case of paragraph (2)(C), from the date procedures for suspending concessions under the Agreement have been completed, and
“(ii) described in clause (i)(II) shall apply beginning on the day after the date described in sub-

Subsec. (f)(4). Pub. L. 103–465, §341(b)(2), substituted “subclause (I) or (II) of paragraph (3)(B)(i)” for “sub-

Subsec. (g)(1). Pub. L. 103–465, §343(c)(1), in introductory provisions, substituted “(B), (C), (D), or (E)” for “(B) or (C)” and “the practices regarding government procurement identified under subparagraph (B)(i), (C)(i), (D)(i), or (E)(i)” for “their discriminatory procurement practices”.

Subsec. (g)(3). Pub. L. 103–465, §343(c)(2), substituted “the practices regarding government procurement identified under subparagraph (B)(i), (C)(i), (D)(i), or (E)(i)” for “discrimination identified pursuant to subsection (d)(2)(B) or (C) of this section.”

1996—Subsecs. (d) to (k). Pub. L. 100–418, §§7003, 7004, temporarily added subsecs. (d) to (k) which read as follows:

“(d) ANNUAL REPORT ON FOREIGN DISCRIMINATION.—
“(1) ANNUAL REPORT REQUIRED.—The President shall, no later than April 30 1990, and annually on April 30 thereafter, submit to the appropriate committees of the House of Representatives and the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, a report on the extent to which foreign countries discriminate against United States products or services in making government procurements.

“(2) IDENTIFICATIONS REQUIRED.—In the annual re-

“(A) are signatories to the Agreement and not in compliance with the requirements of the Agreement;
“(B)(i) are signatories to the Agreement; (ii) are in compliance with the Agreement but, in the government procurement of products or services not covered by the Agreement, maintain a significant and persistent pattern or practice of discrimination against United States products or services which
results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government.

"(C)(i) are not signatories to the Agreement; (ii) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services in which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government.

"(3) CONSIDERATIONS IN MAKING IDENTIFICATIONS.—In making the identifications required by paragraph (1), the President shall—

"(A) use the requirements of the Agreement, government procurement practices, and the effects of such practices on United States businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for United States products or services;

"(B) take into account, among other factors, whether and to what extent countries that are signatories to the Agreement, and other countries described in paragraph (1) of this subsection—

use sole-sourcing or otherwise noncompetitive procedures for procurements that could have been conducted using competitive procedures;

(ii) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the Agreement’s value threshold or to make the procurements less attractive to United States businesses;

(iii) announce procurement opportunities with inadequate time intervals for United States businesses to submit bids; and

(iv) use specifications in such a way as to limit the ability of United States suppliers to participate in procurements; and

(C) use any other additional criteria deemed appropriate.

"(4) CONTENTS OF REPORTS.—The reports required by this subsection shall include, with respect to each country identified under subparagraph (A), (B), or (C) of paragraph (1), the following:

(A) a description of the specific nature of the discrimination, including (for signatory countries) any provision of the Agreement with which the country is not in compliance;

(B) an identification of the United States products or services that are affected by the noncompliance or discrimination;

(C) an analysis of the impact of the noncompliance or discrimination on the commerce of the United States and the ability of United States companies to compete in foreign government procurement markets; and

(D) a description of the status, action taken, and disposition of cases of noncompliance or discrimination identified in the preceding annual report with respect to such country.

"(5) INFORMATION AND ADVICE FROM GOVERNMENT AGENCIES AND UNITED STATES BUSINESSES.—In developing the annual reports required by this subsection, the President shall seek information and advice from executive agencies through the interagency trade organization established under section 1872(a) of this title, and from United States businesses in the United States and in countries that are signatories to the Agreement and in other foreign countries whose products or services are acquired in significant amounts by the United States Government.

"(6) IMPACT OF NONCOMPLIANCE.—The President shall take into account, in identifying countries in the annual report and in any action required by this section, the relative impact of any noncompliance with the Agreement or of other discrimination on United States commerce and the extent to which such noncompliance or discrimination has impeded the ability of United States suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

"(7) IMPACT ON PROCUREMENT COSTS.—Such report shall also include an analysis of the impact of the United States Government procurement costs that may occur as a consequence of any sanctions that may be required by subsection (f) or (g) of this section.

"(e) CONSULTATION.—No later than the date the annual report is submitted under subsection (d)(1) of this section, the United States Trade Representative, on behalf of the United States, shall request consultations with any countries identified in the report to obtain their compliance with the Agreement or the elimination of their discriminatory procurement practices unless the report or proceedings result in a determination pursuant to subsection (d)(1) of this section in the preceding annual report.

"(f) PROCEDURES WITH RESPECT TO VIOLATIONS OF AGREEMENT.—

"(1) INITIATION OF DISPUTE SETTLEMENT PROCEDURES.—If, within 60 days after the annual report is submitted under subsection (d)(1) of this section, a signatory country identified pursuant to subsection (d)(1)(A) of this section has not complied with the Agreement, then the United States Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under the Agreement unless such proceedings are already underway pursuant to the identification of the signatory country under subsection (d)(1)(A) of this section as not in compliance in a preceding annual report.

"(2) SETTLEMENT OF DISPUTES.—If, before the end of a year following the initiation of dispute settlement procedures—

(A) the other participant to the dispute settlement procedures has complied with the Agreement,

(B) the other participant to the procedures takes the action recommended as a result of the procedures to the satisfaction of the President, or

(C) the procedures result in a determination requiring no action by the other participant, the President shall take no action to limit Government procurement from that participant.

"(3) SANCTIONS AFTER FAILURE OF DISPUTE RESOLUTION.—If the dispute settlement procedures initiated pursuant to this subsection with any signatory country to the Agreement are not concluded within one year from their initiation or the country has not met the requirements of paragraph (2)(A) or (2)(B), then—

(A) from the end of such one year period, such signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 10b-1 of title 41 shall apply to such country; and

(B) on the day after the end of such one year period, the President shall revoke the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 2511(a) of this title.

"(4) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanctions required by subparagraph (A) or (B) of paragraph (3) would harm the public interest of the United States, the President may, to the extent necessary to apply appropriate limitations that are equivalent, in their effects, to the noncompliance with the Agreement by that signatory country—

(A) withhold the imposition of either (but not both) of such sanctions;

(B) modify or restrict the application of either or both such sanctions, subject to such terms and conditions as the President considers appropriate; or

(C) take any combination of the actions permitted by subparagraph (A) or (B) of this paragraph.
‘(5) TERMINATION OF SANCTIONS AND REINSTATEMENT OF WAIVERS.—The President may terminate the sanctions imposed under paragraph (3) or (4), reinstate the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 2511(a) of this title, and remove that country from the report under subsection (d)(1) of this section at such time as the President determines that—

(A) the signatory country has complied with the Agreement;

(B) the signatory country has taken corrective action as a result of the dispute settlement procedures to the satisfaction of the President; or

(C) the dispute settlement procedures result in a determination requiring no action by the other signatory country.

‘(g) PROCEDURES WITH RESPECT TO OTHER DISCRIMINATION.—

‘(1) IMPOSITION OF SANCTIONS.—If, within 60 days after the annual report is submitted under subsection (d)(1) of this section, a country that is identified pursuant to subparagraph (B) or (C) of such subsection has not eliminated their discriminatory procurement practices, then, on the day after the end of such 60-day period—

(A) the President shall identify such country as a country that maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and

(B) the prohibition on procurement contained in section 108–1 of title 41 shall apply to such country.

‘(2) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanction required by paragraph (1) would harm the public interest of the United States, the President may, to the extent necessary to impose appropriate limitations that are equivalent, in their effect, to the discrimination against United States products or services in government procurement by that country, modify or restrict the application of such sanction, subject to such terms and conditions as the President considers appropriate.

‘(3) TERMINATION OF SANCTIONS.—The President may terminate the sanctions imposed under paragraph (1) or (2) and remove a country from the report under subsection (d)(1) of this section at such time as the President determines that the country has eliminated the discrimination identified pursuant to subsection (d)(2)(B) or (C) of this section.

‘(h) LIMITATIONS ON IMPOSING SANCTIONS.—

‘(1) AVOIDING ADVERSE IMPACT ON COMPETITION.—The President shall not take any action under subsection (f) or (g) of this section if the President determines that such action—

(A) would limit the procurement or class of procurements to, or would establish a preference for, the products or services of a single manufacturer or supplier; or

(B) would, with respect to any procurement or class of procurements, result in an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies of requisite quality at competitive prices.

‘(2) ADVICE FROM U.S. AGENCIES AND BUSINESSES.—The President, in taking any action under this subsection to limit government procurements from foreign countries, shall seek the advice of executive agencies through the interagency trade organization established under section 1672(a) of this title and the advice of United States businesses and other interested parties.

‘(i) RENEGOTIATION TO SECURE FULL AND OPEN COMPETITION.—The President shall instruct the United States Trade Representative, in conducting renegotiations of the Agreement, to seek improvements in the Agreement that will secure full and open competition consistent with the requirements imposed by the amendments made by the Competition in Contracting Act (Public Law 96–369; 98 Stat. 1175).

‘(j) FEDERAL REGISTER NOTICES OF ACTIONS.—

‘(1) NOTICES REQUIRED.—A notice shall be published in the Federal Register on the date of any action under this section, describing—

(A) the results of dispute settlement proceedings under subsection (f)(2) of this section;

(B) any sanction imposed under subsection (f)(3) or (g)(1) of this section;

(C) any withholding, modification, or restriction of any sanction under subsection (f)(4) or (g)(2) of this section; and

(D) the termination of any sanction under subsection (f)(5) or (g)(3) of this section.

‘(2) PUBLICATION OF DETERMINATIONS LIFTING SANCTIONS.—A notice describing the termination of any sanction under subsection (f)(5) or (g)(3) of this section shall include a copy of the President’s determination under such subsection.

‘(k) GENERAL REPORT ON ACTIONS UNDER THIS SECTION.—

‘(1) ADVICE TO CONGRESS.—The President shall, as necessary, advise the Congress and, by no later than April 30, 1994, submit to the the [sic] appropriate committees of the House of Representatives, and to the Committee on Governmental Affairs and other appropriate committees of the Senate, a general report on actions taken pursuant to this section.

‘(2) CONTENTS OF REPORT.—The general report required by this subsection shall include an evaluation of the adequacy and effectiveness of actions taken pursuant to subsections (e), (f), and (g) of this section as a means toward eliminating discriminatory government procurement practices against United States businesses.

‘(3) LEGISLATIVE RECOMMENDATIONS.—The general report may also include, if appropriate, legislative recommendations for enhancing the usefulness of this section or for other measures to be used as means for eliminating or responding to discriminatory foreign government procurement practices.

See Termination Date of 1988 Amendment note below.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States [Jan. 1, 1995], see section 7004 of Pub. L. 100–418, set out as a note under section 2512 of this title.

TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by former subsec. (k) of this section, extends such date, see section 7004 of Pub. L. 100–418, set out as an Effective and Termination Date of 1988 Amendment note under section 2511 of this title.

TRANSFER OF FUNCTIONS


Pub. L. 96–609, title II, §205, Dec. 28, 1980, 94 Stat. 3562, provided that: ‘‘Notwithstanding subparagraph (1)(A) of subsection 5(a) of Reorganization Plan No. 3 of 1979 (44 F.R. 69272, 93 Stat. 1381) [set out as a note under section 2171 of this title], the Secretary of the Treasury or his delegate shall issue such advisory rulings and make such determinations as are authorized by subsection 305(b)(1) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(b)(1)).’’

DELEGATION OF FUNCTIONS

Functions of President under subsec. (c) delegated to United States Trade Representative, see section 1–201


Effective Date of Repeal

Repeal by Pub. L. 103–465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States [Jan. 1, 1995], see section 344(a) of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 2512 of this title.

§ 2517. Availability of information to Members of Congress designated as official advisers

The United States Trade Representative shall make available to the Members of Congress designated as official advisers pursuant to section 2211 of this title information compiled by the Committee on Government Procurement under article XIX(5) of the Agreement.


Amendments


Change of Name


Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States [Jan. 1, 1995], see section 344(a) of Pub. L. 103–465, set out as a note under section 2512 of this title.

§ 2518. Definitions

As used in this subchapter—

(1) Agreement

The term “Agreement” means the Agreement on Government Procurement referred to in section 3511(d)(17) of this title, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) Civil aircraft

The term “civil aircraft and related articles” means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts and components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and components thereof, for use with respect to such aircraft,

whether to be purchased for use as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) Developed countries

The term “developed countries” means countries so designated by the President.

(4) Eligible product

(A) In general

The term “eligible product” means, with respect to any foreign country or instrumentality that is—

(i) a party to the Agreement, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States;

(ii) a party to the North American Free Trade Agreement, a product or service of that country or instrumentality which is covered under the North American Free Trade Agreement for procurement by the United States;

(iii) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2003, and before January 2, 2005, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States;

(iv) a party to the Dominican Republic-Central America-United States Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States;

(v) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2005, and before July 2, 2006, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States;

(vi) a party to the United States-Oman Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States;

(vii) a party to the United States-Peru Trade Promotion Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States.

(B) Rule of origin

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or
instrumentality. It has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) Lowered threshold for certain products as a consequence of United States-Israel free trade area provisions

The term “eligible product” includes a product or service of Israel for which the United States is obligated to waive Buy National restrictions under—

(i) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, regardless of the thresholds provided for in the Agreement (as defined in paragraph (1)), or

(ii) any subsequent agreement between the United States and Israel which lowers on a reciprocal basis the applicable threshold for entities covered by the Agreement.

(D) Lowered threshold for certain products as a consequence of United States-Canada Free-Trade Agreement

Except as otherwise agreed by the United States and Canada under paragraph 3 of article 1304 of the United States-Canada Free-Trade Agreement, the term “eligible product” includes a product or service of Canada having a contract value of $25,000 or more that would be covered for procurement by the United States under the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.

(5) Instrumentality

The term “instrumentality” shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(6) Least developed country

The term “least developed country” means any country on the United Nations General Assembly list of least developed countries.

(7) Major industrial country

The term “major industrial country” means any such country as defined in section 2336 of this title and any instrumentality of such a country.

For termination of amendment by section 107(c) of Pub. L. 109–283, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 109–169, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 108–286, see Effective and Termination Dates of 2004 Amendment note below.

References in Text

Section 601(a)(2), referred to in par. (2), is section 601(a)(2) of Pub. L. 96–39, title VI, July 26, 1979, 93 Stat. 207, which directed a duty rate of “Free” in the rate column numbered 1 of the Tariff Schedules of the United States for articles classified under specified items between 518.51 and 772.65 which the President determines would provide coverage comparable to that provided by foreign countries in the Annex to the Agreement on Trade in Civil Aircraft if such articles were certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States, which is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of the title.

Amendments


1994—Par. (1). Pub. L. 103–465, §342(f)(1), substituted “section 3511(d)(17) of this title” for “section 2903(c) of this title”.

Par. (4)(C). Pub. L. 103–465, §342(f)(2)(A), substituted “for which the United States is obligated to waive Buy National restrictions under—” and cls. (i) and (ii) for “having a contract value of $50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurement as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in article K(1)(b) of the Agreement on Government Procurement.”

Par. (4)(D). Pub. L. 103–465, §342(f)(2)(B), substituted “the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.” for “GATT Agreement on Government Procurement, but for the SDR threshold provided for in article K(1)(b) of the GATT Agreement on Government Procurement.”

1993—Par. (4)(A), Pub. L. 103–182 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The term ‘eligible product’ means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.”

Amendment of Section

For termination of amendment by section 107(c) of Pub. L. 110–138, see Effective and Termination Dates of 2007 Amendment note below.
and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**SUBCHAPTER II—TECHNICAL BARRIERS TO TRADE (STANDARDS)**

**PART A—OBLIGATIONS OF THE UNITED STATES**

### § 2531. Certain standards-related activities

**(a) No bar to engaging in standards activity**

Nothing in this subchapter may be construed—

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

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

**(b) Unnecessary obstacles**

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


**AMENDMENTS**

1994—Pub. L. 103–465 added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

**Effective Date of 1994 Amendment**

Section 352 of title III of Pub. L. 103–465 provided that: "This subtitle [subtitle F (§§351, 352) of title III of Pub. L. 103–465, amending this section and sections 2532, 2544, 2571, and 2573 of this title and repealing provisions set out below] and the amendments made by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995]."

**Effective Date**

Section 454 of Pub. L. 96–39, which provided that this subchapter was to take effect on Jan. 1, 1980, if the Agreement on Technical Barriers to Trade entered into force with respect to the United States by that date, was repealed by Pub. L. 103–465, title III, § 351(g), Dec. 8, 1994, 108 Stat. 4967.

### § 2532. Federal standards-related activities

No Federal agency may engage in any standards-related activity that creates unnecessary
obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

(1) Non-discriminatory treatment

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

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

(2) Use of international standards

(A) In general

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

(B) Application of requirement

For purposes of this paragraph, the following apply:

(i) International standards not appropriate

The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following:

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

(ii) Regional standards

In developing standards, a Federal agency may, but is not required to, take into consideration any international standard promulgated by an international standards organization the membership of which is described in section 2571(6)(A)(ii) of this title.

(3) Performance criteria

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

(4) Access for foreign suppliers

Each Federal agency shall, with respect to any conformity assessment procedure used by it, permit access for obtaining an assessment of conformity and the mark of the system, if any, for foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or other foreign origin.

References in Text


Amendments

1994—Par. (4). Pub. L. 103–465 substituted “Access” for “Certification access” in heading, and, in text, substituted “conformity assessment procedure” for “certification system” and “an assessment of conformity and the mark of the system, if any” for “certification under that system”.

Effective Date of 1994 Amendment


§2533. State and private standards-related activities

(a) In general

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

(b) Presidential action

The President shall take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies under section 2532 of this title, and of procedures that provide for notification, participation, and publication with respect to such activities.

References in Text

(b) Negotiating functions

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

(c) Cross reference

For provisions of law regarding general authority of the Trade Representative with respect to trade agreements, see section 2171 of this title.


AMENDMENTS


§ 2542. Establishment and operation of technical offices

(a) Establishment

(1) For nonagricultural products

The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) of this section with respect to nonagricultural products.

(2) For agricultural products

The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) of this section with respect to agricultural products.

(b) Functions of offices

The President shall prescribe for each technical office established under subsection (a) of this section such functions as the President deems necessary or appropriate to implement this subchapter.

(Pub. L. 96–39, title IV, § 412, July 26, 1979, 93 Stat. 244.)

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to Secretary of Commerce regarding technical office established under subsec. (a)(1) of this section, and to Secretary of Agriculture regarding technical office established under subsec. (a)(2) of this section, see section 1–166(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 of this title.

§ 2543. Representation of United States interests before international standards organizations

(a) Oversight and consultation

The Secretary concerned shall—

(1) inform, and consult and coordinate with, the Trade Representative with respect to international standards-related activities identified under paragraph (2);

(2) keep adequately informed regarding international standards-related activities and identify those that may substantially affect the commerce of the United States; and

(3) carry out such functions as are required under subsections (b) and (c) of this section.

(b) Representation of United States interests by private persons

(1) Definitions

For purposes of this subsection—

(A) Organization member

The term “organization member” means the private person who holds membership in a private international standards organization.

(B) Private international standards organization

The term “private international standards organization” means any international standards organization before which the interests of the United States are represented by a private person who is officially recognized by that organization for such purpose.

(2) In general

Except as otherwise provided for in this subsection, the representation of United States interests before any private international standards organization shall be carried out by the organization member.

(3) Inadequate representation

If the Secretary concerned, after inquiry instituted on his own motion or at the request of any private person, Federal agency, or State agency having an interest therein, has reason to believe that the participation by the organization member in the proceedings of a private international standards organization will not result in the adequate representation of United States interests that are, or may be, affected by the activities of such organization (particularly with regard to the potential impact of any such activity on the international trade of the United States), the Secretary concerned shall immediately notify the organization member concerned. During any such inquiry, the Secretary concerned may solicit and consider the advice of the appropriate representatives referred to in section 2547 of this title.

(4) Action by organization member

If within the 90-day period after the date on which notification is received under paragraph (3) (or such shorter period as the Secretary concerned determines to be necessary in extraordinary circumstances), the organization member demonstrates to the Secretary concerned its willingness and ability to represent adequately United States interests before the
private international standards organization, the Secretary concerned shall take no further action under this subsection.

(5) Action by Secretary concerned

If—

(A) within the appropriate period referred to in paragraph (4), the organization member does not respond to the Secretary concerned with respect to the notification, or does respond but does not demonstrate to the Secretary concerned the requisite willingness and ability to represent adequately United States interests; or

(B) there is no organization member of the private international standards organization;

the Secretary concerned shall make appropriate arrangements to provide for the adequate representation of United States interests. In cases where subparagraph (A) applies, such provision shall be made by the Secretary concerned through the appropriate organization member if the private international standards organization involved requires representation by that member.

(c) Representation of United States interests by Federal agencies

With respect to any international standards organization before which the interests of the United States are represented by one or more Federal agencies that are officially recognized by that organization for such purpose, the Secretary concerned shall—

(1) encourage cooperation among interested Federal agencies with a view toward facilitating the development of a uniform position with respect to the technical activities with which the organization is concerned;

(2) encourage such Federal agencies to seek information from, and to cooperate with, the affected domestic interests when undertaking such representation; and

(3) not preempt the responsibilities of any Federal agency that has jurisdiction with respect to the activities undertaken by such organization, unless requested to do so by such agency.


AMENDMENTS


§ 2544. Standards information center

(a) Establishment

The Secretary of Commerce shall maintain within the Department of Commerce a standards information center.

(b) Functions

The standards information center shall—

(1) serve as the central national collection facility for information relating to (A) standards, technical regulations, conformity assessment procedures, and standards-related activities, whether such standards, technical regulations, conformity assessment procedures, or activities are public or private, domestic or foreign, or international, regional, national, or local and (B) the membership and participation of Federal, State, or local government bodies or private bodies in the United States in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements concerning standards-related activities;

(2) make available to the public at such reasonable fee as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) other than information to which paragraph (3) applies;

(3) use its best efforts to make available to the public, at such reasonable fees as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) that is of private origin, on a cooperative basis with the private individual or entity, foreign or domestic, who holds the copyright on the information;

(4) in case of such information that is of foreign origin, provide, at such reasonable fee as the Secretary shall prescribe, such translation services as may be necessary;

(5) serve as the inquiry point for requests for information regarding standards-related activities, whether adopted or proposed, within the United States, except that in carrying out this paragraph, the Secretary of Commerce shall refer all inquiries regarding agricultural products to the technical office established under section 2542(a)(2) of this title within the Department of Agriculture; and

(6) provide such other services as may be appropriate, including but not limited to, such services to the technical offices established under section 2542 of this title as may be requested by those offices in carrying out their functions.

(c) Sanitary and phytosanitary measures

(1) Public information

The standards information center shall, in addition to the functions specified under subsection (b) of this section, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

(A) any sanitary or phytosanitary measure of general application, including any inspection procedure or approval procedure proposed, adopted, or maintained by a Federal agency or agency of a State or local government;

(B) the procedures of a Federal agency or an agency of a State or local government for risk assessment and factors the agency considers in conducting the assessment;

(C) the determination of the levels of protection that a Federal agency or an agency of a State or local government considers appropriate; and

(D) the membership and participation of the Federal Government and State and local governments in international and regional
sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements.

(2) Definitions

The definitions in section 2575b of this title apply for purposes of this subsection.

(a) In general

For purposes of carrying out this subchapter, and otherwise encouraging compliance with the Agreement, the Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this subchapter, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person in carrying out appropriate programs and activities, including, but not limited to, programs and activities—

(1) to increase awareness of proposed and adopted standards-related activities;

(2) to facilitate international trade through the appropriate international and domestic standards-related activities;

(3) to provide, if appropriate, and pursuant to section 2543 of this title, adequate United States representation in international standards-related activities; and

(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.

(b) Terms and conditions

Any contract entered into, or any grant made, under subsection (a) of this section shall be subject to such terms and conditions as the Trade Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.

(c) Limitations

Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the Trade Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned.

(d) Audit

Each recipient of a grant or contract under this section shall make available to the Trade Representative or the Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under such grant or contract.

§ 2546. Technical assistance

The Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this subchapter, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this subchapter.

§ 2547. Consultations with representatives of domestic interests

In carrying out the functions for which responsible under this subchapter, the Trade Representative and the Secretary concerned shall solicit technical and policy advice from the committees, established under section 2555 of this title, that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.
§ 2551. Right of action

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


§ 2552. Representations

Any—

(1) Party to the Agreement; or

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

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


AMENDMENTS


1993—Pub. L. 103–182, as amended by Pub. L. 104–295, substituted “Trade Representative” for “Special Representative”.

PART C—ADMINISTRATIVE AND JUDICIAL PROCEEDINGS REGARDING STANDARDS-RELATED ACTIVITIES

SUBPART 1—REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OF OBLIGATIONS

§ 2553. Action after receipt of representations

(a) Review

Upon receipt of any representation made under section 2552 of this title, the Trade Representative shall review the issues concerned in consultation with—

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

(2) the member agencies of the interagency trade organization established under section 1872(a) of this title;

(3) other appropriate Federal agencies; and

(4) appropriate representatives referred to in section 2547 of this title.

(b) Resolution

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


AMENDMENTS


§ 2554. Procedure after finding by international forum

(a) In general

If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 1872(a) of this title shall review the finding and the matters related thereto with a view to recommending appropriate action.

(b) Cross reference

For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 2411 of this title.


SUBPART 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

§ 2561. Findings of reciprocity required in administrative proceedings

(a) In general

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

(1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 2552(2) of this title; and

(2) the dispute settlement procedures provided under the Agreement are not appropriate.

(b) Exemptions

This section does not apply with respect to causes of action arising under—
§ 2571. Definitions

(1) the antitrust laws as defined in section 12(a) of title 15; or
(2) statutes administered by the Secretary of Agriculture.

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


AMENDMENTS


§ 2572. Consideration of standards-related activities by an international forum

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


PART D—DEFINITIONS AND MISCELLANEOUS PROVISIONS

§ 2571. Definitions

As used in this subchapter—

(1) Agreement

The term “Agreement” means the Agreement on Technical Barriers to Trade referred to in section 3511(d)(5) of this title.

(2) Conformity assessment procedure

The term “conformity assessment procedure” means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

(3) Federal agency

The term “Federal agency” means any of the following within the meaning of chapter 2 of part I of title 5:

(A) Any executive department.
(B) Any military department.
(C) Any Government corporation.
(D) Any Government-controlled corporation.
(E) Any independent establishment.

(4) International conformity assessment procedure

The term “international conformity assessment procedure” means a conformity assessment procedure that is adopted by an international standards organization.

(5) International standard

The term “international standard” means any standard that is promulgated by an international standards organization.

(6) International standards organization

The term “international standards organization” means any organization—

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

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

(7) International standards-related activity

The term “international standards-related activity” means the negotiation, development, or promulgation of, or any amendment or change to, an international standard, or an international conformity assessment procedure, or both.

(8) Member

The term “Member” means a WTO member as defined in section 3501(10) of this title.

(9) Private person

The term “private person” means—

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

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

(10) Product

The term “product” means any natural or manufactured item.

(11) Secretary concerned

The term “Secretary concerned” means the Secretary of Commerce with respect to functions under this subchapter relating to non-agricultural products, and the Secretary of Agriculture with respect to functions under this subchapter relating to agricultural products.

(12) Trade Representative

The term “Trade Representative” means the United States Trade Representative.

(13) Standard

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

(14) Standards-related activity

The term “standards-related activity” means the development, adoption, or application of any standard, technical regulation, or conformity assessment procedure.

(15) State

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

(16) State agency

The term “State agency” means any department, agency, or other instrumentality of the
government of any State or of any political subdivision of any State.

(17) Technical regulation

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

(18) United States

The term “United States”, when used in a geographical context, means all States.

REPRESENTATION

Chapter 2 of part I of title 5, which is classified to section 101 et seq. of Title 5, Government Organization and Employees, and which relates to organization of agencies.

REFERENCES IN TEXT

Chapter 2 of part I of title 5, referred to in par. (3), probably means chapter 1 of part I of title 5, which is classified to section 101 et seq. of Title 5, Government Organization and Employees, and which relates to organization of agencies.

AMENDMENTS


1993—Par. (1). Pub. L. 103–465, § 351(e)(1), amended par. (1) generally, substituting “referred to in section 3511(d)(6) of this title” for “approved under section 2503(a) of this title”.

Par. (2). Pub. L. 103–465, § 351(e)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The term ‘certification system’ means a system—

“(A) for determining whether a product conforms with product standards applicable to that product; and

“(B) if a product so conforms, for attesting, by means of a document, mark, or other appropriate evidence of conformity, to that conformity. Such term also includes any modification of, or change to, any such system.”


Par. (6)(A). Pub. L. 103–465, § 351(e)(4), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the membership of which is open to representatives, whether public or private, of the United States and—

“(i) all Parties to the Agreement, or

“(ii) some but not all Parties of the Agreement; and

“(B) Specifications relating to the terminology, symbols, testing and test methods, packaging, or marking or labeling requirements applicable to a product.

“(C) Administrative procedures related to the application of any specification referred to in paragraph (A) or (B).”

Par. (14). Pub. L. 103–465, § 351(e)(8), substituted “technical regulation, or conformity assessment procedure” for “or any certification system”.


1993—Par. (12). Pub. L. 103–182 amended par. (12) generally. Prior to amendment, par. (12) read as follows:

“(12) SPECIAL REPRESENTATIVE.—The term ‘Special Representative’ means the Special Representative for Trade Negotiations.”


date of 1994 Amendment

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 352 of Pub. L. 103–465, set out as a note under section 2531 of this title.

§ 2572. Exemptions

This subchapter does not apply to—

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

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


“(12) SPECIAL REPRESENTATIVE.—The term ‘Special Representative’ means the Special Representative for Trade Negotiations.”


date of 1994 Amendment

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 352 of Pub. L. 103–465, set out as a note under section 2531 of this title.
PART E—STANDARDS AND MEASURES UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT

SUBPART 1—SANITARY AND PHYTOSANITARY MEASURES

§ 2575. General

Nothing in this subpart may be construed—

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

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


§ 2575a. Inquiry point

The standards information center maintained under section 2544 of this title shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

(1) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure proposed, adopted, or maintained by a Federal or State agency;

(2) the procedures of a Federal or State agency for risk assessment, and factors the agency considers in conducting the assessment and in establishing the levels of protection that the agency considers appropriate;

(3) the membership and participation of the Federal Government and State governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements; and

(4) the location of notices of the type required under article 719 of the NAFTA, or where the information contained in such notices can be obtained.


§ 2575b. Subpart definitions

Notwithstanding section 2571 of this title, for purposes of this subpart—

(1) Animal

The term “animal” includes fish, bees, and wild fauna.

(2) Approval procedure

The term “approval procedure” means any registration, notification, or other mandatory administrative procedure for—

(A) approving the use of an additive for a stated purpose or under stated conditions, or

(B) establishing a tolerance for a stated purpose or under stated conditions for a contaminant, in a food, beverage, or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage, or feedstuff containing the additive or contaminant.

(3) Contaminant

The term “contaminant” includes pesticide and veterinary drug residues and extraneous matter.

(4) Control or inspection procedure

The term “control or inspection procedure” means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification, or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing, or use of a good, but does not mean an approval procedure.

(5) Plant

The term “plant” includes wild flora.

(6) Risk assessment

The term “risk assessment” means an evaluation of—

(A) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(B) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage, or feedstuff.

(7) Sanitary or phytosanitary measure

(A) In general

The term “sanitary or phytosanitary measure” means a measure to—

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

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

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

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

(B) Form

The form of a sanitary or phytosanitary measure includes—

(i) end product criteria;

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

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

(iv) a relevant statistical method;

(v) a sampling procedure;
(vi) a method of risk assessment;  
(vii) a packaging and labeling requirement directly related to food safety; and  
(viii) a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation.


SUBPART 2—STANDARDS-RELATED MEASURES

§ 2576b. Subpart definitions

Notwithstanding section 2571 of this title, for purposes of this subpart—

(1) Approval procedure

The term ‘‘approval procedure’’ means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, or approval used for such a purpose, but does not mean an approval procedure.

(2) Conformity assessment procedure

The term ‘‘conformity assessment procedure’’ means any procedure used, directly or indirectly, to determine that a technical regulation, standard, or norm is fulfilled, including signaling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, or approval used for such a purpose, but does not mean an approval procedure.

(3) Objective

The term ‘‘objective’’ includes—

(A) safety,  
(B) protection of human, animal, or plant life or health, the environment or consumers; or  
(C) sustainable development,  
but does not include the protection of domestic production.

(4) Service

The term ‘‘service’’ means a land transportation service or a telecommunications service.

(5) Standard

The term ‘‘standard’’ means—

(A) characteristics for a good or a service,  
(B) characteristics, rules, or guidelines for—  
(i) processes or production methods relating to such good, or  
(ii) operating methods relating to such service, and  
(C) provisions specifying terminology, symbols, packaging, marking, or labelling for—  
(i) good or its related process or production methods, or  
(ii) a service or its related operating methods,  
for common and repeated use, including explanatory and other related provisions set out in a document approved by a standardizing body, with which compliance is not mandatory.

(6) Standards-related measure

The term ‘‘standards-related measure’’ means a standard, technical regulation, or conformity assessment procedure.

(7) Technical regulation

The term ‘‘technical regulation’’ means—

(A) characteristics or their related processes and production methods for a good,  
(B) characteristics for a service or its related operating methods, or
(C) provisions specifying terminology, symbols, packaging, marking, or labelling for—
   (i) a good or its related process or production method, or
   (ii) a service or its related operating method.

set out in a document, including applicable administrative, explanatory, and other related provisions, with which compliance is mandatory.

(8) Telecommunications service

The term “telecommunications service” means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast, or other electromagnetic distribution of radio or television programming to the public generally.


SUBPART 3—PART DEFINITIONS

§ 2577. Definitions

Notwithstanding section 2571 of this title, for purposes of this part—

(1) NAFTA

The term “NAFTA” means the North American Free Trade Agreement.

(2) State

The term “State” means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.


PART F—INTERNATIONAL STANDARD-SETTING ACTIVITIES

§ 2578. Notice of United States participation in international standard-setting activities

(a) In general

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

(b) Notification

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

(c) Required information

The information to be provided in the notice under subsection (b) of this section is—

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

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

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

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

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

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

(d) Public comment

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


EFFECTIVE DATE

Part effective on the date of entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995], except as otherwise provided, see section 451 of Pub. L. 103–465, set out as a note under section 3601 of this title.

DESIGNATION OF AGENCY

Secretary of Agriculture designated under this section as official responsible for informing public of sanitary and phytosanitary standard-setting activities of each international standard-setting organization, see par. (4) of Proc. No. 6780, Mar. 23, 1995, 60 F.R. 15847, set out as a note under section 3511 of this title.

§ 2578a. Equivalence determinations

(a) In general

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

(b) FDA determination

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

(c) Notice

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


References in Text

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b) and (c), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Amendments


§ 2578b. Definitions

(a) In general

As used in this part:

(1) Agency

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

(2) Commissioner

The term “Commissioner” means the Commissioner of Food and Drugs.

(3) International standard-setting organization

The term “international standard-setting organization” means an organization consisting of representatives of 2 or more countries, the purpose of which is to negotiate, develop, promulgate, or amend an international standard.

(4) Sanitary or phytosanitary standard

The term “sanitary or phytosanitary standard” means a standard intended to form a basis for a sanitary or phytosanitary measure.

(5) International standard

The term “international standard” means a standard, guideline, or recommendation—

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

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

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

(D) established by or developed under any other international organization agreed to by the NAFTA countries (as defined in section 3301(4) of this title) or by the WTO members (as defined in section 3301(10) of this title).

(b) Other definitions

The definitions set forth in section 2575b of this title apply for purposes of this part except that in applying paragraph (7) of section 2575b of this title with respect to a sanitary or phytosanitary measure of a foreign country, any reference in such paragraph to the United States shall be deemed to be a reference to that foreign country.


Subchapter III—Miscellaneous Provisions

§ 2581. Auction of import licenses

(a) In general

Notwithstanding any other provision of law, the President may sell import licenses at public auction under such terms and conditions as he deems appropriate. Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(b) “Import license” defined

For purposes of this section, the term “import license” means any documentation used to administer a quantitative restriction imposed or modified after July 26, 1979 under—

(1) section 125, 203, 301, or 406 of the Trade Act of 1974 (19 U.S.C. 2135, 2253, 2411, or 2436),


(3) authority under the notes of the Harmonized Tariff Schedule of the United States, but not including any quantitative restriction imposed under section 22 of the Agricultural Adjustment Act of 1934 (7 U.S.C. 624),

(4) the Trading With the Enemy Act (50 U.S.C. App. L–44),

(5) section 204 of the Agricultural Act of 1966 (7 U.S.C. 1854) other than for meat or meat products, or

(6) any Act enacted explicitly for the purpose of implementing an international agree-
ment to which the United States is a party, including such agreements relating to commodities, but not including any agreement relating to cheese or dairy products.


REFERENCES IN TEXT


The Trading With the Enemy Act, referred to in subsec. (b)(4), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

AMENDMENTS


EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE

Section 1114 of title XI of Pub. L. 96–39 provided that: ‘‘Except as otherwise provided in this title, this title [enacting this subchapter, amending the Tariff Schedules of the United States and sections 1315, 1337, 2112, 2119, 2131, 2155, 2192, 2253, 2432, 2434, 2435, 2462, 2463, 2464, 2481, and 2486 of this title, section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 13, Census, enacting provisions set out as notes under sections 2111, 2112, and 2464 of this title and 301 of Title 13, and amending a provision set out as a note under section 2101 of this title] shall take effect on the date of enactment of this Act [July 26, 1979].’’


Section, Pub. L. 96–39, title XI, §1112, July 26, 1979, 93 Stat. 316, authorized payment of compensation to losses in taxes resulting from concessions granted by United States in Tokyo Round of Multilateral Trade Negotiations on articles produced by United States possessions on which excise taxes are levied by United States.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 5, 1983, see section 218(a) of Pub. L. 98–67, which is classified to section 2706 of this title.

CHAPTER 14—CONVENTION ON CULTURAL PROPERTY

Sec.

2601. Definitions.

2602. Agreements to implement Article 9 of the convention.

2603. Emergency implementation of import restrictions.

2604. Designation of materials covered by agreements or emergency actions.

2605. Cultural Property Advisory Committee.

2606. Import restrictions.

2607. Stolen cultural property.

2608. Temporary disposal of materials and articles subject to this chapter.

2609. Seizure and forfeiture.

2610. Evidentiary requirements.

2611. Certain material and articles exempt from this chapter.

2612. Regulations.

2613. Enforcement.

§ 2601. Definitions

For purposes of this chapter—

(1) The term “agreement” includes any amendment to, or extension of, any agreement under this chapter that enters into force with respect to the United States.

(2) The term “archaeological or ethnological material of the State Party” means—

(A) any object of archaeological interest;

(B) any object of ethnological interest; or

(C) any fragment or part of any object referred to in subparagraph (A) or (B);

which was first discovered within, and is subject to export control by, the State Party. For purposes of this paragraph—

(i) no object may be considered to be an object of archaeological interest unless such object—

(I) is of cultural significance;

(II) is at least two hundred and fifty years old; and

(III) was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; and

(ii) no object may be considered to be an object of ethnological interest unless such object is—

(I) the product of a tribal or nonindustrial society, and

(II) important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.

(3) The term “Committee” means the Cultural Property Advisory Committee established under section 2605 of this title.

(4) The term “consignee” means a consignee as defined in section 1483 of this title.


(6) The term “cultural property” includes articles described in article 1(a) through (k) of the Convention whether or not any such article is specifically designated as such by any State Party for the purposes of such article.

(7) The term “designated archaeological or ethnological material” means any archae-
Title 19—Customs Duties

Chapter 26—Customs Duties—Imposts

§2602. Agreements to implement Article 9 of the convention

(a) Agreement authority

(1) In general

If the President determines, after request is made to the United States under article 9 of the Convention by any State Party—

(A) that the cultural patrimony of the State Party is in jeopardy from the pillage of archaeological or ethnological materials of the State Party;

(B) that the State Party has taken measures consistent with the Convention to protect its cultural patrimony;

(C) that—

(i) the application of the import restrictions set forth in section 2606 of this title with respect to archaeological or ethnological material of the State Party, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage, and

(ii) remedies less drastic than the application of the restrictions set forth in such section are not available; and

(D) that the application of the import restrictions set forth in section 2606 of this title in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes;

the President may, subject to the provisions of this chapter, take the actions described in paragraph (2).

(2) Authority of President

For purposes of paragraph (1), the President may enter into—

(A) a bilateral agreement with the State Party to apply the import restrictions set forth in section 2606 of this title to the archaeological or ethnological material of the State Party the pillage of which is creating the jeopardy to the cultural patrimony of the State Party found to exist under paragraph (1)(A); or

(B) a multilateral agreement with the State Party and with one or more other nations (whether or not a State Party) under which the United States will apply such restrictions, and the other nations will apply similar restrictions, with respect to such material.

§2602. Agreements to implement Article 9 of the convention

(a) Agreement authority

(1) In general

If the President determines, after request is made to the United States under article 9 of the Convention by any State Party—

(A) that the cultural patrimony of the State Party is in jeopardy from the pillage of archaeological or ethnological materials of the State Party;

(B) that the State Party has taken measures consistent with the Convention to protect its cultural patrimony;

(C) that—

(i) the application of the import restrictions set forth in section 2606 of this title with respect to archaeological or ethnological material of the State Party, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage, and

(ii) remedies less drastic than the application of the restrictions set forth in such section are not available; and

(D) that the application of the import restrictions set forth in section 2606 of this title in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes;

the President may, subject to the provisions of this chapter, take the actions described in paragraph (2).

(2) Authority of President

For purposes of paragraph (1), the President may enter into—

(A) a bilateral agreement with the State Party to apply the import restrictions set forth in section 2606 of this title to the archaeological or ethnological material of the State Party the pillage of which is creating the jeopardy to the cultural patrimony of the State Party found to exist under paragraph (1)(A); or

(B) a multilateral agreement with the State Party and with one or more other nations (whether or not a State Party) under which the United States will apply such restrictions, and the other nations will apply similar restrictions, with respect to such material.
§ 2602

(3) Requests
A request made to the United States under article 9 of the Convention by a State Party must be accompanied by a written statement of the facts known to the State Party that relate to those matters with respect to which determinations must be made under subparagraphs (A) through (D) of paragraph (1).

(4) Implementation
In implementing this subsection, the President should endeavor to obtain the commitment of the State Party concerned to permit the exchange of its archaeological and ethnological materials under circumstances in which such exchange does not jeopardize its cultural patrimony.

(b) Effective period
The President may not enter into any agreement under subsection (a) of this section which has an effective period beyond the close of the five-year period beginning on the date on which such agreement enters into force with respect to the United States.

(c) Restrictions on entering into agreements

(1) In general
The President may enter into an agreement if he determines that a number of parties to the agreement—

(A) are similar to those set forth in section 2606 of this title, or

(B) are not implementing such restrictions satisfactorily with the result that no substantial benefit in deterring a serious situation of pillage in the State Party concerned is being obtained.

the President shall suspend the implementation of the import restrictions under section 2606 of this title until such time as the nations take appropriate corrective action.

(e) Extension of agreements
The President may extend any agreement that enters into force with respect to the United States for additional periods of not more than five years each if the President determines that—

(1) the factors referred to in subsection (a)(1) of this section which justified the entering into of the agreement still pertain, and

(2) no cause for suspension under subsection (d) of this section exists.

(f) Procedures
If any request described in subsection (a) of this section is made by a State Party, or if the President proposes to extend any agreement under subsection (e) of this section, the President shall—

(1) publish notification of the request or proposal in the Federal Register;

(2) submit to the Committee such information regarding the request or proposal (including, if applicable, information from the State Party with respect to the implementation of emergency action under section 2603 of this title) as is appropriate to enable the Committee to carry out its duties under section 2605(f) of this title; and

(3) consider, in taking action on the request or proposal, the views and recommendations contained in any Committee report—

(A) required under section 2605(f)(1) or (2) of this title, and

(B) submitted to the President before the close of the one-hundred-and-fifty-day period beginning on the day on which the President submitted information on the request or proposal to the Committee under paragraph (2).

(g) Information on Presidential action

(1) In general
In any case in which the President—

(A) enters into or extends an agreement pursuant to subsection (a) or (e) of this section, or

(B) applies import restrictions under section 2603 of this title,

the President shall, promptly after taking such action, submit a report to the Congress.

(2) Report
The report under paragraph (1) shall contain—

(A) a description of such action (including the text of any agreement entered into),

(B) the differences (if any) between such action and the views and recommendations contained in any Committee report which the President was required to consider, and

1So in original. Probably should be “exchange”.
(C) the reasons for any such difference.

(3) Information relating to committee recommendations

If any Committee report required to be considered by the President recommends that an agreement be entered into, but no such agreement is entered into, the President shall submit to the Congress a report which contains the reasons why such agreement was not entered into.


CODIFICATION

Section 2603 of this title, referred to in subsec. (g)(1)(B), was in the original “section 204”, and was translated as section 2603 of this title, which is section 304 of Pub. L. 97–446, as the probable intent of Congress.

EX. ORD. NO. 12555. PROTECTION OF CULTURAL PROPERTY


By the authority vested in me as President by the Constitution and laws of the United States of America, including the Convention on Cultural Property Implementation Act (Title III of Public Law 97–446; hereinafter referred to as the “Act” [this chapter]), and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. United States Information Agency. The following functions conferred upon the President by the Act are hereby delegated to the Director of the United States Information Agency, acting in consultation with the Secretary of State and the Secretary of Homeland Security:

(a) The functions conferred by section 303(a)(1) [19 U.S.C. 2602(a)(1)] concerning determinations to be made prior to initiation of negotiations of bilateral or multilateral agreements.

(b) The functions conferred by section 303(d) with respect to the determinations concerning the failure of other parties to an agreement to take any or satisfactory implementation action on their agreement; provided, however, that the Secretary of State will remain responsible for interpretation of the agreement.

(c) The functions conferred by section 303(e) relating to the determinations to be made prior to the initiation of negotiations for the extension of any agreement.

(d) The functions conferred by section 303(f) relating to the actions to be taken upon receipt of a request made by a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as the “Convention”).

(e) The functions conferred by section 303(g)(1)(B) relating to the notification of Presidential action and the furnishing of reports to the Congress.

(f) The functions conferred by section 304(b) [19 U.S.C. 2603(b)] to the extent that they involve determinations by the President that an emergency condition applies with respect to any archaeological or ethnological material of any State Party to the Convention, subject to the limitations of sections 304(c)(1), 304(c)(2), and 304(c)(3).

(g) The functions conferred by section 304(c)(3) to the extent that they involve determinations to be made and the receipt and consideration of an advisory report from the Cultural Property Advisory Committee of the President prior to extensions of emergency import restrictions.

(h) The functions conferred by sections 306(f)(6) and 306(g) [19 U.S.C. 2605(f)(6), (g)] relating to the receipt of reports prepared by the Cultural Property Advisory Committee.

(i) The functions conferred by section 306(h) relating to the determinations to be made about the disclosure of matters involved in the Cultural Property Advisory Committee’s proceedings.

SIRC. 2. Department of State. The following functions conferred upon the President by the Act are hereby delegated to the Secretary of State, acting in consultation with and with the participation of the Director of the United States Information Agency and in consultation with the Secretary of Homeland Security:

(a) The functions conferred by section 303(a)(2) [19 U.S.C. 2602(a)(2)] relating to the negotiation and conclusion of bilateral or multilateral agreements under the Act, subject to the restrictions of section 303(c).

(b) The functions conferred by section 303(a)(4) relating to obtaining a commitment on the exchange of archaeological and ethnological materials from a party to an agreement.

(c) The functions conferred by section 303(e) relating only to negotiation and conclusion of extensions of agreements under the Act.

(d) Except with respect to subsection 303(g)(1)(B), the functions conferred by section 303(g), relating to the notification of Presidential action and the furnishing of reports to the Congress.

(e) The functions conferred by section 304(c)(4) [19 U.S.C. 2603(c)(4)] to the extent that they involve the negotiation and conclusion of agreements subject to advice and consent to ratification by the Senate.

SIRC. 3. Department of the Treasury (The Department of Homeland Security). The following functions conferred upon the President by the Act are hereby delegated to the Secretary of Homeland Security, acting in consultation with the Director of the United States Information Agency and the Secretary of State:

(a) Subject to subsection (b) of Section 1 above, the functions conferred by section 303(d) [19 U.S.C. 2602(d)] to the extent that they involve the suspension of import restrictions.

(b) Subject to subsection(s) (f) and (g) of Section 1 above, the functions conferred by section 304 [19 U.S.C. 2603] to the extent that they involve the application of import restrictions set forth in section 307 [19 U.S.C. 2606] and the extension of such import restrictions pursuant to section 304(c)(5).

SIRC. 4. Enforcement in Territories and Other Areas. The Secretary of the Interior is designated to carry out the enforcement functions in section 314 [19 U.S.C. 2633].

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

§ 2603. Emergency implementation of import restrictions

(a) “Emergency condition” defined

For purposes of this section, the term “emergency condition” means, with respect to any archaeological or ethnological material of any State Party, that such material is—

(1) a newly discovered type of material which is of importance for the understanding of the history of mankind and is in jeopardy from pillage, dismantling, dispersal, or fragmentation;

(2) identifiable as coming from any site recognized to be of high cultural significance if such site is in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions; or

(3) a part of the remains of a particular culture or civilization, the record of which is in jeopardy from pillage, dismantling, dispersal,
or fragmentation which is, or threatens to be, of crisis proportions;

and application of the import restrictions set forth in section 2606 of this title on a temporary basis would, in whole or in part, reduce the incentive for such pillage, dismantling, dispersal or fragmentation.

(b) Presidential action

Subject to subsection (c) of this section, if the President determines that an emergency condition applies with respect to any archaeological or ethnological material of any State Party, the President may apply the import restrictions set forth in section 2606 of this title with respect to such material.

(c) Limitations

(1) The President may not implement this section with respect to the archaeological or ethnological materials of any State Party unless the State Party has made a request described in section 2602(a) of this title to the United States and has supplied information which supports a determination that an emergency condition exists.

(2) In taking action under subsection (b) of this section with respect to any State Party, the President shall consider the views and recommendations contained in the Committee report required under section 2605(f)(3) of this title if the report is submitted to the President before the close of the ninety-day period beginning on the day on which the President submitted information to the Committee under section 2602(f)(2) of this title on the request of the State Party under section 2602(a) of this title.

(3) No import restrictions set forth in section 2606 of this title may be applied under this section to the archaeological or ethnological materials of any State Party for more than five years after the date on which the request of a State Party under section 2602(a) of this title is made to the United States. This period may be extended by the President for three more years if the President determines that the emergency condition continues to apply with respect to the archaeological or ethnological material. However, before taking such action, the President shall request and consider, if received within ninety days, a report of the Committee setting forth its recommendations, together with the reasons therefor, as to whether such import restrictions shall be extended.

(4) The import restrictions under this section may continue to apply in whole or in part, if before their expiration under paragraph (3), there has entered into force with respect to the archaeological or ethnological materials an agreement under section 2602 of this title or an agreement with a State Party to which the Senate has given its advice and consent to ratification. Such import restrictions may continue to apply for the duration of the agreement.


AMENDMENTS

1999—Pub. L. 106–113 substituted “Secretary, in consultation with the Secretary of State, shall” for “Secretary shall” in first sentence.

1998—Pub. L. 105–277 struck out “. after consultation with the Director of the United States Information Agency,” after “title, the Secretary” in first sentence.

Effectiveness Date of 1998 Amendment


§ 2605. Cultural Property Advisory Committee

(a) Establishment

There is established the Cultural Property Advisory Committee.

(b) Membership

(1) The Committee shall be composed of eleven members appointed by the President as follows:

(A) Two members representing the interests of museums.

(B) Three members who shall be experts in the fields of archaeology, anthropology, ethnology, or related areas.

(C) Three members who shall be experts in the international sale of archaeological, ethnological, and other cultural property.

(D) Three members who shall represent the interest of the general public.

(2) Appointments made under paragraph (1) shall be made in such a manner so as to insure—

(A) fair representation of the various interests of the public sectors and the private sectors in the international exchange of archaeological and ethnological materials, and

(B) that within such sectors, fair representation is accorded to the interests of regional and local institutions and museums.
(3)(A) Members of the Committee shall be appointed for terms of three years and may be reappointed for one or more terms. With respect to the initial appointments, the President shall select, on a representative basis to the maximum extent practicable, four members to serve three-year terms, four members to serve two-year terms, and the remaining members to serve a one-year term. Thereafter, each appointment shall be for a three-year term.

(B)(i) A vacancy in the Committee shall be filled in the same manner as the original appointment was made and for the unexpired portion of the term, if the vacancy occurred during a term of office. Any member of the Committee may continue to serve as a member of the Committee after the expiration of his term of office until reappointed or until his successor has been appointed.

(ii) The President shall designate a Chairman of the Committee from the members of the Committee.

(c) Expenses

The members of the Committee shall be reimbursed for actual expenses incurred in the performance of duties for the Committee.

(d) Transaction of business

Six of the members of the Committee shall constitute a quorum. All decisions of the Committee shall be by majority vote of the members present and voting.

(e) Staff and administration

(1) The Director of the United States Information Agency shall make available to the Committee such administrative and technical support services and assistance as it may reasonably require to carry out its activities. Upon the request of the Committee, the head of any other Federal agency may detail to the Committee, on a reimbursable basis, any of the personnel of such agency to assist the Committee in carrying out its functions, and provide such information and assistance as the Committee may reasonably require to carry out its activities.

(2) The Committee shall meet at the call of the Director of the United States Information Agency, or when a majority of its members request a meeting in writing.

(f) Reports by Committee

(1) The Committee shall, with respect to each request of a State Party referred to in section 2602(a) of this title, undertake an investigation and review with respect to matters referred to in section 2602(a)(1) of this title as they relate to the State Party or the request and shall prepare a report setting forth—

(A) the results of such investigation and review;
(B) its findings as to the nations individually having a significant import trade in the relevant material; and
(C) its recommendation, together with the reasons therefor, as to whether an agreement should be entered into under section 2602(a) of this title with respect to the State Party.

(2) The Committee shall, with respect to each agreement proposed to be extended by the President under section 2602(e) of this title, prepare a report setting forth its recommendations together with the reasons therefor, as to whether or not the agreement should be extended.

(3) The Committee shall in each case in which the Committee finds that an emergency condition under section 2603 of this title exists prepare a report setting forth its recommendations, together with the reasons therefor, as to whether emergency action under section 2603 of this title should be implemented. If any State Party indicates in its request under section 2602(a) of this title that an emergency condition exists and the Committee finds that such a condition does not exist, the Committee shall prepare a report setting forth the reasons for such finding.

(4) Any report prepared by the Committee which recommends the entering into or the extension of any agreement under section 2602 of this title or the implementation of emergency action under section 2603 of this title shall set forth—

(A) such terms and conditions which it considers necessary and appropriate to include within such agreement, or apply with respect to such implementation, for purposes of carrying out the intent of the Convention; and
(B) such archaeological or ethnological material of the State Party, specified by type or such other classification as the Committee deems appropriate, which should be covered by such agreement or action.

(5) If any member of the Committee disagrees with respect to any matter in any report prepared under this subsection, such member may prepare a statement setting forth the reasons for such disagreement and such statement shall be appended to, and considered a part of, the report.

(6) The Committee shall submit to the Congress and the President a copy of each report prepared by it under this subsection.

(g) Committee review

(1) In general

The Committee shall undertake a continuing review of the effectiveness of agreements under section 2602 of this title that have entered into force with respect to the United States, and of emergency action implemented under section 2603 of this title.

(2) Action by Committee

If the Committee finds, as a result of such review, that—

(A) cause exists for suspending, under section 2602(d) of this title, the import restrictions imposed under an agreement;
(B) any agreement or emergency action is not achieving the purposes for which entered into or implemented; or
(C) changes are required to this chapter in order to implement fully the obligations of the United States under the Convention;

the Committee may submit a report to the Congress and the President setting forth its recommendations for suspending such import restrictions or for improving the effectiveness of any such agreement or emergency action or this chapter.

1 So in original. Probably should be “Committee”.
(h) Federal Advisory Committee Act

The provisions of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. Appendix) shall apply to the Committee except that the requirements of subsections (a) and (b) of section 10 and section 11 of such Act (relating to open meetings, public notice, public participation, and public availability of documents) shall not apply to the Committee, whenever and to the extent it is determined by the President or his designee that the disclosure of matters involved in the Committee’s proceedings would compromise the Government’s negotiating objectives or bargaining positions on the negotiations of any agreement authorized by this chapter.

(i) Confidential information

(1) In general

Any information (including trade secrets and commercial or financial information which is privileged or confidential) submitted in confidence by the private sector to officers or employees of the United States or to the Committee in connection with the responsibilities of the Committee shall not be disclosed to any person other than:

(A) officers and employees of the United States designated by the Director of the United States Information Agency;

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated by the chairman of either such Committee and members of the staff of either such Committee designated by the chairman for use in connection with negotiation of agreements or other activities authorized by this chapter; and

(C) the Committee established under this chapter.

(2) Governmental information

Information submitted in confidence by officers or employees of the United States to the Committee shall not be disclosed other than in accordance with rules issued by the Director of the United States Information Agency, after consultation with the Committee. Such rules shall define the categories of information which require restricted or confidential handling by such Committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the interests of the United States. Such rules shall, to the maximum extent feasible, permit meaningful consultations by Committee members with persons affected by proposed agreements authorized by this chapter.

(j) No authority to negotiate

Nothing contained in this section shall be construed to authorize or to permit any individual (not otherwise authorized or permitted) to participate directly in any negotiation of any agreement authorized by this chapter.

Amendments

1987—Subsec. (b)(3)(A). Pub. L. 100–204, § 307(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ‘‘Members of the Committee shall be appointed for terms of two years and may be reappointed for 1 or more terms.’’

Subsec. (b)(3)(B). Pub. L. 100–204, § 307(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ‘‘A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.’’

Effective Date of 1987 Amendment

Section 307(c) of Pub. L. 100–204 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to members of the Cultural Property Advisory Committee first appointed after the date of enactment of this Act [Dec. 22, 1987].’’

Transfer of Functions

United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22, Foreign Relations and Intercourse.

Delegation of Functions

For delegation of certain functions of President under this section, see Ex. Ord. No. 12555, Mar. 10, 1986, 51 F.R. 4475, set out as a note under section 2602 of this title.

§ 2606. Import restrictions

(a) Documentation of lawful exportation

No designated archaeological or ethnological material that is exported (whether or not such exportation is to the United States) from the State Party after the designation of such material under section 2604 of this title may be imported into the United States unless the State Party issues a certification or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

(b) Customs action in absence of documentation

If the consignee of any designated archaeological or ethnological material is unable to present to the customs officer concerned at the time of making entry of such material—

(1) the certificate or other documentation of the State Party required under subsection (a) of this section; or

(2) satisfactory evidence that such material was exported from the State Party—

(A) not less than ten years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than one year before that date of entry, or

(B) on or before the date on which such material was designated under section 2604 of this title, the customs officer concerned shall refuse to release the material from customs custody and send it to a bonded warehouse or store to be held at the risk and expense of the consignee, notwithstanding any other provision of law, until such documentation or evidence is filed with

References in Text

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.
such officer. If such documentation or evidence is not presented within ninety days after the date on which such material is refused release from customs custody, or such longer period as may be allowed by the Secretary for good cause shown, the material shall be subject to seizure and forfeiture. The presentation of such documentation or evidence shall not bar subsequent action under section 2609 of this title.

e) “Satisfactory evidence” defined

The term “satisfactory evidence” means—

(1) for purposes of subsection (b)(2)(A) of this section—

(A) one or more declarations under oath by the importer, or the person for whose account the material is imported, stating that, to the best of his knowledge—

(i) the material was exported from the State Party not less than ten years before the date of entry into the United States, and

(ii) neither such importer or person (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than one year before the date of entry of the material; and

(B) a statement provided by the consignor, or person who sold the material to the importer, which states the date, or, if not known, his belief, that the material was exported from the State Party not less than ten years before the date of entry into the United States, and the reasons on which the statement is based; and

(2) for purposes of subsection (b)(2)(B) of this section—

(A) one or more declarations under oath by the importer or the person for whose account the material is to be imported, stating that, to the best of his knowledge, the material was exported from the State Party on or before the date such material was designated under section 2604 of this title, and

(B) a statement by the consignor or person who sold the material to the importer which states the date, or if not known, his belief, that the material was exported from the State Party on or before the date such material was designated under section 2604 of this title, and the reasons on which the statement is based.

d) Related persons

For purposes of subsections (b) and (c) of this section, a person shall be treated as a related person to an importer, or to a person for whose account material is imported, if such person—

(1) is a member of the same family as the importer or person of account, including, but not limited to, membership as a brother or sister (whether by whole or half blood), spouse, ancestor, or lineal descendant;

(2) is a partner or associate with the importer or person of account in any partnership, association, or other venture; or

(3) is a corporation or other legal entity in which the importer or person of account directly or indirectly owns, controls, or holds power to vote 20 percent or more of the outstanding voting stock or shares in the entity.

§ 2607. Stolen cultural property

No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this chapter, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.


§ 2608. Temporary disposition of materials and articles subject to this chapter

Pending a final determination as to whether any archaeological or ethnological material, or any article of cultural property, has been imported into the United States in violation of section 2606 of this title or section 2607 of this title, the Secretary shall, upon application by any museum or other cultural or scientific institution in the United States which is open to the public, permit such material or article to be retained at such institution if he finds that—

(1) sufficient safeguards will be taken by the institution for the protection of such material or article; and

(2) sufficient bond is posted by the institution to ensure its return to the Secretary.


§ 2609. Seizure and forfeiture

a) In general

Any designated archaeological or ethnological material or article of cultural property, as the case may be, which is imported into the United States in violation of section 2606 of this title or section 2607 of this title shall be subject to seizure and forfeiture. All provisions of law relating to seizure, forfeiture, and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this chapter, insofar as such provisions of law are applicable to, and not inconsistent with, the provisions of this chapter.

b) Archaeological and ethnological material

Any designated archaeological or ethnological material which is imported into the United States in violation of section 2606 of this title and which is forfeited to the United States under this chapter shall—

(1) first be offered for return to the State Party;
§ 2610. Evidentiary requirements

Notwithstanding the provisions of section 1615 of this title, in any forfeiture proceeding brought under this chapter in which the material or article, as the case may be, is claimed by any person, the United States shall establish—

(1) in the case of any material subject to the provisions of section 2606 of this title, that the material has been listed by the Secretary in accordance with section 2604 of this title; and

(2) in the case of any article subject to section 2607 of this title, that the article—

(A) is documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in a State Party, and

(B) was stolen from such institution after the effective date of this chapter, or after the date of entry into force of the Convention for the State Party concerned, whichever date is later.


REFERENCES IN TEXT

For the effective date of this chapter, referred to in par. (2)(B), see section 315 of Pub. L. 97–446, set out as an Effective Date note under section 2601 of this title.

§ 2611. Certain material and articles exempt from this chapter

The provisions of this chapter shall not apply to—

(1) any archaeological or ethnological material or any article of cultural property which is imported into the United States for temporary exhibition or display if such material or article is immune from seizure under judicial process pursuant to section 2459 of title 22; or

(2) any designated archaeological or ethnological material or any article of cultural property imported into the United States if such material or article—

(A) has been held in the United States for a period of not less than three consecutive years by a recognized museum for temporary exhibition or display; or

(B) was stolen from such institution after the date of entry into force of the Convention for the State Party concerned, whichever date is later.

§ 2607 of this title, referred to in subsec. (c)(1), was in the original “section 208”, and was translated as section 2607 of this title, which is section 308 of Pub. L. 97–446, as the probable intent of Congress.
not less than ten consecutive years and has been exhibited for not less than five years during such period in a recognized museum or religious or secular monument or similar institution in the United States or the Virgin Islands, such customs territory or the Virgin Islands, the provisions of this chapter shall be enforced by appropriate customs officers. In any other territory or area outside the United States, but not within such customs territory or the Virgin Islands, such provisions shall be enforced by such persons as the Secretary shall by regulation prescribe of its location within the United States; and  

(D) if none of the preceding subparagraphs apply, has been within the United States for a period of not less than twenty consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.


§ 2612. Regulations

The Secretary shall prescribe such rules and regulations as are necessary and appropriate to carry out the provisions of this chapter.


§ 2613. Enforcement

In the customs territory of the United States, and in the Virgin Islands, the provisions of this chapter shall be enforced by appropriate customs officers. In any other territory or area within the United States, but not within such customs territory or the Virgin Islands, such provisions shall be enforced by such persons as may be designated by the President.


DELEGATION OF FUNCTIONS

For delegation of certain functions of President under this section, see Ex. Ord. No. 12555, Mar. 10, 1986, 51 F.R. 8475, set out as a note under section 2602 of this title.

CHAPTER 15—CARIBBEAN BASIN ECONOMIC RECOVERY

§ 2701. Authority to grant duty-free treatment

The President may proclaim duty-free treatment (or other preferential treatment) for all eligible articles from any beneficiary country in accordance with the provisions of this chapter.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”—meaning title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384—which is classified principally to this chapter. For complete classification of title II to this Code, see Short Title note set out below and Tables.

AMENDMENTS

2000—Pub. L. 106–200 inserted “(or other preferential treatment)” after “treatment”.

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–171, §1, May 24, 2010, 124 Stat. 1194, provided that: “This Act [amending sections 58c, 2703, and 2703a of this title and enacting provisions set out as notes under section 2703a of this title and section 6655 of Title 26, Internal Revenue Code] may be cited as the ‘Haiti Economic Lift Program Act of 2010’.”

SHORT TITLE OF 2008 AMENDMENT


SHORT TITLE OF 2006 AMENDMENT


SHORT TITLE OF 2009 AMENDMENT

Pub. L. 109–294, title II, §201, May 18, 2000, 114 Stat. 275, provided that: “This title [amending this section and sections 2702 to 2704, 3282, and 3284 of this title and enacting provisions set out as notes under this section] may be cited as the ‘United States-Caribbean Basin Trade Partnership Act’.”

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 101–382, title II, §201, Aug. 20, 1990, 104 Stat. 655, provided that: “This title [enacting section 226 of Title 26, Education, amending sections 1677, 2463, 2702, 2703, and 2706 of this title and section 936 of Title 26, Internal Revenue Code, enacting provisions set out as notes under this section and sections 1677, 2071, and 2703 of this title and section 936 of Title 26, and amending provisions set out as notes under section 2703 of this title] may be cited as the ‘Caribbean Basin Economic Recovery Expansion Act of 1999’.”

SHORT TITLE

Section 201 of title II of Pub. L. 98–67 provided that: “This title [enacting this chapter, amending section 1202 of this title and sections 274 and 7652 of Title 26, Internal Revenue Code, repealing section 2352 of this title, and enacting provisions set out as notes under sections 1319, 2251, and 2703 of this title, sections 274 and 7652 of Title 26, and section 1311 of Title 33, Naviga-

¹ So in original. Probably should be “United"
FINDINGS AND POLICY

Pub. L. 106–200, title II, §203, May 18, 2000, 114 Stat. 275, provided that:

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


“(2) In 1998, Hurricane Mitch and Hurricane Georges devastated areas in the Caribbean Basin region, killing more than 10,000 people and leaving 3,000,000 homeless.

“(3) The total direct impact of Hurricanes Mitch and Georges on Honduras, Nicaragua, the Dominican Republic, El Salvador, and Guatemala amounts to $4,200,000,000, representing a severe loss to income levels in this underdeveloped region.

“(4) In addition to short term disaster assistance, United States policy toward the region should focus on expanding bilateral trade with the Caribbean Basin region as an enduring solution for successful economic growth and recovery.

“(5) Thirty-four democratically elected leaders agreed at the 1994 Summit of the Americas to conclude negotiation of a Free Trade Area of the Americas (in this title referred to as ‘FTAA’) by the year 2005.

“(6) The economic security of the countries in the Caribbean Basin will be enhanced by the completion of the FTAA.

“(7) Offering temporary benefits to Caribbean Basin countries will preserve the United States commitment to Caribbean Basin beneficiary countries, promote the growth of free enterprise and economic opportunity in these neighboring countries, and thereby enhance the national security interests of the United States.

“(8) Given the greater propensity of countries located in the Western Hemisphere to use United States components and to purchase United States products compared to other countries, increased trade and economic activity between the United States and countries in the Western Hemisphere will create new jobs in the United States as a result of expanding export opportunities.

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

“(1) to offer Caribbean Basin beneficiary countries willing to prepare to become a party to the FTAA or another free trade agreement, tariff treatment essentially equivalent to that accorded to products of NAFTA countries for certain products not currently eligible for duty-free treatment under the CBERA; and

“(2) to seek the participation of Caribbean Basin beneficiary countries in the FTAA or another free trade agreement at the earliest possible date, with the goal of achieving full participation in such agreement not later than 2005.”

MEETINGS OF TRADE MINISTERS AND USTR

Pub. L. 106–200, title II, §213, May 18, 2000, 114 Stat. 276, provided that:

“(a) SCHEDULE OF MEETINGS.—The President shall take the necessary steps to convene a meeting with the trade ministers of the Caribbean Basin beneficiary countries in order to establish a schedule of regular meetings, to commence as soon as is practicable, of the trade ministers and the Trade Representative, for the purpose set forth in subsection (b).

“(b) PURPOSE.—The purpose of the meetings scheduled under subsection (a) is to reach agreement between the United States and Caribbean Basin beneficiary countries on the likely timing and procedures for initiating negotiations for FTAA beneficiary countries to enter into mutually advantageous free trade agreements with the United States that contain provisions comparable to those in the NAFTA and would make substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of Public Law 103–182 (19 U.S.C. 3317(b)(5)).

“(c) DEFINITION.—In this section, the term ‘FTAA beneficiary country’ has the meaning given that term in section 213(b)(5)(B) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)(5)(B)).”

CONGRESSIONAL FINDINGS


“(1) a stable political and economic climate in the Caribbean region is necessary for the development of the countries in that region and for the security and economic interests of the United States;

“(2) the Caribbean Basin Economic Recovery Act (this chapter) was enacted in 1983 to assist in the achievement of such a climate by stimulating the development of the export potential of the region; and

“(3) the commitment of the United States to the successful development of the region, as evidenced by the enactment of the Caribbean Basin Economic Recovery Act, should be reaffirmed, and further strengthened, by amending that Act to improve its operation.”

DEFINITIONS


“(1) NAFTA.—The term ‘NAFTA’ means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

“(2) NAFTA COUNTRY.—The term ‘NAFTA country’ means any country with respect to which the NAFTA is in force.

“(3) WTO AND WTO MEMBER.—The terms ‘WTO’ and ‘WTO member’ have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).”

§ 2702. Beneficiary country

(a) Definitions; termination of designation

(1) For purposes of this chapter—

(A) The term “beneficiary country” means any country listed in subsection (b) of this section with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this chapter. Before the President designates any country as a beneficiary country for purposes of this chapter, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(B) The term “entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(C) The term “HTS” means Harmonized Tariff Schedule of the United States.

(D) The term “NAFTA” means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(E) The terms “WTO” and “WTO member” have the meanings given those terms in section 3501 of this title.
(F) The term "former beneficiary country" means a country that ceases to be designated as a beneficiary country under this chapter because the country has become a party to a free trade agreement with the United States.

(2) If the President has designated any country as a beneficiary country for purposes of this chapter, he shall not terminate such designation (either by issuing a proclamation for that purpose or by issuing a proclamation which has the effect of terminating such designation) unless, at least sixty days before such termination, he has notified the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(b) Countries eligible for designation as beneficiary countries; conditions

In designating countries as "beneficiary countries" under this chapter the President shall consider only the following countries and territories or successor political entities:

- Anguilla
- Antigua and Barbuda
- Bahamas, The
- Barbados
- Belize
- Dominica
- Grenada
- Guyana
- Haiti
- Jamaica
- Panama
- Barbados Suriname
- Anguilla Saint Lucia
- Antigua and Barbuda Saint Vincent and the Grenadines
- Bahamas, The Grenadines
- Barbados Suriname
- Belize Trinidad and Tobago
- Dominica Cayman Islands
- Grenada Montserrat
- Guyana Netherlands Antilles
- Haiti Saint Christopher-Nevis
- Jamaica Turks and Caicos Islands
- Panama Virgin Islands, British

In addition, the President shall not designate any country a beneficiary country under this chapter—

(1) if such country is a Communist country;
(2) if such country—
   (A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens;
   (B) has taken steps to repudiate or nullify—
      (i) any existing contract or agreement with, or
      (ii) any patent, trademark, or other intellectual property of,
   a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned;
   (C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or
   (D) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—
      (i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or
(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;
(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;
(4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;
(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;
(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and
(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 2467(4) of this title) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) Factors determining designation

In determining whether to designate any country a beneficiary country under this chapter, the President shall take into account—

(1) an expression by such country of its desire to be so designated;
(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;
(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 3501 of this title);

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to promote its own economic development;

(8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.\(^1\)

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this chapter.

(d) Omitted

(e) Withdrawal or suspension of duty-free treatment to specific articles

(1)(A) The President may, after the requirements of subsection (a)(2) of this section and paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as a beneficiary country, or

(ii) withdraw, suspend, or limit the application of duty-free treatment under this chapter to any article of any country,

if, after such designation, the President determines that as a result of changed circumstances such country would be barred from designation as a beneficiary country under subsection (b) of this section.

(B) The President may, after the requirements of subsection (a)(2) of this section and paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as a CBTPA beneficiary country; or

(ii) withdraw, suspend, or limit the application of preferential treatment under section 2703(b)(2) and (3) of this title to any article of any country,

if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 2703(b)(5)(B) of this title.

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days prior to taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action—

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing; and

(II) the time and place at which such written comments will be accepted.

(3) If preferential treatment under section 2703(b)(2) and (3) of this title is withdrawn, suspended, or limited with respect to a CBTPA beneficiary country, such country shall not be deemed to be a “party” for the purposes of applying section 2703(b)(5)(C) of this title to imports of articles for which preferential treatment has been withdrawn, suspended, or limited with respect to such country.

(f) Reporting requirements

(1) In general

Not later than December 31, 2001, and every 2 years thereafter during the period this chapter is in effect, the United States Trade Representative shall submit to Congress a report regarding the operation of this chapter, including—

(A) with respect to subsections (b) and (c) of this section, the results of a general review of beneficiary countries based on the considerations described in such subsections; and

(B) the performance of each beneficiary country or CBTPA beneficiary country, as the case may be, under the criteria set forth in section 2703(b)(5)(B) of this title.

(2) Public comment

Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 2703(b)(5)(B) of this title.


\(^1\) So in original. The period probably should be a semicolon.
AMENDMENT OF SECTION

For termination of amendment by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates of 2005 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (f), was in the original “this title”, meaning title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 2701 of this title and Tables.


This Act, referred to in provisions following subsec. (b)(6), probably should be “this title” meaning title II of the Tariff Schedules of the United States. The Tariff Schedules were replaced by the Harmonized Tariff Schedule of the United States. See References in Text note above.

CODIFICATION

Subsec. (d) of this section amended general headnote 3(a) of the Tariff Schedules of the United States. The Tariff Schedules were replaced by the Harmonized Tariff Schedule of the United States. See References in Text note above.

AMENDMENTS


Subsec. (b). Pub. L. 109–53, §§ 107(d), 36, 402(b), is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 2701 of this title and Tables.

Subsec. (e)(1)(B), in the original “this ‘subtitle’”, meaning subtitle A (§§ 211–218) of title II of Pub. L. 98–67 which enacted this chapter, amended section 1202 of this title, repealed section 2502 of this title, and enacted provisions set out as notes under sections 1320, 1319, 2251, and 2703 of this title and section 1311 of Title 33, Navigation and Navigable Waters. For complete classification of subtitle A to the Code, see Tables.

**Effective and Termination Dates of 2005 Amendment**

Amendment by Pub. L. 109–53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a NAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as an Effective and Termination Dates note under section 4001 of this title.


**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104–188, set out as an Effective Date note under section 2461 of this title.

**Effective Date of 1994 Amendment**

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 621(b) of Pub. L. 103–465, set out as a note under section 1677k of this title.

**Effective Date of 1988 Amendment**

Amendment by section 1214(q)(1) of Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (e)(2)(A) of this section, related to publishing notice of proposed ac-
§ 2703. Eligible articles

(a) Growth, product, or manufacture of beneficiary countries

(1) Unless otherwise excluded from eligibility by this chapter, and subject to section 423 of the Tax Reform Act of 1986, and except as provided in subsection (b)(2) and (3) of this section, the duty-free treatment provided under this chapter shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) the article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), (i) the term "beneficiary country" includes the Commonwealth of Puerto Rico, the United States Virgin Islands, and any former beneficiary country. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this chapter, an article must be wholly the growth, product, or manufacture of a beneficiary country, or have been a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) As used in this subsection, the phrase "direct costs of processing operations" includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(4) Notwithstanding section 1311 of this title, the products of a beneficiary country which are imported directly from any beneficiary country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico. No duty shall be imposed on the withdrawal from warehouse of the product of such processing or manufacturing if, at the time of such withdrawal, such product meets the requirements of paragraph (1)(B).

(5) The duty-free treatment provided under this chapter shall apply to an article (other than an article listed in subsection (b) of this section) which is the growth, product, or manufacture of the Commonwealth of Puerto Rico if—

(A) the article is imported directly from the beneficiary country into the customs territory of the United States,

(B) the article was by any means advanced in value or improved in condition in a beneficiary country, and

(C) if any materials are added to the article in a beneficiary country, such materials are a product of a beneficiary country or the United States.

(6) Notwithstanding paragraph (1), the duty-free treatment provided under this chapter shall
apply to liqueurs and spirituous beverages produced in the territory of Canada from rum if—
(A) such rum is the growth, product, or manufacture of a beneficiary country or of the Virgin Islands of the United States;
(B) such rum is imported directly from a beneficiary country or the Virgin Islands of the United States into the territory of Canada, and such liqueurs and spirituous beverages are imported directly from the territory of Canada into the customs territory of the United States;
(C) when imported into the customs territory of the United States, such liqueurs and spirituous beverages are classified in subheading 2208.90 or 2208.40 of the HTS; and
(D) such rum accounts for at least 90 percent by volume of the alcoholic content of such liqueurs and spirituous beverages.

(b) Import-sensitive articles

(1) In general

Subject to paragraphs (2) through (5), the duty-free treatment provided under this chapter does not apply to—
(A) textile and apparel articles which were not eligible articles for purposes of this chapter on January 1, 1994, as this chapter was in effect on that date;
(B) footwear provided for in any of subheadings 6401.10.00, 6401.91.00, 6401.92.90, 6401.99.30, 6401.99.60, 6402.30.50, 6402.30.70, 6402.30.80, 6402.91.50, 6402.91.80, 6403.39.60, 6403.91.30, 6403.99.60, 6403.99.90, 6404.11.90, and 6404.19.20 of the HTS that was not designated at the time of the effective date of this chapter [Aug. 5, 1983] as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.];
(C) tuna, prepared or preserved in any manner, in airtight containers;
(D) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;
(E) watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply; or
(F) articles to which reduced rates of duty apply under subsection (h) of this section.

(2) Transition period treatment of certain textile and apparel articles

(A) Articles covered

During the transition period, the preferential treatment described in subparagraph (B) shall apply to the following articles:
(i) Apparel articles assembled in one or more CBTPA beneficiary countries

Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed and cut in the United States) that are—
(I) entered under subheading 9802.00.80 of the HTS; or
(II) entered under chapter 61 or 62 of the HTS, if, after such assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.

Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

(ii) Other apparel articles assembled in one or more CBTPA beneficiary countries

Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed in the United States) that are—
(I) entered under subheading 9802.00.80 of the HTS; or
(II) entered under chapter 61 or 62 of the HTS, if, after such assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.

Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

(iii) Certain knit apparel articles

(I) Apparel articles knit to shape (other than socks provided for in heading 6115 of the HTS) in a CBTPA beneficiary country from yarns wholly formed in the United States, and knit apparel articles (other than t-shirts described in subclause (III)) cut and wholly assembled in one or more CBTPA beneficiary countries from fabric
formed in one or more CBTPA beneficiary countries or the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in one or more CBTPA beneficiary countries), in an amount not exceeding the amount set forth in subclause (II).

(II) The amount referred to in subclause (I) is as follows:

(aa) 500,000,000 square meter equivalents during the 1-year period beginning on October 1, 2002.

(bb) 850,000,000 square meter equivalents during the 1-year period beginning on October 1, 2003.

(cc) 970,000,000 square meter equivalents in each succeeding 1-year period through September 30, 2030.

(III) T-shirts, other than underwear, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, in an amount not exceeding the amount set forth in subclause (IV).

(IV) The amount referred to in subclause (III) is as follows:

(aa) 4,872,000 dozen during the 1-year period beginning on October 1, 2001.

(bb) 9,000,000 dozen during the 1-year period beginning on October 1, 2002.

(cc) 10,000,000 dozen during the 1-year period beginning on October 1, 2003.

(dd) 12,000,000 dozen in each succeeding 1-year period through September 30, 2020.

(V) It is the sense of the Congress that the Congress should determine, based on the record of expansion of exports from the United States as a result of the preferential treatment of articles under this clause, the percentage by which the amount provided in subclauses (II) and (IV) should be compounded for the 1-year periods occurring after the 1-year period ending on September 30, 2004.

(iv) Certain other apparel articles

(I) General rule

Subject to subclause (II), any apparel article classified under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), (v), or (vi), if the article is both cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both.

(II) Limitation

During the 1-year period beginning on October 1, 2001, and during each of the 18 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles that producer or entity entered during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(v) Apparel articles assembled from fabrics or yarn not widely available in commercial quantities

(I) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, to the extent that apparel articles of such fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA.

(II) At the request of any interested party, the President is authorized to proclaim additional fabrics and yarn as eligible for preferential treatment under subclause (I) if—

(aa) the President determines that such fabrics or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(bb) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;

(cc) within 60 days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.
that sets forth the action proposed to be proclaimed and the reasons for such actions, and the advice obtained under division (bb);

(dd) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of division (cc), has expired; and

(ee) the President has consulted with such committees regarding the proposed action during the period referred to in division (cc).

(III) If the President determines that any fabric or yarn was determined to be eligible for preferential treatment under subparagraph (i) on the basis of fraud, the President is authorized to remove that designation from that fabric or yarn with respect to articles entered after such removal.

(vi) Handloomed, handmade, and folklore articles

A handloomed, handmade, or folklore article of a CBTPA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

(vii) Special rules

(I) Exception for findings and trimmings

(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, “bow buds”, decorative lace, trim, elastic strips, zippers, including zipper tapes and labels, and other similar products. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and are used in the production of brassieres.

(bb) In the case of an article described in clause (ii) of this subparagraph, sewing thread shall not be treated as findings or trimmings under this subclause.

(II) Certain interlining

(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, “hymo” piece, or “sleeve header”, of woven or wert-inserted warp knit construction and of coarse animal hair or man-made filaments.

(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(III) De minimis rule

An article that would otherwise be ineligible for preferential treatment under this paragraph because the article contains fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries shall not be ineligible for such treatment if the total weight of all such fibers or yarns is not more than 7 percent of the total weight of the good. Notwithstanding the preceding sentence, an apparel article containing elastomeric yarns shall be eligible for preferential treatment under this paragraph only if such yarns are wholly formed in the United States.

(IV) Special origin rule

An article otherwise eligible for preferential treatment under clause (i), (ii), or (ix) of this subparagraph shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.60, or 5402.61.00 of the HTS duty-free from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

(V) Thread

An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.

(viii) Textile luggage

Textile luggage—

(I) assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or

(II) assembled from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States.

(ix) Apparel articles assembled in one or more CBTPA beneficiary countries from United States and CBTPA beneficiary country components

Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from components cut in the United States and in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or
§ 2703

TITLE 19—CUSTOMS DUTIES  Page 696

from components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS). Apparel articles shall qualify under this clause only if they meet the requirements of clause (i) or (ii) (as the case may be) with respect to dyeing, printing, and finishing of knit and woven fabrics from which the articles are assembled.

(B) Preferential treatment

Except as provided in subparagraph (E), during the transition period, the articles to which this subparagraph applies shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels.

(C) Handloomed, handmade, and folklore articles

For purposes of subparagraph (A)(vi), the President shall consult with representatives of the CBTPA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

(D) Penalties for transshipments

(i) Penalties for exporters

If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile or apparel articles from a CBTPA beneficiary country, then the President shall deny all benefits under this chapter to such exporter, and any successor of such exporter, for a period of 2 years.

(ii) Penalties for countries

Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the CBTPA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3, to the extent consistent with the obligations of the United States under the WTO.

(iii) Transshipment described

Transshipment within the meaning of this subparagraph has occurred when preferential treatment under subparagraph (B) has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (B).

(E) Bilateral emergency actions

(i) In general

The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from a CBTPA beneficiary country if the application of tariff treatment under subparagraph (B) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

(ii) Rules relating to bilateral emergency action

For purposes of applying bilateral emergency action under this subparagraph—

(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

(II) the term “transition period” in section 4 of the Annex shall have the meaning given that term in paragraph (5)(D) of this subsection; and

(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the CBTPA beneficiary country in question and the country does not agree to consult within the time period specified under section 4.

(3) Transition period treatment of certain other articles originating in beneficiary countries

(A) Equivalent tariff treatment

(i) In general

Subject to clauses (ii) and (iii), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that is a CBTPA originating good shall be identical to the tariff treatment that is accorded at such time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTS that is a good of Mexico and is imported into the United States.

(ii) Exception

Clause (i) does not apply to any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS.

(iii) Certain footwear

Notwithstanding paragraph (1)(B) and clause (i) of this subparagraph, footwear provided for in any of subheadings 6403.59.60, 6403.91.30, 6403.99.60, and 6403.99.90 of the HTS shall be eligible for the duty-free treatment provided for under this chapter if—
(I) the article of footwear is the growth, product, or manufacture of a CBTPA beneficiary country; and

(II) the article otherwise meets the requirements of subsection (a) of this section, except that in applying such subsection, “CBTPA beneficiary country” shall be substituted for “beneficiary country” each place it appears.

(B) Relationship to subsection (h) duty reductions

If at any time during the transition period the rate of duty that would (but for action taken under subparagraph (A)(i) in regard to such period) apply with respect to any article under subsection (h) of this section is a rate of duty that is lower than the rate of duty resulting from such action, then such lower rate of duty shall be applied for the purposes of implementing such action.

(4) Customs procedures

(A) In general

(i) Regulations

Any importer that claims preferential treatment under paragraph (2) or (3) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(ii) Determination

(I) In general

In order to qualify for the preferential treatment under paragraph (2) or (3) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subparagraph (II)—

(aa) has implemented and follows; or

(bb) is making substantial progress toward implementing and following procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(II) Country described

A country is described in this subsection if it is a CBTPA beneficiary country—

(aa) from which the article is exported; or

(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment under paragraph (2) or (3).

(B) Certificate of origin

The Certificate of Origin that otherwise would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraphs (2) or (3) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(C) Report by USTR on cooperation of other countries concerning circumvention

The United States Commissioner of Customs shall conduct a study analyzing the extent to which each CBTPA beneficiary country—

(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning fiber content, quantities, description, classification, or origin of textile and apparel goods; and

(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Trade Representative shall submit to Congress, not later than October 1, 2001, a report on the study conducted under this subparagraph.

(5) Definitions and special rules

For purposes of this subsection—

(A) Annex

The term “the Annex” means Annex 300–B of the NAFTA.

(B) CBTPA beneficiary country

The term “CBTPA beneficiary country” means any “beneficiary country”, as defined in section 2702(a)(1)(A) of this title, which the President designates as a CBTPA beneficiary country, taking into account the criteria contained in subsections (b) and (c) of section 2702 of this title and other appropriate criteria, including the following:

(i) Whether the beneficiary country has demonstrated a commitment to—

(I) undertake its obligations under the WTO, including those agreements listed in section 3511(d) of this title, on or ahead of schedule; and

(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

(ii) The extent to which the country provides protection of intellectual property rights consistent with or greater than the

...
protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 3511(d)(15) of this title.

(iii) The extent to which the country provides internationally recognized worker rights, including—

(I) the right of association;

(II) the right to organize and bargain collectively;

(III) a prohibition on the use of any form of forced or compulsory labor;

(IV) a minimum age for the employment of children; and

(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974 [19 U.S.C. 2467(6)].

(v) The extent to which the country has met the counter-narcotics certification criteria set forth in section 2291j of title 22 for eligibility for United States assistance.

(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(vii) The extent to which the country—

(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 3511(d)(17) of this title; and

(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

(C) CBTPA originating good

(i) In general

The term “CBTPA originating good” means a good that meets the rules of origin for a good set forth in chapter 4 of the NAFTA as implemented pursuant to United States law.

(ii) Application of chapter 4

In applying chapter 4 of the NAFTA with respect to a CBTPA beneficiary country for purposes of this subsection—

(I) no country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;

(II) any reference to trade between the United States and Mexico shall be deemed to refer to trade between the United States and a CBTPA beneficiary country;

(III) any reference to a party shall be deemed to refer to a CBTPA beneficiary country or the United States; and

(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974 [19 U.S.C. 2467(6)].

(v) The extent to which the country has met the counter-narcotics certification criteria set forth in section 2291j of title 22 for eligibility for United States assistance.

(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(vii) The extent to which the country—

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In applying chapter 4 of the NAFTA with respect to a CBTPA beneficiary country for purposes of this subsection—

(I) no country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;

(II) any reference to trade between the United States and Mexico shall be deemed to refer to trade between the United States and a CBTPA beneficiary country;

(III) any reference to a party shall be deemed to refer to a CBTPA beneficiary country or the United States; and

(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974 [19 U.S.C. 2467(6)].

(v) The extent to which the country has met the counter-narcotics certification criteria set forth in section 2291j of title 22 for eligibility for United States assistance.

(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(vii) The extent to which the country—

(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 3511(d)(17) of this title; and

(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

(D) Transition period

The term “transition period” means, with respect to a CBTPA beneficiary country, the period that begins on October 1, 2000, and ends on the earlier of—

(i) September 30, 2020; or

(ii) the date on which the FTAA or another free trade agreement that makes substantial progress in achieving the negotiating objectives set forth in section 3317(b)(5) of this title enters into force with respect to the United States and the CBTPA beneficiary country.

(E) CBTPA

The term “CBTPA” means the United States-Caribbean Basin Trade Partnership Act.

(F) FTAA

The term “FTAA” means the Free Trade Area of the Americas.

(G) Former CBTPA beneficiary country

The term “former CBTPA beneficiary country” means a country that ceases to be designated as a CBTPA beneficiary country under this chapter because the country has become a party to a free trade agreement with the United States.

(H) Articles that undergo production in a CBTPA beneficiary country and a former CBTPA beneficiary country

(i) For purposes of determining the eligibility of an article for preferential treatment under paragraph (2) or (3), references in either such paragraph, and in subparagraph (C) of this paragraph to—

(I) a “CBTPA beneficiaries country” shall be considered to include any former CBTPA beneficiary country, and

(II) “CBTPA beneficiary countries” shall be considered to include former CBTPA beneficiary countries.

if the article, or a good used in the production of the article, undergoes production in a CBTPA beneficiary country.

(ii) An article that is eligible for preferential treatment under clause (i) shall not be ineligible for such treatment because the article is imported directly from a former CBTPA beneficiary country.

(iii) Notwithstanding clauses (i) and (ii), an article that is a good of the United States and Mexico shall be deemed to refer to trade between the United States and a CBTPA beneficiary country; and

(iv) any reference to parties shall be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination thereof).

(c) Sugar and beef products; stable food production plan; suspension of duty-free treatment; monitoring

(1) As used in this subsection—
(A) The term "sugar and beef products" means—
   (i) sugars, sirups, and molasses provided for in subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the Harmonized Tariff Schedule of the United States, and
   (ii) articles of beef or veal, however provided for in chapters 2 and 16 of the Harmonized Tariff Schedule of the United States.

(B) The term "Plan" means a stable food production plan that consists of measures and proposals designed to ensure that the present level of food production in, and the nutritional level of the population of, a beneficiary country will not be adversely affected by changes in land use and land ownership that will result if increased production of sugar and beef products is undertaken in response to the duty-free treatment extended under this chapter to such products. A Plan must specify such facts regarding, and such proposed actions by, a beneficiary country as the President deems necessary for purposes of carrying out this subsection, including but not limited to—
   (i) the current levels of food production and nutritional health of the population;
   (ii) current level of production and export of sugar and beef products;
   (iii) expected increases in production and export of sugar and beef products as a result of the duty-free access to the United States market provided under this chapter;
   (iv) measures to be taken to ensure that the expanded production of such products because of such duty-free access will not occur at the expense of stable food production; and
   (v) proposals for a system to monitor the impact of such duty-free access on stable food production and land use and land ownership patterns.

(2) Duty-free treatment extended under this chapter to sugar and beef products that are the product of a beneficiary country shall be suspended by the President under this subsection if—
   (A) the beneficiary country, within the ninety-day period beginning on the date of its designation as such a country under section 2702 of this title, does not submit a Plan to the President for evaluation;
   (B) on the basis of his evaluation, the President determines that the Plan of a beneficiary country does not meet the criteria set forth in paragraph (1)(B); or
   (C) as a result of the monitoring of the operation of the Plan under paragraph (5), the President determines that a beneficiary country is not making a good faith effort to implement its Plan, or that the measures and proposals in the Plan, although being implemented, are not achieving their purposes.

(3) Before the President suspends duty-free treatment by reason of paragraph (2)(A), (B), or (C) to the sugar and beef products of a beneficiary country, he must offer to enter into consultation with the beneficiary country for purposes of formulating appropriate remedial action which may be taken by that country to avoid such suspension. If the beneficiary country thereafter enters into consultation within a reasonable time and undertakes to formulate remedial action in good faith, the President shall withhold the suspension of duty-free treatment on the condition that the remedial action agreed upon be appropriately implemented by that country.

(4) The President shall monitor on a biennial basis the operation of the Plans implemented by beneficiary countries, and shall submit a written report to Congress by March 15 following the close of each biennium, that—
   (A) specifies the extent to which each Plan, and remedial actions, if any, agreed upon under paragraph (4), have been implemented; and
   (B) evaluates the results of such implementation.

(5) The President shall terminate any suspension of duty-free treatment imposed under this subsection if he determines that the beneficiary country has taken appropriate action to remedy the factors on which the suspension was based.

d) Tariff-rate quotas

No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this chapter.

(e) Proclamations suspending duty-free treatment

(1) The President may by proclamation suspend the duty-free treatment provided by this chapter with respect to any eligible article and may proclaim a duty rate for such article if such action is provided under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.] or section 1962 of this title.

(2) In any report by the International Trade Commission to the President under section 202(f) of the Trade Act of 1974 [19 U.S.C. 2252(f)] regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this chapter, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of subsections 1 section 203 of the Trade Act of 1974 [19 U.S.C. 2253(a), (c)], the suspension of the duty-free treatment provided by this chapter shall be treated as an increase in duty.

(4) No proclamation which provides solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be taken under section 203 of the Trade Act of 1974 [19 U.S.C. 2253] unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under section 202(b) of the Trade Act of 1974 [19 U.S.C. 2252(b)], determines in the course of its investigation under such section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this chapter.

1So in original.
§ 2703

(5)(A) Any action taken under section 203 of the Trade Act of 1974 [19 U.S.C. 2253] that is in effect when duty-free treatment pursuant to section 2701 2 of this title is proclaimed shall remain in effect until modified or terminated.

(B) If any article is subject to any such action at the time duty-free treatment is proclaimed pursuant to section 2701 of this title, the President may reduce or terminate the application of such action to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of section 203 of the Trade Act of 1974 [19 U.S.C. 2253].

(f) Petitions to International Trade Commission

(1) If a petition is filed with the International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 [19 U.S.C. 2251] regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within fourteen days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within seven days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this chapter or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the taking of action under section 203 of the Trade Act of 1974 [19 U.S.C. 2253],

(B) on the day a determination by the President not to take action under section 203 of such Act [19 U.S.C. 2253] not to take action becomes final,

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term "perishable product" means—

(A) live plants and fresh cut flowers provided for in chapter 6 of the HTS;

(B) fresh or chilled vegetables provided for in subheadings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(C) fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheading 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, manzanas coloradas, sapodillas, sweetsops and sweetsops of subheading 0810.90.40) of the HTS; and

(D) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(g) Fees not affected by proclamation

No proclamation issued pursuant to this chapter shall affect fees imposed pursuant to section 624 of title 7.

(h) Duty reduction for certain leather-related products

(1) Subject to paragraph (2), the President shall proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves, and leather wearing apparel that—

(A) are the product of any beneficiary country; and

(B) were not designated on August 5, 1983, as eligible articles for purposes of the generalized system of preferences under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.].

(2) The reduction required under paragraph (1) in the rate of duty on any article shall—

(A) result in a rate that is equal to 80 percent of the rate of duty that applies to the article on December 31, 1991, except that, subject to the limitations in paragraph (3), the reduction may not exceed 2.5 percent ad valorem; and

(B) be implemented in 5 equal annual stages with the first one-fifth of the aggregate reduction in the rate of duty being applied to entries or withdrawals from warehouse for consumption, of the article on or after January 1, 1992.

(3) The reduction required under this subsection with respect to the rate of duty on any article is in addition to any reduction in the rate of duty on that article that may be proclaimed by the President as being required or appropriate to carry out any trade agreement entered into under the Uruguay Round of trade negotiations; except that if the reduction so proclaimed—

(A) is less than 1.5 percent ad valorem, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed 3.5 percent ad valorem, or

(B) is 1.5 percent ad valorem or greater, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed the proclaimed reduction plus 1 percent ad valorem.

(See References in Text note below.)
For termination of amendment by section 107(d) of Pub. L. 109-53, see Effective and Termination Dates of 2005 Amendment note below.

REFERENCES IN TEXT

This chapter, referred to in text, was originally ‘‘this title’’, meaning title II of Pub. L. 98-47, Aug. 5, 1983, 97 Stat. 384, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 2701 of this title.

Section 423 of the Tax Reform Act of 1986, referred to in subsec. (a)(1), is section 423 of Pub. L. 99-514, title IV, §3107(a)(1), as if the amendment by Pub. L. 108-429, §2004(b)(2), was included in the enactment of Pub. L. 107-210, §3107(a)(1)(B), and notwithstanding section 3001(c) of Pub. L. 107-206, set out as an Effective Date of 2002 Amendments note below, to reflect the probable intent of Congress.

Amendment of subsec. (b)(2)(A)(i) by Pub. L. 107-210, §3107(a)(2), was executed after amendment by Pub. L. 106-200, §3001(a)(2), notwithstanding section 3001(c) of Pub. L. 107-206, set out as an Effective Date of 2002 Amendments note below, to reflect the probable intent of Congress.

AMENDMENTS


2004—Subsec. (b)(1)(B). Pub. L. 108-429, §1558(a)(1), amended subpar. (B). Generally, prior to amendment, subpar. (B) read as follows: ‘‘footwear not designated at the time of the effective date of this chapter as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974’’.


Amendment of subsec. (b)(2)(A)(ii). Pub. L. 108-429, §2004(b)(2), added subsec. ‘‘Subject to clauses (ii) and (iii)’’ for ‘‘Subject to clause (ii)’’.

Amendment of subsec. (b)(3)(A)(ii). Pub. L. 108-429, §1558(a)(2)(A), substituted ‘‘Subject to clauses (ii) and (iii)’’ for ‘‘Subject to clause (ii)’’.

2002—Subsec. (b)(2)(A)(i). Pub. L. 107-210, §3107(a)(1)(B), as amended by Pub. L. 108-429, §2004(b)(2), substituted ‘‘Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, are carried out in the United States’’.

§ 2703
TITLE 19—CUSTOMS DUTIES
Page 702
bled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.” See Codification note above.

Pub. L. 107–210, § 3109(a)(1), added introductory provisions which read as follows: “Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed and cut in the United States) that are—”

Subsec. (b)(2)(A)(i). Pub. L. 107–210, § 3109(a)(2), amended heading and text generally. Prior to amendment, text read as follows: “Apparel articles cut in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed and cut in the United States) that are—”

Subsec. (b)(2)(A)(ii). Pub. L. 107–210, § 3109(a)(3), amended subcl. (II) generally. Prior to amendment, text read as follows: “Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed and cut in the United States), if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. See Codification note above.”


(aa) 250,000,000 square meter equivalents during the 1-year period beginning on October 1, 2000, increased by 16 percent, compounded annually, in each succeeding 1-year period through September 30, 2004; and

(bb) in each 1-year period thereafter through September 30, 2004, the amount in effect for the 1-year period ending on September 30, 2004, or such other amount as may be provided by law.”


“(II) Subject to subparagraphs (B) and (C), any apparel article classified under subheading 6212.10 of the HTS, if the article is both cut and sewn or otherwise assembled in the United States, or one or more of the CBTPA beneficiary countries, or both—

(a) During the 1-year period beginning on October 1, 2000, and during each of the six succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabric components formed in the United States that are used in the production of such articles of that producer or entity during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

(III) The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement described in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of a producer or entity controlling production shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabric components formed in the United States that are used in the production of such articles of that producer or entity in the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.”


the United States [Jan. 1, 1995], except as otherwise provided, see section 451 of Pub. L. 103–465, set out as an Effective Date note under section 3601 of this title.

**Effective Date of 1990 Amendment**

Section 215(b) of Pub. L. 101–382 provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

"(2) Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other provision of law, upon proper request filed with the appropriate customs officer after September 30, 1990, and before April 1, 1991, any entry, or withdrawal from warehouse—

"(A) which was made after August 5, 1983, and before October 1, 1990, and with respect to which liquidation has not occurred before October 1, 1990, and

"(B) with respect to which there would have been no duty, or a lesser duty, if the amendment made by subsection (a) applied, shall be liquidated as though such amendment applied to such entry or withdrawal."

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**Effective Date of 1988 Amendments**

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) ofPub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

Amendment by section 1214(q)(2) ofPub. L. 100–647, set out as a note under section 100–418, effective Aug. 23, 1988, and applicable with respect to investigations initiated under part 1 (§ 2251 et seq.) of this title.

Amendment by section 1401(b)(2) of Pub. L. 100–418, effective Aug. 23, 1988, and applicable with respect to investigations initiated under part 1 (§ 2251 et seq.) of subchapter II of chapter 12 of this title or on or after that date, see section 1401(c) of Pub. L. 100–418, set out as a note under section 2551 of this title.

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**Effective Date of 1986 Amendment**

Section 423(g) of Pub. L. 99–514 provided that:

"(1) The provisions of, and the amendments made by, this section (other than subsection (e)) [amending this section and General Headnote 3(a)(i) of the Tariff Schedules of the United States formerly set out under section 1202 of this title and enacting provisions set out as a note below] shall apply to articles entered—

"(A) after December 31, 1986, and

"(B) before the expiration of the effective period of item 301.50 of the Appendix to the Tariff Schedules of the United States [not classified to the Code].

"(2) The provisions of subsection (e) [set out as a note below] shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

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**Effective Date of 1984 Amendment**

Amendment by Pub. L. 98–573 effective on 13th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

**Termination of Reporting Requirements**

For termination, effective May 5, 2000, of provisions in subsec. (c)(4) relating to submitting a written report to Congress by March 15 following the close of each biennium, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 25 of House Document No. 103–7.

**Transfer of Functions**

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.
“(C) a material produced in a beneficiary country, or
“(D) otherwise eligible for duty-free treatment under such Act (19 U.S.C. 2701 et seq.) as the growth, product, or manufacture of a beneficiary country;

unless the ethyl alcohol or mixture thereof is an indigenous product of that insular possession or beneficiary country.

“(b) EXCEPTION.—
“(1) Subject to the limitation in paragraph (2), subsection (a) shall not apply to ethyl alcohol that is imported into the United States during calendar years 1987, 1988, and 1989 and produced in—

“(A) an azeotropic distillation facility located in a beneficiary country, if that facility was established before, and in operation on, July 1, 1987,

“(B) an azeotropic distillation facility—

(at least 50 percent of the total value of the equipment and components of which were—

“(i) produced in the United States, and

“(ii) owned by a corporation at least 50 percent of the outstanding shares of stock of which were owned by a United States person (or persons) on or before January 1, 1986, and

“(III) substantially all of the equipment and components of which were, on or before January 1, 1986—

“(I) located in the United States under the possession or control of such corporation,

“(II) ready for shipment to, and installation in, a beneficiary country or an insular possession of the United States, and

“(III) which—

“(i) has on the date of enactment of this Act [Oct. 22, 1986], or

“(ii) will have at the time such facility is placed in service (based on estimates made before the date of enactment of this Act), a stated capacity to produce not more than 42,000,000 gallons of such product per year, or

“(C) a distillation facility operated by a corporation which, before the date of enactment of the Omnibus Trade Act of 1987 (probably means the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, which was approved Aug. 23, 1988)—

“(i) has completed engineering and design of a full-scale fermentation facility in the United States Virgin Islands, and

“(ii) has obtained authorization from authorities of the United States Virgin Islands to operate a full-scale fermentation facility.

“(2) The exception provided under paragraph (1) shall cease to apply during each of calendar years 1987, 1988, and 1989 to ethyl alcohol produced in a facility described in subparagraph (A), (B), or (C) of paragraph (1) after 20,000,000 gallons of ethyl alcohol produced in that facility are entered into the United States during that year.

“(c) DEFINITIONS.—For purposes of this section [amending this section and General Headnote 3(a)(i) of the Tariff Schedules of the United States formerly set out as notes under this section]—

“(1) The term 'ethyl alcohol or a mixture thereof' means (except for purposes of subsection (e) (ethyl alcohol or any mixture thereof described in item 901.50 of the Appendix to the Tariff Schedules of the United States not classified to the Code)

“(2) Ethyl alcohol or a mixture thereof that is produced by a process of full fermentation in an insular possession or beneficiary country shall be treated as being an indigenous product of that possession or country.

“(3)(A) Ethyl alcohol and mixtures thereof that are only dehydrated within an insular possession or beneficiary country (hereinafter in this paragraph referred to as ‘dehydrated alcohol and mixtures’) shall be treated as being indigenous products of that pos-

session or country only if the alcohol or mixture, when entered, meets the applicable local feedstock requirement.

“(B) The local feedstock requirement with respect to any calendar year is—

“(i) 0 percent with respect to the base quantity of dehydrated alcohol and mixtures that is entered;

“(ii) 30 percent with respect to the 45,000,000 gallons of dehydrated alcohol and mixtures next entered after the base quantity; and

“(iii) 50 percent with respect to all dehydrated alcohol and mixtures entered after the amount specified in clause (ii) is entered.

“(C) For purposes of this paragraph:

“(1) The term ‘base quantity’ means, with respect to dehydrated alcohol and mixtures entered during any calendar year, the greater of—

“(A) 100–418, which was approved Aug. 23, 1988
d(1) 60,000,000 gallons; or

“(II) an amount (expressed in gallons) equal to 7 percent of the United States domestic market for ethyl alcohol, as determined by the United States International Trade Commission, during the 12-month period ending on the preceding September 30; that is first entered during that calendar year,

“(ii) The term ‘local feedstock’ means hydrous ethyl alcohol which is wholly produced or manufactured in any insular possession or beneficiary country.

“(iii) The term ‘local feedstock requirement’ means the minimum percent, by volume, of local feedstock that must be included in dehydrated alcohol and mixtures.

“(4) The term ‘beneficiary country’ has the meaning given to such term by section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702).

“(ii) The term ‘United States person’ has the meaning given to such term by section 7701(a)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 7701(a)(3)].

“(5) The term ‘entered’ means, or withdrawn from warehouse, for consumption in the customs territory of the United States.

“(e) DRAWBACKS.—

“(1) For purposes of subsection (b) and (j)(2) of section 313 of the Tariff Act of 1930 (19 U.S.C. 1313), as amended by section 1888(2) of this Act, any ethyl alcohol (provided for in item 427.88 of the Tariff Schedules of the United States [not classified to the Code]) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) which is subject to the additional duty imposed by item 901.50 of the Appendix to such Schedules may be treated as being fungible with, or of being of the same kind and quality as, any other imported ethyl alcohol (provided for in item 427.88 of such Schedules) or mixture containing such alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) only if such other imported ethyl alcohol or mixture thereof is also subject to such additional duty.

“(2) Paragraph (1) shall not apply with respect to ethyl alcohol (provided for in item 427.88 of the Tariff Schedules of the United States) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) that is exempt from the additional duty imposed by item 901.50 of the Appendix to such Schedules by reason of—

“(A) subsection (b), or

“(B) any agreement entered into under section 102(b) of the Trade Act of 1974 (19 U.S.C. 2112(b)).


Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI (§§1101–1147 and 1171–1177) or title XVIII (§§1801–1889A) of Pub. L.
99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 112(b)(2) of Pub. L. 99–514, as amended, set out as a note under section 241 of Title 26, Internal Revenue Code.

DUTY-FREE TREATMENT OF IMPORTED RUM; COMPENSATION MEASURES; PRESIDENTIAL AUTHORITY; REPORT TO CONGRESS

Section 214(c) of Pub. L. 98–67, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ‘‘If the sum of the amounts of taxes covered into the treasuries of Puerto Rico or the United States Virgin Islands pursuant to section 7652(c) of the Internal Revenue Code of 1986 [26 U.S.C. 7652(c)] is reduced below the amount that would have been covered over if the imported rum had been produced in Puerto Rico or the United States Virgin Islands, then the President shall consider compensation measures and, in this regard, may withdraw the duty-free treatment on rum provided by this title [this chapter]. The President shall submit a report to the Congress on the measures he takes.’’

PROC. NO. 7351, TO IMPLEMENT THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

PROC. No. 7351, Oct. 2, 2000, 65 F.R. 58328, provided in pertinent part that the United States Trade Representative (USTR) is authorized to determine whether each designated beneficiary country has satisfied the requirements of subsection (b)(4)(A)(i) of this section relating to the implementation of procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the North American Free Trade Agreement and to exercise the authority provided to the President under section 2483 of this title to embody modifications and technical or conforming changes in the Harmonized Tariff Schedule of the United States (HTS) and is directed to set forth any such determination in a notice to be published in the Federal Register, and that such notice would modify general note 17 of the HTS by listing the countries that satisfy the requirements of subsection (b)(4)(A)(i) of this section, effective Oct. 2, 2000, except that the modifications to the HTS made by the Annex to the proclamation, as further modified by any notice to be published in the Federal Register, would be effective on the date announced by the USTR in such notice.

EX. ORD. No. 13191, IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT AND THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT


By the authority vested in me as President by the Constitution and the laws of the United States of America, including the African Growth and Opportunity Act (Title I of Public Law 106–200) [19 U.S.C. 3701 et seq.] (AGOA), the United States-Caribbean Basin Trade Partnership Act (Title II of Public Law 106–200) [see Short Title of 2000 Amendment note set out under section 2701 of this title] (CBTPA), the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.), and section 301 of title 3, United States Code, and in order to expand international trade and enhance our economic partnership with sub-Saharan Africa and the Caribbean Basin, promote investment and economic development and reduce poverty in those regions, and create new economic opportunities for American workers and businesses, it is hereby ordered as follows:

PART I—IMPLEMENTATION OF THE AGOA

SECTION 1. Apparel Articles Assembled from Fabrics or Yarn Not Available in Commercial Quantities. The Committee, for the Implementation of Textile Agreements (the ‘‘Committee’’) is authorized to exercise the authority vested in the President under section 112(b)(5)(B)(i) of the AGOA (19 U.S.C. 3721(b)(5)(B)(i)) to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The Committee and the United States Trade Representative (USTR) are jointly authorized to exercise the authority vested in the President under sections 112(b)(5)(B)(i), (iii), and (v) of the AGOA (19 U.S.C. 3721(b)(5)(B)(i), (iii), and (v)) to obtain advice from the appropriate advisory committee, to submit a report to the appropriate Congressional committees, and to consult with those Congressional committees. The USTR is authorized to exercise the authority vested in the President under section 112(b)(5)(B)(ii) of the AGOA to obtain advice from the U.S. International Trade Commission (USITC).

SISC. 2. Handloomed, Handmade, and Folklore Articles and Ethnic Printed Fabrics. The Committee, after consultation with the Commissioner, United States Customs Service (Commissioner), is authorized to exercise the authority vested in the President under section 112(b)(6) of the AGOA (19 U.S.C. 3721(b)(6)) to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles or ethnic printed fabrics. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

SISC. 3. Certain Interlinings. The Committee is authorized to exercise the authority vested in the President under section 112(d)(1)(B)(iii) of the AGOA (19 U.S.C. 3722(d)(1)(B)(iii)) to determine whether U.S. manufacturers are producing interlinings in the United States in commercial quantities. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the Federal Register. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

SISC. 4. Penalties for Transshipments. The Committee, after consultation with the Commissioner, is authorized to exercise the authority vested in the President under section 113(b)(3) of the AGOA (19 U.S.C. 3722(b)(3)) to determine, based on sufficient evidence, whether an exporter has engaged in transshipment and to deny for a period of 5 years all benefits under section 112 of the AGOA (19 U.S.C. 3721) to any such exporter, any successor of such exporter, and any other entity owned or operated by the principal of such exporter. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the Federal Register. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

SISC. 5. Effective Visa Systems. Pursuant to sections 112(a) and 113(a)(1) of the AGOA (19 U.S.C. 3721(a) and 3722(a)(1)), the USTR is authorized to direct the Commissioner to take such actions as may be necessary to ensure that textile and apparel articles described in section 112(b) of the AGOA (19 U.S.C. 3721(b)) that are entered, or withdrawn from warehouse, for consumption are accompanied by an appropriate export visa, if the preferential treatment described in section 112(a) of the AGOA is claimed with respect to such articles.

PART II—IMPLEMENTATION OF THE CBTPA

SECTION 1. Apparel Articles Assembled from Fabrics or Yarn Not Available in Commercial Quantities. The Committee is authorized to exercise the authority vested in the President under section 213(b)(2)(A)(v)(II)(aa) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v)(II)(aa)), as added by section 211(a) of the CBTPA, to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee shall establish procedures to ensure ap-
appropriate public participation in any such determination. The Committee and the USTR are jointly authorized to exercise the authority vested in the President under sections 213(b)(2)(A)(v)(II)(bb), (cc), and (ee) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v)(II)(bb), (cc), and (ee)), as added by section 211(a) of the CBTPA, to obtain advice from the appropriate advisory committee, to submit a report to the appropriate Congressional committees, and to consult with those Congressional committees. The USTR is authorized to exercise the authority vested in the President under section 213(b)(2)(A)(v)(II)(bb), (cc), and (ee)), as added by section 211(a) of the CBTPA, to obtain advice from the appropriate advisory committee.

§ 2703a. Special rules for Haiti

(a) Definitions

In this section:

(1) Initial applicable 1-year period

The term “initial applicable 1-year period” means the 1-year period beginning on December 20, 2006.

(2) Appropriate congressional committees

The term “appropriate congressional committees” means the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(3) Core labor standards

The term “core labor standards” means—

(A) freedom of association;

(B) the effective recognition of the right to bargain collectively;

(C) the elimination of all forms of compulsory or forced labor;

(D) the effective abolition of child labor and a prohibition on the worst forms of child labor;

(E) the elimination of discrimination in respect of employment and occupation.

(4) Enter; entry

The terms “enter” and “entry” refer to the entry, or withdrawal from warehouse for consumption, in the customs territory of the United States.

(5) Imported directly from Haiti or the Dominican Republic

Articles are “imported directly from Haiti or the Dominican Republic” if—

(A) the articles are shipped from Haiti or the Dominican Republic into the United States through the territory of an intermediate country, and—

(i) the articles in the shipment do not enter into the commerce of any intermediate country, and the invoices, bills of lading, and other shipping documents specify the United States as the final destination; or

(ii) the invoices and other documents do not specify the United States as the final destination, but the articles in the shipment—

(I) remain under the control of the customs authority in the intermediate country;

(II) do not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail; and

(III) have not been subjected to operations in the intermediate country other than loading, unloading, or other activi-
ties necessary to preserve the articles in good condition.

(6) Knit-to-shape

A good is "knit-to-shape" if 50 percent or more of the exterior surface area of the good is formed by major parts that have been knitted or crocheted directly to the shape used in the good, with no consideration being given to patch pockets, appliqués, or the like. Minor cutting, trimming, or sewing of those major parts shall not affect the determination of whether a good is "knit-to-shape".\(^1\)

(7) TAICNAR Program

The term "TAICNAR Program" means the Technical Assistance Improvement and Compliance Needs Assessment and Remediation Program established pursuant to subsection (e).

(8) Wholly assembled

A good is "wholly assembled" in Haiti if all components, of which there must be at least two, pre-existed in essentially the same condition as found in the finished good and were combined to form the finished good in Haiti. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, and buttons) not appreciably affecting the identity of the good, and minor sub-assemblies (for example, collars, cuffs, plackets, and pockets), shall not affect the determination of whether a good is "wholly assembled" in Haiti.

(b) Apparel and other textile articles

(1) Value-added rule for apparel articles

(A) In general

Apparel articles described in subparagraph (B) of a producer or entity controlling production that are imported directly from Haiti or the Dominican Republic shall be entered under the United States free of duty during the initial applicable 1-year period and any 1-year period thereafter, subject to the limitations set forth in subparagraphs (B) and (C), and subject to subparagraph (D).

(B) Apparel articles described

(i) In general

In the initial applicable 1-year period and any 1-year period thereafter, apparel articles described in this paragraph are apparel articles that are wholly assembled, or are knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, only if, for each entry in that 1-year period, the sum of—

(I) the cost or value of the materials produced in Haiti or one or more countries described in clause (iii), or any combination thereof, plus

(II) the direct costs of processing operations (as defined in section 2703(a)(3) of this title) performed in Haiti or one or more countries described in clause (iii), or any combination thereof,

is not less than the applicable percentage (as defined in clause (v)(I)) of the declared customs value of such apparel articles.

(ii) Deductions

In calculating cost or value under clause (i)(I), there shall be deducted the cost or value of—

(I) any foreign materials that are used in the production of the apparel articles in Haiti; and

(II) any foreign materials that are used in the production of the materials described in clause (i)(I).

(iii) Countries described

The countries referred to in clause (i) are the following:

(I) The United States.

(II) Any country that is a party to a free trade agreement with the United States that is in effect on December 20, 2006, or that enters into force thereafter.

(III) Any country designated as a beneficiary country under section 2703(b)(5)(B) of this title.

(IV) Any country designated as a beneficiary country under section 2466a(a)(1) of this title, if a finding has been made by the President or the President’s designee, and published in the Federal Register, that the country has satisfied the requirements of section 3722 of this title.

(V) Any country designated as a beneficiary country under section 3203(b)(6)(B) of this title.

(iv) Annual aggregation

(I) Initial applicable 1-year period

In the initial applicable 1-year period, the requirements under clause (i) relating to applicable percentage may also be met for articles of a producer or an entity controlling production that enter during the initial applicable 1-year period by aggregating—

(aa) the cost or value of materials under subclause (I) of clause (i), and

(bb) the direct costs of processing operations under subclause (II) of clause (i),

of all apparel articles of that producer or entity controlling production that are wholly assembled, or are knit-to-shape, in Haiti and are entered during the initial applicable 1-year period.

(II) Other 1-year periods

In any 1-year period after the initial applicable 1-year period, the requirements under clause (i) relating to applicable percentage may also be met for articles of a producer or an entity controlling production that enter during the 1-year period by aggregating—

(aa) the cost or value of materials under subclause (I) of clause (i), and

(bb) the direct costs of processing operations under subclause (II) of clause (i),

of all apparel articles of that producer or entity controlling production that are

---

\(^1\) So in original. The closing quotation marks probably should precede the period.
wholly assembled, or are knit-to-shape, in Haiti and are entered during the preceding 1-year period.

(III) Deductions
In calculating cost or value under subclause (I)(aa) or (II)(aa), there shall be deducted the cost or value of—

(aa) any foreign materials that are used in the production of the apparel articles in Haiti; and

(bb) any foreign materials that are used in the production of the materials described in subclause (I)(aa) or (II)(aa) (as the case may be).

(IV) Inclusion in calculation of other articles receiving preferential treatment
Entries of apparel articles that receive preferential treatment under any provision of law other than this subparagraph or are subject to the "General" column 1 rate of duty under the HTS are not included in the annual aggregation under subclause (I) or (II) unless the producer or entity controlling production elects, at the time the annual aggregation calculation is made, to include such entries in such aggregation.

(v) Definitions
In this paragraph:

(I) Applicable percentage
The term "applicable percentage" means—

(aa) 50 percent or more during the initial applicable 1-year period and the succeeding 8 1-year periods;

(bb) 55 percent or more during the 1-year period beginning on December 20, 2015, and the 1-year period beginning on December 20, 2016; and

(cc) 60 percent or more during the 1-year period beginning on December 20, 2017.

(II) Foreign material
The term "foreign material" means a material produced in a country other than Haiti or any country described in clause (iii).

(vi) Development of procedure to ensure compliance
(I) In general
U.S. Customs and Border Protection of the Department of Homeland Security shall develop and implement methods and procedures to ensure ongoing compliance with the requirements set forth in clauses (i) and (iv).

(II) Noncompliance
If U.S. Customs and Border Protection finds that a producer or an entity controlling production has not satisfied such requirements in the initial applicable 1-year period or any 1-year period thereafter, either for individual entries entered pursuant to clause (i) or for entries entered in aggregate pursuant to clause (iv), then apparel articles described in clause (i) of that producer or entity shall be ineligible for preferential treatment under paragraph (1) during any succeeding 1-year period until—

(aa) the cost or value of materials under subclause (I) of clause (i), plus

(bb) the direct costs of processing operations under subclause (II) of clause (i),

of that producer or entity controlling production, is not less than the applicable percentage under clause (v)(I), plus 10 percent, of the aggregate declared customs value of all apparel articles of that producer or entity controlling production that are wholly assembled, or are knit-to-shape, in Haiti and are entered during the preceding 1-year period.

(III) Retroactive application of duty-free treatment
If—

(aa) a producer or an entity controlling production is ineligible for preferential treatment under subparagraph (A) in the initial applicable 1-year period or any 1-year period thereafter because that producer or entity controlling production did not satisfy the requirements of clause (i) or (iv), and

(bb) that producer or entity controlling production satisfies the requirements of subclause (II) of this clause in that 1-year period,

then, notwithstanding section 1514 of this title or any other provision of law, upon proper request filed with U.S. Customs and Border Protection before the 90th day after U.S. Customs and Border Protection determines that item (bb) applies, the entry of any articles—

(AA) that was made during that 1-year period, and

(BB) with respect to which there would have been preferential treatment under subparagraph (A) if the producer or entity controlling production had satisfied the requirements in clause (i) or (iv) (as the case may be),

shall be liquidated or reliquidated as though such preferential treatment under subparagraph (A) applied to such entry.

(vii) Fabrics not available in commercial quantities
(I) In general
For purposes of determining the applicable percentage under clause (i) or (iv), there may be included in that percentage—

(aa) the cost of fabrics or yarns to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA; and

(bb) the cost of fabrics or yarns that are designated as not being available in commercial quantities for purposes of—
(AA) section 2703(b)(2)(A)(v) of this title,
(BB) section 3721(b)(5) of this title,
(CC) section 3203(b)(3)(B)(i)(III) or
(ii) of this title, or
(DD) any other provision, relating
to determining whether a textile or
apparel article is an originating good
eligible for preferential treatment, of
a law that implements a free trade
agreement that enters into force
with respect to the United States,
without regard to the source of the fab-
rics or yarns.

(II) Removal of designation of fabrics
or yarns not available in commercial
quantities

If the President determines that—
(a) any fabric or yarn described in
subclause (I)(aa) was determined to be
eligible for preferential treatment, or
(b) any fabric or yarn described in
subclause (I)(bb) was designated as not
being available in commercial quan-
tities,
on the basis of fraud, the President is
authorized to remove the eligibility or des-
ignation (as the case may be) of that fab-
ric or yarn with respect to articles en-
tered after such removal.

(C) Quantitative limitations

The preferential treatment described in
subparagraph (A) shall be extended, during
each of the 1-year periods set forth in the
following table, to not more than the cor-
responding percentage of the aggregate
square meter equivalents of all apparel arti-
tles imported into the United States in the
most recent 12-month period for which data
are available:

<table>
<thead>
<tr>
<th>Periods</th>
<th>Percentage</th>
</tr>
</thead>
</table>
| the initial applicable 1-year pe-
riod. | 1 percent. |
| each of the succeeding 11 1-year periods | 1.25 percent. |

No preferential treatment shall be provided
under subparagraph (A) after December 19,
2018.

(D) Other preferential treatment not af-
fected by quantitative limitation

Any apparel article that qualifies for
preferential treatment under paragraph
(1), (3), (4), or (5) or subparagraph (B) of
this paragraph or any other provision of
this chapter shall not be subject to, or in-
cluded in the calculation of, the quan-
titative limitation under clause (ii).

(B) Special rule for certain articles of chap-
ter 61 of the HTS

(i) General rule

Any apparel article classifiable under
chapter 61 of the HTS that is wholly as-
sembled, or knit-to-shape, in Haiti from
any combination of fabrics, fabric compo-
nants, components knit-to-shape, or yarns
and is imported directly from Haiti or the
Dominican Republic shall enter the United
States free of duty, subject to clauses (ii),
(iii), and (iv), without regard to the source
of the fabric, fabric components, compo-
nants knit-to-shape, or yarns from which
the article is made.

(ii) Limitation

Except as provided in paragraph (2A), the
preferential treatment described in clause
(i) shall be extended, in the 1-year period
beginning October 1, 2008, and in each of
the 11 succeeding 1-year periods, to not
more than 70,000,000 square meter equiv-
alents of apparel articles described in such
clause.

(iii) Other preferential treatment not af-
fected by quantitative limitation

Any apparel article that qualifies for
preferential treatment under paragraph
(1), (3), (4), or (5) or subparagraph (B) of
this paragraph or any other provision of
this chapter shall not be subject to, or in-
cluded in the calculation of, the quan-
titative limitation under clause (ii).

(ii) Exclusions

The preferential treatment described in
clause (i) shall not apply to the following:

(I) The following apparel articles of
cotton, for men or boys, that are classifi-
able under subheading 6109.10.00 of the
HTS:

(aa) All white T-shirts, with short
hemmed sleeves and hemmed bottom,
with crew or round neckline or with V-
neck and with a mitered seam at the
center of the V, and without pockets,
trim, or embroidery.

(bb) All white singlets, without pock-
ets, trim, or embroidery.

(cc) Other T-shirts, but not including
thermal undershirts.

(II) T-shirts for men or boys that are
classifiable under subheading 6109.90.10.

(III) The following apparel articles of
cotton, for men or boys, that are classifi-
able under subheading 610.10.20 of the
HTS:

(aa) Sweatshirts.

(bb) Pullovers, other than sweaters,
vests, or garments imported as part of
playsuits.
(IV) Sweatshirts for men or boys, of man-made fibers and containing less than 65 percent by weight of man-made fibers, that are classifiable under subheading 6109.30.30 of the HTS.

(iii) Limitation
Except as provided in paragraph (2)(A), the preferential treatment described in clause (i) shall be extended, in the 1-year period beginning October 1, 2008, and in each of the 11 succeeding 1-year periods, to not more than 70,000,000 square meter equivalents of apparel articles described in such clause.

(iv) Other preferential treatment not affected by quantitative limitation
Any apparel article that qualifies for preferential treatment under paragraph (1), (3), (4), or (5) or subparagraph (A) of this paragraph or any other provision of this chapter shall not be subject to, or included in the calculation of, the quantitative limitation under clause (iii).

(2A) Special rule for certain woven articles and certain knit articles entered during fiscal year 2010 and succeeding 1-year periods

(A) In general
Except as provided in subparagraphs (B) and (C) and subject to subparagraph (D), if 52,000,000 square meter equivalents of apparel articles described in paragraph (2)(A)(i) or (2)(B)(i) enter the United States during the 1-year period beginning October 1, 2009, or any of the succeeding 1-year periods, the President shall extend the preferential treatment described in paragraph (2)(A)(i) or (2)(B)(i) (as the case may be) to not more than 200,000,000 square meter equivalents of apparel articles described in paragraph (2)(A)(i) or (2)(B)(i) (as the case may be) during that 1-year period, and shall publish notice of the extension in the Federal Register.

(B) Exception for certain woven articles

(i) In general
In the case of apparel articles described in clause (ii), subparagraph (A) shall be applied by substituting “200,000,000” for “70,000,000”.

(ii) Apparel articles described
Apparel articles described in this clause are apparel articles described in paragraph (2)(A)(i) that are the following:

(I) Category 347
Apparel articles in category 347 that fall within the following statistical reporting numbers of the HTS (as in effect on the day before May 24, 2010):

<table>
<thead>
<tr>
<th>HTS Number</th>
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<th>HTS Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>6203.19.1020</td>
<td>6203.32.4011</td>
<td>6203.22.4061</td>
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<td>6203.19.9020</td>
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<td>6210.40.9033</td>
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<td>6203.32.4036</td>
<td>6211.20.1520</td>
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<tr>
<td>6203.42.4006</td>
<td>6203.42.4051</td>
<td>6211.32.0040</td>
</tr>
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</table>

(II) Category 348
Apparel articles in category 348 that fall within the following statistical reporting numbers of the HTS (as in effect on the day before May 24, 2010):

<table>
<thead>
<tr>
<th>HTS Number</th>
<th>HTS Number</th>
<th>HTS Number</th>
</tr>
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<td>6204.12.0030</td>
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<tr>
<td>6204.62.3006</td>
<td>6204.69.9010</td>
<td>6217.90.9060</td>
</tr>
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</table>

(III) Category 647
Apparel articles in category 647 that fall within the following statistical reporting numbers of the HTS (as in effect on the day before May 24, 2010):

<table>
<thead>
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<th>HTS Number</th>
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</tr>
</tbody>
</table>

(IV) Category 648
Apparel articles in category 648 that fall within the following statistical reporting numbers of the HTS (as in effect on the day before May 24, 2010):

<table>
<thead>
<tr>
<th>HTS Number</th>
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<tbody>
<tr>
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<tr>
<td>6204.63.3090</td>
<td>6204.69.2560</td>
<td>6217.90.9060</td>
</tr>
</tbody>
</table>

(C) Exception for certain knit articles

(i) In general
In the case of apparel articles described in clause (ii), subparagraph (A) shall be applied by substituting “85,000,000” for “200,000,000”.

(ii) Apparel articles described
Apparel articles described in this clause are apparel articles described in paragraph (2)(B)(i) that fall within the following statistical reporting numbers of the HTS (as in effect on the day before May 24, 2010), other than shirts with plackets and pointed collars:

<table>
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<tr>
<th>HTS Number</th>
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<tr>
<td>6109.10.0027</td>
<td>6110.20.0079</td>
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</tr>
</tbody>
</table>

(D) Verification with respect to transshipment for certain apparel articles

(i) In general
Not later than April 1, July 1, October 1, and January 1 of each year, the Commissioner responsible for United States Customs and Border Protection shall verify that apparel articles imported into the United States under this paragraph are not being unlawfully transshipped (within the meaning of subsection (f)) into the United States.

(ii) Report to President
If the Commissioner determines pursuant to clause (i) that apparel articles...

(D) Verification with respect to transshipment for certain apparel articles

(i) In general
Not later than April 1, July 1, October 1, and January 1 of each year, the Commissioner responsible for United States Customs and Border Protection shall verify that apparel articles imported into the United States under this paragraph are not being unlawfully transshipped (within the meaning of subsection (f)) into the United States.

(ii) Report to President
If the Commissioner determines pursuant to clause (i) that apparel articles...
ported into the United States under this paragraph are being unlawfully transshipped into the United States, the Commissioner shall report that determination to the President.

(iii) Authority to reduce quantitative limitation

If, in any 1-year period with respect to which the President extends preferential treatment as described in this paragraph, the Commissioner reports to the President pursuant to clause (ii) regarding unlawful transshipments, the President—

(I) may modify the quantitative limitation under this paragraph as the President considers appropriate to account for such transshipments; and

(II) if the President modifies the limitation under subclause (I), shall publish notice of the modification in the Federal Register.

(E) Category defined

In this paragraph, the term “category” means the number assigned under the U.S. Textile and Apparel Category System of the Office of Textiles and Apparel of the Department of Commerce, as listed in the HTS under the applicable heading or subheading (as in effect on the day before May 24, 2010).

(3) Apparel and other articles subject to certain assembly rules

(A) Brassieres

Any apparel article classifiable under subheading 6212.10 of the HTS that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

(B) Other apparel articles

Any of the following apparel articles that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made:

(i) Any apparel article that is of a type listed in chapter rule 3, 4, or 5 for chapter 61 of the HTS (as such chapter rules are contained in section A of the Annex to Proclamation 8213 of the President of December 20, 2007) as being excluded from the scope of such chapter rule, when such chapter rule is applied to determine whether an apparel article is an originating good for purposes of general note 26(n) to the HTS, except that, for purposes of this clause, reference in such chapter rules to “6104.12.00” shall be deemed to be a reference to “6104.19.60”.

(ii)(I) Subject to subclause (II), any apparel article that is of a type listed in chapter rule 3(a), 4(a), or 5(a) for chapter 62 of the HTS, as such chapter rules are contained in paragraph 9 of section A of the Annex to Proclamation 8213 of the President of December 20, 2007.

(II) Subclause (I) shall not include any apparel article to which subparagraph (A) of this paragraph applies.

(C) Luggage and similar items

Any article classifiable under subheading 4202.12, 4202.22, 4202.32 or 4202.92 of the HTS that is wholly assembled in Haiti and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, or materials from which the article is made.

(D) Headgear

Any article classifiable under heading 6501, 6502, or 6504 of the HTS, or under subheading 6505.90 of the HTS, that is wholly assembled, knit-to-shape, or formed in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

(E) Certain sleepwear

Any of the following apparel articles that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made:

(i) Pajama bottoms and other sleepwear for women and girls, of cotton, that are classifiable under subheading 6208.91.30, or of man-made fibers, that are classifiable under subheading 6208.92.00.

(ii) Pajama bottoms and other sleepwear for girls, of other textile materials, that are classifiable under subheading 6208.99.20.

(F) Certain other apparel articles

(i) In general

Any of the apparel articles described in clause (ii) that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

(ii) Articles described

Apparel articles described in this clause are apparel articles in the following cat-
egory numbers that fall within the following statistical reporting numbers of the HTS (as in effect on the day before May 24, 2010):

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<thead>
<tr>
<th>Category Number</th>
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</tbody>
</table>

(iii) Category defined
In this subparagraph, the term “category” has the meaning given that term in paragraph (2A)(E) of this subsection.

(G) Made-up textile articles
  (i) In general

Any of the made-up textile articles described in clauses (ii) and (iii) that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti
or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

(ii) Articles described

Made-up textile articles described in this clause are articles in the following category numbers that fall within the following statistical reporting numbers of the HTS (as in effect on the day before May 24, 2010):

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<thead>
<tr>
<th>Category Number</th>
<th>HTS Statistical Reporting Number</th>
</tr>
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<td>363</td>
<td>6302.60.0020 6302.91.0015 6302.91.0035 6307.90.8949</td>
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</tr>
</tbody>
</table>

(iii) Other articles described

Made-up textile articles described in this clause are articles that fall within statistical reporting number 6406.10.9090 of the HTS (as in effect on the day before May 24, 2010).

(iv) Category defined

In this subparagraph, the term “category” has the meaning given that term in paragraph (2A)(E) of this subsection.

(4) Earned import allowance rule

(A) In general

Apparel articles wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate that reflects the amount of credits equal to the total square meter equivalents of such apparel articles, in accordance with the program established under subparagraph (B). For purposes of determining the quantity of square meter equivalents under this...
subparagraph, the conversion factors listed in "Correlation: U.S. Textile and Apparel Industry Category System with the Harmonized Tariff Schedule of the United States of America, 2008"\(^2\), or its successor publications, of the United States Department of Commerce, shall apply.

(B) Earned import allowance program

(i) Establishment

The Secretary of Commerce shall establish a program to provide earned import allowance certificates to any producer or entity controlling production for purposes of subparagraph (A), based on the elements described in clause (ii).

(ii) Elements

The elements referred to in clause (i) are the following:

(I) One credit shall be issued to a producer or an entity controlling production for every two square meter equivalents of qualifying woven fabric or qualifying knit fabric that the producer or entity controlling production can demonstrate that it purchased for the manufacture in Haiti of articles like or similar to any article eligible for preferential treatment under subparagraph (A). The Secretary of Commerce shall, if requested by a producer or entity controlling production, create and maintain an account for such producer or entity controlling production, into which such credits shall be deposited.

(II) Such producer or entity controlling production may redeem credits issued under subclause (I) for earned import allowance certificates reflecting such number of earned credits as the producer or entity may request and has available.

(III) The Secretary of Commerce may require any textile mill or other entity located in the United States that exports to Haiti qualifying woven fabric or qualifying knit fabric to submit, upon such export or upon request, documentation, such as a Shipper's Export Declaration, to the Secretary of Commerce—

(aa) verifying that the qualifying woven fabric or qualifying knit fabric was exported to a producer in Haiti or to an entity controlling production; and

(bb) identifying such producer or entity controlling production, and the quantity and description of qualifying woven fabric or qualifying knit fabric exported to such producer or entity controlling production.

(IV) The Secretary of Commerce may require that a producer or entity controlling production submit documentation to verify purchases of qualifying woven fabric or qualifying knit fabric.

(V) The Secretary of Commerce may make available to each person or entity identified in documentation submitted under subclause (III) or (IV) information contained in such documentation that relates to the purchase of qualifying woven fabric or qualifying knit fabric involving such person or entity.

(VI) The program under this subparagraph shall be established so as to allow, to the extent feasible, the submission, storage, retrieval, and disclosure of information in electronic format, including information with respect to the earned import allowance certificates required under subparagraph (A)(i).

(VII) The Secretary of Commerce may reconcile discrepancies in information provided under subclause (III) or (IV) and verify the accuracy of such information.

(VIII) The Secretary of Commerce shall establish procedures to carry out the program under this subparagraph and may establish additional requirements to carry out this subparagraph. Such additional requirements may include—

(aa) submissions by textile mills or other entities in the United States documenting exports of yarns wholly formed in the United States to countries described in paragraph (1)(B)(iii) for the manufacture of qualifying knit fabric; and

(bb) procedures imposed on producers or entities controlling production to allow the Secretary of Commerce to obtain and verify information relating to the production of qualifying knit fabric.

(iii) Qualifying woven fabric defined

For purposes of this subparagraph, the term "qualifying woven fabric" means fabric wholly formed in the United States from yarns wholly formed in the United States, except that—

(I) fabric otherwise eligible as qualifying woven fabric shall not be ineligible as qualifying woven fabric because the fabric contains nylon filament yarn to which section 2703(b)(2)(A)(vii)(IV) of this title applies;

(II) fabric that would otherwise be ineligible as qualifying woven fabric because the total weight of all such yarns is not more than 10 percent of the total weight of the fabric; and

(III) fabric otherwise eligible as qualifying woven fabric shall not be ineligible as qualifying fabric because the fabric contains yarns covered by clause (i) or (ii) of paragraph (5)(A).

(iv) Qualifying knit fabric defined

For purposes of this subparagraph, the term "qualifying knit fabric" means fabric or knit-to-shape components wholly formed or knit-to-shape in any country or any combination of countries described in

\(^2\) So in original. Probably should refer to cl. (i) of this subparagraph.
§ 2703a

(5) Short supply provision

Any apparel article that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and is imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabrics, fabric components, components knit-to-shape, or yarns from which the article is made, if the fabrics, fabric components, components knit-to-shape, or yarns comprising the component that determines the tariff classification of the article are of any of the following:

(i) Fabrics or yarns, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA.

(ii) Fabrics or yarns, to the extent that such fabrics or yarns are designated as not being available in commercial quantities for purposes of—

(I) section 2703(b)(2)(A)(v) of this title;

(II) section 3721(b)(5) of this title;

(III) clause (i)(III) or (ii) of section 3203(b)(3)(B) of this title; or

(IV) any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement entered into by the United States that is in effect at the time the claim for preferential treatment is made.

(B) Removal of designation of fabrics or yarns not available in commercial quantities

If the President determines that—

(i) any fabric or yarn described in clause (i) of subparagraph (A) was determined to be eligible for preferential treatment, or

(ii) any fabric or yarn described in clause (ii) of subparagraph (A) was designated as not being available in commercial quantities, on the basis of fraud, the President is authorized to remove the eligibility or designation (as the case may be) of that fabric or yarn with respect to articles entered after such removal.

(6) Other preferential treatment not affected

The duty-free treatment provided under this subsection is in addition to any other preferential treatment under this chapter.

(c) Special rule for certain wire harness automotive components

(1) In general

Any wire harness automotive component that is the product or manufacture of Haiti and is imported directly from Haiti into the customs territory of the United States shall enter the United States free of duty, during the 10-year period beginning on December 20, 2006, if Haiti has met the requirements of subsection (d) and if the sum of—

(A) the cost or value of the materials produced in Haiti or one or more countries described in subsection (b)(2)(C), or any combination thereof, plus

(B) the direct costs of processing operations (as defined in section 2703(a)(3) of this title) performed in Haiti or the United States, or both,

is not less than 50 percent of the declared customs value of such wire harness automotive component.

(2) Wire harness automotive component

For purposes of this subsection, the term "wire harness automotive component" means any article provided for in subheading 8544.30.00 of the HTS, as in effect on December 20, 2006.
(d) Eligibility requirements

(1) In general

Haiti shall be eligible for preferential treatment under this section if the President determines and certifies to Congress that Haiti—

(A) has established, or is making continual progress toward establishing—

(i) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;

(ii) the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;

(iii) the elimination of barriers to United States trade and investment, including by—

(I) the provision of national treatment and measures to create an environment conducive to domestic and foreign investment;

(II) the protection of intellectual property; and

(III) the resolution of bilateral trade and investment disputes;

(iv) economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through microcredit or other programs;

(v) a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and

(vi) protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(B) does not engage in activities that undermine United States national security or foreign policy interests; and

(C) does not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

(2) Time limit for determination

The President shall determine whether Haiti meets the requirements of paragraph (1) not later than 90 days after December 20, 2006.

(3) Continuing compliance

If the President determines that Haiti is not making continual progress in meeting the requirements described in paragraph (1)(A), the President shall terminate the preferential treatment under this section.

(4) Petition process

Any interested party may file a request to have the status of Haiti reviewed with respect to the eligibility requirements listed in paragraph (1), and the President shall provide for this purpose the same procedures as those that are provided for reviewing the status of eligible beneficiary developing countries with respect to the designation criteria listed in subsections (b) and (c) of section 2462 of this title.

(e) Technical assistance improvement and compliance needs assessment and remediation program

(1) Continued eligibility for preferences

(A) Presidential certification of compliance by Haiti with requirements

Upon the expiration of the 16-month period beginning on the date of the enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008, Haiti shall continue to be eligible for the preferential treatment provided under subsection (b) only if the President determines and certifies to the Congress that—

(i) Haiti has implemented the requirements set forth in paragraphs (2) and (3); and

(ii) Haiti has agreed to require producers of articles for which duty-free treatment may be requested under subsection (b) to participate in the TAIQNAR Program described in paragraph (3) and has developed a system to ensure participation in such program by such producers, including by developing and maintaining the registry described in paragraph (2)(B)(i).

(B) Extension

The President may extend the period for compliance by Haiti under subparagraph (A) if the President—

(i) determines that Haiti has made a good faith effort toward such compliance and has agreed to take additional steps to come into full compliance that are satisfactory to the President; and

(ii) provides to the appropriate congressional committees, not later than 6 months after the last day of the 16-month period specified in subparagraph (A), and every 6 months thereafter, a report identifying the steps that Haiti has agreed to take to come into full compliance and the progress made over the preceding 6-month period in implementing such steps.

(C) Continuing compliance

(i) Termination of preferential treatment

If, after making a certification under subparagraph (A), the President determines that Haiti is no longer meeting the requirements set forth in subparagraph (A), the President shall terminate the preferential treatment provided under subsection (b), unless the President determines, after consulting with the appropriate congressional committees, that meeting such requirements is not practicable because of extraordinary circumstances existing in Haiti when the determination is made.
(ii) Subsequent compliance
If the President, after terminating preferential treatment under clause (i), determines that Haiti is meeting the requirements set forth in subparagraph (A), the President shall reinstate the application of preferential treatment under subsection (b).

(2) Labor Ombudsman

(A) In general
The requirement under this paragraph is that Haiti has established an independent Labor Ombudsman’s Office within the national government that—
(i) reports directly to the President of Haiti;
(ii) is headed by a Labor Ombudsman chosen by the President of Haiti, in consultation with Haitian labor unions and industry associations; and
(iii) is vested with the authority to perform the functions described in subparagraph (B).

(B) Functions
The functions of the Labor Ombudsman’s Office shall include—
(i) developing and maintaining a registry of producers of articles for which duty-free treatment may be requested under subsection (b), and developing, in consultation and coordination with any other appropriate officials of the Government of Haiti, a system to ensure participation by such producers in the TAICNAR Program described in paragraph (3);
(ii) overseeing the implementation of the TAICNAR Program described in paragraph (3);
(iii) receiving and investigating comments from any interested party regarding the conditions described in paragraph (3)(B) in facilities of producers listed in the registry described in clause (i) and, where appropriate, referring such comments or the result of such investigations to the appropriate Haitian authorities, or to the entity operating the TAICNAR Program described in paragraph (3);
(iv) assisting, in consultation and coordination with any other appropriate Haitian authorities, producers listed in the registry described in clause (i) in meeting the conditions set forth in paragraph (3)(B); and
(v) coordinating, with the assistance of the entity operating the TAICNAR Program described in paragraph (3), a tripartite committee comprised of appropriate representatives of government agencies, employers, and workers, as well as other relevant interested parties, for the purposes of evaluating progress in implementing the TAICNAR Program described in paragraph (3), and consulting on improving core labor standards and working conditions in the textile and apparel sector in Haiti, and on other matters of common concern relating to such core labor standards and working conditions.

(3) Technical assistance improvement and compliance needs assessment and remediation program

(A) In general
The requirement under this paragraph is that Haiti, in cooperation with the International Labor Organization, has established a Technical Assistance Improvement and Compliance Needs Assessment and Remediation Program meeting the requirements under subparagraph (C)—
(i) to assess compliance by producers listed in the registry described in paragraph (2)(B)(i) with the conditions set forth in subparagraph (B) and to assist such producers in meeting such conditions; and
(ii) to provide assistance to improve the capacity of the Government of Haiti—
(I) to inspect facilities of producers listed in the registry described in paragraph (2)(B)(i); and
(II) to enforce national labor laws and resolve labor disputes, including through measures described in subparagraph (E).

(B) Conditions described
The conditions referred to in subparagraph (A) are—
(i) compliance with core labor standards; and
(ii) compliance with the labor laws of Haiti that relate directly to core labor standards and to ensuring acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety.

(C) Requirements
The requirements for the TAICNAR Program are that the program—
(i) be operated by the International Labor Organization (or any subdivision, instrumentality, or designee thereof), which prepares the biannual reports described in subparagraph (D);
(ii) be developed through a participatory process that includes the Labor Ombudsman described in paragraph (2) and appropriate representatives of government agencies, employers, and workers;
(iii) assess compliance by each producer listed in the registry described in paragraph (2)(B)(i) with the conditions set forth in subparagraph (B) and identify any deficiencies by such producer with respect to meeting such conditions, including by—
(I) conducting unannounced site visits to manufacturing facilities of the producer;
(II) conducting confidential interviews separately with workers and management of the facilities of the producer;
(III) providing to management and workers, and where applicable, worker organizations in the facilities of the producer, on a confidential basis—
(aa) the results of the assessment carried out under this clause; and
(bb) specific suggestions for remediating any such deficiencies;
(iv) assist the producer in remediating any deficiencies identified under clause (iii);
(v) conduct prompt follow-up site visits to the facilities of the producer to assess progress on remediation of any deficiencies identified under clause (iii); and
(vi) provide training to workers and management of the producer, and where appropriate, to other persons or entities, to promote compliance with subparagraph (B).

(D) Biannual report

The biannual reports referred to in subparagraph (C)(i) are a report, by the entity operating the TAICNAR Program, that is published (and available to the public in a readily accessible manner) on a biannual basis, beginning 6 months after Haiti implements the TAICNAR Program under this paragraph, covering the preceding 6-month period, and that includes the following:

(i) The name of each producer listed in the registry described in paragraph (2)(B)(i) that has been identified as having met the conditions under subparagraph (B).
(ii) The name of each producer listed in the registry described in paragraph (2)(B)(i) that has been identified as having deficiencies with respect to the conditions under subparagraph (B), and has failed to remedy such deficiencies.
(iii) For each producer listed under clause (ii)—
(I) a description of the deficiencies found to exist and the specific suggestions for remediating such deficiencies made by the entity operating the TAICNAR Program;
(II) a description of the efforts by the producer to remEDIATE the deficiencies, including a description of assistance provided by any entity to assist in such remediation; and
(III) with respect to deficiencies that have not been remediated, the amount of time that has elapsed since the deficiencies were first identified in a report under this subparagraph.
(iv) For each producer identified as having deficiencies with respect to the conditions described under subparagraph (B) in a prior report under this subparagraph, a description of the progress made in remediating such deficiencies since the submission of the prior report, and an assessment of whether any aspect of such deficiencies persists.

(E) Capacity building

The assistance to the Government of Haiti referred to in subparagraph (A)(ii) shall include programs—

(i) to review the labor laws and regulations of Haiti and to develop and implement strategies for bringing the laws and regulations into conformity with core labor standards;
(ii) to develop additional strategies for facilitating protection of core labor standards and providing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, including through legal, regulatory, and institutional reform;
(iii) to increase awareness of worker rights, including under core labor standards and national labor laws;
(iv) to promote consultation and cooperation between government representatives, employers, worker representatives, and United States importers on matters relating to core labor standards and national labor laws;
(v) to assist the Labor Ombudsman appointed pursuant to paragraph (2) in establishing and coordinating operation of the committee described in paragraph (2)(B)(v);
(vi) to assist worker representatives in more fully and effectively advocating on behalf of their members; and
(vii) to provide on-the-job training and technical assistance to labor inspectors, judicial officers, and other relevant personnel to build their capacity to enforce national labor laws and resolve labor disputes.

(4) Compliance with eligibility criteria

(A) Country compliance with worker rights eligibility criteria

In making a determination of whether Haiti is meeting the requirement set forth in subsection (d)(1)(A)(vi) relating to internationally recognized worker rights, the President shall consider the reports produced under paragraph (3)(D).

(B) Producer eligibility

(i) Identification of producers

Beginning in the second calendar year after the President makes the certification under paragraph (1)(A), the President shall identify on a biennial basis whether a producer listed in the registry described in paragraph (2)(B)(i) has failed to comply with core labor standards and with the labor laws of Haiti that directly relate to and are consistent with core labor standards.

(ii) Assistance to producers; withdrawal, etc., of preferential treatment

For each producer that the President identifies under clause (i), the President shall seek to assist such producer in coming into compliance with core labor standards and with the labor laws of Haiti that directly relate to and are consistent with core labor standards. If such efforts fail, the President shall withdraw, suspend, or limit the application of preferential treatment under subsection (b) to articles of such producer.

(iii) Reinstating preferential treatment

If the President, after withdrawing, suspending, or limiting the application of preferential treatment under clause (ii) to articles of a producer, determines that such producer is complying with core labor
§ 2703a

(f) Conditions regarding enforcement of subsection (b) to the articles of the producer.

(iv) Consideration of reports

In making the identification under clause (i) and the determination under clause (iii), the President shall consider the reports made available under paragraph (3)(D).

(5) Reports by the President

(A) In general

Not later than one year after the date of the enactment of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008, and annually thereafter, the President shall transmit to the appropriate congressional committees a report on the implementation of this subsection during the preceding 1-year period.

(B) Matters to be included

Each report required by subparagraph (A) shall include the following:

(i) An explanation of the efforts of Haiti, the President, and the International Labor Organization to carry out this subsection.

(ii) A summary of each report produced under paragraph (3)(D) during the preceding 1-year period and a summary of the findings contained in such report.

(iii) Identifications made under paragraph (4)(B)(i) and determinations made under paragraph (4)(B)(iii).

(6) Authorization of appropriations

There is authorized to be appropriated to carry out this section not later than 180 days after December 20, 2006. The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate in preparing such regulations.

(f) Conditions regarding enforcement of circumvention

(1) In general

The preferential treatment under subsection (b)(1) shall not apply unless the President certifies to Congress that Haiti is meeting the following conditions:

(A) Haiti has adopted an effective visa system, domestic laws, and enforcement procedures applicable to articles described in subsection (b) to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to the importation of the articles into the United States.

(B) Haiti has enacted legislation or promulgated regulations that would permit U.S. Customs and Border Protection verification teams to have the access necessary to investigate thoroughly allegations of transshipment through such country.

(C) Haiti agrees to report, on a timely basis, at the request of U.S. Customs and Border Protection, on the total exports from and imports into that country of articles described in subsection (b), consistent with the manner in which the records are kept by Haiti.

(D) Haiti agrees to cooperate fully with the United States to address and take action necessary to prevent circumvention as provided in Article 5 of the Agreement on Textiles and Clothing.

(E) Haiti agrees to require all producers and exporters of articles described in subsection (b) in that country to maintain complete records of the production and the export of such articles, including materials used in the production, for at least 5 years after the production or export (as the case may be).

(F) Haiti agrees to report, on a timely basis, at the request of U.S. Customs and Border Protection, documentation establishing the country of origin of articles described in subsection (b) as used by that country in implementing an effective visa system.

(2) Definition of transshipment

Transshipment within the meaning of this subsection has occurred when preferential treatment for a textile or apparel article under this section has been claimed on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this paragraph, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under this section.

(3) Limitation on goods shipped from the Dominican Republic

(A) Limitation

Notwithstanding subsection (a)(5), relating to the definition of “imported directly from Haiti or the Dominican Republic”, articles described in subsection (b) that are shipped from the Dominican Republic, directly or through the territory of an intermediate country, whether or not such articles undergo processing in the Dominican Republic, shall not be considered to be “imported directly from Haiti or the Dominican Republic” until the President certifies to the Congress that Haiti and the Dominican Republic have developed procedures to prevent unlawful transshipment of the articles and the use of counterfeit documents related to the importation of the articles into the United States.

(B) Technical and other assistance

The Commissioner responsible for U.S. Customs and Border Protection shall provide technical and other assistance to Haiti and the Dominican Republic to develop expeditiously the procedures described in subparagraph (A).

(g) Regulations

The President shall issue regulations to carry out this section not later than 180 days after December 20, 2006. The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate in preparing such regulations.
(h) Termination

Except as provided in subsection (b)(1), the duty-free treatment provided under this section shall remain in effect until September 30, 2020.


REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1)(D), (2)(A)(ii), (B)(v), (6), was in the original “this title”, meaning title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 2701 of this title and Tables.


CODIFICATION


AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–171, §7(1), added par. (1) and struck out former par. (1) which defined “applicable 1-year period”, “initial applicable 1-year period”, “second applicable 1-year period”, “third applicable 1-year period”, “fourth applicable 1-year period”, and “fifth applicable 1-year period” in subpars. (A) to (F), respectively.

Subsec. (b)(1)(A). Pub. L. 111–171, §7(2)(A), substituted “the initial applicable 1-year period and any 1-year period thereafter” for “an applicable 1-year period”.

Subsec. (b)(1)(B)(i). Pub. L. 111–171, §7(2)(B)(i), in introductory provisions, substituted “the initial applicable 1-year period and any 1-year period thereafter” for “an applicable 1-year period”.

Subsec. (b)(1)(B)(iii)(I). Pub. L. 111–171, §7(2)(B)(iii)(I), struck out “applicable” after “Other” in heading and substituted “in any 1-year period after the initial applicable 1-year period” for “in each of the second, third, fourth, and fifth applicable 1-year periods” and “during the 1-year period” for “during the applicable 1-year period” in introductory provisions and “preceding 1-year period” for “preceding applicable 1-year period” in concluding provisions.

Subsec. (b)(1)(B)(iii)(II). Pub. L. 111–171, §7(2)(B)(iii)(II), substituted “the 1-year period beginning on December 20, 2015, and the 1-year period beginning on December 20, 2016” for “the fourth applicable 1-year period”.


Subsec. (b)(1)(B)(v)(I)(II). Pub. L. 111–171, §7(2)(B)(v)(I)(II), substituted “the initial applicable 1-year period or any 1-year period thereafter” for “any applicable 1-year period” and “succeeding applicable 1-year period” in introductory provisions and “preceding 1-year period” for “preceding applicable 1-year period” in concluding provisions.

Subsec. (b)(1)(B)(v)(II)(aa). Pub. L. 111–171, §7(2)(B)(v)(II)(aa), substituted “the initial applicable 1-year period or any 1-year period thereafter” for “an applicable 1-year period”.


Subsec. (b)(1)(C). Pub. L. 111–171, §7(2)(C), substituted “1-year periods” for “applicable 1-year periods” in introductory provisions, added table, struck out former table which designated 1 percent for the initial and 1.25 percent for the second through fifth applicable 1-year periods, and substituted “9” for “11” for “the last day of the fifth applicable 1-year period” in concluding provisions.

Subsec. (b)(2)(A)(ii), (B)(iii). Pub. L. 111–171, §5(1), substituted “Except as provided in paragraph (2A), the preferential treatment” for “The preferential treatment” and “11” for “9”.


Pub. L. 110–246, §15403(1)(C), added par. (3). Former par. (3) redesignated (5).


Pub. L. 110–246, §15403(1)(B), redesignated par. (3) as (5). Former par. (5) redesignated (8).


Subsec. (b). Pub. L. 110–246, §15402(a)(5), (b), (c), as amended by Pub. L. 110–436, §7(1), added par. (1)(D), (2), and (3).

Pub. L. 110–246, §15402(a)(4), as amended by Pub. L. 110–436, §7(1), redesignated par. (3) as subpar. (C) of par. (1), realigned margins, substituted “subparagraph (A)” for “paragraph (1)” in two places, in table substituted “1.25 percent” for “1.75 percent” during the third applicable 1-year period, “1.25 percent” for “1.75 percent” during the fourth applicable 1-year period, and “2 percent” for “2 percent” during the fifth applicable 1-year period.

(III), and in par. (1)(B)(vii)(I)(bb)(DD) redesignated "with respect to the United States" for "under the Bipartisan Trade Promotion Authority Act of 2002"

Pub. L. 110–246, §15402(a)(2), as amended by Pub. L. 110–436, §7(1), amended par. (1) generally. Prior to amendment, text read as follows: "In addition to any other preferential treatment under this chapter, apparel articles described in paragraph (2) of a producer or entity controlling production that are imported directly from Haiti shall enter the United States free of duty during an applicable 1-year period, subject to the limitations set forth in paragraph (2) and (3), if Haiti has met the requirements of subsections (d) and (e)."


Subsec. (b)(5). Pub. L. 110–246, §15402(c), (e), added par. (5) and struck out former par. (5). Prior to amendment, text read as follows: "The preferential treatment under paragraph (1) shall, subject to the limitations under paragraph (3), be extended to any article classifiable under heading 6212.10 of the HTS, if the article is both made, and if Haiti has met the requirements of subsections (d) and (e)."


Subsec. (g). Pub. L. 110–246, §15403(2), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Pub. L. 110–246, §15402(g), added subsec. (g).


**Effective Date of 2008 Amendment**


Pub. L. 110–234, title XV, §15407, May 22, 2008, 122 Stat. 1546, and Pub. L. 110–246, §4(a), title XV, §15407, June 18, 2008, 122 Stat. 1664, 2308, provided that: "The President shall issue such regulations as may be necessary to carry out the amendments made by sections 15402, 15403, and 15404 (amending this section). Regulations to carry out the amendments made by section 15402 shall be issued not later than September 30, 2008. The Secretary of Commerce shall issue such procedures as may be necessary to carry out the amendment made by section 15402(d) not later than September 30, 2008."


**Delegation of Functions**

Proc. No. 8286, Sept. 30, 2008, 73 F.R. 57476, provided in par. (3) that the United States Trade Representative is authorized to perform the functions under subsec. (d)(4) of this section, the reporting function under subsec. (e)(1)(B)(ii) of this section, the consultation function under subsec. (e)(1)(C)(ii) of this section, and the functions under subsec. (e)(5) of this section and provided in par. (4) that the Secretary of Labor, in consultation with the United States Trade Representative, is authorized to perform the functions under subsec. (e)(4)(B)(ii), (1)(i) of this section.

Proc. No. 8114, Mar. 19, 2007, 72 F.R. 13656, provided in par. (5) that the Secretary of the Treasury is authorized to perform the functions assigned to the President under subsec. (f) of this section.

**Findings**

Pub. L. 111–171, §2, May 24, 2010, 124 Stat. 1194, provided that: "(1) On January 12, 2010, Haiti was hit by a 7.0 magnitude earthquake, the worst earthquake to affect Haiti in recorded history. Aftershocks from the earthquake, measuring up to 6.0 on the Richter scale, continued for days afterwards.

(2) The earthquake has devastated Haiti's infrastructure, including homes, offices, factories, roads, ports, communications, and other facilities. The loss of life attributable to the earthquake was massive.

(3) Even before the earthquake, Haiti was the poorest country in the Western Hemisphere, ranking 140 out of 182 countries according to the United Nation's Human Development Index.

(4) In recent years, however, the Government and people of Haiti had taken important steps forward to promote economic growth and development, including making strides towards establishing a competitive apparel sector.


(6) However, the Haitian apparel sector has been hard hit by the January 12, 2010, earthquake. A num-
ber of apparel factories based in and around Port-au-
Prince have been heavily damaged, including the col-
lapse of one major apparel factory that had employed
nearly 4,000 workers.

“(7) The Port-au-Prince seaport that had served the
apparel trade has been badly damaged. And extensive
damage to roads has made it difficult to transport ap-
parel to the Dominican Republic for shipment from
ports in that country.

“(8) According to estimates by the Department of
Commerce, imports of apparel articles from Haiti to
the United States in 2010 have decreased by 23 per-
cent as compared to the same period in 2009.

“(9) The earthquake has increased significantly the
costs and uncertainty of doing business in Haiti. A
strong and unequivocal commitment from the United
States is needed to help Haiti offset these costs and
preserve the gains made under United States trade
preference programs, and to encourage buyers and in-
vestors to stand with Haiti through this crisis.”

CUSTOMS SUPPORT SERVICES
Pub. L. 111–171, § 9, May 24, 2010, 124 Stat. 1205, pro-
vided that:

“(a) IN GENERAL.—

“(1) RAPID RESPONSE TEAM.—The Commissioner
responsible for United States Customs and Border Pro-
tection (in this section referred to as the ‘Commis-
sioner’) shall, in consultation with the United States
Coast Guard, the Drug Enforcement Agency, and other
Federal agencies, as appropriate, seek to send a rapid
response team to Haiti—

“(A) to assess the short-term and long-term tech-
nical, capacity-building, and training needs of the
authorities of the Government of Haiti responsible
for customs services; and

“(B) to provide immediate assistance, as war-
ranted, particularly with respect to—

“(i) reestablishing full capacity for commercial
port operations at the seaport at Port-au-Prince;

“(ii) facilitating trade between the United
States and Haiti under the Caribbean Basin Eco-
nomic Recovery Act [19 U.S.C. 2701 et seq.], as
amended by this Act;

“(iii) preventing unlawful transshipment of
goods through Haiti to the United States; and

“(iv) otherwise strengthening cooperation be-
tween the customs authorities of the United
States, Haiti, and the Dominican Republic with
respect to trade facilitation and economic devel-
lopment, customs compliance and law enforce-
ment, and efforts to combat unlawful trafficking
in narcotic drugs and psychotropic substances.

“(2) First report.—Not later than 75 days after the date
of the enactment of this Act [May 24, 2010], the Com-
missioner shall prepare and submit to the Committee
on Finance of the Senate and the Committee on Ways
and Means of the House of Representatives a noncon-
fidential report summarizing the results of the as-
essment required by paragraph (1)(A), including—

“(A) a description of the short-term and long-
term technical, capacity-building, and training
needs of the authorities of the Government of Haiti
responsible for customs services, including a prior-
itization of immediate infrastructure needs;

“(B) a multi-year plan for supplying technical,
capacity-building, and training assistance to those
authorities, including specific responsibilities to be
undertaken by the support team authorized by sub-
section (b); and

“(C) a statement of the amount and purpose for
which any funds were expended by the rapid re-
response team in Haiti to administer the provisions
of this section, including any expenditure of funds
authorized to be appropriated pursuant to sub-
section (c)(1).

“(b) SUPPORT TEAM.—

“(1) IN GENERAL.—The Commissioner shall, in con-
sultation with other Federal agencies, as appropriate,
seek to establish a support team in Haiti for the pur-
pose of helping to meet the short-term and long-term
technical, capacity-building, and training needs of
the authorities of the Government of Haiti respon-
sible for customs services, as described in this sec-

“(2) TERMINATION.—The support team authorized by
paragraph (1) shall terminate on September 30, 2020.

“(c) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be ap-
propriated to the United States Customs and Border Pro-
tection Agency, to remain available until expended—

“(A) $100,000 to help meet the immediate infra-
structure needs of the authorities of the Govern-
ment of Haiti responsible for customs services for
the purpose of facilitating trade between the United
States and Haiti under the Caribbean Basin Eco-
nomic Recovery Act [19 U.S.C. 2701 et seq.], as
amended by this Act; and

“(B) $750,000 for each of the fiscal years 2011
through 2020 for the purpose of maintaining the
support team authorized by subsection (b).

“(2) SUPPLEMENT AND NOT SUPPLANT.—The amounts
authorized to be appropriated by paragraph (1) shall
supplement and not supplant any other funds author-
ized to be appropriated to the Department of Home-
land Security.”

PRESIDENTIAL PROCLAMATION

provisions. Pub. L. 110–234 was repealed by section 4(a)
of title XV of Pub. L. 110–246, amending this section and
section 2701 of this title and enacting provisions set out as
notes under this section and section 2701 of this title and
the amendments made by this part.”

§ 2704. International Trade Commission reports
on impact of Caribbean Basin Economic Re-
covey Program

(a) Reporting requirement

(1) In general

The United States International Trade Com-
mision (in this section referred to as the “Commission") shall submit to the Com-
mmissioner and the President biennial reports regarding the
economic impact of this chapter on United States industries and consumers and on the
economy of the beneficiary countries.

(2) First report

The first report shall be submitted not later than September 30, 2001.

(3) Treatment of Puerto Rico, etc.

For purposes of this section, industries in the
Commonwealth of Puerto Rico and the in-
sular possessions of the United States are con-
sidered to be United States industries.

(b) Requisite areas of Commission assessment

(1) Each report required under subsection (a) of
this section shall include, but not be limited to,
a report—by the Commission regard-

“(A) the actual effect, during the period cov-
ered by the report, of this Act on the United
States economy generally as well as on those

Page 723 TITLe 19—CuSTOMS DUTIES § 2704

Supplement and not supplant any other funds authorized to be appropriated to the Department of Homeland Security.”
specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries; and

(B) the probable future effect which this Act will have on the United States economy generally, as well as on such domestic industries, before the provisions of this Act terminate.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this Act, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this Act.

(c) Time of submission of reports; public participation

(1) Each report required under subsection (a) of this section shall be submitted to the Congress and to the President before the close of the nine-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2705. Impact study by Secretary of Labor

The Secretary of Labor, in consultation1 with appropriate Federal agencies, shall take a continuing review and analysis of the impact which the implementation of the provisions of this chapter have with respect to United States labor; and shall make an annual written report to Congress on the results of such review and analysis.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 2701 of this title and Tables.

§ 2706. Effective date

(a) This chapter shall take effect on August 5, 1983.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this subtitle", meaning subtitle A (§§ 211–218) of title II of Pub. L. 98–67 which enacted this chapter, amended section 1202 of this title, repealed section 2582 of this title, and enacted provisions set out as notes under sections 1202, 1319, 2251, and 2703 of this title and section 1311 of Title 33, Navigation and Navigable Waters. For complete classification of subtitle A to the Code, see Tables.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–382 struck out subsec. (b) which related to termination of duty-free treatment. Notwithstanding directory language repealing "section 218 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2706(b))", amendment was executed by repealing subsec. (b) to reflect the probable intent of Congress in view of catchline for section 211 of Pub. L. 101–382 which read "Repeal of termination date on duty-free treatment under the Act".

§ 2707. Center for the Study of Western Hemisphere Trade

(a) Establishment

The Commissioner of Customs, after consultation with appropriate officials in the State of Texas, is authorized and directed to make grants to an institution (or a consortium of such institutions) to assist such institution in planning, establishing, and operating a Center for

1 So in original. Probably should be "consultation".
the Study of Western Hemispheric Trade (hereafter in this section referred to as the “Center”). The Commissioner of Customs shall make the first grant not later than December 1, 1994, and the Center shall be established not later than February 1, 1995.

(b) Scope of Center

The Center shall be a year-round program operated by an institution located in the State of Texas (or a consortium of such institutions), the purpose of which is to promote and study trade between and among Western Hemisphere countries. The Center shall conduct activities designed to examine—

(1) the impact of the NAFTA on the economies in, and trade within, the Western Hemisphere;

(2) the negotiation of any future free trade agreements, including possible accessions to the NAFTA; and

(3) adjusting tariffs, reducing nontariff barriers, improving relations among customs officials, and promoting economic relations among countries in the Western Hemisphere.

(c) Consultation; selection criteria

The Commissioner of Customs shall consult with appropriate officials of the State of Texas and private sector authorities with respect to selecting, planning, and establishing the Center. The Center shall conduct activities designed to examine—

(1) the institution’s ability to carry out the programs and activities described in this section;

(2) any resources the institution can provide the Center in addition to Federal funds provided under this program.

(d) Programs and activities

The Center shall conduct the following activities:

(1) Provide forums for international discussion and debate for representatives from countries in the Western Hemisphere regarding issues which affect trade and other economic relations within the hemisphere, including the impact of the NAFTA on individual economies and the desirability and feasibility of possible accessions to the NAFTA by such countries.

(2) Conduct studies and research projects on subjects which affect Western Hemisphere trade, including tariffs, customs, regional and national economics, business development and finance, production and personnel management, manufacturing, agriculture, engineering, transportation, immigration, telecommunications, medicine, science, urban studies, border demographics, social anthropology, and population.

(3) Publish materials, disseminate information, and conduct seminars and conferences to support and educate representatives from countries in the Western Hemisphere who seek to do business with or invest in other Western Hemisphere countries.

(4) Provide grants, fellowships, endowed chairs, and financial assistance to outstanding scholars and authorities from Western Hemisphere countries.

(5) Provide grants, fellowships, and other financial assistance to qualified graduate students, from Western Hemisphere countries, to study at the Center.

(6) Implement academic exchange programs and other cooperative research and instructional agreements with the complementary Dante B. Fascell North-South Center at the University of Miami at Coral Gables.

(e) Definitions

For purposes of this section—

(1) NAFTA

The term “NAFTA” means the North American Free Trade Agreement.

(2) Western Hemisphere countries

The terms “Western Hemisphere countries”, “countries in the Western Hemisphere”, and “Western Hemisphere” mean Canada, the United States, Mexico, countries located in South America, beneficiary countries (as defined by section 2702 of this title), the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(f) Fees for seminars and publications

Notwithstanding any other provision of law, a grant made under this section may provide that the Center may charge a reasonable fee for attendance at seminars and conferences and for copies of publications, studies, reports, and other documents the Center publishes. The Center may waive such fees in any case in which it determines imposing a fee would impose a financial hardship and the purposes of the Center would be served by granting such a waiver.

(g) Duration of grant

The Commissioner of Customs is directed to make grants to any institution or institutions selected as the Center for fiscal years 1994, 1995, 1996, and 1997.

(h) Report

The Commissioner of Customs shall, no later than July 1, 1994, and annually thereafter for years for which grants are made, submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. The first report shall include—

(1) a statement identifying the institution or institutions selected as the Center;

(2) the reasons for selecting the institution or institutions as the Center; and

(3) the plan of such institution or institutions for operating the Center.

Each subsequent report shall include information with respect to the operations of the Center, the collaboration of the Center with, and dissemination of information to, Government policymakers and the business community with respect to the study of Western Hemispheric trade by the Center, and the plan and efforts of the Center to continue operations after grants under this section have expired.
§ 2801

AMENDMENTS
1999—Subsec. (d)(6). Pub. L. 106–29 substituted “Dante B. Fascell North-South Center” for “North-South Center”.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

AUTHORIZED APPROPRIATIONS

Section 515(b) of Pub. L. 103–182 provided that: “There are authorized to be appropriated $10,000,000 for fiscal year 1994, and such sums as may be necessary in the 3 succeeding fiscal years to carry out the purposes of section 219 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2707) (as added by subsection (a)).”

CHAPTER 16—WINE TRADE

Sec.
2801. Congressional findings and purposes.
2802. Definitions.
2803. Designation of major wine trading countries.
2804. Actions to reduce or eliminate tariff and nontariff barriers affecting United States wine.
2805. Required consultations.
2806. United States wine export promotion.

§ 2801. Congressional findings and purposes

(a) Congress finds that—
(1) there is a substantial imbalance in international wine trade resulting, in part, from the relative accessibility enjoyed by foreign wines to the United States market while the United States wine industry faces restrictive tariff and nontariff barriers in virtually every existing or potential foreign market;
(2) the restricted access to foreign markets and the continued low prices for United States wine and grape products adversely affect the economic position of our Nation’s winemakers and grape growers, as well as all other domestic sectors that depend upon wine production;
(3) the competitive position of United States wine in international trade has been weakened by foreign trade practices, high domestic interest rates, and unfavorable foreign exchange rates;
(4) wine consumption per capita is very low in many major non-wine producing markets and the demand potential for United States wine is significant; and
(5) the United States winemaking industry has the capacity and the ability to export substantial volumes of wine and an increase in United States wine exports will create new jobs, improve this Nation’s balance of trade, and otherwise strengthen the national economy.

(b) The purposes of this chapter are—
(1) to provide wine consumers with the greatest possible choice of wines from wine-producing countries;
(2) to encourage the initiation of an export promotion program to develop, maintain, and expand foreign markets for United States wine; and
(3) to achieve greater access to foreign markets for United States wine and grape products through the reduction or elimination of tariff barriers and nontariff barriers to (or other distortions of) trade in wine.


SHORT TITLE
Section 901 of title IX of Pub. L. 98–573 provided that: “This title [enacting this chapter] may be cited as the ‘Wine Equity and Export Expansion Act of 1984’.”

§ 2802. Definitions

For purposes of this chapter—
(1) the term “Committees” means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate;
(2) the term “wine product” means grapes and any product (other than wine) made from grapes, including, but not limited to, raisins and grape juice, whether or not concentrated.
(3) the term “major wine trading country” means any foreign country, or group of foreign countries, designated as such under section 2803 of this title.
(4) the phrase “nontariff barrier to (or other distortion of)”, in the context of trade in United States wine, includes any measure implemented by the government of a major wine trading country that either gives a competitive advantage to the wine industry of that country or restricts the importation of United States wine into that country.
(5) the term “Trade Representative” means the United States Trade Representative.
(6) the term “United States wine” means wine produced within the customs territory of the United States.
(7) the term “wine” means any fermented alcoholic beverage that—
(A) is made from grapes or other fruit;
(B) contains not less than 0.5 percent alcohol by volume and not more than 24 percent alcohol by volume, including all dilutions and mixtures thereof by whatever process produced; and
(C) is for nonindustrial use.


§ 2803. Designation of major wine trading countries

(a) The Trade Representative shall designate as a major wine trading country each foreign country, or group of foreign countries represented as an economic union, that, in the judgment of the Trade Representative—
(1) is a potential significant market for United States wine; and
(2) maintains tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(b) In deciding, for purposes of subsection (a)(2) of this section, whether a foreign country...
or group of countries maintains nontariff barriers to (or other distortions of) trade in United States wine, the Trade Representative shall take into account—
(1) the review and report required under section 854(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2135 note);
(2) such relevant actions that may have been taken by that country or group since that review was conducted; and
(3) such information as may be submitted under section 2805 of this title by representatives of the wine and grape products industries in the United States, as well as other sources.

REFERENCES IN TEXT
Section 854(a) of the Trade Agreements Act of 1979, referred to in subsec. (b)(1), is section 854(a) of Pub. L. 96–39, title VIII, July 26, 1979, 93 Stat. 294, which is set out as a note under section 2135 of this title.

§ 2804. Actions to reduce or eliminate tariff and nontariff barriers affecting United States wine

(a) Consultations with major wine trading countries

The President shall direct the Trade Representative to enter into consultations with each major wine trading country to seek a reduction or elimination of that country’s tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine.

(b) Reports to Congress on actions taken to expand export opportunities

(1) the President shall notify each of the Committees regarding the extent and effect of the efforts undertaken since the submission of the report required under section 854(a) of the Trade Agreements Act of 1979 [19 U.S.C. 2135 note], and during the 12-month period beginning on October 30, 1984, to expand opportunities in each major wine trading country for exports of United States wine. Such notification, which shall be in the form of a separate written report (that must be submitted within 30 days after the close of that 12-month period) for each major wine trading country, shall include—
(A) a description of each act, policy, and practice (and of its legal basis and operation) in that country that constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine;
(B) an assessment of the extent to which each such act, policy, or practice is subject to international agreements to which the United States is a party;
(C) information with respect to any action taken, or proposed to be taken, under existing authority to eliminate or reduce each such act, policy, or practice, including, but not limited to—
(i) any action under the Trade Act of 1974 [19 U.S.C. 2101 et seq.], and
(ii) any negotiation or consultation with any foreign government;
(D) if action referred to in subparagraph (C) was not taken, an explanation of the reasons therefore; and
(E) recommendations to the Congress of any additional legislative authority or other action which the President believes is necessary and appropriate to obtain the elimination or reduction of foreign tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(2) The reports required under paragraph (1) shall be developed and coordinated by the Trade Representative through the interagency trade organization established by section 1872(a) of this title.

(c) Enforcement of rights

If the President, after taking into account information and advice received under subsections (a) and (b) of this section, section 2805 of this title or from other sources, determines that action is appropriate to respond to any act, policy, or practice of a major wine trading country constituting a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine and—
(1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement; or
(2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President, shall take all appropriate and feasible action under the Trade Act of 1974 [19 U.S.C. 2101 et seq.] to enforce the rights of the United States under any such trade agreement or to obtain the elimination of such act, policy, or practice.

REFERENCES IN TEXT
Section 854(a) of the Trade Agreements Act of 1979, referred to in subsec. (b)(1), is section 854(a) of Pub. L. 96–39, title VIII, July 26, 1979, 93 Stat. 294, which is set out as a note under section 2135 of this title.


REPORTS ON NEGOTIATIONS TO ELIMINATE WINE TRADE BARRIERS
Pub. L. 100–418, title I, §1125, Aug. 23, 1988, 102 Stat. 147, provided that: “Before the close of the 13-month period beginning on the date of the enactment of this Act [Aug. 23, 1988], the President shall update each report that the President submitted to the Committee on Ways and Means and the Committee on Finance under section 905(b) of the Wine Equity and Export Expansion Act of 1984 (19 U.S.C. 2801(b)) and submit the updated report to both of such committees. Each updated report shall contain, with respect to the major wine trading country concerned—
(1) a description of each tariff or nontariff barrier to (or other distortion of) trade in United States wine

1So in original. Probably should be “therefor”.

2So in original. Probably should be “therefor”.

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§ 2805. Required consultations

The Trade Representative shall consult with the Committees and with representatives of the wine and grape products industries in the United States—

(1) before identifying tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine and designating major wine trading countries under section 2803 of this title;

(2) in developing the reports required under section 2804(b) of this title; and

(3) for purposes of determining whether action by the President is appropriate under any provision of the Trade Act of 1974 [19 U.S.C. 2101 et seq.] with respect to any act, policy, or practice referred to in section 2804(b)(1) of this title.


References in Text


§ 2806. United States wine export promotion

In order to develop, maintain, and expand foreign markets for United States wine, the President is encouraged to—

(1) utilize, for the fiscal year ending September 30, 1985, the authority provided under section 135 of the Omnibus Budget Reconciliation Act of 1982 [7 U.S.C. 612c; note] to make available sufficient funds to initiate, in cooperation with nongovernmental trade associations representative of United States wineries, an export promotion program for United States;¹ and

(2) request, for each subsequent fiscal year, an appropriation for such a wine export promotion program that will not be at the expense of any appropriations requested for export promotion programs involving other agriculture commodities.


¹ So in original. Probably should be “United States wine.”

References in Text


CHAPTER 17—NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS

Sec.

2901. Overall and principal trade negotiating objectives of the United States.

(a) Overall trade negotiating objectives

The overall trade negotiating objectives of the United States are to obtain—

(1) more open, equitable, and reciprocal market access;

(2) the reduction or elimination of barriers and other trade-distorting policies and practices; and

(b) Principal trade negotiating objectives

(1) Dispute settlement

The principal negotiating objectives of the United States with respect to dispute settlement are—

(A) to provide for more effective and expeditious dispute settlement mechanisms and procedures; and

(B) to ensure that such mechanisms within the GATT and GATT agreements provide for more effective and expeditious resolution of disputes and enable better enforcement of United States rights.

(2) Improvement of the GATT and multilateral trade negotiation agreements

The principal negotiating objectives of the United States regarding the improvement of GATT and multilateral trade negotiation agreements are—

(A) to enhance the status of the GATT;

(B) to improve the operation and extend the coverage of the GATT and such agreements and arrangements to products, sectors, and conditions of trade not adequately covered; and

(C) to expand country participation in particular agreements or arrangements, where appropriate.

(3) Transparency

The principal negotiating objective of the United States regarding transparency is to obtain broader application of the principle of transparency and clarification of the costs and benefits of trade policy actions through the observance of open and equitable procedures in trade matters by Contracting Parties to the GATT.
§ 2901

(4) Developing countries

The principal negotiating objectives of the United States regarding developing countries are—

(A) to ensure that developing countries promote economic development by assuming the fullest possible measure of responsibility for achieving and maintaining an open international trading system by providing reciprocal benefits and assuming equivalent obligations with respect to their import and export practices; and

(B) to establish procedures for reducing nonreciprocal trade benefits for the more advanced developing countries.

(5) Current account surpluses

The principal negotiating objective of the United States regarding current account surpluses is to develop rules to address large and persistent global current account imbalances of countries, including imbalances which threaten the stability of the international trading system, by imposing greater responsibility on such countries to undertake policy changes aimed at restoring current account equilibrium, including expedited implementation of trade agreements where feasible and appropriate.

(6) Trade and monetary coordination

The principal negotiating objective of the United States regarding trade and monetary coordination is to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions.

(7) Agriculture

The principal negotiating objectives of the United States with respect to agriculture are to achieve, on an expedited basis to the maximum extent feasible, more open and fair conditions of trade in agricultural commodities by—

(A) developing, strengthening, and clarifying rules for agricultural trade, including disciplines on restrictive or trade-distorting import and export practices;

(B) increasing United States agricultural exports by eliminating barriers to trade (including transparent and nontransparent barriers) and reducing or eliminating the subsidization of agricultural production consistent with the United States policy of agricultural stabilization in cyclical and unpredictable markets;

(C) creating a free and more open world agricultural trading system by resolving questions pertaining to export and other trade-distorting subsidies, market pricing and market access and eliminating and reducing substantially other specific constraints to fair trade and more open market access, such as tariffs, quotas, and other nontariff practices, including unjustified phytosanitary and sanitary restrictions; and

(D) seeking agreements by which the major agricultural exporting nations agree to pursue policies to reduce excessive production of agricultural commodities during periods of oversupply, with due regard for the fact that the United States already undertakes such policies, and without recourse to arbitrary schemes to divide market shares among major exporting countries.

(8) Unfair trade practices

The principal negotiating objectives of the United States with respect to unfair trade practices are—

(A) to improve the provisions of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targeting practices;

(B) to obtain the application of similar rules to the treatment of primary and nonprimary products in the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT (relating to subsidies and countervailing measures); and

(C) to obtain the enforcement of GATT rules against—

(i) state trading enterprises, and

(ii) the acts, practices, or policies of any foreign government which, as a practical matter, unreasonably require that—

(I) substantial direct investment in the foreign country be made;

(II) intellectual property be licensed to the foreign country or to any firm of the foreign country, or

(III) other collateral concessions be made,

as a condition for the importation of any product or service of the United States into the foreign country or as a condition for carrying on business in the foreign country.

(9) Trade in services

(A) The principal negotiating objectives of the United States regarding trade in services are—

(i) to reduce or to eliminate barriers to, or other distortions of, international trade in services, including barriers that deny national treatment and restrictions on establishment and operation in such markets; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) are consistent with the commercial policies of the United States, and

(II) will reduce or eliminate such barriers or distortions, and help ensure fair, equitable opportunities for foreign markets.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.
(10) Intellectual property

The principal negotiating objectives of the United States regarding intellectual property are—

(A) to seek the enactment and effective enforcement by foreign countries of laws which—

(i) recognize and adequately protect intellectual property, including copyrights, patents, trademarks, semiconductor chip layout designs, and trade secrets, and

(ii) provide protection against unfair competition,

(B) to establish in the GATT obligations—

(i) to implement adequate substantive standards based on—

(I) the standards in existing international agreements that provide adequate protection, and

(II) the standards in national laws if international agreement standards are inadequate or do not exist,

(ii) to establish effective procedures to enforce, both internally and at the border, the standards implemented under clause (i), and

(iii) to implement effective dispute settlement procedures that improve on existing GATT procedures;

(C) to recognize that the inclusion in the GATT of—

(i) adequate and effective substantive norms and standards for the protection and enforcement of intellectual property rights, and

(ii) dispute settlement provisions and enforcement procedures,

is without prejudice to other complementary initiatives undertaken in other international organizations; and

(D) to supplement and strengthen standards for protection and enforcement in existing international intellectual property conventions administered by other international organizations, including their expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection.

(11) Foreign direct investment

(A) The principal negotiating objectives of the United States regarding foreign direct investment are—

(i) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) will help ensure a free flow of foreign direct investment, and

(II) will reduce or eliminate the trade distortive effects of certain trade-related investment measures.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(12) Safeguards

The principal negotiating objectives of the United States regarding safeguards are—

(A) to improve and expand rules and procedures covering safeguard measures;

(B) to ensure that safeguard measures are—

(i) transparent,

(ii) temporary,

(iii) degressive, and

(iv) subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment; and

(C) to require notification of, and to monitor the use by, GATT Contracting Parties of import relief actions for their domestic industries.

(13) Specific barriers

The principal negotiating objective of the United States regarding specific barriers is to obtain competitive opportunities for United States exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports to United States markets, including the reduction or elimination of specific tariff and nontariff trade barriers, particularly—

(A) measures identified in the annual report prepared under section 2241 of this title; and

(B) foreign tariffs and nontariff barriers on competitive United States exports when like or similar products enter the United States at low rates of duty or are duty-free, and other tariff disparities that impede access to particular export markets.

(14) Worker rights

The principal negotiating objectives of the United States regarding worker rights are—

(A) to promote respect for worker rights;

(B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and

(C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

(15) Access to high technology

(A) The principal negotiating objective of the United States regarding access to high technology is to obtain the elimination or reduction of foreign barriers to, and acts, policies, or practices by foreign governments which limit, equitable access by United States persons to foreign-developed technology, including barriers, acts, policies, or practices which have the effect of—

(i) restricting the participation of United States persons in government-supported research and development projects;
(ii) denying equitable access by United States persons to government-held patents; 
(iii) requiring the approval or agreement of government entities, or imposing other forms of government interventions, as a condition for the granting of licenses to United States persons by foreign persons (except for approval or agreement which may be necessary for national security purposes to control the export of critical military technology); and 
(iv) otherwise denying equitable access by United States persons to foreign-developed technology or contributing to the inequitable flow of technology between the United States and its trading partners. 

(B) In pursuing the negotiating objective described in subparagraph (A), the United States negotiators shall take into account United States Government policies in licensing or other monopoly system available to foreign persons technology and other information developed by United States laboratories. 

(16) Border taxes 

The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the GATT with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily for revenue on direct taxes rather than indirect taxes. 


SHORT TITLE 

Section 1(a) of Pub. L. 100–418 provided that: ‘‘This Act [see Tables for classification] may be cited as the ‘‘Omnibus Trade and Competitiveness Act of 1988’’.” 

FINDINGS AND PURPOSES OF TRADE, CUSTOMS, AND TARIFF LAWS 

Section 1001 of title I of Pub. L. 100–418 provided that: 

“(a) FINDINGS.—The Congress finds that—

“(1) in the last 10 years there has arisen a new global economy in which trade, technological development, investment, and services form an integrated system; and in this system these activities affect each other and the health of the United States economy; 

“(2) the United States is confronted with a fundamental disequilibrium in its trade and current account balances and a rapid increase in its net external debt; 

“(3) such disequilibrium and increase are a result of numerous factors, including—

“(A) disparities between the macroeconomic policies of the major trading nations; 

“(B) the large United States budget deficit; 

“(C) instabilities and structural defects in the world monetary system; 

“(D) the growth of debt throughout the developing world; 

“(E) structural defects in the world trading system and inadequate enforcement of trade agreement obligations; 

“(F) governmental distortions and barriers; 

“(G) serious shortcomings in United States trade policy; and 

“(H) inadequate growth in the productivity and competitiveness of United States firms and industries relative to their overseas competition; 

“(i) it is essential, and should be the highest priority of the United States Government, to pursue a broad array of domestic and international policies—

“(A) to prevent future declines in the United States economy and standards of living, 

“(B) to ensure future stability in external trade of the United States, and 

“(C) to guarantee the continued vitality of the technological, industrial, and agricultural base of the United States; 

“(5) the President should be authorized and encouraged to negotiate trade agreements and related investment, financial, intellectual property, and services agreements that meet the standards set forth in this title [see Tables for classification]; and 

“(6) while the United States is not in a position to dictate economic policy to the rest of the world, the United States is in a position to lead the world and it is in the national interest for the United States to do so. 

“(b) PURPOSES.—The purposes of this title [see Tables for classification] are to—

“(1) authorize the negotiation of reciprocal trade agreements; 

“(2) strengthen United States trade laws; 

“(3) improve the development and management of United States trade strategy; and 

“(4) through these actions, improve standards of living in the world.” 

EX. ORD. NO. 12661. IMPLEMENTING OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988 AND RELATED INTERNATIONAL TRADE MATTERS 


By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418, 102 Stat. 1107) (“Omnibus Trade Act”) [see Short Title note above], the Tariff Act of 1930 (Chapter 497, 46 Stat. 590, June 17, 1930), as amended (“Tariff Act”) [19 U.S.C. 1202 et seq.], the National Defense Authorization Act, Fiscal Year 1989 (P.L. 100–456, 102 Stat. 1918) (“Defense Authorization Act”) [see Tables for classification], section 301 of Title 19 of the United States Code, and, in general, to ensure that the international trade policy of the United States shall be conducted and administered in a way that achieves the economic, foreign policy, and national security objectives of the United States and in a coordinated manner under the direction of the President, it is hereby ordered as follows: 

PART I—TRADE, CUSTOMS, AND TARIFF LAWS 

SECTION 1–101. Accession of State Trading Regimes to the General Agreement on Tariffs and Trade. The functions vested in the President by sections 1106(a), (b) and (d) of the Omnibus Trade Act (19 U.S.C. 2906(a), (b), (d)), regarding the accession of state trading regimes to the General Agreement on Tariffs and Trade, are delegated to the United States Trade Representative. 

Sect. 1–201. Wine Barriers. The functions vested in the President by section 1125 of the Omnibus Trade Act (19 U.S.C. 2804 note), regarding the updated report on barriers to wine trade, are delegated to the United States Trade Representative. 

Sect. 1–301. Steel Imports. The functions vested in the President by section 665(d)(1) and (2) of the Trade and Tariff Act of 1984 (19 U.S.C. 2253, note), as amended by section 1322 of the Omnibus Trade Act, are delegated to the United States Trade Representative. 

Sect. 1–401. Telecommunications Trade. The functions vested in the President by sections 1375 and 1376(e) of the Omnibus Trade Act (19 U.S.C. 3104, 3106(e)), regarding certain telecommunications negotiations as may be ordered by the President and reports thereon to Congressional Committees, are delegated to the United States Trade Representative. 

Sect. 1–501. Uniform Fee on Imports. The functions vested in the President by section 1428 of the Omnibus
PART II—EXPORT ENHANCEMENT

Soc. 2–101. Countertrade and Barter.

(1) Establishment. There is established an Interagency Group on Countertrade, which shall be composed of the Secretaries of Commerce, State, Defense, Treasury, Labor, Agriculture, and Energy, the Attorney General, the Administrator of the Agency for International Development, the Director (Administrator) of the Federal Emergency Management Agency, the United States Trade Representative and the Director of the Office of Management and Budget, or their respective representatives. The Secretary of Commerce or his representative shall be the Chairman of the interagency group.

(2) Functions. The interagency group shall carry out the functions and duties set out in section 2260(a) of the Omnibus Trade Act [15 U.S.C. 4712(a)].

Soc. 2–201. Sanctions Against Toshiba and Kongsberg.

(1) Procurement Sanctions. Pursuant to section 2443 of the Omnibus Trade Act [50 U.S.C. App. 2410a] and subject to the exceptions referred to in paragraph (3), departments, agencies and instrumentalities of the United States Government shall not for the three-year period beginning on the date this Order takes effect, contract with or procure products and services from Toshiba Machine Company, Kongsberg Trading Company, Toshiba Corporation or Kongsberg Vapenfabrikk. The head of each department, agency or instrumentality is hereby directed and authorized to implement this procurement sanction in accordance with paragraph (3).

(2) Import Sanctions. Pursuant to section 2443 of the Omnibus Trade Act and subject to the exceptions referred to in paragraph (3), importation into the United States, its territories and possessions, of products produced by Toshiba Machine Company or Kongsberg Trading Company is prohibited for three years from the effective date of this Order. The Secretary of the Treasury is hereby directed and authorized to implement this import sanction in accordance with paragraph (3).

(3) Exceptions. Authority to make determinations as to exceptions to sanctions and to implement exceptions by regulation or otherwise is delegated (i) to the Secretary of Defense with respect to determinations under section 2443(c)(1) regarding the procurement of defense articles or defense services, (ii) to the Secretary of the Treasury with respect to exceptions under section 2443(c)(2) regarding importation prohibited by section 2443(a)(2), and (iii) to the head of each Federal department, agency or instrumentality with respect to exceptions under section 2443(c)(2) affecting their respective contracting and procurement. All regulations implementing these exceptions provisions shall be consistent with any guidelines provided by the Office of Federal Procurement Policy, Office of Management and Budget.

(4) Annual Report. The annual report required by section 2445 [50 U.S.C. App. 2413], concerning estimated increases in defense expenditures arising from illegal technology transfers, shall be prepared by the Secretary of Defense, in consultation with the Secretaries of State and Commerce, for submission to the Congress by the President.

PART III—FOREIGN CORRUPT PRACTICES

Soc. 3–101. Foreign Corrupt Practices Act Amendments; Investment; and Technology

The functions conferred upon the President by section 506(d)(1) (‘‘International’’) of the Omnibus Trade Act [15 U.S.C. 78dd–1 note] are delegated to the Secretary of State, who in performing such functions shall act in consultation with the Attorney General, the Secretary of Commerce, the Chairman of the Securities and Exchange Commission, the Secretary of Commerce, the Secretary of the Treasury and the Director of the Office of Management and Budget.


(1) Executive Order No. 11858, as amended [50 U.S.C. App. 2170 note], regarding the Committee on Foreign Investment in the United States (the ‘‘Committee’’) is further amended as follows:

(A) By adding new Sections 7 and 8 as follows:

“SEC. 7. (1) Investigations. (a) The Committee is authorized to receive notices and other information, to determine whether investigations should be undertaken, and to make investigations, pursuant to Section 721(a) of the Defense Production Act. (b) If the Committee determines that an investigation should be undertaken, such investigation shall commence no later than 30 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. Such investigation shall be completed no later than 45 days after such determination. (c) If one or more Committee members differ with a Committee decision not to undertake an investigation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision within 25 days after receipt of the Committee’s written notification of the proposed or pending merger, acquisition, or takeover.

“(2) Report to the President. Upon completion or termination of any investigation, the Committee shall report to the President and present a recommendation. Any such report shall include information relevant to subparagraphs (1) and (2) of Section 721(d) of the Defense Production Act. If the Committee is unable to reach a unanimous recommendation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision.

“SEC. 8. The Chairman of the Committee, in consultation with other members of the Committee, is hereby delegated the authority to issue regulations to implement Section 721 of the Defense Production Act.”

(B) By deleting, from the second sentence in Section 1(a), the text beginning with “a representative” and ending with “by each of”.

(C) By deleting, from the third sentence in Section 1(a), the phrase “representative of the”.

(D) By deleting “and” at the end of subparagraph (3) of Section 1(b), by substituting “; and” for the period at the end of subparagraph (4) of that Section, and by adding a new subparagraph (5) of that subsection as follows: “(5) The views of the Executive Branch and discharge the responsibilities with respect to Section 721(a) and (e) of the Defense Production Act of 1950, as amended [50 U.S.C. App. 2061 et seq.] (‘‘Defense Production Act’’).”

(E) By adding the following sentence at the end of Section 5: “Information or documentary material filed pursuant to Section 1(b)(5) or Section 7 of this Order shall be treated in accordance with paragraph (b) of Section 721 of the Defense Production Act.”

(F) By inserting in Section 1(a) the following additional Committee members: “(7) The Attorney General,” and “(8) The Director of the Office of Management and Budget.”

(G) The Interim Presidential Directive to the Secretary of the Treasury of October 26, 1988, is hereby revoked, and any notices received or investigations pending as of the date this Order takes effect shall be referred to the Chairman of the Committee for action consistent with this Order.

Soc. 3–301. Reporting Requirement on Semiconductors, Fiber Optics and Superconducting Materials.

(1) The Secretary of Commerce, in consultation with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and the Director of the Office of Management and Budget, shall prepare for
with regard to regulations, rules, or agency statements of
general applicability and future effect designed to
implement, interpret, or prescribe law or policy or
describing the procedure or practice requirements of an
agency relative to the administration of the Export Ad-

dministration Act [50 U.S.C. App. 2401 et seq.], determine
whether such regulations, rules, or agency statements
are exempted from review under that Order, pursuant
to the provisions of section 8(b) thereof [50 U.S.C. App.
2407(b)].

SISC. 5–201. Offsets. The negotiating functions under
section 826(d) of the Defense Authorization Act [10
U.S.C. 2532 note], as may be ordered by the President,
are hereby jointly delegated to the Secretary of De-
fense and the United States Trade Representative.
These functions shall be coordinated with the Sec-

SISC. 5–202. Reporting Functions. The reporting
functions of the President under section 826(d) of the De-

SISC. 5–203. International Trade Commission. The
functions vested in the President by section 332(g) of
the Tariff Act [19 U.S.C. 2252(g)], regarding reports by
the United States International Trade Commission to
the President, are delegated to the United States Trade
Representative.

SISC. 5–204. Strengthening International Institutions. To
the extent possible, actions undertaken under this
Order shall be conducted in a manner that strengthens
international institutions that further United States
objectives, such as opening foreign markets and pre-
venting the export of strategic goods and technologies
to proscribed destinations.

SISC. 5–501. Effective Date. This Order shall take effect
at 12:01 a.m. on Wednesday, December 28, 1988.

§ 2902. Trade agreement negotiating authority

(a) Agreements regarding tariff barriers

(1) Whenever the President determines that
one or more existing duties or other import re-
stictions of any foreign country or the United
States are unduly burdening and restricting the
foreign trade of the United States and that the
purposes, policies, and objectives of this title
will be promoted thereby, the President—
(A) before June 1, 1993, may enter into trade
agreements with foreign countries; and

(B) may, subject to paragraphs (2) through
(5), proclaim—
(i) such modification or continuance of
any existing duty,

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

(iii) such additional duties;
as he determines to be required or appropriate
to carry out any such trade agreement.

(2) No proclamation may be made under sub-
section (a) of this section that—
(A) reduces any rate of duty (other than a
rate of duty that does not exceed 5 percent ad
valorem on August 23, 1988), to a rate which is
less than 50 percent of the rate of such duty
that applies on August 23, 1988; or

(B) increases any rate of duty above the rate
that applies on August 23, 1988.
§ 2902  TITLE 19—CUSTOMS DUTIES  Page 734

(3)(A) Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed in paragraph (1) to carry out such agreement with respect to such article.

(B) No staging under subparagraph (A) is required with respect to a rate reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States.

The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

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

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

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

(5) No reduction in a rate of duty under a trade agreement entered into under subsection (a) of this section on any article may take effect more than 10 years after the effective date of the first reduction under paragraph (1) that is proclaimed to carry out the trade agreement with respect to such article.

(6) A rate of duty reduction or increase that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction or increase is included within an implementing bill provided for under section 2903 of this title and that bill is enacted into law.

(b) Agreements regarding nontariff barriers

(1) Whenever the President determines that any barrier to, or other distortion of, international trade—

(A) unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy; or

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

and that the purposes, policies, and objectives of this title will be promoted thereby, the President may, before June 1, 1993, enter into a trade agreement with foreign countries providing for—

(i) the reduction or elimination of such barrier or other distortion; or

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

(2) A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 2901 of this title.

(c) Bilateral agreements regarding tariff and nontariff barriers

(1) Before June 1, 1993, the President may enter into bilateral trade agreements with foreign countries that provide for the elimination or reduction of any duty imposed by the United States. A trade agreement entered into under this paragraph may also provide for the reduction or elimination of barriers to, or other distortions of, the international trade of the foreign country or the United States.

(2) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country.

(3) A trade agreement may be entered into under paragraph (1) with any foreign country only if—

(A) the agreement makes progress in meeting the applicable objectives described in section 2901 of this title;

(B) such foreign country requests the negotiation of such an agreement; and

(C) the President, at least 60 days before the date notice is provided under section 2903(a)(i)(A) of this title—

(i) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(ii) consults with such committees regarding the negotiation of such agreement.

(4) The 60-day period of time described in paragraph (3)(C) shall be computed in accordance with section 2903(e) of this title.

(5) In any case in which there is an inconsistency between any provision of this Act and any bilateral free trade area agreement that entered into force and effect with respect to the United States before January 1, 1987, the provision shall not apply with respect to the foreign country that is party to that agreement.

(d) Consultation with Congress before agreements entered into

(1) Before the President enters into any trade agreement under subsection (b) or (c) of this section, the President shall consult with—

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

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

(2) The consultation under paragraph (1) shall include—

(A) the nature of the agreement;

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

(C) all matters relating to the implementation of the agreement under section 2903 of this title.

(3) If it is proposed to implement two or more trade agreements in a single implementing bill under section 2903 of this title, the consultation under paragraph (1) shall include the desirability and feasibility of such proposed implementation.
(e) Special provisions regarding Uruguay Round trade negotiations

(1) In general

Notwithstanding the time limitations in subsections (a) and (b) of this section, if the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade has not resulted in trade agreements by May 31, 1993, the President may, during the period after May 31, 1993, and before April 16, 1994, enter into, under subsections (a) and (b) of this section, trade agreements resulting from such negotiations.

(2) Application of tariff proclamation authority

No proclamation under subsection (a) of this section to carry out the provisions regarding tariff barriers of a trade agreement that is entered into pursuant to paragraph (1) may take effect before the effective date of a bill that implements the provisions regarding nontariff barriers of a trade agreement that is entered into under such paragraph.

(3) Application of implementing and “fast track” procedures

Section 2903 of this title applies to any trade agreement negotiated under subsection (b) of this section pursuant to paragraph (1), except that—

(A) in applying subsection (a)(1)(A) of section 2903 of this title to any such agreement, the phrase “at least 120 calendar days before the day on which he enters into the trade agreement (but not later than December 15, 1993)” shall be substituted for the phrase “at least 90 calendar days before the day on which he enters into the trade agreement.”;

and

(B) no provision of subsection (b) of section 2903 of this title other than paragraph (1)(A) applies to any such agreement and in applying such paragraph, “April 16, 1994;” shall be substituted for “June 1, 1991;”.

(4) Advisory committee reports

The report required under section 2155(e)(1) of this title regarding any trade agreement provided for under paragraph (1) shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 2903(a)(1)(A) of this title of his intention to enter into the agreement (but before January 15, 1994).


REFERENCES IN TEXT

This title, referred to in subsections (a)(1), (b)(1), and (d)(2)(B), is title I (§1001 et seq.) of Pub. L. 100–418, see note below. For complete classification of this title to the Code, see Tables.


AMENDMENTS

into under section 2902(b) or (c) of this title is subject to the obligations imposed by such agreement, the President shall recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(b) Application of Congressional “fast track” procedures to implementing bills

(1) Except as provided in subsection (c) of this section—

(A) the provisions of section 2191 of this title (hereinafter in this section referred to as “fast track procedures”) apply to implementing bills submitted with respect to trade agreements entered into under section 2902(b) or (c) of this title before June 1, 1991; and

(B) such fast track procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under section 2902(b) or (c) of this title after May 31, 1991, and before June 1, 1993, if (and only if)—

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

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before June 1, 1991.

(2) If the President is of the opinion that the fast track procedures should be extended to implementing bills described in paragraph (1)(B), the President must submit to the Congress, no later than March 1, 1991, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under section 2902(b) or (c) of this title and the anticipated schedule for submitting such agreements to the Congress for approval;

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

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

(3) The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 2155 of this title of his decision to submit a report to Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but no later than March 1, 1991, a written report that contains—

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

(B) a statement of its views, and the reasons therefore, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

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

(5)(A) For purposes of this subsection, the term “extension disapproval resolution” means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: “(i) the House [or Senate] disapproves the request of the President for the extension, under section 1103(b)(1)(B)(i) of the Omnibus Trade and Competitiveness Act of 1988, of the provisions of section 151 of the Trade Act of 1974 to any implementing bill submitted with respect to any trade agreement entered into under section 2902(b) or (c) of such Act after May 31, 1991, because sufficient tangible progress has not been made in trade negotiations.”.

(B) Extension disapproval resolutions—

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

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

(C) The provisions of section 2192(d) and (e) of this title (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

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

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

(iii) either House of the Congress to consider an extension disapproval resolution that is reported to such House after May 15, 1991.

(e) Limitations on use of “fast track” procedures

(1)(A) The fast track procedures shall not apply to any implementing bill submitted with respect to a trade agreement entered into under section 2902(b) or (c) of this title if both Houses of the Congress separately agree to procedural disapproval resolutions within any 60-day period.

(B) The fast track procedures shall not apply to any implementing bill submitted with respect to a trade agreement entered into under section 2902(b) or (c) of this title if both Houses of the Congress separately agree to procedural disapproval resolutions within any 60-day period.

(2) If the President is of the opinion that the fast track procedures should be extended to implementing bills described in paragraph (1)(B), the President must submit to the Congress, no later than March 1, 1991, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under section 2902(b) or (c) of this title and the anticipated schedule for submitting such agreements to the Congress for approval;

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

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

(3) The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 2155 of this title of his decision to submit a report to Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but no later than March 1, 1991, a written report that contains—

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

(B) a statement of its views, and the reasons therefore, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

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

(5)(A) For purposes of this subsection, the term “extension disapproval resolution” means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: “(i) the House [or Senate] disapproves the request of the President for the extension, under section 1103(b)(1)(B)(i) of the Omnibus Trade and Competitiveness Act of 1988, of the provisions of section 151 of the Trade Act of 1974 to any implementing bill submitted with respect to any trade agreement entered into under section 2902(b) or (c) of such Act after May 31, 1991, because sufficient tangible progress has not been made in trade negotiations.”.

(B) Extension disapproval resolutions—

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

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

(C) The provisions of section 2192(d) and (e) of this title (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

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

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

(iii) either House of the Congress to consider an extension disapproval resolution that is reported to such House after May 15, 1991.

(6) If the President is of the opinion that the fast track procedures should be extended to implementing bills described in paragraph (1)(B), the President must submit to the Congress, no later than March 1, 1991, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under section 2902(b) or (c) of this title and the anticipated schedule for submitting such agreements to the Congress for approval;

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

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

(7) The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 2155 of this title of his decision to submit a report to Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but no later than March 1, 1991, a written report that contains—

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

(B) a statement of its views, and the reasons therefore, regarding whether the extension requested under paragraph (2) should be approved or disapproved.
(E) For purposes of this subsection, the term "procedural disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to consult with Congress on trade negotiations and trade agreements in accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, and, therefore, the provisions of section 151 of the Trade Act of 1974 shall not apply to any implementing bill submitted with respect to any trade agreement entered into under section 1102(b) or (c) of such Act of 1988, if, during the 60-day period beginning on the date on which this resolution is agreed to by the House, the Congress is not in session.

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


REFERENCES IN TEXT

This title, referred to in subsecs. (a)(2)(B)(i) and (b)(2)(B), (3)(A), is title I (§1001 et seq.) of Pub. L. 100–418, see note below. For complete classification of this title to the Code, see Tables.

The Omnibus Trade and Competitiveness Act of 1988, referred to in subsecs. (b)(5)(A) and (c)(1)(E), is Pub. L. 100–418, Aug. 23, 1988, 102 Stat. 1107. Sections 1102(b) and (c) and 1103(b)(1)(B)(i) and (c)(1)(E) of such Act are classified to sections 2902(b) and (c) and 2903(b)(1)(B)(i) and (c)(1)(E) of this title, respectively. For complete classification of this Act to the Code, see Tables.

Section 151 of the Trade Act of 1974, referred to in subsecs. (b)(5)(A) and (c)(1)(E), is classified to section 2191 of this title.

§ 2904. Termination and reservation authority; reciprocal nondiscriminatory treatment

(a) In general

For purposes of applying sections 2135, 2136(a), and 2137 of this title—

(1) any trade agreement entered into under section 2902 of this title shall be treated as an agreement entered into under section 2111 or 2112, as appropriate, of this title; and

(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 2902 of this title shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 2112 of this title.

(b) Reciprocal nondiscriminatory treatment

(1) The President shall determine, before June 1, 1993, whether any major industrial country has failed to make concessions under trade agreements entered into under section 2902(a) and (b) of this title which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities, provided by concessions made by the United States under trade agreements entered into under section 2902(a) and (b) of this title, for the commerce of such country in the United States.

(2) If the President determines under paragraph (1) that a major industrial country has not made concessions under trade agreements entered into under section 2902(a) and (b) of this title which provide substantially equivalent competitive opportunities for the commerce of the United States, the President shall, either generally with respect to such country or by article produced by such country, in order to restore equivalence of competitive opportunities, recommend to the Congress—

(A) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under section 2902(a) and (b) of this title that have been made with respect to rates of duty or other import restrictions imposed by the United States, and

(B) legislation providing that any law necessary to carry out any trade agreement under section 2902(a) or (b) of this title not apply to such country.
§ 2905. Accession of state trading regimes to General Agreement on Tariffs and Trade or WTO

(a) In general

Before any major foreign country accedes, after August 23, 1988, to the GATT 1947, or to the WTO Agreement, the President shall determine—

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

(A) the exports of such major foreign country,

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

(2) whether such state trading enterprises—

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

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

(b) Effects of affirmative determination

If both of the determinations made under paragraphs (1) and (2) of subsection (a) of this section with respect to a major foreign country are affirmative—

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

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

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

(i) will—

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

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

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

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

(c) Expedited consideration of bill to approve extension

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

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

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

(B) shall be treated as an implementing bill for purposes of subsections (d), (e), (f), and (g) of section 2191 of this title.

(d) Publication

The President shall publish in the Federal Register each determination made under subsection (a) of this section.

(e) Definitions

For purposes of this section:

(1) The term “GATT 1947” has the meaning given that term in section 3501(1)(A) of this title.

(2) The term “WTO Agreement” means the Agreement Establishing the World Trade Organization entered into on April 15, 1994 and the multilateral trade agreements (as such term is defined in section 3501(4) of this title).

(3) For purposes of this subsection, the term “major industrial country” means Canada, the European Communities, the individual member countries of the European Communities, Japan, and any other foreign country designated by the President for purposes of this subsection.


§ 2905. Accession of state trading regimes to General Agreement on Tariffs and Trade or WTO

(a) In general

Before any major foreign country accedes, after August 23, 1988, to the GATT 1947, or to the WTO Agreement, the President shall deter-

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

(A) the exports of such major foreign country,

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

(2) whether such state trading enterprises—

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

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

(b) Effects of affirmative determination

If both of the determinations made under sub-

(1) the President may submit to the Congress any draft of a bill which approves of the exten-

sion of the application of the GATT 1947 or the WTO Agreement between the United States and a major foreign country.

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

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

(B) shall be treated as an implementing bill for purposes of subsections (d), (e), (f), and (g) of section 2191 of this title.

(d) Publication

The President shall publish in the Federal Register each determination made under subsection (a) of this section.

(e) Definitions

For purposes of this section:

(1) The term “GATT 1947” has the meaning given that term in section 3501(1)(A) of this title.

(2) The term “WTO Agreement” means the Agreement Establishing the World Trade Organization entered into on April 15, 1994 and the multilateral trade agreements (as such term is defined in section 3501(4) of this title).


AMENDMENTS


EFFECTIVE DATE OF 1994 AMENDMENT


DELEGATION OF FUNCTIONS

For delegation of certain functions of President under this section to United States Trade Representative, see section 1–101 of Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of this title.

PRESIDENTIAL DOCS. REGARDING STATE TRADING ENTERPRISES

The following presidential documents related to determinations under subsec. (a) of this section:

CHINA.—Memorandum of the President of the United States, Nov. 9, 2001, 66 F.R. 57307.

SAUDI ARABIA.—Memorandum of the President of the United States, Nov. 10, 2005, 70 F.R. 69419.

TAIWAN, PROVINCE OF CHINA.—Memorandum of the President of the United States, Nov. 9, 2001, 66 F.R. 57309.

§ 2906. Definitions

For purposes of this chapter:

(1) The term "distortion" includes, but is not limited to, a subsidy.

(2) The term "foreign country" includes any foreign instrumentality. Any territory or possession of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.

(3) The term "GATT" means the GATT 1947 (as defined in section 3501(1)(A) of this title).

(4) The term "implementing bill" has the meaning given such term in section 2191(b)(1) of this title.

(5) The term "international trade" includes, but is not limited to—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

(6) The term "state trading enterprise" means—

(A) any agency, instrumentality, or administrative unit of a foreign country which—

(i) purchases goods or services in international trade for any purpose other than the use of such goods or services by such agency, instrumentality, administrative unit, or foreign country, or

(ii) sells goods or services in international trade; or

(B) any business firm which—

(i) is substantially owned or controlled by a foreign country or any agency, instrumentality, or administrative unit thereof,

(ii) is granted (formally or informally) any special or exclusive privilege by such foreign country, agency, instrumentality, or administrative unit, and

(iii) purchases goods or services in international trade for any purpose other than the use of such goods or services by such foreign country, agency, instrumentality, or administrative unit, or which sells goods or services in international trade.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this part", meaning part 1 (§§1101 to 1107) of title I of Pub. L. 100–418, which enacted this chapter, amended sections 2131, 2135, and 2191 of this title. For complete classification of part 1 to the Code, see Tables.

CODIFICATION

Section is comprised of subsec. (a) of section 1107 of Pub. L. 100–418. Subsec. (b) of section 1107 of Pub. L. 100–418 amended sections 2131 and 2191 of this title.

AMENDMENTS

1994—Par. (3), Pub. L. 103–465 substituted "the GATT 1947 (as defined in section 3501(1)(A) of this title)" for "the General Agreement on Tariffs and Trade".

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 621(b) of Pub. L. 103–465, set out as a note under section 107k of this title.

CHAPTER 18—IMPLEMENTATION OF HARMONIZED TARIFF SCHEDULE

Sec.

3001. Purposes.

3002. Definitions.

3003. Congressional approval of United States accession to the Convention.

3004. Enactment of Harmonized Tariff Schedule.


3006. Presidential action on Commission recommendations.

3007. Publication of Harmonized Tariff Schedule.

3008. Import and export statistics.

3009. Coordination of trade policy and Convention.

3101. Transition to Harmonized Tariff Schedule.

3102. Reference to Harmonized Tariff Schedule.

§ 3001. Purposes

The purposes of this chapter are—

(1) to approve the International Convention on the Harmonized Commodity Description and Coding System;

(2) to implement in United States law the nomenclature established internationally by the Convention; and

(3) to provide that the Convention shall be treated as a trade agreement obligation of the United States.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this subtitle", meaning subtitle B (§§1201 to 1217) of title I of Pub. L. 100–418, which enacted this chapter, amended sections 1312, 1315, 1321, 1327, 1466, 1496, 1947, 2011, 2138, 2233, 2434, 2437, 2483, 2602, 2612, 2677k of this title.

Effective Date of 1994 Amendment

Except as provided in subsection (b), the provisions of this subtitle (subtitle B (§§1201–1217) of title I of Pub. L. 100–418, see References in Text note above) take effect on the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988 (Aug. 25, 1988).

(b) Implementation of the Harmonized Tariff Schedule.—The effective date of the Harmonized Tariff Schedule is January 1, 1989. On such date—
“(1) the amendments made by sections 1204(a), 1213, 1214, and 1215 (amending sections 88c, 1312, 1315, 1321, 1337, 1466, 1496, 2011, 2138, 2233, 2434, 2437, 2481, 2483, 2581, 2702, and 2703 of this title, sections 511r, 1440, 1783, and 1784 of Title 7, Agriculture, section 374 of Title 10, Armed Forces, section 301 of Title 13, Census, sections 1274, 2064, 2066, 2602, and 2612 of Title 15, Commerce and Trade, sections 1606a and 3912 of Title 16, Conservation, sections 41 and 951 of Title 21, Food and Drugs, section 5059 of Title 22, Foreign Relations and Intercourse, sections 7632 and 8504 of Title 26, Internal Revenue Code, section 1285 of Title 28, Judiciary and Judicial Procedure, and section 908 of Title 50, War and National Defense, and amending provisions set out as notes preceding section 1202 and under section 2112 of this title) take effect on or after such date; and
“(2) sections 1204(c), 1211, and 1212 (enacting sections 3004(c), 3011, and 3012 of this title) take effect.”

§ 3002. Definitions

As used in this chapter:
(3) The term “entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.
(4) The term “Federal agency” means any establishment in the executive branch of the United States Government.
(5) The term “old Schedules” means title I of the Tariff Act of 1930 (19 U.S.C. 1202) as in effect on the day before the effective date of the amendment to such title under section 1204(a).
(6) The term “technical rectifications” means rectifications of an editorial character or minor technical or clerical changes which do not affect the substance or meaning of the text, such as—
(A) errors in spelling, numbering, or punctuation;
(B) errors in indentation;
(C) errors (including inadvertent omissions) in cross-references to headings or subheadings or notes; and
(D) other clerical or typographical errors.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this subtitle”, meaning subtitle B (§§1201 to 1217) of title I of Pub. L. 100–418, which is classified principally to this chapter. For complete classification of this subtitle to the Code, see References in Text note set out under section 3001 of this title and Tables.

Title I of the Tariff Act of 1930 (19 U.S.C. 1202) as in effect on the day before the effective date of the amendment to such title under section 1204(a), referred to in par. (5), is title I of act June 17, 1930, ch. 497, 46 Stat. 590, as in effect on the day before Jan. 1, 1989.

Title I of the Tariff Act of 1930 which comprised the Tariff Schedules of the United States was not set out in the Code.

§ 3003. Congressional approval of United States accession to the Convention

(a) Congressional approval

The Congress approves the accession by the United States of America to the Convention.

(b) Acceptance of final legal text of Convention by President

The President may accept for the United States the final legal instruments embodying the Convention. The President shall submit a copy of each final instrument to the Congress on the date it becomes available.

(c) Unspecified private remedies not created

Neither the entry into force with respect to the United States of the Convention nor the enactment of this chapter may be construed as creating any private right of action or remedy for which provision is not explicitly made under this chapter or under other laws of the United States.

(d) Termination

The provisions of section 2135(a) of this title do not apply to the Convention.


REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this subtitle”, meaning subtitle B (§§1201 to 1217) of title I of Pub. L. 100–418, which is classified principally to this chapter. For complete classification of this subtitle to the Code, see References in Text note set out under section 3001 of this title and Tables.

§ 3004. Enactment of Harmonized Tariff Schedule

(a) Omitted

(b) Modifications to Harmonized Tariff Schedule

At the earliest practicable date after August 23, 1988, the President shall—
(1) proclaim such modifications to the Harmonized Tariff Schedule as are consistent with the standards applied in converting the old Schedules into the format of the Convention, as reflected in such Publication No. 2030 and Supplement No. 1 thereto, and as are necessary or appropriate to implement—
(A) the future outstanding staged rate reductions authorized by the Congress in—
(i) the Trade Act of 1974 (19 U.S.C. 2101 et seq.) and the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) to reflect the tariff reductions that resulted from the Tokyo Round of multilateral trade negotiations, and
(ii) the United States-Israel Free Trade Area Implementation Act of 1985 [19 U.S.C. 2112 note] to reflect the tariff reduction resulting from the United States-Israel Free Trade Area Agreement,
(B) the applicable provisions of—
(i) statutes enacted,
(ii) executive actions taken, and
(iii) final judicial decisions rendered, after January 1, 1988, and before January 1, 1989, and

1So in original.
or terminated rate shall be the effect of the suspended or terminated rate, the last order and the proclamation or Executive order by the President by proclamation or Executive order increase such existing rate to
 modification, continuance, or imposition of any rate of duty or other import restriction as
 classification of any article, include, for informational purposes, a reference to the classification of that article under the Harmonized Tariff Schedule.

(C) such technical rectifications as the President considers necessary; and
(2) take such action as the President considers necessary to bring trade agreements to which the United States is a party into conformity with the Harmonized Tariff Schedule.

(e) Status of Harmonized Tariff Schedule
(1) The following shall be considered to be statutory provisions of law for all purposes:
(A) The provisions of the Harmonized Tariff Schedule as enacted by this chapter.
(B) Each statutory amendment to the Harmonized Tariff Schedule.
(C) Each modification or change made to the Harmonized Tariff Schedule by the President under authority of law (including section 604 of the Trade Act of 1974 [19 U.S.C. 2483]).
(2) Neither the enactment of this chapter nor the subsequent enactment of any amendment to the Harmonized Tariff Schedule, unless such subsequent enactment otherwise provides, may be construed as limiting the authority of the President—
(A) to effect the import treatment necessary or appropriate to carry out, modify, withdraw, suspend, or terminate, in whole or in part, trade agreements; or
(B) to take such other actions through the modification, continuance, or imposition of any rate of duty or other import restriction as may be necessary or appropriate under the authority of the President.
(3) If a rate of duty established in column 1 by the President by proclamation or Executive order is higher than the existing rate of duty in column 2, the President may by proclamation or Executive order increase such existing rate to the higher rate.
(4) If a rate of duty is suspended or terminated by the President by proclamation or Executive order and the proclamation or Executive order does not specify the rate that is to apply in lieu of the suspended or terminated rate, the last rate of duty that applied prior to the suspended or terminated rate shall be the effective rate of duty.

(d) Interim informational use of Harmonized Tariff Schedule classifications
Each—
(1) proclamation issued by the President;
(2) public notice issued by the Commission or other Federal agency; and
(3) finding, determination, order, recommendation, or other decision made by the Commission or other Federal agency during the period between August 23, 1988, and January 1, 1989, shall, if the proclamation, notice, or decision contains a reference to the tariff classification of any article, include, for informational purposes, a reference to the classification of that article under the Harmonized Tariff Schedule.


REFERENCES IN TEXT
The Harmonized Tariff Schedule, referred to in text, is not set out in the Code. See Publication of Har-

monized Tariff Schedule note set out under section 1202 of this title.

Codification

Effective Date
Subsecs. (b) and (d) effective Aug. 23, 1988, and subsec. (c) effective Jan. 1, 1989, see section 1217(a), (b)(2) of Pub. L. 100–418, set out as a note under section 3001 of this title.

§3005. Commission review of, and recommendations regarding, Harmonized Tariff Schedule
(a) In general
The Commission shall keep the Harmonized Tariff Schedule under continuous review and periodically, at such time as amendments to the Convention are recommended by the Customs Cooperation Council for adoption, and as other circumstances warrant, shall recommend to the President such modifications in the Harmonized Tariff Schedule as the Commission considers necessary or appropriate—
(1) to conform the Harmonized Tariff Schedule with amendments made to the Convention;
(2) to promote the uniform application of the Convention and particularly the Annex there to;
(3) to ensure that the Harmonized Tariff Schedule is kept up-to-date in light of changes in technology or in patterns of international trade;
(4) to alleviate unnecessary administrative burdens; and
(5) to make technical rectifications.

(b) Agency and public views regarding recommendations
In formulating recommendations under subsection (a) of this section, the Commission shall solicit, and give consideration to, the views of interested Federal agencies and the public. For purposes of obtaining public views, the Commission—

So in original. Probably should be “effective”.

§3005. Commission review of, and recommendations regarding, Harmonized Tariff Schedule
(a) In general
The Commission shall keep the Harmonized Tariff Schedule under continuous review and periodically, at such time as amendments to the Convention are recommended by the Customs Cooperation Council for adoption, and as other circumstances warrant, shall recommend to the President such modifications in the Harmonized Tariff Schedule as the Commission considers necessary or appropriate—
(1) to conform the Harmonized Tariff Schedule with amendments made to the Convention;
(2) to promote the uniform application of the Convention and particularly the Annex there to;
(3) to ensure that the Harmonized Tariff Schedule is kept up-to-date in light of changes in technology or in patterns of international trade;
(4) to alleviate unnecessary administrative burdens; and
(5) to make technical rectifications.

(b) Agency and public views regarding recommendations
In formulating recommendations under subsection (a) of this section, the Commission shall solicit, and give consideration to, the views of interested Federal agencies and the public. For purposes of obtaining public views, the Commission—
§ 3006. Presidential action on Commission recommendations

(a) In general
The President may proclaim modifications, based on the recommendations by the Commission under section 3005 of this title, to the Harmonized Tariff Schedule if the President determines that the modifications—
(1) are in conformity with United States obligations under the Convention; and
(2) do not run counter to the national economic interest of the United States.

(b) Lay-over period
(1) The President may proclaim a modification under subsection (a) of this section only after the expiration of the 60-day period beginning on the date on which the President submits a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the proposed modification and the reasons therefor.
(2) The 60-day period referred to in paragraph (1) shall be computed by excluding—
(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and
(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(c) Effective date of modifications
Modifications proclaimed by the President under subsection (a) of this section may not take effect before the 30th day after the date on which the text of the proclamation is published in the Federal Register.

§ 3007. Publication of Harmonized Tariff Schedule

(a) In general
The Commission shall compile and publish, at appropriate intervals, and keep up to date the Harmonized Tariff Schedule and related information in the form of printed copy; and, if, in its judgment, such format would serve the public interest and convenience—
(1) in the form of microfilm images; or 
(2) in the form of electronic media.

(b) Content

Publications under subsection (a) of this section, in whatever format, shall contain—

(1) the then current Harmonized Tariff Schedule;
(2) statistical annotations and related statistical information formulated under section 1484(f) of this title; and
(3) such other matters as the Commission considers to be necessary or appropriate to carry out the purposes enumerated in the Preamble to the Convention.


REFERENCES IN TEXT

The Harmonized Tariff Schedule, referred to in subsection (a), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS


§ 3008. Import and export statistics

The Secretary of Commerce shall compile, and make publicly available, the import and export trade statistics of the United States. Such statistics shall be conform to the nomenclature of the Convention.

(Pub. L. 100–418, title I, §1206, Aug. 23, 1988, 102 Stat. 1152.)

§ 3009. Coordination of trade policy and Convention

The United States Trade Representative is responsible for coordination of United States trade policy in relation to the Convention. Before formulating any United States position with respect to the Convention, including any proposed amendments thereto, the United States Trade Representative shall seek, and consider, information and advice from interested parties in the private sector (including a functional advisory committee) and from interested Federal agencies.

(Pub. L. 100–418, title I, §1209, Aug. 23, 1988, 102 Stat. 1152.)

§ 3010. United States participation on Customs Cooperation Council regarding Convention

(a) Principal United States agencies

(1) Subject to the policy direction of the Office of the United States Trade Representative under section 3009 of this title, the Department of the Treasury, the Department of Commerce, and the Commission shall, with respect to the activities of the Customs Cooperation Council relating to the Convention—

(A) be primarily responsible for formulating United States Government positions on technical and procedural issues; and 
(B) represent the United States Government.

(2) The Department of Agriculture and other interested Federal agencies shall provide to the Department of the Treasury, the Department of Commerce, and the Commission technical advice and assistance relating to the functions referred to in paragraph (1).

(b) Development of technical proposals

(1) In connection with responsibilities arising from the implementation of the Convention and under section 1484(f) of this title regarding United States programs for the development of adequate and comparable statistical information on merchandise trade, the Secretary of the Treasury, the Secretary of Commerce, and the Commission shall prepare technical proposals that are appropriate or required to assure that the United States contribution to the development of the Convention recognizes the needs of the United States business community for a Convention which reflects sound principles of commodity identification, modern producing methods, and current trading patterns and practices.

(2) In carrying out this subsection, the Secretary of the Treasury, the Secretary of Commerce, and the Commission shall—

(A) solicit and consider the views of interested parties in the private sector (including a functional advisory committee) and of interested Federal agencies;
(B) establish procedures for reviewing, and developing appropriate responses to, inquiries and complaints from interested parties concerning articles produced in and exported from the United States; and
(C) where appropriate, establish procedures for—

(i) ensuring that the dispute settlement provisions and other relevant procedures available under the Convention are utilized to promote United States export interests, and
(ii) submitting classification questions to the Harmonized System Committee of the Customs Cooperation Council.

(c) Availability of Customs Cooperation Council publications

As soon as practicable after August 23, 1988, and periodically thereafter as appropriate, the Commission shall see to the publication of—

(1) summary records of the Harmonized System Committee of the Customs Cooperation Council; and
(2) subject to applicable copyright laws, the Explanatory Notes, Classification Opinions, and other instruments of the Customs Cooperation Council relating to the Convention.


AMENDMENTS


§ 3011. Transition to Harmonized Tariff Schedule

(a) Existing executive actions

(1) The appropriate officers of the United States Government shall take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system
of the Harmonized Tariff Schedule all proclama-
tions, regulations, rulings, notices, findings, de-
terminations, orders, recommendations, and
other written actions that—
(A) are in effect on the day before January 1, 1989; and
(B) contain references to the tariff classi-
fication of articles under the old Schedules.

(2) Neither the repeal of the old Schedules, nor the failure of any officer of the United States
Government to make the conforming changes
required under paragraph (1), shall affect to any
extent the validity or effect of the proclama-
tion, regulation, ruling, notice, finding, deter-
mination, order, recommendation, or other ac-
tion referred to in paragraph (1).

(b) Generalized System of Preferences conver-
sion

(1) The review of the proposed conversion of the Generalized System of Preferences program
to the Convention tariff nomenclature, initiated
by the Office of the United States Trade Rep-
resentative by notice published in the Federal
Register on December 8, 1986 (at page 44,163 of
volume 51 thereof), shall be treated as satisfying
the requirements of sections 2465(a) and
2466(c)(3) of this title (as in effect on July 31,
1995).

(2) In applying section 2466(c)(1) of this title
(as in effect on July 31, 1995) for calendar year
1989, the reference in such section to July 1 shall
be treated as a reference to September 1.

(c) Import restrictions under Agricultural Ad-
justment Act

(1) Whenever the President determines that
the conversion of an import restriction pro-
claimed under section 22 of the Agricultural Ad-
justment Act (7 U.S.C. 624) from part 3 of the
Appendix to the old Schedules to subchapter IV
of chapter 99 of the Harmonized Tariff Schedule
results in—
(A) an article that was previously subject to
the restriction being excluded from the restric-
tion; or
(B) an article not previously subject to the
restriction being included within the restric-
tion;

the President may proclaim changes in sub-
chapter IV of chapter 99 of the Harmonized Tar-
iff Schedule to conform that subchapter to the
fullest extent possible to part 3 of the Appendix
to the old Schedules.

(2) Whenever the President determines that
the conversion from headnote 2 of subpart A of
part 10 of schedule 1 of the old Schedules to Ad-
ditional U.S. Note 2, chapter 17, of the Har-
monized Tariff Schedule results in—
(A) an article that was previously covered by
such headnote being excluded from coverage; or
(B) an article not previously covered by such
headnote being included in coverage;

the President may proclaim changes in Addi-
tional U.S. Note 2, chapter 17 of the Harmonized
Tariff Schedule to conform that note to the full-
est extent possible to headnote 2 of subpart A of
part 10 of schedule 1 of the old Schedules.

(3) No change to the Harmonized Tariff Sched-
ule may be proclaimed under paragraph (1) or (2)
after June 30, 1990.

(d) Certain protests and petitions under customs
law

(1)(A) This chapter may not be considered to
divest the courts of jurisdiction over—
(i) any protest filed under section 1514 of this
title; or
(ii) any petition by an American manufac-
turer, producer, or wholesaler under section
1516 of this title;

covering articles entered before January 1, 1989.

(B) Nothing in this chapter shall affect the ju-
risdiction of the courts with respect to articles
entered after January 1, 1989.

(2)(A) If any protest or petition referred to in
paragraph (1)(A) is sustained in whole or in part
by a final judicial decision, the entries subject
to that protest or petition and made before Jan-
uary 1, 1989, shall be liquidated or reliquidated,
as appropriate, in accordance with such final ju-
dicial decision under the old Schedules.

(B) At the earliest practicable date after Janu-
ary 1, 1989, the Commission shall initiate an in-
vestigation under section 1332 of this title of
those final judicial decisions referred to in sub-
paragraph (A) that—
(i) are published during the 2-year period be-
going from February 1, 1988; and
(ii) would have affected tariff treatment if they
had been published during the period of the
conversion of the old Schedules into the
format of the Convention.

No later than September 1, 1990, the Commission
shall report the results of the investigation to the
President, the Committee on Ways and Means,
and the Committee on Finance, and shall
recommend those changes to the Harmonized
Tariff Schedule that the Commission would have
recommended if the final decisions concerned
had been made before the conversion into the
format of the Convention occurred.

(3) The President shall review all changes rec-
commended by the Commission under paragraph
(2)(B) and shall, as soon as practicable, proclaim
such of those changes, if any, which he decides
are necessary or appropriate to conform such
Schedule to the final judicial decisions. Any
such change shall be effective with respect to—
(A) entries made on or after the date of such
proclamation; and
(B) entries made on or after January 1, 1989,
if, notwithstanding section 1514 of this title,
application for liquidation or reliquidation
thereof is made by the importer to the cus-
toms officer concerned within 180 days after
the effective date of such proclamation.

(4) If any protest or petition referred to in
paragraph (1)(A) is not sustained in whole or in
part by a final judicial decision, the entries sub-
ject to that petition or protest and made before
January 1, 1989, shall be liquidated or reliqui-
dated, as appropriate, in accordance with the
final judicial decision under the old Schedules.

(Pub. L. 100–418, title I, § 1211, Aug. 23, 1988, 102
Stat. 1153; Pub. L. 104–188, title I, § 1954(a)(1),

References in Text
The Harmonized Tariff Schedule, referred to in sub-
sect. (a)(1), (c), and (d)(2)(B), (3), is not set out in the

This chapter, referred to in subsec. (d)(1), was in the original "‘this subtitle’, meaning subtitle B (§§ 1201–1217) of title I of Pub. L. 100–418, which is classified principally to this chapter. For complete classification of this subtitle to the Code, see References in Text note set out under section 3001 of this title and Tables.

AMENDMENTS


EFFECTIVE DATE OF 1996 AMENDMENT
Amendment by Pub. L. 104–188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104–188, set out as an Effective Date note under section 2461 of this title.

EFFECTIVE DATE
Section effective Jan. 1, 1989, see section 1217(b)(2) of Pub. L. 100–418, set out as a note under section 3001 of this title.

§ 3012. Reference to Harmonized Tariff Schedule

Any reference in any law to the "Tariff Schedules of the United States", "the Tariff Schedules", "such Schedules", and any other general reference that clearly refers to the old Schedules shall be treated as a reference to the Harmonized Tariff Schedule.


REFERENCES IN TEXT

The Harmonized Tariff Schedule, referred to in text, is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

EFFECTIVE DATE
Section effective Jan. 1, 1989, see section 1217(b)(2) of Pub. L. 100–418, set out as a note under section 3001 of this title.

CHAPTER 19—TELECOMMUNICATIONS TRADE

Sec.
3101. Findings and purposes.
3102. Definitions.
3103. Investigation of foreign telecommunications trade barriers.
3104. Negotiations in response to investigation.
3105. Actions to be taken if no agreement obtained.
3106. Review of trade agreement implementation by Trade Representative.
3107. Compensation authority.
3108. Consultations.
3109. Submission of data; action to ensure compliance.
3110. Study on telecommunications competitiveness in United States.
3111. International obligations.

§ 3101. Findings and purposes

(a) Findings

The Congress finds that—

(1) rapid growth in the world market for telecommunications products and services is likely to continue for several decades;

(2) the United States can improve prospects for—

(A) the growth of—

(i) United States exports of telecommunications products and services, and

(ii) export-related employment and consumer services in the United States, and

(B) the continuance of the technological leadership of the United States,

by undertaking a program to achieve an open world market for trade in telecommunications products, services, and investment;

(3) most foreign markets for telecommunications products, services, and investment are characterized by extensive government intervention (including restrictive import practices and discriminatory procurement practices) which adversely affect United States exports of telecommunications products and services and United States investment in telecommunications;

(4) the open nature of the United States telecommunications market, accruing from the liberalization and restructuring of such market, has contributed, and will continue to contribute, to an increase in imports of telecommunications products and a growing imbalance in competitive opportunities for trade in telecommunications;

(5) unless this imbalance is corrected through the achievement of mutually advantageous market opportunities for trade in telecommunications products and services of such foreign countries in the United States market; and

(6) the unique business conditions in the worldwide market for telecommunications products and services caused by the combination of deregulation and divestiture in the United States, which represents a unilateral liberalization of United States trade with the rest of the world, and continuing government intervention in the domestic industries of many other countries create a need to make an exception in the case of telecommunications products and services that should not necessarily be a precedent for legislating specific sectoral priorities in combating the closed markets or unfair foreign trade practices of other countries.

(b) Purposes

The purposes of this chapter are—

(1) to foster the economic and technological growth of, and employment in, the United States telecommunications industry;

(2) to secure a high quality telecommunications network for the benefit of the people of the United States;

(3) to develop an international consensus in favor of open trade and competition in telecommunications products and services;

(4) to ensure that countries which have made commitments to open telecommunications trade fully abide by those commitments; and

(5) to achieve a more open world trading system for telecommunications products and
services through negotiation and provision of mutually advantageous market opportunities for United States telecommunications export-ers and their subsidiaries in those markets in which barriers exist to free international trade.


**SHORT TITLE**

Section 1371 of Pub. L. 100–418 provided that: "This part (part 4 (§§ 1371–1382) of subtitle C of title I of Pub. L. 100–418, enacting this chapter) may be cited as the “Telecommunications Trade Act of 1988”.

§ 3102. Definitions

For purposes of this chapter—

(a) The term “Trade Representative” means the United States Trade Representative.

(b) The term “telecommunications product” means—

(A) any paging devices provided for under item 684.65 of such Schedules, and

(B) any article classified under any of the following item numbers of such Schedules:

- 684.57
- 684.67
- 685.28
- 685.39
- 684.58
- 684.80
- 685.30
- 685.48
- 684.59
- 685.18
- 685.31
- 685.17
- 684.65
- 685.24
- 685.33
- 686.41
- 684.66
- 685.25
- 685.34
- 707.90


**REFERENCES IN TEXT**

Such Schedules, referred to in par. (2), to be treated as a reference to the Harmonized Tariff Schedule, pursuant to section 3012 of this title. The Harmonized Tariff Schedule note set out under section 3103 of this title.

§ 3103. Investigation of foreign telecommunications trade barriers

(a) In general

The Trade Representative shall conduct an investigation to identify priority foreign countries. Such investigation shall be concluded by no later than the date that is 5 months after August 23, 1988.

(b) Factors to be taken into account

In identifying priority foreign countries under subsection (a) of this section, the Trade Representative shall take into account, among other relevant factors—

(1) the nature and significance of the acts, policies, and practices that deny mutually advantageous market opportunities to telecommunications products and services of United States firms;

(2) the economic benefits (actual and potential) accruing to foreign firms from open access to the United States market;

(3) the potential size of the market of a foreign country for telecommunications products and services of United States firms;

(4) the potential to increase United States exports of telecommunications products and services, either directly or through the establishment of a beneficial precedent; and

(5) measurable progress being made to eliminate the objectionable acts, policies, or practices.

(c) Revocations and additional identifications

(1) The Trade Representative may at any time, after taking into account the factors described in subsection (b) of this section—

(A) revoke the identification of any priority foreign country that was made under this section, or

(B) identify any foreign country as a priority foreign country under this section, if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 2419(3) of this title a detailed explanation of the reasons for the revocation under paragraph (1) of this subsection of any identification of any foreign country as a priority foreign country.

(d) Report to Congress

By no later than the date that is 30 days after the date on which the investigation conducted under subsection (a) of this section is completed, the United States Trade Representative shall submit a report on the investigation to the President and to appropriate committees of the Congress.


§ 3104. Negotiations in response to investigation

(a) In general

Upon—

(1) the date that is 30 days after the date on which any foreign country is identified in the investigation conducted under section 3103(a) of this title as a priority foreign country, and

(2) the date on which any foreign country is identified under section 3103(c)(1)(B) of this title as a priority foreign country,

the President shall enter into negotiations with such priority foreign country for the purpose of entering into a bilateral or multilateral trade agreement under chapter 17 of this title which meets the specific negotiating objectives established by the President under subsection (b) of this section for such priority foreign country.

(b) Establishment of specific negotiating objectives for each foreign priority country

(1) The President shall establish such relevant specific negotiating objectives on a country-by-country basis as are necessary to meet the general negotiating objectives of the United States under this section.

(2)(A) The President may refine or modify specific negotiating objectives for particular negotiations in order to respond to circumstances arising during the negotiating period, including—

(i) changed practices by the priority foreign country,

(ii) tangible substantive developments in multilateral negotiations,

(iii) changes in competitive positions, technological developments, or

(iv) other relevant factors.

(B) By no later than the date that is 30 days after the date on which the President makes any
modifications or refinements to specific negotiating objectives under subparagraph (A), the President shall submit to appropriate committees of the Congress a statement describing such modifications or refinements and the reasons for such modifications or refinements.

(c) General negotiating objectives

The general negotiating objectives of the United States under this section are—

(1) to obtain multilateral or bilateral agreements (or the modification of existing agreements) that provide mutually advantageous market opportunities for trade in telecommunications products and services between the United States and foreign countries;

(2) to correct the imbalances in market opportunities accruing from reductions in barriers to the access of telecommunications products and services of foreign firms to the United States market; and

(3) to facilitate the increase in United States exports of telecommunications products and services to a level of exports that reflects the competitiveness of the United States telecommunications industry.

(d) Specific negotiating objectives

The specific negotiating objectives of the United States under this section regarding telecommunications products and services are to obtain—

(1) national treatment for telecommunications products and services that are provided by United States firms;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale or lease by government-owned or controlled entities) of all telecommunications products and services;

(4) the reduction or elimination of customs duties on telecommunications products;

(5) the elimination of subsidies, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;

(6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services;

(7) assurances that any requirement for the registration of telecommunications products, which are to be located on customer premises, approved and registered by type, be limited to the certification by the manufacturer that the products meet the standards established by the foreign country for preventing harm to the network or network personnel;

(8) transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products;

(9) the ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approvals;

(10) access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including nondiscriminatory prices) for the provision of value-added services by United States suppliers;

(11) the nondiscriminatory procurement of telecommunications products and services by foreign entities that provide local exchange telecommunications services which are owned, controlled, or, if appropriate, regulated by foreign governments; and

(12) monitoring and effective dispute settlement mechanisms to facilitate compliance with matters referred to in the preceding paragraphs of this subsection.


§3105. Actions to be taken if no agreement obtained

(a) In general

(1) If the President is unable, before the close of the negotiating period, to enter into an agreement under subtitle A with any priority foreign country identified under section 3103 of this title which achieves the general negotiating objectives described in section 3104(b) of this title as defined by the specific objectives established by the President for that country, the President shall take whatever actions authorized under subsection (b) of this section that are appropriate and most likely to achieve such general negotiating objectives.

(2) In taking actions under paragraph (1), the President shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the President determines that actions against other economic sectors would be more effective in achieving the general negotiating objectives referred to in paragraph (1).

(b) Actions authorized

(1) The President is authorized to take any of the following actions under subsection (a) of this section with respect to any priority foreign country:

References in Text

Chapter 17 of this title, referred to in subsec. (a), was in the original “part 1 of subtitle A”, meaning part 1 (§§1101–1117) of subtitle A of title 1 of Pub. L. 100–418, Aug. 23, 1988, 102 Stat. 1211, which enacted chapter 17 (§2901 et seq.) of this title and amended sections 2131, 2133, and 2191 of this title. For complete classification of part 1 to the Code, see Tables.

Delegation of Functions

Functions of President under this section relating to certain telecommunications negotiations delegated to United States Trade Representative, see section 1–481 of Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of this title.

§3105. Actions to be taken if no agreement obtained

(a) In general

(1) If the President is unable, before the close of the negotiating period, to enter into an agreement under subtitle A with any priority foreign country identified under section 3103 of this title which achieves the general negotiating objectives described in section 3104(b) of this title as defined by the specific objectives established by the President for that country, the President shall take whatever actions authorized under subsection (b) of this section that are appropriate and most likely to achieve such general negotiating objectives.

(2) In taking actions under paragraph (1), the President shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the President determines that actions against other economic sectors would be more effective in achieving the general negotiating objectives referred to in paragraph (1).

(b) Actions authorized

(1) The President is authorized to take any of the following actions under subsection (a) of this section with respect to any priority foreign country:
(A) termination, withdrawal, or suspension of any portion of any trade agreement entered into with such country under—
   (i) the Trade Act of 1974 [19 U.S.C. 2101 et seq.],
   (ii) section 1821 of this title, or
   (iii) section 1351 of this title,
with respect to any duty or import restriction imposed by the United States on any telecommunications product;

(B) actions described in section 301 of the Trade Act of 1974 [19 U.S.C. 2411];

(C) prohibition of purchases by the Federal Government of telecommunications products of such country;

(D) increases in domestic preferences under chapter 83 of title 41 for purchases by the Federal Government of telecommunications products of such country;

(E) suspension of any waiver of domestic preferences under chapter 83 of title 41 which may have been extended to such country pursuant to the Trade Agreements Act of 1979 with respect to telecommunications products or any other products;

(F) issuance of orders to appropriate officers and employees of the Federal Government to deny Federal funds or Federal credits for purchases of the telecommunications products of such country; and

(G) suspension, in whole or in part, of benefits accorded articles of such country under title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.).

(2) Notwithstanding section 125 of the Trade Act of 1974 [19 U.S.C. 2135] and any other provision of law, if any portion of a trade agreement described in paragraph (1)(A) is terminated, withdrawn, or suspended under paragraph (1) with respect to any duty imposed by the United States on the products of a foreign country, the rate of such duty that shall apply to such products entered, or withdrawn from warehouse for consumption, after the date on which such termination, withdrawal, or suspension takes effect shall be a rate determined by the President.

(c) Negotiating period

(1) For purposes of this section, the term “negotiating period” means—

(A) with respect to a priority foreign country identified in the investigation conducted under section 3103(a) of this title, the 18-month period beginning on August 23, 1988, and

(B) with respect to any foreign country identified as a priority foreign country after the conclusion of such investigation, the 1-year period beginning on the date on which such identification is made.

(2)(A) The negotiating period with respect to a priority foreign country may be extended for not more than two 1-year periods.

(B) By no later than the date that is 15 days after the date on which the President extends the negotiating period with respect to any priority foreign country, the President shall submit to appropriate committees of the Congress a report on the status of negotiations with such country that includes—

   (i) a finding by the President that substantial progress is being made in negotiations with such country, and

   (ii) a statement detailing the reasons why an extension of such negotiating period is necessary.

(d) Modification and termination authority

The President may modify or terminate any action taken under subsection (a) of this section if, after taking into consideration the factors described in section 3103(b) of this title, the President determines that changed circumstances warrant such modification or termination.

(e) Report

The President shall promptly inform the appropriate committees of the Congress of any action taken under subsection (a) of this section or of the modification or termination of any such action under subsection (d) of this section.


REFERENCES IN TEXT


Codification


Delegation of Functions

Functions of President under subsec. (e) relating to reports to Congressional committees delegated to United States Trade Representative, see section 1–401 of Ex. Ord. No. 21661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of this title.

§ 3106. Review of trade agreement implementation by Trade Representative

(a) In general

(1) In conducting the annual analysis under section 181(a) of the Trade Act of 1974 (19 U.S.C. 2241), the Trade Representative shall review the operation and effectiveness of—

(A) each trade agreement negotiated by reason of this chapter that is in force with respect to the United States; and

(B) every other trade agreement regarding telecommunications products or services that is in force with respect to the United States.

(2) In each review conducted under paragraph (1), the Trade Representative shall determine whether any act, policy, or practice of the foreign country that has entered into the agreement described in paragraph (1)—
§ 3107. Compensation authority

If—

(1) the President has taken action under section 3105(a) of this title with respect to any foreign country, and

(2) such action is found to be inconsistent with the international obligations of the United States, including the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 3501 of this title),

the President may enter into trade agreements with such foreign country for the purpose of granting new concessions as compensation for such action in order to maintain the general level of reciprocal and mutually advantageous concessions.


§ 3108. Consultations

(a) Advice from departments and agencies

Prior to taking any action under this chapter, the President shall seek information and advice from the interagency trade organization established under section 1872(a) of this title.

(b) Advice from private sector

Before—

(1) the Trade Representative concludes the investigation conducted under section 3103(a) of this title or takes action under section 3103(c) of this title,

(2) the President establishes specific negotiating objectives under section 3104(b) of this title with respect to any foreign country, or

(3) the President takes action under section 3105 of this title,

the Trade Representative shall provide an opportunity for the presentation of views by any interested party with respect to such investigation, objectives, or action, including appropriate committees established pursuant to section 2155 of this title.

(c) Consultations with Congress and official advisers

For purposes of conducting negotiations under section 3104(a) of this title, the Trade Representative shall keep appropriate committees of the Congress, as well as appropriate committees established pursuant to section 2155 of this title, currently informed with respect to—

(1) the negotiating priorities and objectives for each priority foreign country;

(2) the assessment of negotiating prospects, both bilateral and multilateral; and

(3) any United States concessions which might be included in negotiations to achieve the objectives described in subsections (c) and (d) of section 3104 of this title.

(d) Modification of specific negotiating objectives

Before the President takes any action under section 3104(b)(2)(A) of this title to refine or modify specific negotiating objectives, the President shall consult with the Congress and
§ 3109. Submission of data; action to ensure compliance

(a) Submission of data


(b) Action to ensure compliance

(1)(A) Any product of a foreign country that is subject to registration or approval by the Commission may be entered only if—

(i) such product conforms with all applicable rules and regulations of the Commission, and

(ii) the information which is required on Federal Communications Commission Form 740 on August 23, 1988, is provided to the appropriate customs officer at the time of such entry in such form and manner as the Secretary of the Treasury may prescribe.

(B) For purposes of this paragraph, the term “entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(2) The Commission, the Secretary of Commerce, and the Trade Representative shall provide such assistance in the enforcement of paragraph (1) as the Secretary of the Treasury may request.

(3) The Secretary of the Treasury shall compile the information collected under paragraph (1)(A)(ii) into a summary and shall annually submit such summary to the Congress until the authority to negotiate trade agreements under chapter 17 of this title expires. Such information shall also be made available to the public.


AMENDMENTS

1994—Pub. L. 103–465 substituted “the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 3501 of this title)” for “the General Agreement on Tariffs and Trade”.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 621(b) or Pub. L. 103–465, set out as a note under section 1677k of this title.

CHAPTER 20—ANDEAN TRADE PREFERENCE

§ 3201. Authority to grant duty-free treatment

The President may proclaim duty-free treatment (or other preferential treatment) for all eligible articles from any beneficiary country in accordance with the provisions of this chapter.


AMENDMENTS

2002—Pub. L. 107–210 inserted “or other preferential treatment” after “treatment”.

with members of the industry, and representatives of labor, affected by the proposed refinement or modification.

TERMINATION OF PREFERENTIAL TREATMENT

Preferential treatment under this chapter to expire after June 30, 2007, see section 3206 of this title.

SHORT TITLE OF 2008 AMENDMENT


SHORT TITLE OF 2006 AMENDMENT


SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–210, div. C, title XXXI, §3101, Aug. 6, 2002, 116 Stat. 1821, provided that: "This title [amending sections 2703, 3201 to 3203, 3206, and 3721 of this title and enacting provisions set out as notes under this section and sections 3202, 3206, and 3721 of this title] may be cited as the "Andean Trade Promotion and Drug Eradication Act.""

SHORT TITLE

Section 201 of title II of Pub. L. 102–182 provided that: "This title [enacting provisions set out as notes under this section and enacting provisions set out as a note under section 6655 of Title 26, Internal Revenue Code] may be cited as the "Andean Trade Promotion and Drug Eradication Act.""

FINDINGS

Pub. L. 107–210, div. C, title XXXI, §3102, Aug. 6, 2002, 116 Stat. 1823, provided that: "Congress makes the following findings:

"(1) Since the Andean Trade Preference Act [19 U.S.C. 3201 et seq.] was enacted in 1991, it has had a positive impact on United States trade with Bolivia, Colombia, Ecuador, and Peru. Two-way trade has doubled, with the United States serving as the leading source of imports and leading export market for each of the Andean beneficiary countries. This has resulted in increased jobs and expanded export opportunities in both the United States and the Andean region.

"(2) The Andean Trade Preference Act has been a key element in the United States counternarcotics strategy in the Andean region, promoting export diversification and broad-based economic development that provides sustainable economic alternatives to drug-crop production, strengthening the legitimate economies of Andean countries and creating viable alternatives to illicit trade in coca.

"(3) Notwithstanding the success of the Andean Trade Preference Act, the Andean region remains threatened by political and economic instability and fragility, vulnerable to the consequences of the drug war and fierce global competition for its legitimate trade.

"(4) The continuing instability in the Andean region poses a threat to the security interests of the United States and the world. This problem has been partially addressed through foreign aid, such as Plan Colombia, enacted by Congress in 2000. However, foreign aid alone is not sufficient. Enhancement of legitimate trade with the United States provides an alternative means for reviving and stabilizing the economies in the Andean region.

"(5) The Andean Trade Preference Act constitutes a tangible commitment by the United States to the promotion of prosperity, stability, and democracy in the beneficiary countries.

"(6) Renewal and enhancement of the Andean Trade Preference Act will bolster the confidence of domestic private enterprise and foreign investors in the economic prospects of the region, ensuring that legitimate private enterprise can be the engine of economic development and political stability in the region.

"(7) Each of the Andean beneficiary countries is committed to conclude negotiation of a Free Trade Area of the Americas by the year 2005, as a means of enhancing the economic security of the region.

"(8) Temporarily enhancing trade benefits for Andean beneficiary countries will promote the growth of free enterprise and economic opportunity in these countries and serve the security interests of the United States, the region, and the world."

§ 3202. Beneficiary country

(a) Definitions

For purposes of this chapter—

(1) The term "beneficiary country" means any country listed in subsection (b)(1) of this section with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this chapter.

(2) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(3) The term "HTS" means Harmonized Tariff Schedule of the United States.

(b) Countries eligible for designation; congressional notification

(1) In designating countries as beneficiary countries under this chapter, the President shall consider only the following countries or successor political entities:

Bolivia
Ecuador
Colombia
Peru.

(2) Before the President designates any country as a beneficiary country for purposes of this chapter, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(c) Limitations on designation

The President shall not designate any country a beneficiary country under this chapter—

(1) if such country is a Communist country;

(2) if such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens;

(B) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association, which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with
§ 3202  TITLE 19—CUSTOMS DUTIES  Page 752

respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association,

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on United States commerce, unless the President—

(A) has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and

(B) reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 2467(4) of this title) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this chapter if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(d) Factors affecting designation

In determining whether to designate any country a beneficiary country under this chapter, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 3501 of this title);

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to protect its own economic development;

(8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(11) whether such country has met the narcotics cooperation certification criteria set forth in section 2291(h)(2)(A) of title 22 for eligibility for United States assistance; and

(12) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this chapter.

(e) Withdrawal or suspension of designation

(1)(A) The President may—

(i) withdraw or suspend the designation of any country as a beneficiary country, or

(ii) withdraw, suspend, or limit the application of duty-free treatment under this chapter to any article of any country,

1 See References in Text note below.
if, after such designation, the President determines that as a result of changed circumstances such a country should be barred from designation as a beneficiary country.

(B) The President may, after the requirements of paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as an ATPDEA beneficiary country, or

(ii) withdraw, suspend, or limit the application of preferential treatment under section 3203(b)(1), (3), or (4) of this title to any article of any country.

if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 3203(b)(6)(B) of this title.

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days before taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action—

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(f) Reporting requirements

(1) In general

Not later than June 30, 2010, and annually thereafter during the period this chapter is in effect, the United States Trade Representative shall submit to the Congress a report regarding the operation of this chapter, including:

(A) with respect to subsections (c) and (d) of this section, the results of a general review of beneficiary countries based on the considerations described in such subsections; and

(B) the performance of each beneficiary country or ATPDEA beneficiary country, as the case may be, under the criteria set forth in section 3203(b)(6)(B) of this title.

(2) Public comment

Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the requirements of any country, as a note under section 3201 of this title.

References in Text


Subsec. (b) of section 2291 of Title 22, referred to in subsec. (d)(11), was repealed by Pub. L. 102–585, §6(b)(2), Nov. 2, 1992, 106 Stat. 4932. For successor provisions to former subsec. (b), see sections 2291 and 2291k of Title 22, Foreign Relations and Intercourse.

This chapter, referred to in subsec. (d)(12), was in the original “this Act” and was translated as reading “this title”, meaning title II of Pub. L. 102–182 which enacted this chapter, to reflect the probable intent of Congress.

Amendments


2002—Subsec. (e)(1). Pub. L. 107–210, §3103(b), redesignated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cl. (i) and (ii), respectively, of subpar. (A), and added subpar. (B).

Subsec. (f). Pub. L. 107–210, §3103(e), substituted “Report requirements” for “Report” in heading and amended text generally. Prior to amendment, text read as follows: “Not later than January 31, 2001, the President shall submit to the Congress a complete report regarding the operation of this chapter, including the results of a general review of beneficiary countries based on the considerations described in subsections (c) and (d) of this section. In reporting on the considerations described in subsection (d)(11) of this section, the President shall report any evidence that the crop eradication and crop substitution efforts of the beneficiary countries are directly related to the effects of this chapter.”


1996—Subsec. (c)(7). Pub. L. 104–188 substituted “2467(b) of this title” for “2462(a)(4) of this title”.

1994—Subsec. (d)(4). Pub. L. 103–463 substituted “WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs 9 and 4, respectively, of section 3501 of this title)” for “General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2503(a) of this title”.

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104–188, set out as an Effective Date note under section 2461 of this title.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 621(b) of Pub. L. 103–465, set out as a note under section 1677k of this title.

Deligation of Authority

Functions of President under subsec. (e)(2)(A) of this section, related to publishing notice of proposal to suspend designation of Bolivia as beneficiary country, were delegated to United States Trade Representative by Memorandum of the President of the United States, Sept. 25, 2008, 73 F.R. 56701.

Functions of President under subsec. (e)(2)(A), related to publishing notice of proposed actions, delegated to United States Trade Representative, see Proc. No. 7616, Oct. 31, 2002, 67 F.R. 67293, set out as a note under section 3203 of this title.

PETITIONS FOR REVIEW

“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Aug. 6, 2002], the President shall promulgate regulations regarding the review of eligibility of articles and countries under the Andean Trade Preference Act [19 U.S.C. 3201 et seq.], consistent with section 202(e) of such Act [19 U.S.C. 3202(e)], as amended by this title.

“(2) CONTENT OF REGULATIONS.—The regulations shall be similar to the regulations regarding eligibility under the generalized system of preferences under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.] with respect to the timetable for reviews and content, and shall include procedures for requesting withdrawal, suspension, or limitations of preferential duty treatment under the Andean Trade Preference Act, conducting reviews of such requests, and implementing the results of the reviews.”

[For delegation of functions of President under section 3203(d) of Pub. L. 107–219, set out above, see section 2(a) of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.]

PRESIDENTIAL DESIGNATION OF BENEFICIARY COUNTRIES
The following countries were designated as beneficiary countries for purposes of this chapter:


§ 3203. Eligible articles

(a) In general

(1) Unless otherwise excluded from eligibility (or otherwise provided for) by this chapter, the duty-free treatment (or preferential treatment) provided under this chapter shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the cost or value of the materials produced in a beneficiary country or 2 or more beneficiary countries under this chapter, or a beneficiary country under the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.] or 2 or more such countries, plus

(i) the direct costs of processing operations performed in a beneficiary country or countries (under this chapter or the Caribbean Basin Economic Recovery Act),

(ii) the sum of—

(A) all actual labor costs involved in the manufacture of a beneficiary country, and

(B) the sum of—

(i) the cost or value of the materials produced in a beneficiary country or 2 or more beneficiary countries under this chapter, or a beneficiary country under the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.] or 2 or more such countries, plus

(ii) the direct costs of processing operations performed in a beneficiary country or countries (under this chapter or the Caribbean Basin Economic Recovery Act),

is not less than 35 percent of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term “beneficiary country” includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out paragraph (1) including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this chapter, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) As used in this subsection, the phrase “direct costs of processing operations” includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expense of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, interest, and salesmen’s salaries, commissions or expenses.

(4) If the President, pursuant to section 223 of the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.] or 2 or more such countries, plus

(i) the cost or value of the materials produced in a beneficiary country or 2 or more beneficiary countries under this chapter, or a beneficiary country under the Caribbean Basin Economic Recovery Act [19 U.S.C. 2701 et seq.] or 2 or more such countries, plus

(ii) the direct costs of processing operations performed in a beneficiary country or countries (under this chapter or the Caribbean Basin Economic Recovery Act),

is not less than 35 percent of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term “beneficiary country” includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(b) Exceptions and special rules

(1) Certain articles that are not import-sensitive

The President may proclaim duty-free treatment under this chapter for any article described in subparagraph (A), (B), (C), or (D) that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of
the United States from an ATPDEA beneficiary country, and that meets the requirements of this section, if the President determines that such article is not import-sensitive in the context of imports from ATPDEA beneficiary countries:

(A) Footwear not designated at the time of the effective date of this chapter as eligible for purposes of the generalized system of preferences under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.];

(B) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(C) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

(D) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the generalized system of preferences under title V of the Trade Act of 1974.

(2) Exclusions

Subject to paragraph (3), duty-free treatment under this chapter may not be extended to—

(A) textiles and apparel articles which were not eligible articles for purposes of this chapter on January 1, 1994, as this chapter was in effect on that date;

(B) rum and tafia classified in subheading 2208.40 of the HTS;

(C) sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(D) tuna prepared or preserved in any manner in airtight containers, except as provided in paragraph (4).

(3) Apparel articles and certain textile articles

(A) In general

Apparel articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels, but only if such articles are described in subparagraph (B).

(B) Covered articles

The apparel articles referred to in subparagraph (A) are the following:

(i) Apparel articles assembled from products of the United States or ATPDEA beneficiary countries or products not available in commercial quantities

Apparel articles sewn or otherwise assembled in 1 or more ATPDEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following:

(I) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or 1 or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in the United States). Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knitted fabrics, is carried out in the United States. Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

(ii) Additional fabrics

At the request of any interested party, the President is authorized to proclaim additional fabrics and yarns as eligible for preferential treatment under clause (i) if—

(I) the President determines that such fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(II) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;

(III) within 60 days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the action proposed to be proclaimed and the reasons for such action, and the advice obtained under subclause (II);

(IV) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclause (III), has expired; and

(V) the President has consulted with such committees regarding the proposed action during the period referred to in subclause (III).
(iii) Apparel articles assembled in 1 or more ATPDEA beneficiary countries from regional fabrics or regional components

(I) Subject to the limitation set forth in subclause (II), apparel articles sewn or otherwise assembled in 1 or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in 1 or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or 1 or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in 1 or more ATPDEA beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i)).

(II) The preferential treatment referred to in subclause (I) shall be extended in the 1-year period beginning October 1, 2002, and in each of the 8 succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(III) For purposes of subclause (II), the term "applicable percentage" means—

(a) 2 percent for the 1-year period beginning October 1, 2002, increased in each of the 4 succeeding 1-year periods by equal increments, so that for the period beginning October 1, 2006, the applicable percentage does not exceed 5 percent; and

(b) for the 1-year period beginning October 1, 2007, and for the succeeding 3-year period, the percentage determined under item (aa) for the 1-year period beginning October 1, 2006.

(iv) Handloomed, handmade, and folklore articles

A handloomed, handmade, or folklore article of an ATPDEA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

(v) Certain other apparel articles

(I) General rule

Any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (I), (II), (III), or (IV), if the article is both cut and sewn or otherwise assembled in the United States, or one or more ATPDEA beneficiary countries, or both.

(II) Limitation

During the 1-year period beginning on October 1, 2003, and during each of the 7 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under this paragraph only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(III) Development of procedure to ensure compliance

The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under this paragraph during any succeeding 1-year period until the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(vi) Special rules

(I) Exception for findings and trimmings

An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, "bow buds", decorative lace, trim, elastic strips, zippers, including zipper tapes and labels, and other similar products.

(II) Certain interlining

(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.
(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, "hymo" piece, or "sleeve header", of woven or wet-inserted warp knit construction and of coarse animal hair or man-made filaments.

(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(II) De minimis rule
An article that would otherwise be ineligible for preferential treatment under this subparagraph because the article contains yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries shall not be ineligible for such treatment if the total weight of all such yarns is not more than 7 percent of the total weight of the good.

(IV) Special origin rule
An article otherwise eligible for preferential treatment under clause (i) or (iii) shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

(vii) Textile luggage
Textile luggage—
(I) assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or
(viii) Removal of designation of fabrics or yarns not available in commercial quantities
If the President determines that any fabric or yarn was determined to be eligible for preferential treatment under clause (i)(III) or (ii) on the basis of fraud, the President is authorized to remove that designation from that fabric or yarn with respect to articles entered after such removal.

(C) Handloomed, handmade, and folklore articles
For purposes of subparagraph (B)(iv), the President shall consult with representatives of the ATPDEA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

(D) Penalties for transshipment
(i) Penalties for exporters
If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to apparel articles from an ATPDEA beneficiary country, then the President shall deny all benefits under this chapter to such exporter, and any successor of such exporter, for a period of 2 years.

(ii) Penalties for countries
Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the ATPDEA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3, to the extent consistent with the obligations of the United States under the WTO.

(iii) Transshipment described
Transshipment within the meaning of this subparagraph has occurred when preferential treatment under subparagraph (A) has been claimed for an apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (A).

(E) Bilateral emergency actions
(i) In general
The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from an ATPDEA beneficiary country if the application of tariff treatment under subparagraph (A) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

(ii) Rules relating to bilateral emergency action
For purposes of applying bilateral emergency action under this subparagraph—
(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;
the term “transition period” in section 4 of the Annex shall mean the period ending February 12, 2011; and
(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the ATPDEA beneficiary country in question and the country does not agree to consult within the time period specified under section 4 of the Annex.

(4) Tuna

(A) General rule
Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each, and that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, shall enter the United States free of duty and free of any quantitative restrictions.

(B) Definitions
In this paragraph—

(i) United States vessel
A “United States vessel” is—
(I) a vessel that has a certificate of documentation with a fishery endorsement under chapter 121 of title 46; or
(II) in the case of a vessel without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 973g of title 16.

(ii) ATPDEA vessel
An “ATPDEA vessel” is a vessel—
(I) which sails under the flag of an ATPDEA beneficiary country;
(II) which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of such boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;
(IV) of which the master and officers are nationals of an ATPDEA beneficiary country; and
(V) of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

(5) Customs procedures

(A) In general

(i) Regulations
Any importer that claims preferential treatment under paragraph (1), (3), or (4) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAPTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(ii) Determination

(I) In general
In order to qualify for the preferential treatment under paragraph (1), (3), or (4) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II)—

(aa) has implemented and follows, or
(bb) is making substantial progress toward implementing and following, procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAPTA.

(II) Country described
A country is described in this subclause if it is an ATPDEA beneficiary country—

(aa) from which the article is exported; or
(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment under paragraph (1), (3), or (4).

(B) Certificate of Origin

The Certificate of Origin that otherwise would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraph (1), (3), or (4) if such Certificate of Origin would not be required under Article 503 of the NAPTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(C) Report on cooperation of ATPDEA countries concerning circumvention

The United States Commissioner of Customs shall conduct a study analyzing the extent to which each ATPDEA beneficiary country—

(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices,
exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning quantities, description, classification, or origin of textile and apparel goods; and

(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Commissioner of Customs shall submit to the Congress, not later than October 1, 2003, a report on the study conducted under this subparagraph.

(6) Definitions

In this subsection—

(A) Annex

The term ‘‘the Annex’’ means Annex 300-B of the NAPTA.

(B) ATPDEA beneficiary country

The term ‘‘ATPDEA beneficiary country’’ means any ‘‘beneficiary country’’, as defined in section 3202(a)(1) of this title, which the President designates as an ATPDEA beneficiary country, taking into account the criteria contained in subsections (c) and (d) of section 3202 of this title and other appropriate criteria, including the following:

(i) Whether the beneficiary country has demonstrated a commitment to—

(I) undertake its obligations under the WTO, including those agreements listed in section 3511(d) of this title, on or ahead of schedule; and

(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

(ii) The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 3511(d)(15) of this title.

(iii) The extent to which the country provides internationally recognized worker rights, including—

(I) the right of association;

(II) the right to organize and bargain collectively;

(III) a prohibition on the use of any form of forced or compulsory labor;

(IV) a minimum age for the employment of children; and

(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974 [19 U.S.C. 2467(6)].

(v) The extent to which the country has met the counternarcotics certification criteria set forth in section 2291 of this title for eligibility for United States assistance.

(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(vii) The extent to which the country—

(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 3511(d)(17) of this title; and

(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

(viii) The extent to which the country has taken steps to support the efforts of the United States to combat terrorism.

(C) NAFTA

The term ‘‘NAFTA’’ means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(D) WTO

The term ‘‘WTO’’ has the meaning given that term in section 3501 of this title.

(E) ATPDEA

The term ‘‘ATPDEA’’ means the Andean Trade Promotion and Drug Eradication Act.

(F) FTAA

The term ‘‘FTAA’’ means the Free Trade Area for the Americas.

(c) Suspension of duty-free treatment

(1) The President may by proclamation suspend the duty-free treatment provided by this chapter with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.] or section 1862 of this title.

(2) In any report by the United States International Trade Commission to the President under section 202(f) of the Trade Act of 1974 [19 U.S.C. 2252(f)] regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this chapter, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of section 203 of the Trade Act of 1974 [19 U.S.C. 2253], the suspension of the duty-free treatment provided by this chapter shall be treated as an increase in duty.

(4) No proclamation providing solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be taken under section 203 of the Trade Act of 1974 [19 U.S.C. 2253] unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under section 202(b) of the Trade
Act of 1974 [19 U.S.C. 2252(b)], determines in the course of its investigation under such section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this chapter.

(5)(A) Any action taken under section 203 of the Trade Act of 1974 [19 U.S.C. 2253] that is in effect when duty-free treatment is proclaimed under section 3201 of this title shall remain in effect until modified or terminated.

(B) If any article is subject to any such action at the time duty-free treatment is proclaimed under section 3201 of this title, the President may reduce or terminate the application of such action to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of section 204 of the Trade Act of 1974 [19 U.S.C. 2254].

(d) Emergency relief with respect to perishable products

(1) If a petition is filed with the United States International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 [19 U.S.C. 2251] regarding a perishable product and alleging injury from imports from beneficiary countries, the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within 14 days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this chapter or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the taking of action under section 203 of the Trade Act of 1974 [19 U.S.C. 2253],

(B) on the day a determination by the President not to take action under section 203(b)(2) of such Act becomes final.

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day of the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term "perishable product" means—

(A) live plants and fresh cut flowers provided for in chapter 6 of the HTS;

(B) fresh or chilled vegetables provided for in headings 0701 through 0709 (except subheading 0709.32.00) and heading 0714 of the HTS;

(C) fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheadings 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, manzanos colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; or

(D) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(e) Fees under section 624 of title 7

No proclamation issued pursuant to this chapter shall affect fees imposed pursuant to section 624 of title 7.

(f) Tariff-rate quotas

No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this chapter.


REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(B) and (f), was in the original "this Act" and was translated as reading "this title", meaning title II of Pub. L. 102–182 which enacted this chapter, to reflect the probable intent of Congress.


The effective date of this chapter, referred to in subsec. (b)(1)(A), means the date of enactment of Pub. L. 102–182, which was approved Dec. 4, 1991.

The Trade Act of 1974, referred to in subsecs. (b)(1)(A), (D), and (c)(1), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978. Chapter 1 of title II of the Act is classified generally to part 1 (§ 2251 et seq.) of subchapter II of chapter 12 of this title. Title V of the Act is classified generally to part 5 (§ 2251 et seq.) of subchapter V of chapter 12 of this title. Title V, § 2251 et seq., was classified to subchapter V (§ 2251 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.
Amendments


Subsec. (b)(3)(E)(ii)(II). Pub. L. 110–191, §1(b)(1)(B), substituted “Subject to section 3206 of this title, the” for “Subject to section 3206 of this title, during”.


Pub. L. 110–191, §1(b)(2), substituted “During” for “During”.

Subsec. (b)(3)(B)(ii)(II). Pub. L. 110–42, §2(1)(A), substituted “The” for “Subject to section 3206 of this title, the” and “and 5 succeeding 1-year periods” for “for 4 succeeding 1-year periods”.


2003—Subsec. (a)(1). Pub. L. 107–210, §3103(c)(2)(A), in introductory provisions, inserted “or other provision” for “or otherwise provided for” after “eligibility” and “or preferential treatment” after “duty-free treatment”.


Subsec. (b). Pub. L. 107–210, §3103(a)(2), substituted “Exceptions and special rules for ‘Exceptions to duty-free treatment’” in heading and amended text generally. Prior to amendment, text read as follows: “The duty-free treatment provided under this chapter shall not apply to—

‘(1)’ textile and apparel articles which are subject to textile agreements;

‘(2)’ footgear not designated at the time of the effective date of this chapter as eligible for the purpose of the generalized system of preferences under title V of the HTS;

‘(3)’ tuna, prepared or preserved in any manner, in air-tight containers;

‘(4)’ petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

‘(5)’ watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

‘(6)’ articles to which reduced rates of duty apply under subsection (c) of this section;

‘(7)’ sugars, syrups, and molasses classified in subheadings 1701.11.01, 1701.12.02, 1701.99.04, 1702.90.32, 1806.10.42, and 2106.90.12 of the HTS; or

‘(8)’ rum and tafia classified in subheading 2208.40.00 of the HTS.

Subsecs. (c) to (g). Pub. L. 107–210, §3103(a)(1), redesignated subsecs. (d) to (g) as (c) to (f), respectively, and struck out former subsec. (c) which related to duty reductions for certain handbags, luggage, flat goods, work gloves, and leather wearing apparel of beneficiary countries.


Effective Date of 2006 Amendment

Amendment by section 5005(b) of Pub. L. 109–432 applicable to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 20, 2006, see section 5006 of Pub. L. 109–432, set out as a note under section 2703 of this title.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 effective on the date of entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995], except as otherwise provided, see section 451 of Pub. L. 103–465, set out as an Effective Date note under section 3601 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

Delegation of Authority


Articles Eligible for Preferential Treatment Under the Andean Trade Preference Act


“(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other provision of law, and subject to subsection (c)—

(1) with respect to any article described in section 204(b)(1)(D) of the Andean Trade Preference Act [19 U.S.C. 3203](b)(1)(D) (as amended by section 3103(a)(2) of the Trade Act of 2002 [Pub. L. 107–210]) for which the President proclaims duty free treatment pursuant to section 204(b)(1) of the Andean Trade Preference Act, the entry of any such article on or after August 6, 2002, and before the date on which the President proclaims duty free treatment for such article shall be subject to the rate of duty applicable on August 5, 2002; and

(2) footgear not designated at the time of the effective date of this chapter as eligible for the purpose of the generalized system of preferences under title V of the HTS;
“(2) such entries shall be liquidated or reliquidated as if the reduced duty preferential treatment applied, and the Secretary of the Treasury shall refund any excess duties paid with respect to such entry.

“(b) ENTRY.—As used in this subsection, the term ‘entry’ includes a withdrawal from warehouse for consumption.

“(c) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service within 180 days after the date of the enactment of this Act (Dec. 3, 2004), and such request contains sufficient information to enable the Customs Service—

“(1) to locate the entry; or

“(2) to reconstruct the entry if it cannot be located.”

**Duty Free or Preferential Treatment of Certain Apparel Articles**

Pub. L. 107-206, title III, § 3001(b), Aug. 2, 2002, 116 Stat. 910, provided that: “Any duty free or other preferential treatment provided under the Andean Trade Preference Act (19 U.S.C. 3201 et seq.) to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. Any duty-free or other preferential treatment provided under the Andean Trade Preference Act to apparel articles assembled from fabric formed in the United States shall apply to such articles only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States.

**PROC. NO. 7616. TO IMPLEMENT THE ANDANE TRADE PROMOTION AND DRUG ERADICATION ACT**


1. Section 3105 of the Andean Trade Promotion and Drug Eradication Act (title XXXI of the Trade Act of 2002, Public Law 107-210) (see Tables for classification) (ATPDEA) amended section 204(b) of the Andean Trade Preference Act (19 U.S.C. 3203(b)) (ATPA) to provide that certain preferential tariff treatment may be provided to eligible articles that are the product of any country that the President designates as an “ATPDEA beneficiary country” pursuant to section 204(b)(6)(B) of the ATPA, as amended, provided that the President determines that the country has satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended, relating to the implementation of procedures and requirements similar to those in chapter 5 of the NAFTA.

2. Section 3108(a)(2) of the ATPDEA amended section 204(b) of the ATPA to authorize the President to proclaim duty-free treatment for any article described in section 204(b)(1)(A) through (D) of the ATPA, as amended, that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of section 204 of the ATPA, as amended, if the President determines that such article is not import-sensitive in the context of imports from ATPDEA beneficiary countries, provided that the President determines that the country has satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended, relating to the implementation of procedures and requirements similar to those in chapter 5 of the NAFTA.

3. Section 3108(a)(2) of the ATPDEA amended section 204(b) of the ATPA to provide that eligible textile and apparel articles of a designated ATPDEA beneficiary country shall enter the United States free of duty and free of quantitative limitations, provided that the President determines that the country has satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended, relating to the implementation of procedures and requirements similar to those in chapter 5 of the NAFTA.

4. Section 3108(a)(2) of the ATPDEA amended section 204(b) of the ATPA to provide that eligible tuna products of a designated ATPDEA beneficiary country shall enter the United States free of duty and free of quantitative limitations, provided that the President determines that the country has satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended, relating to the implementation of procedures and requirements similar to those in chapter 5 of the NAFTA.

5. Section 3108(a)(2) of the ATPDEA (19 U.S.C. 3202(e)(2)(A)) requires the President to furnish in the Federal Register notice of proposed action under section 203(e)(1) of the ATPA (19 U.S.C. 3202(e)(1)) at least 30 days prior to taking such action. Section 212(e)(2)(A) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2702(e)(2)(A)) requires the President to publish in the Federal Register notice of proposed action under section 212(e)(1) of the CBERA (19 U.S.C. 2702(e)(1)) at least 30 days prior to taking such action.

6. In order to implement the tariff treatment provided under the ATPDEA, it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS).

7. Section 604 of the Trade Act of 1974 (19 U.S.C. 3214) (1974 Trade Act) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including section 604 of the 1974 Trade Act, do proclaim as follows: (1) I have designated the following countries as ATPDEA beneficiary countries pursuant to section 204(b)(5)(B) of the ATPA, as amended, and have determined that these countries have satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended, relating to the implementation of procedures and requirements similar to those in chapter 5 of the NAFTA:

Bolivia
Colombia
Ecuador
Peru,
(2) In order to provide for the preferential treatment provided for in section 204(b) of the ATPA, as amended, the HTS is modified as provided in the annex to this proclamation.

3. The functions of the President under section 203(e)(2)(A) of the ATPA and section 212(e)(2)(A) of the CBERA with respect to publishing notice of an action he proposes to take, (sic) are delegated to the United States Trade Representative.

4. Any provisions of previous proclamations and Executive Orders that are inconsistent with this proclamation are superseded to the extent of such inconsistency.

5. This proclamation is effective on the date of signature.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

GEORGE W. BUSH.

**PRESIDENTIAL SUSPENSION OF DESIGNATION OF BENEFICIARY COUNTRIES**

Proc. No. 8233, Nov. 25, 2008, 73 F.R. 73679, provided in par. (4) that the designation of Bolivia as a beneficiary
§ 3204. International Trade Commission reports on impact of this chapter

(a) Reporting requirements

(1) In general

The United States International Trade Commission (in this section referred to as the "Commission") shall submit to Congress and the President biennial reports regarding the economic impact of this chapter on United States industries and consumers, and, in conjunction with other agencies, the effectiveness of this chapter in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries.

(2) Submission

During the period that this chapter is in effect, the report required by paragraph (1) shall be submitted on December 31 of each year that the report required by section 2704 of this title is not submitted.

(3) Treatment of Puerto Rico, etc.

For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States are considered to be United States industries.

(b) Report requirements

(1) Each report required under subsection (a) of this section shall include, but not be limited to, an assessment by the Commission regarding—

(A) the actual effect, during the period covered by the report, of this chapter on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries;

(B) the probable future effect that this chapter will have on the United States economy generally, as well as on such domestic industries, before the provisions of this chapter terminate; and

(C) the estimated effect that this chapter has had on the drug-related crop eradication and crop substitution efforts of the beneficiary countries.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this chapter, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this chapter.

(c) Submission dates; public comment

(1) Each report required under subsection (a) of this section shall be submitted to the Congress before the close of the 9-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide an opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.


AMENDMENTS

2000—Subsec. (a). Pub. L. 106–200 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: 'The United States International Trade Commission (hereinafter in this section referred to as the 'Commission') shall prepare, and submit to the Congress, a report regarding the economic impact of this chapter on United States industries and consumers, and, in conjunction with other agencies, the effectiveness of this chapter in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries, during—

'(1) the 24-month period beginning with December 4, 1991; and

'(2) each calendar year occurring thereafter until duty-free treatment under this chapter is terminated under section 3206(b) of this title.

For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.''

§ 3205. Impact study by Secretary of Labor

The Secretary of Labor, in consultation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact that the implementation of the provisions of this chapter has with respect to United States labor; and shall make an annual written report to Congress on the results of such review and analysis.


§ 3206. Termination of preferential treatment

(a) In general

No duty-free treatment or other preferential treatment extended to beneficiary countries under this chapter shall—

(1) remain in effect—

(A) with respect to Colombia after February 12, 2011; and

(B) with respect to Peru after December 31, 2010;

(2) remain in effect with respect to Ecuador after June 30, 2009, except that duty-free treatment and other preferential treatment under this chapter shall remain in effect with respect to Ecuador during the period beginning on July 1, 2009, and ending on February 12, 2011, unless the President reviews the criteria set forth in section 3202 of this title, and on or
before June 30, 2009, reports to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives pursuant to subsection (b) that—

(A) the President has determined that Ecuador does not satisfy the requirements set forth in section 3202(c) of this title for being designated as a beneficiary country; and

(B) in making that determination, the President has taken into account each of the factors set forth in section 3202(d) of this title; and

(3) remain in effect with respect to Bolivia after June 30, 2009, except that duty-free treatment under this chapter shall remain in effect with respect to Bolivia during the period beginning on July 1, 2009, and ending on December 31, 2009, only if the President reviews the criteria set forth in section 3202 of this title, and on or before June 30, 2009, reports to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives pursuant to subsection (b) that—

(A) the President has determined that Bolivia satisfies the requirements set forth in section 3202(c) of this title for being designated as a beneficiary country; and

(B) in making that determination, the President has taken into account each of the factors set forth in section 3202(d) of this title.

(b) Reports

On or before June 30, 2009, the President shall make determinations pursuant to subsections (a)(2)(A) and (a)(3)(A) and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on—

(1) such determinations; and

(2) the reasons for such determinations.


(Amendments


2008—Pub. L. 110–436 amended section generally. Prior to amendment, text read as follows: “No duty-free treatment or other preferential treatment extended to beneficiary countries under this chapter shall remain in effect after December 31, 2008.”

2007—Pub. L. 110–42 struck out subsec. (a) designation and heading at beginning of section, substituted “No” for “Subject to subsection (b), no” and “February 29, 2008” for “February 28, 2008.”

2006—Pub. L. 109–432 designated existing provisions as subsec. (a), inserted heading, substituted “Subject to subsection (b), no” for “No” and “June 30, 2007” for “December 31, 2006”, and added subsec. (b).

2002—Pub. L. 107–210 substituted “Termination of preferential treatment” for “Effective date and termination of duty-free treatment” in section catchline and amended text generally; substituting provisions establishing a termination date of Dec. 31, 2006, for preferential treatment under this chapter for provisions designated subsecs. (a) and (b) establishing an effective date of Dec. 4, 1991, for this chapter and a termination date 10 years later for duty-free treatment under this chapter.

RETOROWTE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS


(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 [19 U.S.C. 1514] or any other provision of law, and subject to paragraph (3), the entry—

(A) of any article to which duty-free treatment (or preferential treatment) under the Andean Trade Preference Act (19 U.S.C. 3201 et seq.) would have applied if the entry had been made on December 4, 2001, and

(B) that was made after December 4, 2001, and before the date of the enactment of this Act [Aug. 6, 2002],

shall be liquidated or reliquidated as if such duty-free treatment (or preferential treatment) applied, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

(2) ENTRY.—As used in this subsection, the term ‘entry’ includes a withdrawal from warehouse for consumption.

(3) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service—

(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located.

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.]

CHAPTER 21—NORTH AMERICAN FREE TRADE

Sec. 3301. Definitions.

SUBCHAPTER I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, NORTH AMERICAN FREE TRADE AGREEMENT

3311. Approval and entry into force of North American Free Trade Agreement.

3312. Relationship of Agreement to United States and State law.

3313. Consultation and layover requirements for, and effective date of, proclaimed actions.

3314. Implementing actions in anticipation of entry into force and initial regulations.

3315. United States Section of NAFTA Secretariat.

3316. Appointments to chapter 20 panel proceedings.

3317. Congressional intent regarding future accessions.
§ 3301. Definitions

For purposes of this Act:

(1) Agreement

The term “Agreement” means the North American Free Trade Agreement approved by the Congress under section 3311(a) of this title.

(2) HTS

The term “HTS” means the Harmonized Tariff Schedule of the United States.

(3) Mexico

Any reference to Mexico shall be considered to be a reference to the United Mexican States.

(4) NAFTA country

Except as provided in section 3332 of this title, the term “NAFTA country” means—

(A) Canada for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Canada; and

(B) Mexico for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Mexico.

(5) International Trade Commission


(6) Trade Representative

The term “Trade Representative” means the United States Trade Representative.


REFERENCES IN TEXT


The North American Free Trade Agreement, referred to in par. (1), is not set out in the Code.


SHORT TITLE

Section 1(a) of Pub. L. 103–182 provided that: “This Act [see Tables for classification] may be cited as the ‘North American Free Trade Agreement Implementation Act.’”
§ 3311. Approval and entry into force of North American Free Trade Agreement

§ 3311. Approval and entry into force of North American Free Trade Agreement

(a) Approval of Agreement and statement of administrative action

Pursuant to section 2003 of this title and section 2191 of this title, the Congress approves—

(1) the North American Free Trade Agreement entered into on December 17, 1992, with the Governments of Canada and Mexico and submitted to the Congress on November 4, 1993; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on November 4, 1993.

(b) Conditions for entry into force of Agreement

The President is authorized to exchange notes with the Government of Canada or Mexico providing for the entry into force, on or after January 1, 1994, of the Agreement for the United States with respect to such country at such time as—

(1) the President—

(A) determines that such country has implemented the statutory changes necessary to bring that country into compliance with its obligations under the Agreement and has made provision to implement the Uniform Regulations provided for under article 511 of the Agreement regarding the interpretation, application, and administration of the rules of origin, and

(B) transmits a report to the House of Representatives and the Senate setting forth the determination under subparagraph (A) and including, in the case of Mexico, a description of the specific measures taken by that country to—

(i) bring its laws into conformity with the requirements of the Schedule of Mexico in Annex 1904.15 of the Agreement, and

(ii) otherwise ensure the effective implementation of the binational panel review process under chapter 19 of the Agreement regarding final antidumping and countervailing duty determinations; and

(2) the Government of such country exchanges notes with the United States providing for the entry into force of the North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation for that country and the United States.


Effective Date; Termination of NAFTA Status

Section 109 of title I of Pub. L. 103–182 provided that:

"(2) SECTION 107 AMENDMENT.—The amendment made by section 107 takes effect on the date the Agreement enters into force between the United States and Canada. [Jan. 1, 1994]."

"(b) TERMINATION OF NAFTA STATUS.—During any period in which a country ceases to be a NAFTA country, sections 101 through 106 [enacting this section and sections 3312 to 3316 of this title] shall cease to have effect with respect to such country."

North American Free Trade Agreement: Entry into Force


EX. ORD. No. 12889, IMPLEMENTATION OF NORTH AMERICAN FREE TRADE AGREEMENT

EX. ORD. No. 12889, Dec. 27, 1993, 58 F.R. 69881, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057) (the NAFTA Implementation Act) [see Short Title note set out under section 3301 of this title] and section 302 of title 3, United States Code, and in order to implement the North American Free Trade Agreement (NAFTA), it is hereby ordered:

SECTION 1. Establishment of United States Section of the NAFTA Secretariat. Pursuant to section 105(a) of the NAFTA Implementation Act (19 U.S.C. 3315(a)), a United States section of the NAFTA Secretariat shall be established within the Department of Commerce and shall carry out the functions set out in that section.

Sic. 2. Acceptance by the President of Panel and Committee Decisions. Pursuant to subparagraph 516A(g)(7)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. 1516a(g)(7)(B), in the event that the provisions of that subparagraph take effect, I accept, as a whole, all decisions of binational panels and extraordinary challenge committees.

Sic. 3. Implementation of Safeguard Provisions for Textile and Apparel Goods. Pursuant to section 201 of the NAFTA Implementation Act (19 U.S.C. 3311(a)), the Committee for the Implementation of Textile Agreements (the Committee) shall take such action as necessary to implement the bilateral safeguard provisions (tariff actions) set out in section 4 of Annex 300–B of the NAFTA. The United States Customs Service shall take such actions to carry out those safeguard provisions as directed by the Secretary of the Treasury, upon the advice and recommendation of the Chairman of the Committee.

Sic. 4. Publication of Proposed Rules regarding Technical Regulations and Sanitary and Phytosanitary Measures. (a) In accordance with Articles 718 and 909 of the NAFTA, each agency subject to the provisions of the Administrative Procedure Act, as amended (5 U.S.C. 551 et seq.), shall, in applying section 553 of title 5, United States Code, with respect to any proposed Federal technical regulation or any Federal sanitary or phytosanitary measure of general application, other than a regulation issued pursuant to section 1914(a) of the NAFTA Implementation Act (19 U.S.C. 3314(a)), publish or serve notice of such regulation or measure not less than 75 days before the comment due date, except:

(1) in the case of a technical regulation relating to perishable goods, in which case the agency shall, to the greatest extent practicable, publish or serve notice at least 30 days prior to adoption of such regulation;

(2) in the case of a technical regulation, where the United States considers it necessary to address an ur-
gent problem relating to safety or to protection of human, animal or plant life or health, the environment or consumers; or

(b) in the case of sanitary or phytosanitary measures, where the United States considers it necessary to address an urgent problem relating to sanitary or phytosanitary protection.

For purposes of this section, the term “sanitary or phytosanitary measure” shall be defined in accordance with section 463 of the Trade Agreements Act of 1979 [19 U.S.C. 2575b], and “technical regulation” shall be defined in accordance with section 473 of the Trade Agreements Act of 1979 [19 U.S.C. 2576b].

(c) This section supersedes section 1 of Executive Order No. 12662 of December 31, 1988 [19 U.S.C. 2112 note].

SISC § 5. Government Procurement Procedures. (a) Waiver. (1) With respect to eligible products (as defined in section 1015(b) of the NAFTA Implementation Act [amending section 2518(4)(A) of this title]) of Canada and Mexico, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Federal Government procurement that would, if applied to such products or suppliers, result in treatment less favorable than the most favorable treatment accorded:

(A) to United States products and services and suppliers of such products and services; or

(B) to eligible products of either Mexico or Canada, shall be waived.

(2) This waiver shall be applied by all executive agencies listed in Annexes 1 and 2 of this Executive order in consultation with, and when deemed necessary at the direction of, the United States Trade Representative (Trade Representative).

(b) The Secretary of Defense, or his designee, in consultation with the Trade Representative, shall be responsible for determinations under Article 1018(1) pursuant to Annex 1001.1b-1(A)(4), of the NAFTA. The Secretary of Defense, or his designee, and the Trade Representative shall establish procedures for this purpose.

(c) The executive agencies listed in Annex 2 are directed to procure eligible products in compliance with the procedural provisions of Chapter 19 of the NAFTA.

(d) The Trade Representative shall be responsible for calculating and adjusting the threshold as required by Article 1001(1)(c) of the NAFTA.

(e) This order shall apply only to solicitations issued on or after the date of entry into force of the NAFTA for the United States.

(f) Although regulatory implementation of this order must be consistent with the Federal Acquisitions Regulation (FAR), it is expected that agencies listed in Annexes 1 and 2 of this order will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

(g) Pursuant to section 25 of the Office of Federal Procurement Policy Act, as amended ([former] 41 U.S.C. 42(a) [now 41 U.S.C. 1302, 1306], the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 60 days from the date this order is issued.

§ 6. Government Use of Patented Technology. (a) Each agency shall, within 60 days from the date this order is issued, modify or adopt procedures to ensure compliance with Article 1709(10) of the NAFTA regarding notice when patented technology is used by or for the Federal Government without a license from the owner, except that the requirement of Article 1709(10)(b) regarding reasonable efforts to obtain authorization from the patent owner:

(1) is hereby waived for an invention used or manufactured by or for the Federal Government, except that the patent owner must be notified whenever the agency or its contractor, without making a patent search, knows or has demonstrable reasonable grounds to know that an invention described in and covered by a valid United States patent is or will be used or manufactured without a license; and

(2) is waived whenever a national emergency or other circumstances of extreme urgency exist, except that the patent owner must be notified as soon as it is reasonably practicable to do so.

(b) Agencies shall treat the term “remuneration” as used in Articles 1709(10)(b) and (j) and 1715 of the NAFTA as equivalent to “reasonable and entire compensation” as used in section 1498 of title 28, United States Code.

(c) In addition to the general provisions of section 7 of this order regarding enforceable rights, nothing in this order is intended to suggest that the giving of notice to a patent owner under Article 1709(10) of the NAFTA constitutes an admission that the Federal Government has infringed a valid privately-owned patent.

SISC § 7. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SISC § 8. Effective Date. This order shall take effect upon the date of entry into force of the NAFTA for the United States.

WILLIAM J. CLINTON.

ANNEX I

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
United States Agency for International Development
General Services Administration
National Aeronautics and Space Administration
Department of Veterans Affairs
Environmental Protection Agency
United States Information Agency
National Science Foundation
Panama Canal Commission
Executive Office of the President
Farm Credit Administration
National Credit Union Administration
Merit Systems Protection Board
National Mediation Board
Federal Mediation and Conciliation Service
Export-Import Bank of the United States
United States International Trade Commission
Securities and Exchange Commission
Commodity Futures Trading Commission
Federal Communications Commission
Federal Trade Commission
Consumer Product Safety Commission
Equal Employment Opportunity Commission
Board for International Broadcasting
Federal Maritime Commission
Nuclear Regulatory Commission
National Transportation Safety Board
Smithsonian Institution
Peace Corps

Office of Thrift Supervision
Federal Housing Finance Board
National Labor Relations Board
National Mediation Board
Railroad Retirement Board
American Battle Monuments Commission
Federal Communications Commission
Federal Trade Commission
Interstate Commerce Commission
United States International Trade Commission
Export-Import Bank of the United States
Federal Mediation and Conciliation Service
Selectives Service System
Department of Justice
Department of Agriculture
Department of Homeland Security
Department of the Interior
Department of Education
Department of Veterans Affairs
Department of Transportation
Department of State
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Treasury
Department of Energy
Department of Labor
Department of the Interior
Department of Agriculture
Department of Commerce
Department of Labor
Department of Commerce
Department of Homeland Security
Department of Health and Human Services
Department of Housing and Urban Development
Department of Veterans Affairs
Department of Transportation
Department of Energy
Department of Labor
§ 3312. Relationship of Agreement to United States and State law

(a) Relationship of Agreement to United States law

(1) United States law to prevail in conflict

No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) Construction

Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, including any law regarding—
   (i) the protection of human, animal, or plant life or health,
   (ii) the protection of the environment, or
   (iii) motor carrier or worker safety; or

(B) to limit any authority conferred under any law of the United States, including section 2411 of this title; unless specifically provided for in this Act.

(b) Relationship of Agreement to State law

(1) Federal-State consultation

(A) In general

On December 8, 1993, the President shall, through the intergovernmental policy advisory committees on trade established under section 2114c(2)(A) of this title, consult with the States for the purpose of achieving conformity of State laws and practices with the Agreement.

(B) Federal-State consultation process

The Trade Representative shall establish within the Office of the United States Trade Representative a Federal-State consultation process for addressing issues relating to the Agreement that directly relate to, or will potentially have a direct impact on, the States. The Federal-State consultation process shall include procedures under which—

(i) the Trade Representative will assist the States in identifying those State laws that may not conform with the Agreement but may be maintained under the Agreement by reason of being in effect before the Agreement entered into force;

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

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

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

(v) the States will be involved (including involvement through the inclusion of appropriate representatives of the States) to the greatest extent practicable at each stage of the development of United States positions regarding matters referred to in clause (ii) that will be addressed by committees, subcommittees, or working groups established under the Agreement or through dispute settlement processes provided for under the Agreement.

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

(2) Legal challenge

No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(3) “State law” defined

For purposes of this subsection, the term “State law” includes—

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

(B) any State law regulating or taxing the business of insurance.

(c) Effect of Agreement with respect to private remedies

No person other than the United States—

(1) shall have any cause of action or defense under—

   (A) the Agreement or by virtue of Congressional approval thereof, or
   (B) the North American Agreement on Environmental Cooperation or the North American Agreement on Labor Cooperation;
   or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement, the North American Agreement on Environmental Cooperation, or the North American Agreement on Labor Cooperation.


REFERENCES IN TEXT

This Act, referred to in subsec. (a)(2), is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2067, known as the North American Agreement on Environmental Cooperation; and
American Free Trade Agreement Implementation Act. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

The President is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

1. the President has obtained advice regarding the proposed action from—
   (A) the appropriate advisory committees established under section 2155 of this title, and
   (B) the International Trade Commission;
2. the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the House Ways and Means Committee on Finance of the Senate that sets forth—
   (A) the action proposed to be proclaimed and the reasons therefor, and
   (B) the advice obtained under paragraph (1);
3. a period of 60 calendar days, beginning with the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action, has expired; and
4. the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

(b) Effective date of certain proclaimed actions

Any action proclaimed by the President under this Act that is not subject to the consultation and layover requirements of section (a) of this section may not take effect on the 15th day after the date on which the text of the proclamation is published in the Federal Register.


§ 3313. Consultation and layover requirements for, and effective date of, proclaimed actions

(a) Consultation and layover requirements

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

1. the President has obtained advice from the appropriate advisory committees and the U.S. International Trade Commission on the proposed implementation of an action by Presidential proclamation;
2. submitting a report on such action to the House Ways and Means and Senate Finance Committees; and
3. consulting with such committees during the 60-day period following the date on which the requirements under (1) and (2) have been met.

The President retains the sole authority under the NAFTA Act [Pub. L. 103–182, see Tables for classification] and Uruguay Round Act [Pub. L. 103–465, see Tables for classification] to implement an action by proclamation after the consultation and layover requirements set forth in section 103(a)(1) through (4) and section 115 of such Acts, respectively, have been met. You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Termination of NAFTA Status

Section to cease to have effect with respect to any country during any period in which such country ceases to be a NAFTA country, see section 109(b) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3311 of this title.

§ 3314. Implementing actions in anticipation of entry into force and initial regulations

(a) Implementing actions

After December 8, 1993—

1. the President may proclaim such actions; and
2. other appropriate officers of the United States Government may issue such regulations;

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force. The 15-day restriction in section 3313(b) of this title on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) Initial regulations

Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 3311(a)(2) of this title to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement; except that interim or initial regulations to implement those Uniform Regulations regarding rules of origin provided for under article 511 of the Agreement shall be issued no later than the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a

References in Text


Delegation of Authority

Memorandum of President of the United States, Sept. 29, 1995, 60 F.R. 52961, provided:

Memorandum for the United States Trade Representative

By virtue of the authority vested in me as President by the Constitution and laws of the United States, in-
date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.


§ 3315. United States Section of NAFTA Secretariat

(a) Establishment of United States Section

The President is authorized to establish within any department or agency of the United States Government a United States Section of the Secretariat established under chapter 20 of the Agreement. The United States Section, subject to the oversight of the interagency group established under section 3432 of this title, shall carry out its functions within the Secretariat to facilitate the operation of the Agreement, including the operation of chapters 19 and 20 of the Agreement and the work of the panels, extraordinary challenge committees, special committees, and scientific review boards convened under those chapters. The United States Section may not be considered to be an agency for purposes of section 552 of title 5.

(b) Authorization of appropriations

There are authorized to be appropriated for each fiscal year after fiscal year 1993 to the department or agency within which the United States Section is established the lesser of—

(1) such sums as may be necessary; or

(2) $2,000,000;

for the establishment and operations of the United States Section and for the payment of the United States share of the expenses, including food when sequestered, of binational panels and extraordinary challenge committees convened under chapter 19, and of the expenses incurred in dispute settlement proceedings under chapter 20 of the Agreement.

(c) Reimbursement of certain expenses

If, in accordance with Annex 2002.2 of the Agreement, the Canadian Section or the Mexican Section of the Secretariat provides funds to the United States Section during any fiscal year, as reimbursement for expenses by the Canadian Section or the Mexican Section in connection with settlement proceedings under chapter 19 or 20 of the Agreement, the United States Section may retain and use such funds to carry out the functions described in subsection (a) of this section.


AMENDMENTS

2007—Subsec. (b). Pub. L. 110–161, which directed the amendment of section 3315 of title 19, United States Code, by inserting ‘‘including food when sequestered,’’ after ‘‘for the establishment and operations of the United States Section and for the payment of the United States share of the expenses’’, was executed by making the substitution in the concluding provisions of this section, which is section 105 of Pub. L. 103–182, to reflect the probable intent of Congress.

Termination of NAFTA Status

Section to cease to have effect with respect to any country during any period in which such country ceases to be a NAFTA country, see section 109(b) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3311 of this title.

Establishment of United States Section of NAFTA Secretariat

For establishment of United States Section of NAFTA Secretariat within Department of Commerce, see section 1 of Ex. Ord. No. 12885, Dec. 27, 1993, 58 F.R. 69681, set out as a note under section 3311 of this title.

§ 3316. Appointments to chapter 20 panel proceedings

(a) Consultation

The Trade Representative shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the selection and appointment of candidates for the rosters described in article 2009 of the Agreement.

(b) Selection of individuals with environmental expertise

The United States shall, to the maximum extent practicable, encourage the selection of individuals who have expertise and experience in environmental issues for service in panel proceedings under chapter 20 of the Agreement to hear any challenge to a United States or State environmental law.


Termination of NAFTA Status

Section to cease to have effect with respect to any country during any period in which such country ceases to be a NAFTA country, see section 109(b) of Pub. L. 103–182, set out as an Effective Date; Termination of NAFTA Status note under section 3311 of this title.

§ 3317. Congressional intent regarding future accessions

(a) In general

Section 3311(a) of this title may not be construed as conferring Congressional approval of the entry into force of the Agreement for the United States with respect to countries other than Canada and Mexico.
(b) Future free trade area negotiations

(1) Findings

The Congress makes the following findings:

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

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

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

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

(2) Report on significant market opening

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

(A) that—

(i) currently provide fair and equitable market access for United States exports of goods and services and opportunities for export-related investment by United States persons, beyond what is required by existing multilateral trade agreements or obligations; or

(ii) have made significant progress in opening their markets to United States exports of goods and services and export-related investment by United States persons; and

(B) the further opening of whose markets has the greatest potential to increase United States exports of goods and services and export-related investment by United States persons, either directly or through the establishment of a beneficial precedent.

(3) Presidential determination

The President, on the basis of the report submitted by the Trade Representative under paragraph (2), shall determine with which foreign country or countries, if any, the United States should seek to negotiate a free trade area agreement or agreements.

(4) Recommendations on future free trade area negotiations

No later than July 1, 1994, and July 1, 1997, the President shall submit to the appropriate Congressional committees a written report that contains—

(A) recommendations for free trade area negotiations with each foreign country selected under paragraph (3);

(B) with respect to each country selected, the specific negotiating objectives that are necessary to meet the objectives of the United States under this section; and

(C) legislative proposals to ensure adequate consultation with the Congress and the private sector during the negotiations, advance Congressional approval of the negotiations recommended by the President, and Congressional approval of any trade agreement entered into by the President as a result of the negotiations.

(5) General negotiating objectives

The general negotiating objectives of the United States under this section are to obtain—

(A) preferential treatment for United States goods;

(B) national treatment and, where appropriate, equivalent competitive opportunity for United States services and foreign direct investment by United States persons;

(C) the elimination of barriers to trade in goods and services by United States persons through standards, testing, labeling, and certification requirements;

(D) nondiscriminatory government procurement policies and practices with respect to United States goods and services;

(E) the elimination of other barriers to market access for United States goods and services, and the elimination of barriers to foreign direct investment by United States persons;

(F) the elimination of acts, policies, and practices which deny fair and equitable market opportunities, including foreign government toleration of anticompetitive business practices by private firms or among private firms that have the effect of restricting, on a basis that is inconsistent with commercial considerations, purchasing by such firms of United States goods and services;

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

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

(I) the elimination of all export taxes;

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

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


SUBCHAPTER II—CUSTOMS PROVISIONS

§3331. Tariff modifications

(a) Tariff modifications provided for in Agreement

(1) Proclamation authority

The President may proclaim—
(A) such modifications or continuation of any duty,
(B) such continuation of duty-free or excise treatment, or
(C) such additional duties,
as the President determines to be necessary or appropriate to carry out or apply articles 302, 305, 307, 308, and 703 and Annexes 302.2, 307.1, 308.1, 308.2, 300–B, 703.2, and 703.3 of the Agreement.

(2) Effect on Mexican GSP status

(b) Other tariff modifications
(1) in general
Subject to paragraph (2) and the consultation and layover requirements of section 3313(a) of this title, the President may proclaim—
(A) such modifications or continuation of any duty,
(B) such modifications as the United States may agree to with Mexico or Canada regarding the staging of any duty treatment set forth in Annex 302.2 of the Agreement,
(C) such continuation of duty-free or excise treatment, or
(D) such additional duties,
as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada or Mexico provided for by the Agreement.

(2) Special rule for articles with tariff phaseout periods of more than 10 years
The President may not consider a request to accelerate the staging of duty reductions for an article for which the United States tariff phaseout period is more than 10 years if a request for acceleration with respect to such article has been denied in the preceding 3 calendar years.

(c) Conversion to ad valorem rates for certain textiles
For purposes of subsections (a) and (b) of this section, with respect to an article covered by Annex 300–B of the Agreement imported from Mexico for which the base rate in the Schedule of the United States in Annex 300–B is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.


References in Text

Amendments

Effective Date of 1996 Amendment
Amendment by Pub. L. 104–188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104–188, set out as an Effective Date note under section 2461 of this title.

Effective Date
Section 213 of Pub. L. 103–182 provided that: “(a) Provisions Effective on Date of enactment.—Section 212 [enacting provisions set out as a note under section 58c of this title] and this section take effect on the date of the enactment of this Act [Dec. 8, 1993].

(b) Provisions Effective When Agreement Enters into Force.—Section 201, section 302, section 203(a), (d), and (e), section 210 and section 211, the amendment made by section 203(c), and the amendments made by sections 204 through 209 [enacting this section and sections 3332, 3333(a), (d), (e), 3334, and 3335 of this title and amending sections 58c, 1301, 1303, 1508, 1509, 1514, 1520, and 1592, and 1626 of this title] take effect on the date the Agreement enters into force with respect to the United States [Jan. 1, 1994].

(c) Provisions With Delayed Effective Dates.—The amendments made by section 203(b) [amending sections 81c, 1311 to 1313, and 1562 of this title] apply—
(1) with respect to exports from the United States to Canada—
(A) on January 1, 1996, if Canada is a NAFTA country on that date, and
(B) after such date for so long as Canada continues to be a NAFTA country; and
(2) with respect to exports from the United States to Mexico—
(A) on January 1, 2001, if Mexico is a NAFTA country on that date; and
(B) after such date for so long as Mexico continues to be a NAFTA country.”

North American Free Trade Agreement: Entry into Force

Implementation of Safeguard Provisions for Textile and Apparel Goods
The Committee for the Implementation of Textile Agreements to implement safeguard provisions for textile and apparel goods pursuant to this section, see section 3 of Ex. Ord. No. 12889, Dec. 27, 1993, 58 F.R. 69681, set out as a note under section 3311 of this title.

§ 3332. Rules of origin
(a) Originating goods
(1) in general
For purposes of implementing the tariff treatment and quantitative restrictions provided for under the Agreement, except as otherwise provided in this section, a good originates in the territory of a NAFTA country if—
(A) the good is wholly obtained or produced entirely in the territory of one or more of the NAFTA countries;
(B)(i) each nonoriginating material used in the production of the good—
(1) undergoes an applicable change in tariff classification set out in Annex 401 of the Agreement as a result of production occurring entirely in the territory of one or more of the NAFTA countries; or 
(II) where no change in tariff classification is required, the good otherwise satisfies the applicable requirements of such Annex; and 
(ii) the good satisfies all other applicable requirements of this section; 
(C) the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials; or 
(D) except for a good provided for in chapters 61 through 63 of the HTS, the good is produced entirely in the territory of one or more of the NAFTA countries, but one or more of the nonoriginating materials, that are provided for as parts under the HTS and are used in the production of the good, do not undergo a change in tariff classification because— 
(i) the good was imported into the territory of a NAFTA country in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the HTS; or 
(ii)(I) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings; or 
(ii) the subheading for the good provides for and specifically describes both the good itself and its parts.

(2) Special rules

(A) Foreign-trade zones

Subparagraph (B) of paragraph (1) shall not apply to a good produced in a foreign-trade zone or subzone (established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act [19 U.S.C. 81a et seq.]) that is entered for consumption in the customs territory of the United States.

(B) Regional value-content requirement

For purposes of subparagraph (D) of paragraph (1), a good shall be treated as originating in a NAFTA country if the regional value-content of the good, determined in accordance with subsection (b) of this section, is not less than 60 percent where the transaction value method is used, or not less than 50 percent where the net cost method is used, and the good satisfies all other applicable requirements of this section.

(b) Regional value-content

(1) In general

Except as provided in paragraph (5), the regional value-content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of—

(A) the transaction value method described in paragraph (2); or 
(B) the net cost method described in paragraph (3).

(2) Transaction value method

(A) In general

An exporter or producer may calculate the regional value-content of a good on the basis of the following transaction value method:

\[
RVC = \frac{TV-VNM}{TV} \times 100
\]

(B) Definitions

For purposes of subparagraph (A):

(i) The term “RVC” means the regional value-content, expressed as a percentage.

(ii) The term “TV” means the transaction value of the good adjusted to a F.O.B. basis.

(iii) The term “VNM” means the value of nonoriginating materials used by the producer in the production of the good.

(3) Net cost method

(A) In general

An exporter or producer may calculate the regional value-content of a good on the basis of the following net cost method:

\[
RVC = \frac{NC-VNM}{NC} \times 100
\]

(B) Definitions

For purposes of subparagraph (A):

(i) The term “RVC” means the regional value-content, expressed as a percentage.

(ii) The term “NC” means the net cost of the good.

(iii) The term “VNM” means the value of nonoriginating materials used by the producer in the production of the good.

(4) Value of nonoriginating materials used in originating materials

Except as provided in subsection (c)(1) of this section, and for a motor vehicle identified in subsection (c)(2) of this section or a component identified in Annex 403.2 of the Agreement, the value of nonoriginating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value-content of the good under paragraph (2) or (3), include the value of nonoriginating materials used to produce originating materials that are subsequently used in the production of the good.

(5) Net cost method must be used in certain cases

An exporter or producer shall calculate the regional value-content of a good solely on the basis of the net cost method described in paragraph (3), if—

(A) there is no transaction value for the good; 
(B) the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code; 
(C) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods to related persons during the six-month period immediately preceding the month in which the good is sold exceeds 85 percent of the producer’s total sales of such goods during that period;
(D) the good is—

   (i) a motor vehicle provided for in heading 8701 or 8702, subheadings 8703.21 through 8703.90, or heading 8704, 8705, or 8706;
   (ii) identified in Annex 403.1 or 403.2 of the Agreement and is for use in a motor vehicle provided for in heading 8701 or 8702, subheadings 8703.21 through 8703.90, or heading 8704, 8705, or 8706;
   (iii) identified in Annex 403.1 or 403.2 of the Agreement, that is used in production of a good provided for in subheading 8469.10 through 8469.10.00;
   (iv) a word processing machine provided for in heading 8469.10.00.

(E) the exporter or producer chooses to accumulate the regional value-content of the good in accordance with subsection (d) of this section; or

(F) the good is designated as an intermediate material under paragraph (10) and is subject to a regional value-content requirement.

(6) Net cost method allowed for adjustments

If an exporter or producer of a good calculates the regional value-content of the good on the basis of the transaction value method and a NAFTA country subsequently notifies the exporter or producer, during the course of a verification conducted in accordance with chapter 5 of the Agreement, that the transaction value of the good or the value of any material used in the production of the good must be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, the exporter or producer may calculate the regional value-content of the good on the basis of the net cost method.

(7) Review of adjustment

Nothing in paragraph (6) shall be construed to prevent any review or appeal available in accordance with article 510 of the Agreement with respect to an adjustment to or a rejection of—

   (A) the transaction value of a good; or
   (B) the value of any material used in the production of a good.

(8) Calculating net cost

The producer may, consistent with regulations implementing this section, calculate the net cost of a good under paragraph (3), by—

   (A) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and reasonably allocating the resulting net cost of those goods to the good;
   (B) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the good, and subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the good; or
   (C) reasonably allocating each cost that is part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(9) Value of material used in production

Except as provided in paragraph (11), the value of a material used in the production of a good—

   (A) shall—
      (i) be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Code; or
      (ii) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, be determined in accordance with Articles 2 through 7 of the Customs Valuation Code; and
   (B) if not included under clause (i) or (ii) of subparagraph (A), shall include—
      (i) freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;
      (ii) duties, taxes, and customs brokerage fees paid on the material in the territory of one or more of the NAFTA countries; and
      (iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

(10) Intermediate material

Except for goods described in subsection (c)(1) of this section, any self-produced material, other than a component identified in Annex 403.2 of the Agreement, that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value-content of the good under paragraph (2) or (3); provided that if the intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is used in the production of the intermediate material may be designated by the producer as an intermediate material.

(11) Value of intermediate material

The value of an intermediate material shall be—

   (A) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to the intermediate material; or
   (B) the aggregate of each cost that is part of the total cost incurred with respect to the intermediate material that can be reasonably allocated to that intermediate material.

(12) Indirect material

The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the NAFTA country in which the good is produced.
(c) Automotive goods

(1) Passenger vehicles and light trucks, and their automotive parts

For purposes of calculating the regional value-content under the net cost method for—

(A) a good that is a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, or

(B) a good provided for in the tariff provisions listed in Annex 403.1 of the Agreement, that is subject to a regional value-content requirement and is for use as original equipment in the production of a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31;

the value of nonoriginating materials used by the producer in the production of the good shall be the sum of the values of all non-originating materials, determined in accordance with subsection (b)(9) of this section at the time the nonoriginating materials are received by the first person in the territory of a NAFTA country who takes title to them, that are imported from outside the territories of the NAFTA countries under the tariff provisions listed in Annex 403.1 of the Agreement, and are used in the production of the good or that are used in the production of any material used in the production of the good.

(2) Other vehicles and their automotive parts

For purposes of calculating the regional value-content under the net cost method for a good that is a motor vehicle provided for in heading 8701, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, a motor vehicle for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00, or a component identified in Annex 403.2 of the Agreement for use as original equipment in the production of the motor vehicle, the value of nonoriginating materials used by the producer in the production of the good shall be the sum of—

(A) for each material used by the producer listed in Annex 403.2 of the Agreement, whether or not produced by the producer, at the choice of the producer and determined in accordance with subsection (b) of this section, either—

(i) the value of such material that is nonoriginating, or

(ii) the value of nonoriginating materials used in the production of such material; and

(B) the value of any other nonoriginating material used by the producer that is not listed in Annex 403.2 of the Agreement determined in accordance with subsection (b) of this section.

(3) Averaging permitted

(A) In general

For purposes of calculating the regional value-content of a motor vehicle described in paragraph (1) or (2), the producer may average its calculation over its fiscal year, using any of the categories described in subparagraph (B), on the basis of either all motor vehicles in the category or on the basis of only the motor vehicles in the category that are exported to the territory of one or more of the other NAFTA countries.

(B) Category described

A category is described in this subparagraph if it is—

(i) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a NAFTA country;

(ii) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;

(iii) the same model line of motor vehicles produced in the territory of a NAFTA country; or

(iv) if applicable, the basis set out in Annex 403.3 of the Agreement.

(4) Annex 403.1 and Annex 403.2

For purposes of calculating the regional value-content for any or all goods provided for in a tariff provision listed in Annex 403.1 of the Agreement, or a component or material identified in Annex 403.2 of the Agreement, produced in the same plant, the producer of the good may—

(A) average its calculation—

(i) over the fiscal year of the motor vehicle producer to whom the good is sold;

(ii) over any quarter or month; or

(iii) over its fiscal year, if the good is sold as an aftermarket part;

(B) calculate the average referred to in subparagraph (A) separately for any or all goods sold to one or more motor vehicle producers; or

(C) with respect to any calculation under this paragraph, make a separate calculation for goods that are exported to the territory of one or more NAFTA countries.

(5) Phase-in of regional value-content requirement

Notwithstanding Annex 401 of the Agreement, and except as provided in paragraph (6), the regional value-content requirement shall be—

(A) for a producer’s fiscal year beginning on the day closest to January 1, 1998, and thereafter, 56 percent calculated under the net cost method, and for a producer’s fiscal year beginning on the day closest to January 1, 2002, and thereafter, 62.5 percent calculated under the net cost method, for—

(i) a good that is a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, and

(ii) a good provided for in heading 8407 or 8408, or subheading 8407.40, that is for use in a motor vehicle identified in clause (i); and

(B) for a producer’s fiscal year beginning on the day closest to January 1, 1998, and
thereafter, 55 percent calculated under the net cost method, and for a producer’s fiscal year beginning on the day closest to January 1, 2002, and thereafter, 60 percent calculated under the net cost method, for—

(i) a good that is a motor vehicle provided for in heading 8701, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or a motor vehicle for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00;

(ii) a good provided for in heading 8407 or 8408, or subheading 8708.40 that is for use in a motor vehicle identified in clause (i); and

(iii) except for a good identified in subparagraph (A)(ii) or a good provided for in subheadings 8462.10 through 8462.90, or subheading 8483.20 or 8483.30, a good identified in Annex 403.1 of the Agreement that is subject to a regional value-content requirement and is for use in a motor vehicle identified in subparagraph (A)(i) or (B)(i).

(6) New and refitted plants

The regional value-content requirement for a motor vehicle identified in paragraph (1) or (2) shall be—

(A) 50 percent for 5 years after the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, if—

(i) it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in paragraph (2), size category and underbody, not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries;

(ii) the plant consists of a new building in which the motor vehicle is assembled; and

(iii) the plant contains substantially all new machinery that is used in the assembly of the motor vehicle; or

(B) 50 percent for 2 years after the date on which the first motor vehicle prototype is produced at a plant following a refit, if it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in paragraph (2), size category and underbody, different from that assembled by the motor vehicle assembler in the plant before the refit.

(7) Election for certain vehicles from Canada

In the case of goods provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, exported from Canada directly to the United States, and entered on or after January 1, 1989, and before the date of entry into force of the Agreement between the United States and Canada, an importer may elect to use the rules of origin set out in this section in lieu of the rules of origin contained in section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) and may elect to use the method for calculating the value of non-originating materials established in article 403(2) of the Agreement in lieu of the method established in article 403(1) of the Agreement for purposes of determining eligibility for preferential duty treatment under the United States-Canada Free-Trade Agreement. Any election under this paragraph shall be made in writing to the Customs Service not later than the date that is 180 days after the date of entry into force of the Agreement between the United States and Canada. Any such election may be made only if the liquidation of such entry has not become final. For purposes of averaging the calculation of regional value-content for the goods covered by such entry, where the producer’s 1989–1990 fiscal year began after January 1, 1989, the producer may include the period between January 1, 1989, and the beginning of its first fiscal year after January 1, 1989, as part of fiscal year 1989–1990.

(d) Accumulation

(1) Determination of originating good

For purposes of determining whether a good is an originating good, the production of the good in the territory of one or more of the NAFTA countries by one or more producers shall, at the choice of the exporter or producer of the good, be considered to have been performed in the territory of any of the NAFTA countries by that exporter or producer, if—

(A) all nonoriginating materials used in the production of the good undergo an applicable tariff classification change set out in Annex 401 of the Agreement;

(B) the good satisfies any applicable regional value-content requirement; and

(C) the good satisfies all other applicable requirements of this section.

The requirements of subparagraphs (A) and (B) must be satisfied entirely in the territory of one or more of the NAFTA countries.

(2) Treatment as single producer

For purposes of subsection (b)(10) of this section, the production of a producer that chooses to accumulate its production with that of other producers under paragraph (1) shall be treated as the production of a single producer.

(e) De minimis amounts of nonoriginating materials

(1) In general

Except as provided in paragraphs (3), (4), (5), and (6), a good shall be considered to be an originating good if—

(A) the value of all nonoriginating materials used in the production of the good that do not undergo an applicable change in tariff classification (set out in Annex 401 of the Agreement) is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis, or

(B) where the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all such nonoriginating materials is not more than 7 percent of the total cost of the good, provided that the good satisfies all other applicable requirements of this section and, if the good is subject to a regional value-content requirement, the value of such nonoriginating materials is taken into account in calculating the regional value-content of the good.
(2) Goods not subject to regional value-content requirement

A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy such requirement if—

(A)(i) the value of all nonoriginating materials used in the production of the good is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis; or

(ii) where the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all nonoriginating materials is not more than 7 percent of the total cost of the good; and

(B) the good satisfies all other applicable requirements of this section.

(3) Dairy products, etc.

Paragraph (1) does not apply to—

(A) a nonoriginating material provided for in chapter 4 of the HTS or a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80 that is used in the production of a good provided for in chapter 4 of the HTS;

(B) a nonoriginating material provided for in chapter 4 of the HTS or a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80 that is used in the production of—

(i) preparations for infants containing over 10 percent by weight of milk solids provided for in subheading 1901.10.00;

(ii) mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20.00;

(iii) a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80;

(iv) a good provided for in heading 2009 that is used in the production of instant coffee, not flavored, provided for in subheading 2101.10.20;

(E) a nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in headings 1501 through 1508, or heading 1512, 1514, or 1515;

(F) a nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in headings 1801 through 1703;

(G) a nonoriginating material provided for in chapter 17 of the HTS or heading 1805 that is used in the production of a good provided for in subheading 1806.10;

(H) a nonoriginating material provided for in headings 2203 through 2208 that is used in the production of a good provided for in headings 2207 through 2208;

(I) a nonoriginating material used in the production of—

(i) a good provided for in subheading 7321.11.30;

(ii) a good provided for in subheading 8415.10, subheadings 8415.81 through 8415.83, subheadings 8418.10 through 8418.21, subheadings 8418.29 through 8418.40, subheadings 8421.12 or 8422.11, subheadings 8450.11 through 8450.20, or subheadings 8451.21 through 8451.29;

(iii) trash compactors provided for in subheading 8479.89.60; or

(iv) a good provided for in subheading 8516.60.40; and

(J) a printed circuit assembly that is a nonoriginating material used in the production of a good where the applicable change in tariff classification for the good, as set out in Annex A of the Agreement, places restrictions on the use of such nonoriginating material.

(4) Certain fruit juices

Paragraph (1) does not apply to a nonoriginating single juice ingredient provided for in heading 2009 that is used in the production of—

(A) a good provided for in subheading 2009.90, or concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins, provided for in subheading 2106.90.19; or

(B) mixtures of fruit or vegetable juices, fortified with minerals or vitamins, provided for in subheading 2202.90.39.

(5) Goods provided for in chapters 1 through 27 of the HTS

Paragraph (1) does not apply to a nonoriginating material used in the production of a good provided for in chapters 1 through 27 of the HTS unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(6) Goods provided for in chapters 50 through 63 of the HTS

A good provided for in chapters 50 through 63 of the HTS, that does not originate because certain fibers or yarns used in the production of the component of the good that determines
§ 3332

(1) In general

Except as provided in paragraph (2), accessories, spare parts, or tools delivered with the good that form part of the good’s standard accessories, spare parts, or tools shall—

(A) be considered as originating goods if the good is an originating good; and

(B) be disregarded in determining whether all the nonoriginating goods under the good applicable change in tariff classification set out in Annex 401 of the Agreement.

(2) Conditions

Paragraph (1) shall apply only if—

(A) the accessories, spare parts, or tools are not invoiced separately from the good;

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

(C) in any case in which the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools are taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(h) Indirect materials

An indirect material shall be considered to be an originating material without regard to where it is produced.

(i) Packaging materials and containers for retail sale

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement. If the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(j) Packing materials and containers for shipment

Packaging materials and containers in which a good is packed for shipment shall be disregarded—

(1) in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement; and

(2) in determining whether the good satisfies a regional value-content requirement.

(k) Transshipment

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of subsection (a) of this section if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the NAFTA countries, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a NAFTA country.

(l) Nonqualifying operations

A good shall not be considered to be an originating good merely by reason of—

(1) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(2) any production or pricing practice with respect to which it may be demonstrated, by a preponderance of evidence, that the object was to circumvent this section.

(m) Interpretation and application

For purposes of this section:

(1) The basis for any tariff classification is the HTS.

(2) Except as otherwise expressly provided, whenever in this section there is a reference to a heading or subheading such reference shall be a reference to a heading or subheading of the HTS.

(3) In applying subsection (a)(4) of this section, the determination of whether a heading or subheading under the HTS provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading, the rules of interpretation, or notes of the HTS.

(4) In applying the Customs Valuation Code—

(A) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions;

(B) the provisions of this section shall take precedence over the Customs Valuation Code to the extent of any difference; and

(C) the definitions in subsection (p) of this section shall take precedence over the definitions in the Customs Valuation Code to the extent of any difference.
(5) All costs referred to in this section shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the NAFTA country in which the good is produced.

(n) Origin of automatic data processing goods

Notwithstanding any other provision of this section, when the NAFTA countries apply the rate of duty described in paragraph 1 of section A of Annex 308.1 of the Agreement to a good provided for under the tariff provisions set out in Table 308.1.1 of such Annex, the good shall, upon importation from a NAFTA country, be deemed to originate in the territory of a NAFTA country for purposes of this section.

(o) Special rule for certain agricultural products

Notwithstanding any other provision of this section, for purposes of applying a rate of duty to a good provided for in—

(1) heading 1202 that is exported from the territory of Mexico, if the good is not wholly obtained in the territory of Mexico;

(2) subheading 2006.11 that is exported from the territory of Mexico, if any material provided for in heading 1202 used in the production of that good is not wholly obtained in the territory of Mexico, or

(3) subheading 1906.10.42 or 2106.90.12 that is exported from the territory of Mexico, if any material provided for in subheading 1701.99 used in the production of that good is not a qualifying good,

such good shall be treated as a nonoriginating good and, for purposes of this subsection, the terms “qualifying good” and “wholly obtained in the territory of” have the meaning given such terms in paragraph 26 of section A of Annex 703.2 of the Agreement.

(p) Definitions

For purposes of this section—

(1) Class of motor vehicles

The term “class of motor vehicles” means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles designed for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00.

(B) Motor vehicles provided for in subheading 8701.10, or subheadings 8701.30 through 8701.90.

(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or motor vehicles provided for in subheading 8704.21 or 8704.31.

(D) Motor vehicles provided for in subheadings 8705.21 through 8705.90.

(2) Customs Valuation Code

The term “Customs Valuation Code” means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, including its interpretative notes.

(3) F.O.B.

The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(4) Fungible goods and fungible materials

The terms “fungible goods” and “fungible materials” mean goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.

(5) Generally Accepted Accounting Principles

The term “Generally Accepted Accounting Principles” means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information, and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices, or procedures.

(6) Goods wholly obtained or produced entirely in the territory of one or more of the NAFTA countries

The term “goods wholly obtained or produced entirely in the territory of one or more of the NAFTA countries” means—

(A) mineral goods extracted in the territory of one or more of the NAFTA countries;

(B) vegetable goods harvested in the territory of one or more of the NAFTA countries;

(C) live animals born and raised in the territory of one or more of the NAFTA countries;

(D) goods obtained from hunting, trapping, or fishing in the territory of one or more of the NAFTA countries;

(E) goods (such as fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a NAFTA country and flying its flag;

(F) goods produced on board factory ships from the goods referred to in subparagraph (E), if such factory ships are registered or recorded with that NAFTA country and flying its flag;

(G) goods taken by a NAFTA country or a person of a NAFTA country from the seabed or beneath the seabed outside territorial waters, provided that a NAFTA country has rights to exploit such seabed;

(H) goods taken from outer space, if the goods are obtained by a NAFTA country or a person of a NAFTA country and not processed in a country other than a NAFTA country;

(I) waste and scrap derived from—

(i) production in the territory of one or more of the NAFTA countries; or

(ii) used goods collected in the territory of one or more of the NAFTA countries, if such goods are fit only for the recovery of raw materials; and

(J) goods produced in the territory of one or more of the NAFTA countries exclusively from goods referred to in subparagraphs (A) through (I), or from their derivatives, at any stage of production.

(7) Identical or similar goods

The term “identical or similar goods” means “identical goods” and “similar goods”, respec-
Indirect material
(A) The term “indirect material” means a good—
(i) used in the production, testing, or inspection of a good but not physically incorporated into the good, or
(ii) used in the maintenance of buildings or the operation of equipment associated with the production of a good,
in the territory of one or more of the NAFTA countries.
(B) When used for a purpose described in subparagraph (A), the following materials are among those considered to be indirect materials:
(i) Fuel and energy.
(ii) Tools, dies, and molds.
(iii) Spare parts and materials used in the maintenance of equipment and buildings.
(iv) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings.
(v) Gloves, glasses, footwear, clothing, safety equipment, and supplies.
(vi) Equipment, devices, and supplies used for testing or inspecting the goods.
(vii) Catalysts and solvents.
(viii) Any other goods that are not incorporated into the good, if the use of such goods in the production of the good can reasonably be demonstrated to be a part of that production.

Intermediate material
The term “intermediate material” means a material that is self-produced, used in the production of a good, and designated pursuant to subsection (b)(10) of this section.

Marque
The term “marque” means the trade name used by a separate marketing division of a motor vehicle assembler.

Material
The term “material” means a good that is used in the production of another good and includes a part or an ingredient.

Model line
The term “model line” means a group of motor vehicles having the same platform or model name.

Motor vehicle assembler
The term “motor vehicle assembler” means a producer of motor vehicles and any related persons or joint ventures in which the producer participates.

NAFTA country
The term “NAFTA country” means the United States, Canada or Mexico for such time as the Agreement is in force with respect to Canada or Mexico, and the United States applies the Agreement to Canada or Mexico.

New building
The term “new building” means a new construction, including at least the pouring or construction of new foundation and floor, the erection of a new structure and roof, and installation of new plumbing, electrical, and other utilities to house a complete vehicle assembly process.

Net cost
The term “net cost” means total cost less sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost.

Net cost of a good
The term “net cost of a good” means the net cost that can be reasonably allocated to a good using one of the methods set out in subsection (b)(8) of this section.

Nonallowable interest costs
The term “nonallowable interest costs” means interest costs incurred by a producer as a result of an interest rate that exceeds the applicable Federal Government interest rate for comparable maturities by more than 700 basis points, determined pursuant to regulations implementing this section.

Nonoriginating good; nonoriginating material
The term “nonoriginating good” or “nonoriginating material” means a good or material that does not qualify as an originating good or material under the rules of origin set out in this section.

Originating
The term “originating” means qualifying under the rules of origin set out in this section.

Producer
The term “producer” means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles a good.

Production
The term “production” means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, or assembling a good.

Reasonably allocate
The term “reasonably allocate” means to apportion in a manner appropriate to the circumstances.

Refit
The term “refit” means a plant closure, for purposes of plant conversion or retooling, that lasts at least 3 months.

Related persons
The term “related persons” means persons specified in any of the following subparagraphs:
(A) Persons who are officers or directors of one another’s businesses.
(B) Persons who are legally recognized partners in business.
(C) Persons who are employer and employee.
(D) Persons one of whom owns, controls, or holds 25 percent or more of the outstanding voting stock or shares of the other.
(E) Persons if 25 percent or more of the outstanding voting stock or shares of each of them is directly or indirectly owned, controlled, or held by a third person.

(F) Persons one of whom is directly or indirectly controlled by the other.

(G) Persons who are directly or indirectly controlled by a third person.

(H) Persons who are members of the same family.

For purposes of this paragraph, the term “members of the same family” means natural or adoptive children, brothers, sisters, parents, grandparents, or spouses.

(26) Royalties

The term “royalties” means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula, or process. It does not include work, patent, trademark, design, model, plan, copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula, or process.

(27) Sales promotion, marketing, and after-sales service costs

The term “sales promotion, marketing, and after-sales service costs” means the costs related to sales promotion, marketing, and after-sales service office and distribution centers. The term “self-produced material” means a material that is produced by the producer of a good and used in the production of that good.

(28) Self-produced material

The term “self-produced material” means a material that is produced by the producer of a good and used in the production of that good.

(29) Shipping and packing costs

The term “shipping and packing costs” means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, but does not include the costs of preparing and packaging the good for retail sale.

(30) Size category

The term “size category” means with respect to a motor vehicle identified in subsection (c)(1)(A) of this section—

(A) 85 cubic feet or less of passenger and luggage interior volume;

(B) more than 85 cubic feet, but less than 100 cubic feet, of passenger and luggage interior volume;

(C) at least 100 cubic feet, but not more than 110 cubic feet, of passenger and luggage interior volume;

(D) more than 110 cubic feet, but less than 120 cubic feet, of passenger and luggage interior volume; and

(E) 120 cubic feet or more of passenger and luggage interior volume.

(31) Territory

The term “territory” means a territory described in Annex 201.1 of the Agreement.

(32) Total cost

The term “total cost” means all product costs, period costs, and other costs incurred in the territory of one or more of the NAFTA countries.

(33) Transaction value

Except as provided in subsection (c)(1) or (c)(2)(A) of this section, the term “transaction value” means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3, and 4 of Article 8 of the Cus-


Effective Date
Section effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as a note under section 3331 of this title.

Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

North American Free Trade Agreement: Entry Into Force

§ 3333. Drawback
(a) “Good subject to NAFTA drawback” defined
For purposes of this Act and the amendments made by subsection (b) of this section, the term “good subject to NAFTA drawback” means any imported good other than the following:

1 Good entered under bond for transportation and exportation to a NAFTA country.

2 Good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph—

(A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in the same condition, shall not be considered to change the condition of the good, and

(B) except for a good referred to in paragraph 12 of section A of Annex 703.2 of the Agreement that is exported to Mexico, if a good described in the first sentence of this paragraph is commingled with fungible goods and exported in the same condition, the origin of the good may be determined on the basis of the inventory methods provided for in the regulations implementing this title.

See References in Text note below.
(3) A good—
   (A) that is—
      (i) deemed to be exported from the United States,
      (ii) used as a material in the production of another good that is deemed to be exported to a NAFTA country, or
      (iii) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is deemed to be exported to a NAFTA country, and
   (B) that is delivered—
      (i) to a duty-free shop,
      (ii) for ship’s stores or supplies for ships or aircraft, or
      (iii) for use in a project undertaken jointly by the United States and a NAFTA country and destined to become the property of the United States.

(4) A good exported to a NAFTA country for which a refund of customs duties is granted by reason of—
   (A) the failure of the good to conform to sample or specification, or
   (B) the shipment of the good without the consent of the consignee.

(5) A good that qualifies under the rules of origin set out in section 3332 of this title that is—
   (A) exported to a NAFTA country,
   (B) used as a material in the production of another good that is exported to a NAFTA country, or
   (C) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is exported to a NAFTA country.

(6) A good provided for in subheading 1701.11.02 of the HTS that is—
   (A) used as a material, or
   (B) substituted for by a good of the same kind and quality that is used as a material, in the production of a good provided for in existing Canadian tariff item 1701.99.00 or existing Mexican tariff item 1701.99.99 (relating to refined sugar).

(7) A citrus product that is exported to Canada.

(8) A good used as a material, or substituted for by a good of the same kind and quality that is used as a material, in the production of—
   (A) apparel, or
   (B) a good provided for in subheading 6307.90.99 (insofar as it relates to furniture moving pads), 5811.00.20, or 5811.00.30 of the HTS,

that is exported to Canada and that is subject to Canada’s most-favored-nation rate of duty upon importation into Canada.

Where in paragraph (6) a good referred to by an item is described in parentheses following the item, the description is provided for purposes of reference only.

(b), (c) Omitted

(d) Elimination of drawback for fees under section 624 of title 7

Notwithstanding any other provision of law, the Secretary of the Treasury may not, on condition of export, refund or reduce a fee applied pursuant to section 624 of title 7 with respect to goods included under subsection (a) of this section that are exported to—
   (1) Canada after December 31, 1995, for so long as it is a NAFTA country; or
   (2) Mexico after December 31, 2000, for so long as it is a NAFTA country.

(e) Inapplicability to countervailing and antidumping duties

Nothing in this section or the amendments made by it shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.


References in Text


The amendments made by subsection (b) of this section, referred to in subsec. (a), are the amendments made by section 203(b) of Pub. L. 103–182 to sections 81c, 1311 to 1313, and 1562 of this title.

This title, referred to in subsec. (a)(2)(B), is title II of Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057, which enacted this subchapter, amended sections 58c, 81c, 1304, 1311 to 1313, 1358, 1359, 1359a, 1511, 1520, 1562, 1592, and 1628 of this title, and enacted provisions set out as notes under sections 58c, 1304, and 3331 of this title.

This section or the amendments made by it, referred to in subsec. (e), is section 203 of Pub. L. 103–182, which enacted this section and amended sections 81c, 1311 to 1313, and 1562 of this title.

Codification

Section is comprised of section 203 of Pub. L. 103–182.

Subsec. (b) of section 203 of Pub. L. 103–182 amended sections 81c, 1311 to 1313, and 1562 of this title. Subsec. (c) of section 203 of Pub. L. 103–182 amended section 1313 of this title.

Effective Date

Section effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as a note under section 3331 of this title.

§ 3334. Prohibition on drawback for television picture tubes

Notwithstanding any other provision of law, no customs duties may be refunded, waived, or reduced on color cathode-ray television picture tubes, including video monitor cathode-ray tubes (providing for in subheading 8540.11.00 of the HTS), that are nonoriginating goods under section 3332(p)(19) of this title and are—
   (A) exported to a NAFTA country;
   (B) used as a material in the production of other goods that are exported to a NAFTA country; or
§ 3335. Monitoring of television and picture tube imports

(a) Monitoring

Beginning on the date the Agreement enters into force with respect to the United States, the United States Customs Service shall, for a period of 5 years, monitor imports into the United States of articles described in subheading 5528.10 of the HTS from NAFTA countries and shall take action to exercise all rights of the United States under chapter 5 of the Agreement with respect to such imports. The United States Customs Service shall take appropriate action under chapter 5 of the Agreement with respect to such imports, including verifications to ensure that the rules of origin under the Agreement are fully complied with and that the duty drawback obligations contained in article 303 and Annex 303.8 of the Agreement are fully implemented and duties are correctly assessed.

(b) Report to Trade Representative

The United States Customs Service shall make the results of the monitoring and verification required by subsection (a) of this section available to the President and the Trade Representative. If, based on such information, the President has reason to believe that articles described in subheading 5540.11 of the HTS, intended for ultimate consumption in the United States, are entering the territory of a NAFTA country inconsistent with the provisions of the Agreement, or have been undervalued in a manner that may raise concerns under United States trade laws, the President shall promptly take such action as may be appropriate under all relevant provisions of the Agreement, including article 317 and chapter 20, and under applicable United States trade statutes.

Effective Date

Section effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as a note under section 3331 of this title.

§ 3351. Definitions

As used in this subpart:

(1) Canadian article

The term “Canadian article” means an article that—

(A) is an originating good under chapter 4 of the Agreement; and

(B) qualifies under the Agreement to be marked as a good of Canada.

(2) Mexican article

The term “Mexican article” means an article that—

(A) is an originating good under chapter 4 of the Agreement; and

(B) qualifies under the Agreement to be marked as a good of Mexico.

Effective Date

Section 318 of title III of Pub. L. 103–182 provided that: “Except as provided in section 308(b) [enacting provisions set out as a note under section 2112 of this title], the provisions of this subpart [subtitle A (§§ 301–318) of title III of Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2100, which enacted this subpart and provisions set out as a note under section 2112 of this title, and amended provisions set out as a note under section 2112 of this title] take effect on the date the Agreement enters into force with respect to the United States [Jan. 1, 1994].”

§ 3352. Commencing of action for relief

(a) Filing of petition

(1) In general

A petition requesting action under this subpart for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the International Trade Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The International Trade Commission shall transmit a copy of any petition filed under this subsection to the Trade Representative.

(2) Provisional relief

An entity filing a petition under this subsection may request that provisional relief be
provided as if the petition had been filed under section 2252(a) of this title.

(3) Critical circumstances

An allegation that critical circumstances exist must be included in the petition or made on or before the 90th day after the date on which the investigation is initiated under subsection (b) of this section.

(b) Investigation and determination

Upon the filing of a petition under subsection (a) of this section, the International Trade Commission, unless subsection (d) of this section applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of—

(1) serious injury; or

(2) except in the case of a Canadian article, a threat of serious injury;

to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) Applicable provisions

The provisions of—

(1) paragraphs (1)(B), (3), and (4) of subsection (b);

(2) subsection (c); and

(3) subsection (d),

of section 2253 of this title apply with respect to any investigation initiated under subsection (b) of this section.

(d) Articles exempt from investigation

No investigation may be initiated under this section with respect to—

(1) any Canadian article or Mexican article if import relief has been provided under this subpart with respect to that article; or

(2) any textile or apparel article set out in Appendix 1.1 of Annex 300–B of the Agreement.


REFERENCES IN TEXT

Paragraphs (3) and (4) of subsection (b) of section 2252 of this title, referred to in subsec. (c)(1), were repealed and a new paragraph (3) was added by Pub. L. 103–465, title III, §301(c), Dec. 8, 1994, 108 Stat. 4932.

§ 3354. Provision of relief

(a) In general

No later than 30 days after the date on which a determination is made under subsection (a) of this section, the President, subject to subsection (b) of this section, shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the International Trade Commission.

(b) Exception

The President is not required to provide import relief under this section if the President de-
§ 3355  TITLE 19—CUSTOMS DUTIES  Page 786
terminates that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) Nature of relief

The import relief (including provisional relief) that the President is authorized to provide under this subpart is as follows:

(1) In the case of imports of a Canadian article—

(A) the suspension of any further reduction provided for under Annex 401.2 of the United States-Canada Free-Trade Agreement in the duty imposed on such article;

(B) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or

(ii) the column 1 general rate of duty imposed on like articles on December 31, 1988; or

(C) in the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or

(2) In the case of imports of a Mexican article—

(A) the suspension of any further reduction provided for under the United States Schedule to Annex 302.2 of the Agreement in the duty imposed on such article;

(B) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or

(ii) the column 1 general rate of duty imposed on like articles on December 31, 1988; or

(C) in the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or

(d) Period of relief

The import relief that the President is authorized to provide under this section may not exceed 3 years, except that, if a Canadian article or Mexican article which is the subject of the action—

(1) is provided for in an item for which the transition period of tariff elimination set out in the United States Schedule to Annex 302.2 of the Agreement is greater than 10 years; and

(2) the President determines that the affected industry has undertaken adjustment and requires an extension of the period of the import relief;

the President, after obtaining the advice of the International Trade Commission, may extend the period of the import relief for not more than 1 year, if the duty applied during the initial period of the relief is substantially reduced at the beginning of the extension period.

(e) Rate on Mexican articles after termination of import relief

When import relief under this subpart is terminated with respect to a Mexican article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which termination occurs shall be the rate that, according to the United States Schedule to Annex 302.2 of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the initiation of the import relief action under section 3332 of this title; and

(2) the tariff treatment for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the rate of duty conforming to the applicable rate set out in the United States Schedule to Annex 302.2; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule to Annex 302.2 for the elimination of the tariff.


NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE


§ 3355. Termination of relief authority

(a) General rule

Except as provided in subsection (b) of this section, no import relief may be provided under this subpart—

(1) in the case of a Canadian article, after December 31, 1998; or

(2) in the case of a Mexican article, after the date that is 10 years after the date on which the Agreement enters into force;

unless the article against which the action is taken is an item for which the transition period for tariff elimination set out in the United States Schedule to Annex 302.2 of the Agreement is greater than 10 years, in which case the period during which relief may be granted shall be the period of staged tariff elimination for that article.

(b) Exception

Import relief may be provided under this subpart in the case of a Canadian article or Mexican article after the date on which such relief would, but for this subsection, terminate under subsection (a) of this section, but only if the Government of Canada or Mexico, as the case may be, consents to such provision.

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE


§ 3356. Compensation authority

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 3354 of this title shall be treated as action taken under chapter 1 of title II of such Act (19 U.S.C. 2251 et seq.).


REFERENCES IN TEXT


§ 3357. Submission of petitions

A petition for import relief may be submitted to the International Trade Commission under—
(1) this subpart;
(2) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.); and
(3) under both this subpart and such chapter 1 at the same time, in which case the International Trade Commission shall consider such petitions jointly.


REFERENCES IN TEXT

The Trade Act of 1974, referred to in pars. (2) and (3), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 1 of title II of the Act is classified generally to part 1 (§2251 et seq.) of subchapter II of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

§ 3358. Price-based snapback for frozen concentrated orange juice

(a) Trigger price determination

(1) In general

The Secretary shall determine—
(A) each period of 5 consecutive business days in which the daily price for frozen concentrated orange juice is less than the trigger price; and
(B) for each period determined under subparagraph (A), the first period occurring thereafter of 5 consecutive business days in which the daily price for frozen concentrated orange juice is greater than the trigger price.

(2) Notice of determinations

The Secretary shall immediately notify the Commissioner of Customs and publish notice in the Federal Register of any determination under paragraph (1), and the date of such publication shall be the determination date for that determination.

(b) Imports of Mexican articles

Whenever after any determination date for a determination under subsection (a)(1)(A) of this section, the quantity of Mexican articles of frozen concentrated orange juice that is entered exceeds—
(1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002; or
(2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007;
the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable limitation in paragraph (1) or (2) is reached and before the determination date for the related determination under subsection (a)(1)(B) of this section shall be the rate of duty specified in subsection (c) of this section.

(c) Rate of duty

The rate of duty specified for purposes of subsection (b) of this section for articles entered on any day is the rate in the HTS that is the lower of—
(1) the column 1 general rate of duty in effect for such articles on July 1, 1991; or
(2) the column 1 general rate of duty in effect on that day.

(d) Definitions

For purposes of this section—
(1) The term ‘‘daily price’’ means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary, for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange.
(2) The term ‘‘business day’’ means a day in which contracts for frozen concentrated orange juice are being traded on the New York Cotton Exchange, or any successor as determined by the Secretary.
(3) The term ‘‘entered’’ means entered or withdrawn from warehouse for consumption, in the customs territory of the United States.
(4) The term ‘‘frozen concentrated orange juice’’ means all products classifiable under subheading 2009.11.00 of the HTS.
(5) The term ‘‘Secretary’’ means the Secretary of Agriculture.
(6) The term ‘‘trigger price’’ means the average daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary, for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.


AMENDMENTS

1996—Subsec. (c)(1), (2). Pub. L. 104–295 substituted ‘‘column 1 general’’ for ‘‘column I-General’’.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Sec-
§ 3371. NAFTA article impact in import relief cases under Trade Act of 1974

(a) In general

If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], the International Trade Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 1330(d) of this title), the International Trade Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether—

(1) imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and

(2) imports of the article from a NAFTA country, considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

(b) Factors

(1) Substantial import share

In determining whether imports from a NAFTA country, considered individually, account for a substantial share of total imports, such imports normally shall not be considered to account for a substantial share of total imports if that country is not among the top 5 suppliers of the article subject to the investigation, measured in terms of import share during the most recent 3-year period.

(2) Application of "contribute importantly" standard

In determining whether imports from a NAFTA country or countries contribute importantly to the serious injury, or threat thereof, the International Trade Commission shall consider such factors as the change in the import share of the NAFTA country or countries, and the level and change in the level of imports of such country or countries.

(c) "Contribute importantly" defined

For purposes of this section and section 3372(a) of this title, the term "contribute importantly" refers to an important cause, but not necessarily the most important cause.


§ 3372. Presidential action regarding NAFTA imports

(a) In general

In determining whether to take action under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.] with respect to imports from a NAFTA country, the President shall determine whether—

(1) imports from such country, considered individually, account for a substantial share of total imports; or

(2) imports from a NAFTA country, considered individually, or in exceptional circumstances imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, found by the International Trade Commission.

(b) Exclusion of NAFTA imports

In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], the President shall exclude from such action imports from a NAFTA country if the President makes a negative determination under subsection (a)(1) or (2) of this section with respect to imports from such country.

(c) Action after exclusion of NAFTA country imports

(1) In general

If the President, under subsection (b) of this section, excludes imports from a NAFTA country or countries from action under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.] but thereafter determines that a surge in imports from that country or countries is undermining the effectiveness of the action—

(A) the President may take appropriate action under such chapter 1 to include those imports in the action; and

(B) any entity that is representative of an industry for which such action is being taken may request the International Trade Commission to conduct an investigation of the surge in such imports.

(2) Investigation

Upon receiving a request under paragraph (1)(B), the International Trade Commission shall conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action. The International Trade Commission shall submit the findings of its investigation to the President no later than 30 days after the request is received by the International Trade Commission.

(3) "Surge" defined

For purposes of this subsection, the term "surge" means a significant increase in imports over the trend for a recent representative base period.
(d) Condition applicable to quantitative restrictions

Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article, with allowance for reasonable growth.


REFERENCES IN TEXT

The Trade Act of 1974, referred to in subsecs. (a) to (c), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 1 of title II of the Act is classified generally to part 1 (§2251 et seq.) of subchapter II of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

SUBPART 3—GENERAL PROVISIONS

§ 3381. Monitoring

For purposes of expediting an investigation concerning provisional relief under this part or section 2252 of this title regarding—

1. fresh or chilled tomatoes provided for in subheading 0702.00.00 of the HTS; and
2. fresh or chilled peppers, other than chili peppers provided for in subheading 0709.60.00 of the HTS;

the International Trade Commission, until January 1, 2009, shall monitor imports of such goods as if proper requests for such monitoring had been made under subsection (d)(1)(C)(i) of section 2252 of this title. At the request of the International Trade Commission, the Secretary of Agriculture and the Commissioner of Customs shall provide to the International Trade Commission information relevant to the monitoring carried out under this section.


REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle A (§§301–318) of title III of Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2100, as enacted, section 2252 of this title, enacted sections set out as notes under sections 2112 and 3351 of this title, and amended provisions set out as a note under section 2112 of this title.

AMENDMENTS


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 3382. Procedures concerning conduct of International Trade Commission investigations

The International Trade Commission shall adopt such procedures and rules and regulations as are necessary to bring its procedures into conformity with chapter 8 of the Agreement.


PART B—AGRICULTURE

§ 3391. Agriculture

(a) Omitted

(b) Section 624 of title 7

(1) In general

The President may, pursuant to article 309 and Annex 703.2 of the Agreement, exempt from any quantitative limitation or fee imposed pursuant to section 624 of title 7 any article which originates in Mexico, if Mexico is a NAFTA country.

(2) Qualification of articles

The determination of whether an article originates in Mexico shall be made in accordance with section 3332 of this title, except that operations performed in, or materials obtained from, any country other than the United States or Mexico shall be treated as if performed in or obtained from a country other than a NAFTA country.

(c) Tariff rate quotas

In implementing the tariff rate quotas set out in the United States Schedule to Annex 302.2 of the Agreement, the President shall take such action as may be necessary to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

(d) Peanuts

(1) Effect of the Agreement

(A) In general

Nothing in the Agreement or this Act reduces or eliminates—

(i) any penalty required under section 1359a(d) of title 7; or
(ii) any requirement under Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts, on peanuts in the domestic market, pursuant to section 1445c–3(f) of title 7.

(B) Omitted

(2) Consultations on imports

It is the sense of Congress that the United States should request consultations in the Working Group on Emergency Action, established in the Understanding Between the Parties to the North American Free Trade Agreement Concerning Chapter Eight—Emergency Action, if imports of peanuts exceed the in-quota quantity under a tariff rate quota set out in the United States Schedule to Annex 302.2 of the Agreement concerning whether—

(A) the increased imports of peanuts constitute a substantial cause of, or contribute

1 See References in Text note below.
(f) End-use certificates

(1) In general

The Secretary of Agriculture (referred to in this subsection as the “Secretary”) shall prescribe, in coordination with the Commissioner of Customs, a program requiring that end-use certificates be included in the documentation covering the entry into, or the withdrawal from a warehouse for consumption in, the customs territory of the United States—

(A) of any wheat that is a product of any foreign country or instrumentality that requires, as of the effective date of this subsection, end-use certificates for imports of wheat that is a product of the United States (referred to in this subsection as “United States-produced wheat”); and

(B) of any barley that is a product of any foreign country or instrumentality that requires, as of the effective date of this subsection, end-use certificates for imports of barley that is a product of the United States (referred to in this subsection as “United States-produced barley”).

(2) Regulations

The Secretary shall prescribe by regulation such requirements regarding the information to be included in end-use certificates as may be necessary and appropriate to carry out this subsection.

(3) Producer protection determination

At any time after the effective date of the requirements established under paragraph (1), the Secretary may, subject to paragraph (5), suspend the requirements when making a determination, after consultation with domestic producers, that the program implemented under this subsection has directly resulted in—

(A) the reduction of income to the United States producers of agricultural commodities; or

(B) the reduction of the competitiveness of United States agricultural commodities in the world export markets.

(4) Suspension of requirements

(A) Wheat

If a foreign country or instrumentality that requires end-use certificates for imports of United States-produced wheat as of the effective date of the requirement under paragraph (1)(A) eliminates the requirement, the Secretary shall suspend the requirement under paragraph (1)(A) beginning 30 calendar days after suspension by the foreign country or instrumentality.

(B) Barley

If a foreign country or instrumentality that requires end-use certificates for imports of United States-produced barley as of the effective date of the requirement under paragraph (1)(B) eliminates the requirement, the Secretary shall suspend the requirement under paragraph (1)(B) beginning 30 calendar days after suspension by the foreign country or instrumentality.

(5) Report to Congress

The Secretary shall not suspend the requirements established under paragraph (1) under circumstances identified in paragraph (3) before the Secretary submits a report to Congress detailing the determination made under paragraph (3) and the reasons for making the determination.

(6) Compliance

It shall be a violation of section 1001 of title 18 for a person to engage in fraud or knowingly violate this subsection or a regulation implementing this subsection.

(7) Effective date

This subsection shall be effective on the date that is 120 days after December 8, 1993.

(g) Omitted

(h) Assistance for affected farmworkers

(1) In general

Subject to paragraph (3), if at any time the Secretary of Agriculture determines that the implementation of the Agreement has caused low-income migrant or seasonal farmworkers to lose income, the Secretary may make available grants, not to exceed $20,000,000 for any
fiscal year, to public agencies or private organizations with tax-exempt status under section 501(c)(3) of title 26, that have experience in providing emergency services to low-income migrant or seasonal farmworkers. Emergency services to be provided with assistance received under this subsection may include such types of assistance as the Secretary determines to be necessary and appropriate.

(2) “Low-income migrant or seasonal farmworker” defined

As used in this subsection, the term “low-income migrant or seasonal farmworker” shall have the same meaning as provided in section 5177a(b) of title 42.

(3) Authorization of appropriations

There are authorized to be appropriated $20,000,000 for each fiscal year to carry out this subsection.

(i) Biennial report on effects of Agreement on American agriculture

(1) In general

The Secretary of Agriculture shall prepare a biennial report on the effects of the Agreement on United States producers of agricultural commodities and on rural communities located in the United States.

(2) Contents of report

The report required under this subsection shall include—

(A) an assessment of the effects of implementing the Agreement on the various agricultural commodities affected by the Agreement, on a commodity-by-commodity basis;

(B) an assessment of the effects of implementing the Agreement on investments made in United States agriculture and on rural communities located in the United States;

(C) an assessment of the effects of implementing the Agreement on employment in United States agriculture, including any gains or losses of jobs in businesses directly or indirectly related to United States agriculture; and

(D) such other information and data as the Secretary determines appropriate.

(3) Submission of report

The Secretary shall furnish the report required under this subsection to the Committee on Agriculture, Nutrition, and Forestry of the Senate and to the Committee on Agriculture, House of Representatives. The report shall be due every 2 years and shall be submitted by March 1 of the year in which the report is due. The first report shall be due by March 1, 1997, and the final report shall be due by March 1, 2011.


Codification


Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2331(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PART C—TEMPORARY ENTRY OF BUSINESS PERSONS

§ 3401. Nonimmigrant traders and investors

Upon a basis of reciprocity secured by the Agreement, an alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in Section B of Annex 1603 of the Agreement, but only if any such purpose shall have been so specified in such Annex on the date of entry into force of the Agreement. For purposes of this section, the term “citizen of Mexico” means “citizen” as defined in Annex 1608 of the Agreement.


References in Text

The Immigration and Nationality Act, referred to in text, is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Effective Date

Section 342 of title III of Pub. L. 103–182 provided that: “The provisions of this subtitle [subtitle D (§§ 341, 342) of title III of Pub. L. 103–182, enacting this section and amending section 1184 of Title 8, Aliens and Nationality] take effect on the date the Agreement enters into force with respect to the United States [Jan. 1, 1994].”

North American Free Trade Agreement: Entry Into Force

PART D—STANDARDS

SUBPART 1—STANDARDS AND MEASURES

§ 3411. Transportation

No regulation issued by the Secretary of Transportation implementing a recommendation of the Land Transportation Standards Subcommittee established under article 913(5)(a)(1) of the Agreement may take effect before the date 90 days after the date of issuance. (Pub. L. 103–182, title III, §352, Dec. 8, 1993, 107 Stat. 2122.)

SUBPART 2—AGRICULTURAL STANDARDS

§ 3421. Agricultural standards

(a) to (f) Omitted

(g) Peanut butter and peanut paste

(1) In general

Except as provided in paragraph (2), all peanut butter and peanut paste in the United States domestic market shall be processed from peanuts that meet the quality standards established for peanuts under Marketing Agreement No. 146.

(2) Imports

Peanut butter and peanut paste imported into the United States shall comply with paragraph (1) or with sanitary measures that achieve at least the same level of sanitary protection.

(h) Animal health biocontainment facility

(1) Grant for construction

The Secretary of Agriculture shall make a grant to a land grant college or university described in paragraph (2) for the construction of a facility at the college or university for the conduct of research in animal health, disease-transmitting insects, and toxic chemicals that requires the use of biocontainment facilities and equipment. The facility to be constructed with the grant shall be known as the “Southwest Regional Animal Health Biocontainment Facility”.

(2) Grant recipient described

To be eligible for the grant under paragraph (1), a land grant college or university must be—

(A) located in a State adjacent to the international border with Mexico; and

(B) determined by the Secretary of Agriculture to have an established program in animal health research and education and to have a collaborative relationship with one or more colleges of veterinary medicine or universities located in Mexico.

(3) Activities of the facility

The facility constructed using the grant made under paragraph (1) shall be used for conducting the following activities:

(A) The biocontainment facility shall support research that will improve the scientific basis for regulatory activities, decreasing the need for new regulatory programs and enhancing international trade.

(B) The biocontainment facility shall support research that will improve the scientific basis for regulatory activities, decreasing the need for new regulatory programs and enhancing international trade.

(C) The biocontainment facility shall support research that will improve the scientific basis for regulatory activities, decreasing the need for new regulatory programs and enhancing international trade.

(D) The biocontainment facility shall support research that will improve the scientific basis for regulatory activities, decreasing the need for new regulatory programs and enhancing international trade.

(4) Authorization of appropriations

There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this subsection.

(i) Reports on inspection of imported meat, poultry, other foods, animals, and plants

(1) Definitions

As used in this subsection:

(A) Imports

The term “imports” means any meat, poultry, other food, animal, or plant that is imported into the United States in commercially significant quantities.

(B) Secretary

The term “Secretary” means the Secretary of Agriculture.

(2) In general

In consultation with representatives of other appropriate agencies, the Secretary shall prepare an annual report on the impact of the Agreement on the inspection of imports.

(3) Contents of reports

The report required under this subsection shall, to the maximum extent practicable, include a description of—

(A) the quantity or, with respect to the Customs Service, the number of shipments, of imports from a NAFTA country that are inspected at the borders of the United States with Canada and Mexico during the prior year;

(B) any change in the level or types of inspections of imports in each NAFTA country during the prior year;

(C) in any case in which the Secretary has determined that the inspection system of another NAFTA country is equivalent to the inspection system of the United States, the reasons supporting the determination of the Secretary;

(D) the incidence of violations of inspection requirements by imports from NAFTA countries during the prior year—

(i) at the borders of the United States with Mexico or Canada; or

(ii) at the last point of inspection in a NAFTA country prior to shipment to the United States if the agency accepts inspection in that country;
(E) the incidence of violations of inspection requirements of imports to the United States from Mexico or Canada prior to the implementation of the Agreement;

(F) any additional cost associated with maintaining an adequate inspection system of imports as a result of the implementation of the Agreement;

(G) any incidence of transshipment of imports—

(1) that originate in a country other than a NAFTA country;

(2) that are shipped to the United States through a NAFTA country during the prior year; and

(3) that are incorrectly represented by the importer to qualify for preferential treatment under the Agreement;

(H) the quantity and results of any monitoring by the United States of equivalent inspection systems of imports in other NAFTA countries during the prior year;

(I) the use by other NAFTA countries of sanitary and phytosanitary measures (as defined in the Agreement) to limit exports of United States meat, poultry, other foods, animals, and plants to the countries during the prior year; and

(J) any other information the Secretary determines to be appropriate.

(4) Frequency of reports

The Secretary shall submit—

(A) the initial report required under this subsection not later than January 31, 1995; and

(B) an annual report required under this subsection not later than 1 year after the date of the submission of the initial report and the end of each 1-year period thereafter through calendar year 2004.

(5) Report to Congress

The Secretary shall prepare and submit the report required under this subsection to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.


Codification

Section is comprised of section 361 of Pub. L. 103–182 are classified as follows: subsec. (a) amended section 1582 of Title 7, Agriculture; subsec. (b) amended section 104 of Title 21, Food and Drugs; subsec. (c) amended section 105 of Title 21; subsec. (d) amended section 1306 of this title and section 281 of Title 7; subsec. (e) amended section 466 of Title 21; and subsec. (f) amended section 620 of Title 21.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 22331, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

North American Free Trade Agreement: Entry into Force


Subchapter IV—Dispute Settlement in Antidumping and Countervailing Duty Cases

Part A—Organizational, Administrative, and Procedural Provisions Regarding Implementation of Chapter 19 of Agreement

§ 3431. References in part

Any reference in this part to an Annex, chapter, or article shall be considered to be a reference to the respective Annex, chapter, or article of the Agreement.


Effective Date

Section 416 of title IV of Pub. L. 103–182 provided that: “The provisions of this title [enacting this subchapter, amending sections 1502, 1514, 1516a, 1677, and 1677f of this title and sections 1581, 1584, 2201, and 2643 of Title 28, Judiciary and Judicial Procedure, and amending provisions set out as a note under section 2312 of this title] and the amendments made by this title take effect on the date the Agreement enters into force with respect to the United States [Jan. 1, 1994], but shall not apply—

“(1) to any final determination described in paragraph (1)B(i), (2)B(ii), (ii), or (iii), of section 516A(a) of the Tariff Act of 1930 (19 U.S.C. 1516a(a)(1)(B), (2)B(i), (ii), (iii)] notice of which is published in the Federal Register before such date, or to a determination described in paragraph (2)B(iii), of section 516A(a) of such Act notice of which is received by the Government of Canada or Mexico before such date; or

“(2) to any binational panel review under the United States-Canada Free-Trade Agreement, or any extraordinary challenge arising out of any such review, that was commenced before such date.”

§ 3432. Organizational and administrative provisions

(a) Criteria for selection of individuals to serve on panels and committees

(1) In general

The selection of individuals under this section for—

(A) placement on lists prepared by the interagency group under subsection (c)(2)(B)(i) and (ii) of this section;

(B) placement on preliminary candidate lists under subsection (c)(3)(A) of this section;

(C) placement on final candidate lists under subsection (c)(4)(A) of this section;

(D) placement by the Trade Representative on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; and

(E) appointment by the Trade Representative for service on the panels and committees convened under chapter 19;

shall be made on the basis of the criteria provided in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 and shall be made without regard to political affiliation.
(2) Additional criteria for roster placements and appointments under paragraph 1 of Annex 1901.2

Rosters described in paragraph 1 of Annex 1901.2 shall include, to the fullest extent practicable, judges and former judges who meet the criteria referred to in paragraph (1). The Trade Representative shall, subject to subsection (b) of this section, appoint judges to binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, where such judges serve and are available to serve and such service is authorized by the chief judge of the court on which they sit.

(b) Selection of certain judges to serve on panels and committees

(1) Applicability

This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, who are judges of courts created under article III of the Constitution of the United States.

(2) Consultation with chief judges

The Trade Representative shall consult, from time to time, with the chief judges of the Federal judicial circuits regarding the interest in, and availability for, participation in binational panels, extraordinary challenge committees, and special committees, of judges within their respective circuits. If the chief judge of a Federal judicial circuit determines that it is appropriate for one or more judges within that circuit to be included on a roster described in subsection (a)(1)(D) of this section, the chief judge shall identify all such judges for the Chief Justice of the United States who may, upon his or her approval, submit the names of such judges to the Trade Representative. The Trade Representative shall include the names of such judges on the roster.

(3) Submission of lists to Congress

The Trade Representative shall submit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on Finance and the Committee on the Judiciary of the Senate a list of all judges included on a roster under paragraph (2). Such list shall be submitted at the same time as the final candidate lists are submitted under subsection (c)(4)(A) of this section and the final forms of amendments are submitted under subsection (c)(4)(C)(iv) of this section.

(4) Appointment of judges to panels or committees

At such time as the Trade Representative proposes to appoint a judge described in paragraph (1) to a binational panel, an extraordinary challenge committee, or a special committee, the Trade Representative shall consult with that judge in order to ascertain whether the judge is available for such appointment.

(c) Selection of other candidates

(1) Applicability

This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, other than those individuals to whom subsection (b) of this section applies.

(2) Interagency group

(A) Establishment

There is established within the interagency organization established under section 1872 of this title an interagency group which shall—

(i) be chaired by the Trade Representative; and
(ii) consist of such officers (or the designees thereof) of the United States Government as the Trade Representative considers appropriate.

(B) Functions

The interagency group established under subparagraph (A) shall, in a manner consistent with chapter 19—

(I) a list of individuals who are qualified to serve as members of binational panels convened under chapter 19; and
(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under chapter 19 and special committees established under article 1905;

(ii) if the Trade Representative makes a request under paragraph (4)(C)(ii) with respect to a final candidate list during any calendar year, prepare by July 1 of such calendar year a list of those individuals who are qualified to be added to that final candidate list;

(iii) exercise oversight of the administration of the United States Section that is authorized to be established under section 313 of this title; and
(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees and special committees under chapter 19.

(3) Preliminary candidate lists

(A) In general

The Trade Representative shall select individuals from the respective lists prepared by the interagency group under paragraph (2)(B)(i) for placement on—

(i) a preliminary candidate list of individuals eligible to serve as members of binational panels under Annex 1901.2; and
(ii) a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 1904.13 and special committees under article 1905.

(B) Submission of lists to Congressional Committees

(i) In general

No later than January 3 of each calendar year, the Trade Representative shall sub-
mit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the "appropriate Congressional Committees") the preliminary candidate lists of those individuals selected by the Trade Representative under subparagraph (A) to be candidates eligible to serve on panels or committees convened pursuant to chapter 19 during the 1-year period beginning on April 1 of such calendar year.

(ii) Additional information

At the time the candidate lists are submitted under clause (i), the Trade Representative shall submit for each individual on the list a statement of professional qualifications.

(C) Consultation

Upon submission of the preliminary candidate lists under subparagraph (B) to the appropriate Congressional Committees, the Trade Representative shall consult with such Committees with regard to the individuals included on the preliminary candidate lists.

(D) Revision of lists

The Trade Representative may add and delete individuals from the preliminary candidate lists submitted under subparagraph (B) after consultation with the appropriate Congressional Committees regarding the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the preliminary candidate lists, along with the information described in subparagraph (B)(ii) with respect to any proposed addition.

(4) Final candidate lists

(A) Submission of lists to Congressional Committees

No later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final candidate lists of those individuals selected by the Trade Representative to be candidates eligible to serve on panels and committees convened under chapter 19 during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final candidate list only if such individual was included in the preliminary candidate list or if written notice of the addition of such individual to the preliminary candidate list was submitted to the appropriate Congressional Committees at least 15 days before the date on which that final candidate list is submitted to such Committees under this subparagraph.

(B) Finality of lists

Except as provided in subparagraph (C), no additions may be made to the final candidate lists after the final candidate lists are submitted to the appropriate Congressional Committees under subparagraph (A).

(C) Amendment of lists

(i) In general

If, after the Trade Representative has submitted the final candidate lists to the appropriate Congressional Committees under subparagraph (A) for a calendar year and before July 1 of such calendar year, the Trade Representative determines that additional individuals need to be added to a final candidate list, the Trade Representative shall—

(I) request the interagency group established under paragraph (2)(A) to prepare a list of individuals who are qualified to be added to such candidate list;

(II) select individuals from the list prepared by the interagency group under paragraph (2)(B)(ii) to be included in a proposed amendment to such final candidate list; and

(III) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees the proposed amendments to such final candidate list developed by the Trade Representative under subclause (II), along with the information described in paragraph (3)(B)(ii).

(ii) Consultation with Congressional Committees

Upon submission of a proposed amendment under clause (i)(III) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.

(iii) Adjustment of proposed amendment

The Trade Representative may add and delete individuals from any proposed amendment submitted under clause (i)(III) after consulting with the appropriate Congressional Committees with regard to the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the proposed amendment.

(iv) Final amendment

(I) In general

If the Trade Representative submits a proposed amendment to a final candidate list, the Trade Representative shall, no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and, subject to subclause (II), the individuals included in the final form of such amendment shall be added to the final candidate list.

(II) Inclusion of individuals

An individual may be included in the final form of an amendment submitted under subclause (I) only if such individ-
Selection and appointment

§ 3432

(2) Restrictions on selection and appointment

the Agreement.

United States Government under the terms of that is to be made solely or jointly by the

lished under paragraph (2)(A) or of the Trade

18, the written or oral responses of individuals

to inquiries of the interagency group estab-

professional qualifications, and financial and
other relevant interests, that bear on their

jurisdiction of an agency of the United States.

section, shall be treated as matters within the

administration on behalf of the United States Govern-

ment in making any selection or appointment
of an individual to—

(A) the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(B) the panels or committees convened under chapter 19;

that is to be made solely or jointly by the

United States Government under the terms of the Agreement.

(5) Treatment of responses

For purposes of applying section 1001 of title 18, the written or oral responses of individuals to inquiries of the interagency group estab-

lished under paragraph (2)(A) or of the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for the placements and appoint-

ments described in subsection (a)(1) of this section, shall be treated as matters within the jurisdiction of an agency of the United States.

(d) Selection and appointment

(1) Authority of Trade Representative

The Trade Representative is the only officer of the United States Government authorized to act on behalf of the United States Government in making any selection or appointment of an individual to—

(A) the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(B) the panels or committees convened under chapter 19;

under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee;

only if such individual is on the appropriate final candidate list that was submitted to the appropriate Congressional Committees under subsection (c)(4)(A) of this section during such calendar year or on such list as it may be amended under subsection (c)(4)(C)(iv)(I) of this section, or on the list submitted under subsection (b)(3) of this section to the Congressional Committees referred to in such subsection; and

(i) be selected by the United States Gov-

erment for placement on the rosters de-

scribed in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or

(ii) be appointed solely or jointly by the

United States Government to serve as a

member of a panel or committee convened under chapter 19;

during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the require-

ments of subsection (a) of this section, and of subsection (b) or (c) of this section (as the case may be).

(3) Exceptions

Notwithstanding subsection (c)(3) of this section (other than subparagraph (B)), sub-

section (c)(4) of this section, or paragraph (2)(A) of this subsection, individuals included on the preliminary candidate lists submitted to the appropriate Congressional Committees under subsection (c)(3)(B) of this section may—

(A) be selected by the Trade Representa-

tive for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during the 3-month period

beginning on the date on which the Agreement enters into force with respect to the United States; and

(B) be appointed solely or jointly by the

Trade Representative under the terms of the Agreement to serve as members of panels or committees that are convened under chapter 19 during such 3-month period.

(e) Transition

If the Agreement enters into force between the United States and a NAFTA country after January 3, 1994, the provisions of subsection (c) of this section shall be applied with respect to the calendar year in which such entering into force occurs—

(1) by substituting “the date that is 30 days after the date on which the Agreement enters into force with respect to the United States” for “January 3 of each calendar year” in sub-

sections (c)(2)(B)(i) and (c)(3)(B)(i) of this section; and

(2) by substituting “the date that is 3 months after the date on which the Agreement enters into force with respect to the United States” for “March 31 of each calendar year” in subsection (c)(4)(A) of this section.
(f) Immunity

With the exception of acts described in section 777(f)(3) of the Tariff Act of 1930 (19 U.S.C. 1677f(f)(3)), individuals serving on panels or committees convened pursuant to chapter 19, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.

(g) Regulations

The administering authority under title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.), the International Trade Commission, and the Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapter 19. Initial regulations to carry out such functions shall be issued before the date on which the Agreement enters into force with respect to the United States.

(h) Report to Congress

At such time as the final candidate lists are submitted under subsection (c)(4)(A) of this section and the final forms of amendments are submitted under subsection (c)(4)(C)(iv) of this section, the Trade Representative shall submit to the Committee on the Judiciary and the Committee on Finance a report regarding the efforts made to secure the participation of judges and former judges on binational panels, extraordinary challenge committees, and special committees established under chapter 19.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) Witnesses and evidence

The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) of this section may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a) of this section, the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question; and

(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) Witnesses and evidence

The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) of this section may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a) of this section, the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question; and

(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) Witnesses and evidence

The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) of this section may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a) of this section, the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question; and

(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.
tion, association, organization, or other entity may be compelled to appear and be deposed and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the committee, as provided in this section.


§ 3434. Requests for review of determinations by competent investigating authorities of NAFTA countries

(a) Definitions

As used in this section:

(1) Competent investigating authority

The term “competent investigating authority” means the competent investigating authority, as defined in article 1911, of a NAFTA country.

(2) United States Secretary

The term “United States Secretary” means that officer of the United States referred to in article 1908.

(b) Requests for review by United States

In the case of a final determination of a competent investigating authority, requests by the United States for binational panel review of such determination under article 1904 shall be made by the United States Secretary.

(c) Requests for review by person

In the case of a final determination of a competent investigating authority, a person, within the meaning of paragraph 5 of article 1904, may request a binational panel review of such determination by filing such a request with the United States Secretary within the time limit provided for in paragraph 4 of article 1904. The receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904. The request for such panel review shall be without prejudice to any challenge before a binational panel of the basis for a particular request for review.

(d) Service of request for review

Whenever binational panel review of a final determination made by a competent investigating authority is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would otherwise be entitled under the law of the importing country to commence proceedings for judicial review of the determination.


§ 3435. Rules of procedure for panels and committees

(a) Rules of procedure for binational panels

The administering authority shall prescribe rules, negotiated in accordance with paragraph 14 of article 1904, governing, with respect to binational panel reviews—

(1) requests for such reviews, complaints, other pleadings, and other papers;

(2) the amendment, filing, and service of such pleadings and papers;

(3) the joinder, suspension, and termination of such reviews; and

(4) other appropriate procedural matters.

(b) Rules of procedure for extraordinary challenge committees

The administering authority shall prescribe rules, negotiated in accordance with paragraph 2 of Annex 1904.13, governing the procedures for reviews by extraordinary challenge committees.

(c) Rules of procedure for safeguarding panel review system

The administering authority shall prescribe rules, negotiated in accordance with Annex 1905.6, governing the procedures for special committees described in such Annex.

(d) Publication of rules

The rules prescribed under subsections (a), (b), and (c) of this section shall be published in the Federal Register.

(e) Administering authority

As used in this section, the term “administering authority” has the meaning given such term in section 1077(1) of this title.


§ 3436. Subsidy negotiations

In the case of any trade agreement which may be entered into by the President with a NAFTA country, the negotiating objectives of the United States with respect to subsidies shall include—

(1) achievement of increased discipline on domestic subsidies provided by a foreign government, including—

(A) the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations;

(B) the provision of goods or services at preferential rates;

(C) the granting of funds or forgiveness of debt to cover operating losses sustained by a specific industry; and

(D) the assumption of any costs or expenses of manufacture, production, or distribution;

(2) achievement of increased discipline on export subsidies provided by a foreign government, particularly with respect to agricultural products; and

(3) maintenance of effective remedies against subsidized imports, including, where appropriate, countervailing duties.


§ 3437. Identification of industries facing subsidized imports

(a) Petitions

Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a United States industry and has reason to believe—

(1) that—
(A) as a result of implementation of provisions of the Agreement, the industry is likely to face increased competition from subsidized imports, from a NAFTA country, with which it directly competes; or
(B) the industry is likely to face increased competition from subsidized imports with which it directly competes from any other country designated by the President, following consultations with the Congress, as benefiting from a reduction of tariffs or other trade barriers under a trade agreement that enters into force with respect to the United States after January 1, 1994; and
(2) that the industry is likely to experience a deterioration of its competitive position before more effective rules and disciplines relating to the use of government subsidies have been developed with respect to the country concerned;
may file with the Trade Representative a petition that such industry be identified under this section.

(b) Identification of industry
Within 90 days after receipt of a petition under subsection (a) of this section, the Trade Representative, in consultation with the Secretary of Commerce, shall decide whether to identify the industry on the basis that there is a reasonable likelihood that the industry may face both the subsidization described in subsection (a)(1) of this section and the deterioration described in subsection (a)(2) of this section.

(c) Action after identification
At the request of an entity that is representative of an industry identified under subsection (b) of this section, the Trade Representative shall—
(1) compile and make available to the industry information under section 2418 of this title;
(2) recommend to the President that an investigation by the International Trade Commission be requested under section 332 of the Tariff Act of 1930 [19 U.S.C. 1332]; or
(3) take actions described in both paragraphs (1) and (2).
The industry may request the Trade Representative to take appropriate action to update (as often as annually) any information obtained under paragraph (1) or (2), or both, as the case may be, until an agreement on more effective rules and disciplines relating to government subsidies is reached between the United States and the NAFTA countries.

(d) Initiation of action under other law
(1) In general
The Trade Representative and the Secretary of Commerce shall review information obtained under subsection (c) of this section and consult with the industry identified under subsection (b) of this section with a view to deciding whether any action is appropriate—
(A) under section 2411 of this title, including the initiation of an investigation under section 2412(c) of this title (in the case of the Trade Representative); or
(B) under subtitle A of title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], including the initiation of an investigation under section 702(a) of that Act [19 U.S.C. 1671a(a)] (in the case of the Secretary of Commerce).

(2) Criteria for initiation
In determining whether to initiate any investigation under section 2411 of this title or any other trade law, other than title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], the Trade Representative, after consultation with the Secretary of Commerce—
(A) shall seek the advice of the advisory committees established under section 2158 of this title;
(B) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;
(C) shall coordinate with the interagency organization established under section 1872 of this title; and
(D) may ask the President to request advice from the International Trade Commission.

(3) Title III actions
In the event an investigation is initiated under section 2412(c) of this title as a result of a review under this subsection and the Trade Representative, following such investigation (including any applicable dispute settlement proceedings under the Agreement or any other trade agreement), determines to take action under section 2411(a) of this title, the Trade Representative shall give preference to actions that most directly affect the products that benefit from governmental subsidies and were the subject of the investigation, unless there are no significant imports of such products or the Trade Representative otherwise determines that application of the action to other products would be more effective.

(e) Effect of decisions
Any decision, whether positive or negative, or any action by the Trade Representative or the Secretary of Commerce under this section shall not in any way—
(1) prejudice the right of any industry to file a petition under any trade law;
(2) prejudice, affect, substitute for, or obviate any proceeding, investigation, or determination under section 2411 of this title, title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], or any other trade law.
(f) Standing
Nothing in this section may be construed to alter in any manner the requirements in effect before December 8, 1993, for standing under any law of the United States or to add any additional requirements for standing under any law of the United States.
§ 3438. Treatment of amendments to antidumping and countervailing duty law

Any amendment enacted after the Agreement enters into force with respect to the United States that is made to—

(a) In general

(1) Proceedings regarding protective orders and undertakings

If on the date on which a country ceases to be a NAFTA country an investigation or enforcement proceeding concerning the violation of a protective order issued under section 1677f of this title or an undertaking of the Government of that country is pending, the investigation or proceeding shall continue, and sanctions may continue to be imposed, in accordance with the provisions of such section 1677f of this title.

(b) Transition provisions

(1) Provisions applying to goods from a NAFTA country

If on the date on which a country ceases to be a NAFTA country discriminatorily enforces a law or to which the provisions of this Title VII of the Tariff Act 1930 [19 U.S.C. 1671 et seq.] apply, the provisions of this section shall apply to goods from a NAFTA country only to the extent specified in the amendment.

(2) Binational panel and extraordinary challenge committee reviews

If on the date on which a country ceases to be a NAFTA country an investigation or enforcement proceeding concerning the violation of a protective order issued under section 1516a of this title, such determination shall be reviewable under section 1516a(g)(2) of this title applies, such determination shall be reviewable under section 1516a(a) of this title. In the case of a determination to which the provisions of this paragraph apply, the time limits for commencing an action under section 1516a(a) of this title shall not begin to run until the date on which the Agreement ceases to be in force with respect to that country.

§ 3451. Effect of termination of NAFTA country status

(a) In general

Except as provided in subsection (b) of this section, on the date on which a country ceases to be a NAFTA country, the provisions of this title (other than this section) and the amendments made by this title shall cease to have effect with respect to that country.

References in Text

The Tariff Act of 1930, referred to in subsec. (d)(1), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Act is classified generally to subchapter IV (§ 1671 et seq.) of chapter 4 of this title, Subtitle A of title VII of the Act is classified generally to part I (§ 1671 et seq.) of subchapter IV of chapter 4 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

Amendments

1996—Subsec. (e)(2). Pub. L. 104–295 substituted semicolon for comma after ‘‘such a petition’’.

References in Text


References in Text

This title, referred to in subsec. (a), is Title IV of Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2129, which enacted this subchapter, amended sections 1502, 1514, 1516a, 1677, and 1677f of this title and sections 1581, 1584, 2201, and 2643 of Title 28, Judiciary and Judicial Procedure, enacted provisions set out as a note under section 3431 of this title, and amended provisions set out as a note under section 2112 of this title.

Amendments

1996—Subsec. (b)(2). Pub. L. 104–295 substituted “action under section 1516a(a)” for “action under section 1516a(a)”.

Subchapter V—Miscellaneous Provisions

Part A—Provisions Relating to Performance Under Agreement

§ 3461. Discriminatory taxes

It is the sense of the Congress that when a State, province, or other governmental entity of a NAFTA country discriminatorily enforces sales or other taxes so as to afford protection to domestic production or domestic service providers, such enforcement is in violation of the
terms of the Agreement. When such discriminatory enforcement adversely affects United States producers of goods or United States service providers, the Trade Representative should pursue all appropriate remedies to obtain removal of such discriminatory enforcement, including invocation of the provisions of the Agreement.


**Effective Date**

Section 516 of title V of Pub. L. 103–182 provided that: "(a) In General.—Except as provided in subsection (b), the provisions of this subtitle (subtitle B (§§ 511–516) of title V of Pub. L. 103–182, enacting this part and section 2707 of this title, amending section 2242 of this title, and enacting provisions set out as a note under section 2707 of this title) shall take effect on the date the Agreement enters into force with respect to the United States (Jan. 1, 1994).

"(b) Exception.—Section 515 (enacting section 2707 of this title and provisions set out as a note under section 2707 of this title) shall take effect on the date of the enactment of this Act [Dec. 8, 1993]."

§ 3462. Review of operation and effects of Agreement

(a) Study

By not later than July 1, 1997, the President shall provide to the Congress a comprehensive study on the operation and effects of the Agreement. The study shall include an assessment of the following factors:

1. The net effect of the Agreement on the economy of the United States, including with respect to the United States gross national product, employment, balance of trade, and current account balance.

2. The industries (including agricultural industries) in the United States that have significantly increased exports to Mexico or Canada as a result of the Agreement, or in which imports into the United States from Mexico or Canada have increased significantly as a result of the Agreement, and the extent to which any change in the wages, employment, or productivity in each such industry as a result of the Agreement.

3. The extent to which investment in new or existing production or other operations in the United States has been redirected to Mexico as a result of the Agreement, and the effect on United States employment of such redirection.

4. The extent of any increase in investment, including foreign direct investment and increased investment by United States investors, in new or existing production or other operations in the United States as a result of the Agreement, and the effect on United States employment of such investment.

5. The extent to which the Agreement has contributed to—

   A improvement in real wages and working conditions in Mexico,

   B effective enforcement of labor and environmental laws in Mexico, and

   C the reduction or abatement of pollution in the region of the United States-Mexico border.

(b) Scope

In assessing the factors listed in subsection (a) of this section, to the extent possible, the study shall distinguish between the consequences of the Agreement and events that likely would have occurred without the Agreement. In addition, the study shall evaluate the effects of the Agreement relative to aggregate economic changes and, to the extent possible, relative to the effects of other factors, including—

1. international competition,

2. reductions in defense spending,

3. the shift from traditional manufacturing to knowledge and information based economic activity, and

4. the Federal debt burden.

(c) Recommendations of President

The study shall include any appropriate recommendations by the President with respect to the operation and effects of the Agreement, including recommendations with respect to the specific factors listed in subsection (a) of this section.

(d) Recommendations of certain committees

The President shall provide the study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and any other committee that has jurisdiction over any provision of United States law that was either enacted or amended by the North American Free Trade Agreement Implementation Act. Each such committee may hold hearings and make recommendations to the President with respect to the operation and effects of the Agreement.


References in Text


§ 3463. Report on impact of NAFTA on motor vehicle exports to Mexico

(a) Findings

The Congress makes the following findings:

1. Trade in motor vehicles and motor vehicle parts is one of the most restricted areas of trade between the United States and Mexico.

2. The elimination of Mexico’s restrictive barriers to trade in motor vehicles and motor vehicle parts over a 10-year period under the Agreement should increase substantially United States exports of such products to Mexico.

3. The Department of Commerce estimates that the Agreement provides the opportunity to increase United States exports of motor vehicles and motor vehicle parts by $1,000,000,000 during the first year of the Agreement’s implementation with the potential for additional increases over the 10-year transition period.

4. The United States automotive industry has estimated that United States exports of motor vehicles to Mexico should increase to more than 60,000 units during the first year of the Agreement’s implementation, which is substantially above the current level of 4,000 units.
§ 3471 Agreement on Labor Cooperation

(a) Commission for Labor Cooperation

(1) Membership

The United States is authorized to participate in the Commission for Labor Cooperation in accordance with the North American Agreement on Labor Cooperation.

(2) Contributions to budget

There are authorized to be appropriated to the President (or such agency as the President may designate) $2,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Labor Cooperation pursuant to Article 47 of the North American Agreement on Labor Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) Definitions

As used in this section—

(1) the term “Commission for Labor Cooperation” means the commission established by Part Three of the North American Agreement on Labor Cooperation; and

(2) the term “North American Agreement on Labor Cooperation” means the North American Agreement on Labor Cooperation Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States (signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993).


§ 3472 Agreement on Environmental Cooperation

(a) Commission for Environmental Cooperation

(1) Membership

The United States is authorized to participate in the Commission for Environmental Cooperation in accordance with the North American Agreement on Environmental Cooperation.

(2) Contributions to budget

There are authorized to be appropriated to the President (or such agency as the President may designate) $5,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Environmental Cooperation pursuant to Article 43 of the North American Agreement on Environmental Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) Definitions

As used in this section—

(1) the term “Commission for Environmental Cooperation” means the commission established by Part Three of the North American Agreement on Environmental Cooperation; and

(2) the term “North American Agreement on Environmental Cooperation” means the North American Agreement on Environmental Cooperation Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States (signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993).


EX. ORD. NO. 12915. FEDERAL IMPLEMENTATION OF THE NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION

Ex. Ord. No. 12915, May 13, 1994, 59 F.R. 25775, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act, Public Law 103–182; 107 Stat. 2857 (“NAFTA Implementation Act”)[see Tables for classification], and section 301 of title 3, United States Code, it is hereby ordered as follows:


Cooperation Agreement") shall be implemented consistent with United States policy for the protection of human, animal or plant life or health, and the environment.

The Environmental Cooperation Agreement shall be implemented to advance sustainable development, pollution prevention, environmental justice, ecosystem protection, and biodiversity preservation and in a manner that promotes transparency and public participation in accordance with the North American Free Trade Agreement ("NAFTA") and the Environmental Cooperation Agreement.

Effective implementation of the Environmental Cooperation Agreement is essential to the realization of the environmental objectives of NAFTA and the NAFTA Implementation Act and promotes cooperation on trade and environmental issues between the United States, Canada, and Mexico.

Sect. 2. IMPLEMENTATION OF THE ENVIRONMENTAL COOPERATION AGREEMENT.

(a) Policy Priorities. In accordance with Article 10(2) of the Environmental Cooperation Agreement, it is the policy of the United States to promote consideration of, with a view towards developing recommendations and reaching agreement on, the following priorities within the Council of the Commission for Environmental Cooperation ("Council"): (1) pursuant to Article 10(2)(a), the environmental impact of goods throughout their life cycles, including the environmental effects of processes and production methods and the internalization of environmental costs associated with products from raw material to disposal; (2) pursuant to Articles 10(2)(b), (g), (l), (j), and (k), pollution prevention techniques and strategies, transboundary and border environmental issues, the conservation and protection of wild flora and fauna (including endangered species), their habitats and especially protected natural areas, and environmental emergency preparedness and response activities; (3) pursuant to Articles 10(3) and 10(4), implementation of Environmental Cooperation Agreement provisions and the exchange of information among the United States, Canada, and Mexico concerning the development, continuing improvement, and effective enforcement of, and compliance with, environmental laws, policies, incentives, regulations, and other applicable standards; (4) pursuant to Article 10(5)(a), public access to environmental information held by public authorities of each party to the Environmental Cooperation Agreement, including information on hazardous materials and activities in its communities, and the opportunity to participate in decision-making processes related to such public access; (5) pursuant to Article 10(2)(1), environmental matters as they relate to sustainable development; and (6) other priorities as appropriate or necessary.

(b) United States Representation on the Council. The Administrator of the Environmental Protection Agency ("EPA") shall be the representative of the United States on the Council. The policies and positions of the United States in the Council shall be coordinated through applicable interagency procedures.

(c) Environmental Effects of the NAFTA. Pursuant to Article 10(6)(d) of the Environmental Cooperation Agreement, the Administrator of the EPA shall work actively within the Council to consider on an ongoing basis the environmental effects of the NAFTA and review progress toward the objectives of the Environmental Cooperation Agreement.

(d) Transparency and Public Participation. The United States, as appropriate, shall endeavor to ensure the transparency and openness of, and opportunities for the public to participate in, activities under the Environmental Cooperation Agreement.

(1) To the greatest extent practicable, pursuant to Articles 15(1) and 15(2), where the Secretariat of the Commission for Environmental Cooperation ("Secretariat") informs the Council that a factual record is warranted, the United States shall support the preparation of such factual record.

(2) To the greatest extent practicable, the United States shall support public disclosure of all nonconfidential and nonproprietary elements of reports, factual records, decisions, recommendations, and information gathered or prepared by the Commission for Environmental Cooperation ("Commission"). Where requested information is not made available, the United States shall endeavor to notify the Commission in writing as to the public its reasons for denial of the request.

(3) The United States shall provide public notice of the opportunity to apply for inclusion on a roster of qualified individuals available to serve on arbitral panels under the Environmental Cooperation Agreement.

(4) The United States shall seek to ensure that the Model Rules of Procedure for dispute settlement established pursuant to Articles 28(1) and 28(2) of the Environmental Cooperation Agreement provide for the preparation of public versions of, and arbitral reports not otherwise made publicly available, and for public access to arbitral hearings.

(5) Consistent with the Environmental Cooperation Agreement, the EPA Administrator shall develop procedures to inform the public of arbitral proceedings and Commission activities under the Environmental Cooperation Agreement, and to provide appropriate mechanisms for receiving public comment with respect to such arbitral proceedings and Commission activities involving the United States.

(6) As a disputing party, the United States shall seek to ensure, pursuant to Article 30 of the Environmental Cooperation Agreement, that the arbitral panels consult with appropriate experts for information and technical advice.

(e) Consultation with States. (1) Pursuant to Article 18 of the Environmental Cooperation Agreement, the EPA Administrator shall establish a governmental committee to furnish advice regarding implementation and further elaboration of the Agreement. Through this committee, or through other means as appropriate, the EPA Administrator and other relevant Federal agencies shall:

(A) inform the States on a continuing basis of matters under the Environmental Cooperation Agreement that directly relate to, or will potentially have a direct impact on, the States, including: (i) dispute settlement proceedings and other matters involving enforcement by the States of environmental laws; and (ii) implementation of the Environmental Cooperation Agreement, including Council, committee, and working group activities, in any area in which the States exercise concurrent or exclusive legislative, regulatory, or enforcement authority.

(B) provide the States with an opportunity to submit information and advice with respect to the matters identified in section 2(e)(1)(A) of this order; and

(C) involve the States to the greatest extent practicable at each stage of the development of United States positions regarding matters identified in section 2(e)(1)(A) of this order that will be addressed by the Council, committees, subcommittees, or working groups established under the Environmental Cooperation Agreement, or through dispute settlement processes prescribed under the Environmental Cooperation Agreement (including involvement through the inclusion of appropriate representatives of the States).

(2) When formulating positions regarding matters identified in section 2(e)(1)(A) of this order, the United States shall take into account the information and advice received from States.

(3) The United States, where appropriate, shall include representatives of interested States as Members of the United States delegations to the Council and other Commission bodies, including arbitral panels.

Sect. 3. NATIONAL ADVISORY COMMITTEE. The EPA Administrator shall utilize a National Advisory Committee as provided under Article 17 of the Environmental Cooperation Agreement.

Sect. 4. UNITED STATES CONTRIBUTIONS TO THE COMMISSION FOR ENVIRONMENTAL COOPERA-
TION. In accordance with section 532(a)(2) of the NAFTA Implementation Act (19 U.S.C. 3472(a)(2)), the EPA is designated as the agency authorized to make the contributions of the United States from funds available for such contributions to the annual budget of the Commission for Environmental Cooperation.

Ssc. 5. JUDICIAL REVIEW. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 3473. Agreement on Border Environment Co- 
operation Commission

(a) Border Environment Cooperation Commis- 

sion

(1) Membership

The United States is authorized to participate in the Border Environment Cooperation Commission in accordance with the Border Environment Cooperation Agreement.

(2) Contributions to the Commission budget

There are authorized to be appropriated to the President (or such agency as the President may designate) $5,000,000 for fiscal year 1994 and each fiscal year thereafter for United States contributions to the budget of the Border Environment Cooperation Commission pursuant to section 7 of Article III of Chapter I of the Border Environment Cooperation Agreement. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.

(b) Civil actions involving Commission

For the purpose of any civil action which may be brought within the United States by or against the Border Environment Cooperation Commission in accordance with the Border Environment Cooperation Agreement (including an action brought to enforce an arbitral award against the Commission), the Commission shall be deemed to be an inhabitant of the Federal judicial district in which its principal office is located. Any action to which the Commission is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction of any such action. When the Commission is a defendant in any action in a State court, it may at any time before trial remove the action into the appropriate district court of the United States by following the procedures for removal provided in section 1446 of title 28.

(c) Definitions

As used in this section—


(2) the terms “Border Environment Cooperation Commission” and “Commission” mean the commission established pursuant to Chapter I of the Border Environment Cooperation Agreement; and

(3) the term “United States” means the United States, its territories and possessions, and the Commonwealth of Puerto Rico.


EX. ORD. NO. 12916. IMPLEMENTATION OF BORDER ENVI-
RONMENT COOPERATION COMMISSION AND NORTH AMER- 
ICAN DEVELOPMENT BANK


By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2657 (“NAFTA Implementation Act”) (see Tables for classification), and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION I. The Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank, as amended by the Protocol of Amendment done at Washington and Mexico City, November 25 and 26, 2002 (“Agreement”) shall be implemented consistent with United States policy for the protection of human, animal or plant life or health, and the environment. The Agreement shall also be implemented to advance sustainable development, pollution prevention, environmental justice, ecosystem protection, and biodiversity preservation and in a manner that promotes transparency and public participation in accordance with the North American Free Trade Agreement and the Agreement.

Ssc. 2. (a) The Secretary of State, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency shall be members of the Board of Directors of the Border Environment Cooperation Commission and the North American Development Bank (“Board”) as provided in clauses (1), (3), and (5) of article II in chapter III of the Agreement.

(b) Appointments to the Board under clauses (7) and (9) of article II in chapter III of the Agreement shall be made by the President. Individuals so appointed shall serve at the pleasure of the President.

(c) The Secretary of the Treasury is selected to be the Chairperson of the Board during any period in which the United States is to select the Chairperson under article III in chapter III of the Agreement.

(d) Except with respect to functions assigned by section 4, 5, 6, or 7 of this order, the Secretary of the Treasury shall coordinate with the Secretary of State, the Administrator of the Environmental Protection Agency, such other agencies and offices as may be appropriate, and the individuals appointed under subsection 2(b) as may be appropriate, the development of the policies and positions of the United States with respect to matters coming before the Board.

Ssc. 3. For purposes of loans, guarantees, or grants endorsed by the United States for community adjustment and investment, the members of the Board listed in subsections 2(a) and (b) shall be instructed by the Secretary of the Treasury in accordance with procedures established by the Community Adjustment and
Investment Program Finance Committee established pursuant to section 7 of this order.

Sec. 4. The functions vested in the President by section 543(a)(1) of the NAFTA Implementation Act [22 U.S.C. 290m-2(a)(1)] are delegated to the Secretary of the Treasury.

Sec. 5. The functions vested in the President by section 543(a)(2) and (3) of the NAFTA Implementation Act are delegated to the Secretary of the Treasury, who shall exercise such functions in accordance with the recommendations of the Community Adjustment and Investment Program Finance Committee established pursuant to section 7 of this order.

Sec. 6. The functions vested in the President by section 543(a)(5) and section 543(d) of the NAFTA Implementation Act are delegated to the Community Adjustment and Investment Program Finance Committee established pursuant to section 7 of this order.

(c) The Finance Committee shall be composed of representatives from the Department of the Treasury, the Department of Housing and Urban Development, the Small Business Administration, and any other Federal agencies selected by the Chair of the Finance Committee to assist in carrying out the community adjustment and investment program pursuant to section 543(a)(3) of the NAFTA Implementation Act [22 U.S.C. 290m-2(a)(3)].

(c) The Department of the Treasury representative shall serve as Chair of the Finance Committee. The Chair shall be responsible for presiding over the meetings of the Finance Committee, ensuring that the views of all other members are taken into account, coordinating with other appropriate United States Government agencies in carrying out the community adjustment and investment program, and requesting meetings of the Advisory Committee pursuant to section 543(b)(4)(C) of the NAFTA Implementation Act.

Sec. 8. Any advice or conclusions of reviews provided to the President by the Advisory Committee pursuant to section 543(b)(3) of the NAFTA Implementation Act [22 U.S.C. 290m-2(b)(3)] shall be provided through the Finance Committee.

Sec. 9. Any summaries of public comments or conclusions of investigations and audits provided to the President by the ombudsman pursuant to section 543(c)(1) of the NAFTA Implementation Act shall be provided through the Finance Committee.

Sec. 10. The authority of the President under section 6 of Public Law 102–532; 7 U.S.C. 5404, to establish an advisory board to be known as the Good Neighbor Environmental Board is delegated to the Administrator of the Environmental Protection Agency.

Sec. 11. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

CHAPTER 22—URUGUAY ROUND TRADE AGREEMENTS

Sec. 3501. Definitions.

SUBCHAPTER I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, URUGUAY ROUND AGREEMENTS

PART A—APPROVAL OF AGREEMENTS AND RELATED PROVISIONS

3511. Approval and entry into force of Uruguay Round Agreements.

3512. Relationship of agreements to United States law and State law.

3513. Implementing actions in anticipation of entry into force; regulations.

PART B—TARIFF MODIFICATIONS

3521. Tariff modifications.

3522. Liquidation or reliquidation and refund of duty paid on certain entries.

3523. Duty free treatment for octodecyl isocyanate and 5-Chloro-2-(2.4-dichloro-phenoxy) phenol.

3524. Consultation and layover requirements for, and effective date of, proclaimed actions.

PART C—URUGUAY ROUND IMPLEMENTATION AND DISPUTE SETTLEMENT

3531. Definitions.

3532. Implementation of Uruguay Round Agreements.

3533. Dispute settlement panels and procedures.

3534. Annual report on WTO.

3535. Review of participation in WTO.

3536. Increased transparency.

3537. Access to WTO dispute settlement process.

3538. Administrative action following WTO panel reports.

3539. Fund for WTO dispute settlements.

PART D—RELATED PROVISIONS

3551. Working party on worker rights.


3553. Membership in WTO of boycotting countries.

3554. Africa trade and development policy.

3555. Objectives for extended negotiations.

3556. Certain nonrubber footwear.

SUBCHAPTER II—ENFORCEMENT OF UNITED STATES RIGHTS UNDER SUBSIDIES AGREEMENT

3571. Subsidies enforcement.

3572. Review of Subsidies Agreement.

SUBCHAPTER III—ADDITIONAL IMPLEMENTATION OF AGREEMENTS

PART A—FOREIGN TRADE BARRIERS AND UNFAIR TRADE PRACTICES

3581. Objectives in intellectual property.

PART B—TEXTILES

3591. Textile product integration.


SUBCHAPTER IV—AGRICULTURE-RELATED PROVISIONS

PART A—MARKET ACCESS

3601. Administration of tariff-rate quotas.

3602. Special agricultural safeguard authority.

PART B—EXPORTS

3611. Repealed.

PART C—OTHER PROVISIONS

3621. Tobacco proclamation authority.

3622. Repealed.

3623. Study of milk marketing order system.

3624. Additional program funding.

§ 3501. Definitions.

For purposes of this Act:

(1) GATT 1947; GATT 1994

(A) GATT 1947

The term ‘‘GATT 1947’’ means the General Agreement on Tariffs and Trade, dated Octo-
URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

SUBCHAPTER I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, URUGUAY ROUND AGREEMENTS

PART A—APPROVAL OF AGREEMENTS AND RELATED PROVISIONS

§ 3511. Approval and entry into force of Uruguay Round Agreements

(a) Approval of agreements and statement of administrative action

Pursuant to section 2903 of this title and section 2191 of this title, the Congress approves—

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

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

(b) Entry into force

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

(c) Authorization of appropriations

There are authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the WTO.

(d) Trade agreements to which this Act applies

Subsection (a) of this section applies to the WTO Agreement and to the following agreements annexed to that Agreement:


(2) The Agreement on Agriculture.

(3) The Agreement on the Application of Sanitary and Phytosanitary Measures.

(4) The Agreement on Textiles and Clothing.

(5) The Agreement on Technical Barriers to Trade.

(6) The Agreement on Trade-Related Investment Measures.


(9) The Agreement on Preshipment Inspection.
(11) The Agreement on Import Licensing Procedures.
(12) The Agreement on Subsidies and Countervailing Measures.
(13) The Agreement on Safeguards.
(14) The General Agreement on Trade in Services.
(16) The Understanding on Rules and Procedures Governing the Settlement of Disputes.
(17) The Agreement on Government Procurement.
(18) The International Bovine Meat Agreement.


REFERENCES IN TEXT

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

Executive Documents set out below, provide generally for the implementation of the trade agreements resulting from the Uruguay Round of multilateral trade negotiations, effective Jan. 1, 1995.

PROC. NO. 6763, TO IMPLEMENT TRADE AGREEMENTS RESULTING FROM URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS, AND FOR OTHER PURPOSES

1. On April 15, 1994, the President entered into trade agreements resulting from the Uruguay Round of multilateral trade negotiations (“the Uruguay Round Agreements”). In section 101(a) of the Uruguay Round Agreements Act (“the URRAA”) (Public Law 103–465; 108 Stat. 4809) [19 U.S.C. 3511(a)], the Congress approved the Uruguay Round Agreements listed in section 101(d) of that Act.

2. (a) Sections 1102(a) and (e) of the Omnibus Trade and Competitiveness Act of 1988, as amended (“the 1988 Act”) (19 U.S.C. 2902(a) and (e)), authorize the President to proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any trade agreements entered into under those sections.

(b) Accordingly, I have determined that it is required or appropriate in order to carry out the Uruguay Round Agreements, which were entered into under sections 1102(a) and (e) of the 1988 Act (19 U.S.C. 2902(a) and (e)), that I proclaim the modifications and continuances of existing duties, duty-free treatments, excise treatments, and additional duties set forth in the Annex to this proclamation.

3. (a) Section 111(a) of the URRAA [19 U.S.C. 3521(a)] authorizes the President to proclaim such other modification of any duty, such other staged rate reduction, or such other additional duties beyond those authorized by section 1102 of the 1988 Act (19 U.S.C. 2902) as the President determines to be necessary or appropriate to carry out Schedule XX—United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (“Schedule XX”).

(b) Accordingly, I have determined that it is necessary or appropriate to carry out Schedule XX to proclaim such other modifications of duties, such other staged rate reductions, and such other additional duties, beyond those authorized by section 1102 of the 1988 Act (19 U.S.C. 2902), as are set forth in the Annex to this proclamation.

4. Section 111(d) of the URRAA [19 U.S.C. 3521(d)] requires the President to proclaim the rate of duty set forth in Column B of the table set forth in that section as the column 2 rate of duty for the subheading of the Harmonized Tariff Schedule of the United States (“HTS”) [see 19 U.S.C. 1202] that corresponds to the subheading in Schedule XX listed in Column A.

5. (a) Section 22(f) of the Agricultural Adjustment Act (“the Adjustment Act”) (7 U.S.C. 601(c)), as amended by section 401(a)(1) of the URRAA, provides that, as of the date of entry into force of the Agreement Establishing the World Trade Organization (“the WTO Agreement”) no quantitative limitation or fee shall be imposed under that section with respect to any article that is the product of a World Trade Organization member, as defined in section 2(10) of the URRAA [19 U.S.C. 3501(10)].

(b) Section 401(a)(2) of the URRAA [7 U.S.C. 624 note] further provides that, with respect to wheat, amended section 22(f) of the Adjustment Act (7 U.S.C. 624(c)) shall be effective on the later date of entry into force of the WTO Agreement or September 12, 1995.

(c) Accordingly, I have determined that it is necessary to provide for the termination of all quantitative limitations and fees previously proclaimed under section 22 of the Adjustment Act (7 U.S.C. 624), other than those for wheat, as provided in the Annex to this proclamation.

6. (a) Section 404(a) of the URRAA directs the President to take such action as may be necessary in implementing the tariff-rate quotas set out in Schedule XX to ensure that imports of agricultural products do not disrupt the orderly marketing of commodities in the United States.

(b) Section 404(d)(3) of the URRAA authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas and to modify any allocation, as he determines appropriate.

(c) Section 404(d)(5) of the URRAA authorizes the President to proclaim additional U.S. note 3 to chapter 17 of the HTS, dealing with imports of sugar, together with appropriate modifications thereto, to reflect Schedule XX.

(d) Section 405 of the URRAA [19 U.S.C. 3602] directs the President to cause to be published in the Federal Register the list of special safeguard agricultural goods and, if appropriate, to impose price-based or volume-based safeguards with respect to such goods consistent with Article 5 of the Agreement on Agriculture annexed to the WTO Agreement, and authorizes the President to exempt from any safeguard duty any agricultural good originating in a country that is a party to the North American Free Trade Agreement (“the NAFTA”).

7. Presidential Proclamation No. 6641 of December 15, 1993 (108 Stat. 5134), implementing the NAFTA with respect to the United States and, pursuant to sections 201 and 202 of the North American Free Trade Agreement Implementation Act (“the NAFTA Act”) (19 U.S.C. 3331 and 3332), incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out or apply the NAFTA. Certain technical errors were made in the Annexes to that proclamation. I have determined that, in order to reflect accurately the intended tariff treatment and rules of origin provided for in the NAFTA, it is necessary to modify certain provisions of the HTS, as set forth in the Annex to this proclamation.

8. Presidential Proclamation No. 6455 of July 2, 1992 [19 U.S.C. 3322 note], implementing the Andean Trade Preference Act (“the ATPA”) (19 U.S.C. 3321 et seq.), provided duty-free entry for all eligible articles and duty reductions for certain other articles that are the product of any designated beneficiary country under that Act. Through technical error, the tariff treatment of ethyl alcohol, ethyl alcohol by-product, and mixtures containing these products was incompletely stated. Accordingly, I have determined that it is appropriate to...
modify the provisions of subchapter I of chapter 99 of the HTS to provide fully for the tariff treatment of such products under the ATPA.

Section 242 of the Compact of Free Association ("the Compact") between the United States and Palau provides that, upon implementation of the Compact, the President shall proclaim duty-free entry for most products of Palau, and that the President may, subject to applicable law, make such modifications as the President determines appropriate.

The President determines that it is necessary and appropriate to modify Section 242 to provide duty-free treatment for products of Palau as a freely associated state.

Thus, I have determined, pursuant to the Compact of Free Association, that it is necessary and appropriate to modify Section 242 to provide duty-free treatment for products of Palau as a freely associated state.

Accordingly, I have determined, in response to the Compact of Free Association, that it is appropriate to modify Section 242 to provide duty-free treatment for products of Palau as a freely associated state.

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Accordingly, I have determined, in response to the Compact of Free Association, that it is appropriate to modify Section 242 to provide duty-free treatment for products of Palau as a freely associated state.
(6) Whenever the rate of duty in the general sub-column of rates of duty column 1 of the HTS is reduced to “Free”, all rates of duty set forth in the special sub-column of column 1 shall be deleted from the HTS.

(7) The USTR, the Secretary of Agriculture, and the Secretary of the Treasury are authorized to exercise my authority under the statutes cited in this proclamation to perform the actions to implement this proclamation, as assigned to them in the Annex to this proclamation.

(8) Paragraphs (1)-(4), (6), and (7) shall be effective on January 23, 1994, unless the USTR announces prior to that date that the WTO Agreement will not enter into force on that date.

(9) All provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of December, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

WILLIAM J. CLINTON.

ANNEX

The Annex of Proclamation 6763, which amended the Harmonized Tariff Schedule of the United States, is not set out under this section because the Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1292 of this title.

PROC. NO. 6760, TO IMPLEMENT CERTAIN PROVISIONS OF TRADE AGREEMENTS RESULTING FROM URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS, AND FOR OTHER PURPOSES

Proc. No. 6760, Mar. 23, 1995, 60 F.R. 15845, provided:

1. On April 15, 1994, I entered into trade agreements resulting from the Uruguay Round of multilateral trade negotiations (“the Uruguay Round Agreements”). In section 101(a) of the Uruguay Round Agreements Act (“the URAA”) (Public Law 103-465; 108 Stat. 4814) (19 U.S.C. 3511(a)), the Congress approved the Uruguay Round Trade Agreements listed in section 101(d) of that Act.

2. Pursuant to section 101(b) of the URAA (19 U.S.C. 3511(b)), I decided to accept the Agreement Establishing the World Trade Organization (“the WTO Agreement”) on behalf of the United States, and I determined that the WTO Agreement entered into force for the United States on January 1, 1995.

In sections 1102(a) and (e) of the Omnibus Trade and Competitiveness Act of 1988, as amended (“the 1988 Act”) (19 U.S.C. 2902(a) and (e)), authorize the President to proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any trade agreement entered into under these sections.

(b) Section 111(a) of the URAA (19 U.S.C. 3521(a)) authorizes the President to proclaim such other modification of any duty, such other stagerate reduction, or such other additional duties beyond those authorized by section 1102 of the 1988 Act (19 U.S.C. 2902) as the President determines to be necessary or appropriate to carry out Schedule XX—United States; and incorporated in the Harmonized Tariff Schedule of the United States (“the HTS”) [see 19 U.S.C. 1202] tariff modifications necessary and appropriate to carry out the Uruguay Round Agreements and to ensure the continuation of the agreed NAFTA rules of origin, to modify certain conforming changes in rules of origin for the North American Free Trade Agreement (“NAFTA”). Certain technical errors, including inadvertent omissions, were made in that proclamation. I have determined that it is necessary, to reflect accurately the intended tariff treatment provided for in the Uruguay Round Agreements and to ensure the continuation of the agreed NAFTA rules of origin, to modify certain provisions of the HTS, as set forth in the Annex to this proclamation.

5. (a) One of the Uruguay Round Agreements approved by the Congress in sections 101(a) and 101(d) of the URAA (19 U.S.C. 3511(a) and (d)) is the Agreement on Trade-Related Aspects of Intellectual Property Rights (“the TRIPs Agreement”).

(b) Section 104A of the Omnibus Trade and Competitiveness Act of 1988, as amended by section 514 of the URAA, provides for copyright protection in restored works. Section 104A(a), as amended, provides that the date of restoration of a restored copyright shall be the date on which the TRIPs Agreement enters into force with respect to the United States; if the country is a nation adhering to the Berne Convention or a World Trade Organization (WTO) member on such date.

(c) Article 65, paragraph 1, of the TRIPs Agreement provides that no WTO member shall be obliged to apply the provisions of this Agreement until one year after the date of entry into force of the WTO Agreement. The date of entry into force of the WTO Agreement with respect to the United States was January 1, 1995.

(d) The statement of administrative action, approved by the Congress in section 106(a)(2) of the URAA (19 U.S.C. 3511(a)(2)), provides that, “in general, copyright will be restored on the date when the TRIPs Agreement’s obligations take effect for the United States.”

(e) Accordingly, I have decided that it is necessary and appropriate, in order to implement the TRIPs Agreement and to ensure that section 106 of the URAA (amending sections 104A and 109 of Title 17, Copyrights) is appropriately implemented, to proclaim that the date on which the obligations of the TRIPs Agreement will take effect for the United States is January 1, 1996.

6. (a) Section 902(a)(2) of title 17, United States Code, authorizes the President to extend protection under chapter 9 of title 17, United States Code, to mask works of owners who are nationals, domiciliaries, or sovereign authorities of, and to mask works, which are first commercially exploited in, a foreign nation that grants United States mask work owners substantially the same protection that it grants its own nationals and domiciliaries, or that grants protection to such works on substantially the same basis as does chapter 9 of title 17, United States Code.

(b) Australia, Canada, Japan, Switzerland, and the Member States of the European Community provide adequate and effective protection for mask works within the meaning of 17 U.S.C. 902(a)(2), and have been subject to interim protection under 17 U.S.C. 914. Consequently, I find that these countries satisfy the requirements of 17 U.S.C. 902(a)(2), and are to be extended full protection under chapter 9 of title 17, United States Code, effective on July 1, 1995.

(c) In addition, 17 U.S.C. 902(a)(1)(A)(i) provides that mask work owners who are nationals, domiciliaries, or sovereign authorities of a foreign nation that is a party to a treaty affording protection to mask works to which the United States is also a party are eligible for protection under chapter 9 of title 17, United States Code. The TRIPs Agreement, which requires all WTO members to provide protection to such works, was made in that proclamation. I have determined that it is necessary, to reflect accurately the intended tariff treatment provided under chapter 9 of title 17 on the basis of national treatment, is such an agreement. Because the United States is a member of the WTO and thus of the TRIPs Agreement, and because the TRIPs Agreement is effective for the United States on January 1, 1996, all other WTO members will become eligible for full pro-
The Annex of Proclamation 6780, which amended the Harmonized Tariff Schedule of the United States, is not set out under this section because the Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1302 of this title.

Ex. Ord. No. 13042. IMPLEMENTING FOR UNITED STATES ARTICLE VIII OF AGREEMENT ESTABLISHING WORLD TRADE ORGANIZATION CONCERNING LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 101(b) of the Uruguay Round Agreements Act (Public Law 103-344) (19 U.S.C. 3511(b)) and section 1 of the International Organizations Immunities Act (22 U.S.C. 288), I hereby implement for the United States the provisions of Article VIII of the Agreement Establishing the World Trade Organization.

Sec. 1. The provisions of the Convention on the Privileges and Immunities of the Specialized Agencies (U.N. General Assembly Resolution 179 (II) of November 21, 1947, 33 U.N.T.S. 261) shall apply to the World Trade Organization, its officials, and the representatives of its members, provided: (1) sections 19(b) and 15, regarding immunity from taxation, and sections 13(d) and section 20, regarding immunity from national service obligations, shall not apply to U.S. nationals and aliens admitted for permanent residence; (2) with respect to section 13(d) and section 19(c), regarding exemption from immigration restrictions and alien registration requirements, World Trade Organization officials and representatives of its members shall be entitled to the same, and no greater, privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees of foreign governments, and members of their families; (3) with respect to section 9(a) regarding exemption from taxation, such exemption shall not extend to taxes levied on real property, or that portion of real property, which is not used for the purposes of the World Trade Organization. The leasing or renting by the World Trade Organization of its property to another entity or person to generate revenue shall not be considered a use for the purposes of the World Trade Organization. Whether property or portions thereof are used for the purposes of the World Trade Organization shall be determined within the sole discretion of the Secretary of State or the Secretary’s designee; (4) with respect to section 25(2)(II) regarding approval of orders to leave the United States, “Foreign Minister” shall mean the Secretary of State or the Secretary’s designee.

Sec. 2. In addition and without impairment to the protections extended above, having found that the World Trade Organization is a public international organization in which the United States participates within the meaning of the International Organizations Immunities Act (22 U.S.C. 288a et seq.), I hereby designate the World Trade Organization as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by that Act, except that section 6 of that Act (22 U.S.C. 288c), provid-
ing exemption from property tax imposed by, or under the authority of, any Act of Congress, shall not extend to taxes levied on property, or that portion of property, that is not used for the purposes of the World Trade Organization. The leasing or renting by the World Trade Organization of its property to another entity or person to generate revenue shall not be considered a use for the purposes of the World Trade Organization. Whether property or portions thereof are used for the purposes of the World Trade Organization shall be determined within the sole discretion of the Secretary of State or the Secretary’s designee. This designation is not intended to abridge in any respect privileges, exemptions, or immunities that the World Trade Organization otherwise enjoys or may acquire by international agreements or by congressional action.

WILLIAM J. CLINTON.

ACCEPTANCE OF WTO AGREEMENT

Memorandum of President of the United States, Dec. 23, 1994, 60 F.R. 1009, provided:

Memorandum for the United States Trade Representative

Being advised that Canada, the European Community, Mexico, Japan, and other major trading countries have committed to acceptance of the Uruguay Round Agreements, I have determined that a sufficient number of foreign countries are accepting the obligations of those Agreements, in accordance with article XIV of the Agreement Establishing the World Trade Organization (WTO Agreement), to ensure the effective operation of, and adequate benefits for the United States under, those Agreements.

Pursuant to section 101(b) of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4809) [19 U.S.C. 3511(b)] and section 301 of title 3, United States Code, I hereby direct the United States Trade Representative, or his designee, to accept the Uruguay Round Agreements, as described in section 101(d) of that Act, on behalf of the United States in accordance with article XIV of the WTO Agreement.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 3512. Relationship of agreements to United States law and State law

(a) Relationship of agreements to United States law

(1) United States law to prevail in conflict

No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect.

(2) Construction

Nothing in this Act shall be construed—

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

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

(ii) the protection of the environment, or

(iii) worker safety, or

(B) to limit any authority conferred under any law of the United States, including section 2411 of this title,

unless specifically provided for in this Act.

(b) Relationship of agreements to State law

(1) Federal-State consultation

(A) In general

On December 8, 1994, the President shall, through the intergovernmental policy advisory committees on trade established under section 2114c(2)(A) of this title, consult with the States for the purpose of achieving conformance of State laws and practices with the Uruguay Round Agreements.

(B) Federal-State consultation process

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

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

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

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

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

(C) Federal-State cooperation in WTO dispute settlement

(i) When a WTO member requests consultations with the United States under Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 3511(d)(16) of this title (hereafter in this subsection referred to as the “Dispute Settlement Understanding”) concerning whether the law of a State is inconsistent with the obligations undertaken by the United States in any of the Uruguay Round Agreements, the Trade Representative shall notify the Governor of the State concerned whether the law of a State is inconsistent with the obligations undertaken by the United States in any of the Uruguay Round Agreements.

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

(iii) The Trade Representative shall make every effort to ensure that the State concerned is involved in the development of the position of the United States at each stage of the consultations and each subsequent stage of dispute settlement proceedings regarding the matter. In particular, the Trade Representative shall—
(I) notify the State concerned not later than 7 days after a WTO member requests the establishment of a dispute settlement panel or gives notice of the WTO member’s decision to appeal a report by a dispute settlement panel regarding the matter; and

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

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

(D) Notice to States regarding consultations on foreign subcentral government laws

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

(ii) In exigent circumstances clause (i) shall not apply, in which case the Trade Representative shall notify the appropriate representatives of each State regarding the matter.

(2) Legal challenge

(A) In general

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

(B) Procedures governing action

In any action described in subparagraph (A) that is brought by the United States against a State or any subdivision thereof—

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

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

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

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

(C) Reports to congressional committees

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

(i) describing the proposed action;

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

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

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

(3) “State law” defined

For purposes of this subsection—

(A) the term “State law” includes—

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

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

(B) the terms “dispute settlement panel” and “Appellate Body” have the meanings given those terms in section 3531 of this title.

(c) Effect of agreement with respect to private remedies

(1) Limitations

No person other than the United States—

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

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

(2) Intent of Congress

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

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

(B) on any other basis.

(d) Statement of administrative action

The statement of administrative action approved by the Congress under section 3511(a) of this title shall be regarded as an authorititative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application.


REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(2) and (d), is Pub. L. 103–465, Dec. 8, 1994, 108 Stat. 4809, known as the Uruguay Round Agreements Act. For complete classification of this Act to the Code, see Short Title note set out under section 3501 of this title and Tables.

§ 3513. Implementing actions in anticipation of entry into force; regulations

(a) Implementing actions

After December 8, 1994—

(1) the President may proclaim such actions, and

(2) other appropriate officers of the United States Government may issue such regulations, as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date any of the Uruguay Round Agreements enters into force with respect to the United States is appropriately implemented on such date. Such proclamation or regulation may not have an effective date earlier than the date of entry into force with respect to the United States of the agreement to which the proclamation or regulation relates.

(b) Regulations

Any interim regulation necessary or appropriate to carry out any action proposed in the statement of administrative action approved under section 3511(a) of this title to implement an agreement described in section 3511(d)(7), (12), or (13) of this title shall be issued not later than 1 year after the date on which the agreement enters into force with respect to the United States.


REFERENCES IN TEXT


§ 3521. Tariff modifications

(a) In general

In addition to the authority provided by section 2902 of this title, the President shall have the authority to proclaim—

(1) such other modification of any duty,

(2) such other staged rate reduction, or

(3) such additional duties,

as the President determines to be necessary or appropriate to carry out Schedule XX.

(b) Other tariff modifications

Subject to the consultation and layover requirements of section 3524 of this title, the President may proclaim—

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

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

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

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

(c) Authority to increase duties on articles from certain countries

(1) In general

(A) Determination with respect to certain countries

Notwithstanding section 1881 of this title, after the entry into force of the WTO Agreement with respect to the United States, if the President—

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

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

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

§ 3521. Tariff modifications

(a) In general

In addition to the authority provided by section 2902 of this title, the President shall have the authority to proclaim—

(1) such other modification of any duty,

(2) such other staged rate reduction, or

(3) such additional duties,

as the President determines to be necessary or appropriate to carry out Schedule XX.

(b) Other tariff modifications

Subject to the consultation and layover requirements of section 3524 of this title, the President may proclaim—

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

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

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

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

(c) Authority to increase duties on articles from certain countries

(1) In general

(A) Determination with respect to certain countries

Notwithstanding section 1881 of this title, after the entry into force of the WTO Agreement with respect to the United States, if the President—

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

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

the President may proclaim an increase in the rate of duty with respect to any article of such country in accordance with subparagraph (B).
§ 3521

TITLE 19—CUSTOMS DUTIES

(B) Rate of duty described
The President may proclaim a rate of duty
on any article of a country identified under
subparagraph (A) that is equal to the greater
of—
(i) the rate of duty set forth for such article in the base rate of duty column of
Schedule XX, or
(ii) the rate of duty set forth for such article in the bound rate of duty column of
Schedule XX.
(2) Termination of increased duties
The President shall terminate any increase
in the rate of duty proclaimed under this subsection by a proclamation which shall be effective on the earlier of—
(A) the date set out in such proclamation
of termination, or
(B) the date the WTO Agreement enters
into force with respect to the foreign country with respect to which the determination
under paragraph (1) was made.
(3) Publication of determination and termination
The President shall publish in the Federal
Register notice of a determination made under
paragraph (1) and a termination occurring by
reason of paragraph (2).
(d) Adjustments to certain column 2 rates of duty
At such time as the President proclaims any
modification to the HTS to implement the provisions of Schedule XX, the President shall also
proclaim the rate of duty set forth in Column B
as the column 2 rate of duty for the subheading
of the HTS that corresponds to the subheading
in Schedule XX listed in Column A.
Column A

Column B

Schedule XX
subheading:
0201.10.50 ............
0201.20.80 ............
0201.30.80 ............
0202.10.50 ............
0202.20.80 ............
0202.30.80 ............
0401.30.25 ............
0401.30.75 ............
0402.10.50 ............
0402.21.25 ............
0402.21.50 ............
0402.21.90 ............
0402.29.50 ............
0402.91.60 ............
0402.99.50 ............
0402.99.90 ............
0403.10.50 ............
0403.90.16 ............
0403.90.45 ............
0403.90.55 ............
0403.90.65 ............
0403.90.78 ............
0403.90.95 ............
0404.10.11 ............
0404.10.15 ............
0404.10.90 ............
0404.90.30 ............
0404.90.50 ............
0405.00.40 ............
0405.00.90 ............
0406.10.08 ............
0406.10.18 ............

Rate of duty for column 2 of the
HTS:
31.1%
31.1%
31.1%
31.1%
31.1%
31.1%
90.8¢/liter
$1.936/kg
$1.018/kg
$1.018/kg
$1.285/kg
$1.831/kg
$1.299/kg + 17.5%
36.8¢/kg
58.4¢/kg
54.5¢/kg + 17.5%
$1.217/kg + 20%
90.8¢/liter
$1.03/kg
$1.285/kg
$1.831/kg
$1.936/kg
$1.217/kg + 20%
20%
$1.217/kg + 10%
$1.03/kg
25%
$1.399/kg + 10%
$1.813/kg
$2.194/kg + 10%
$1.775/kg
$2.67/kg

Page 814

Column A

Column B

Schedule XX
subheading:
0406.10.28 ............
0406.10.38 ............
0406.10.48 ............
0406.10.58 ............
0406.10.68 ............
0406.10.78 ............
0406.10.88 ............
0406.20.28 ............
0406.20.33 ............
0406.20.39 ............
0406.20.48 ............
0406.20.53 ............
0406.20.63 ............
0406.20.67 ............
0406.20.71 ............
0406.20.75 ............
0406.20.79 ............
0406.20.83 ............
0406.20.87 ............
0406.20.91 ............
0406.30.18 ............
0406.30.28 ............
0406.30.38 ............
0406.30.48 ............
0406.30.53 ............
0406.30.63 ............
0406.30.67 ............
0406.30.71 ............
0406.30.75 ............
0406.30.79 ............
0406.30.83 ............
0406.30.87 ............
0406.30.91 ............
0406.40.70 ............
0406.90.12 ............
0406.90.18 ............
0406.90.33 ............
0406.90.38 ............
0406.90.43 ............
0406.90.48 ............
0406.90.64 ............
0406.90.68 ............
0406.90.74 ............
0406.90.78 ............
0406.90.84 ............
0406.90.88 ............
0406.90.92 ............
0406.90.94 ............
0406.90.97 ............
1202.10.80 ............
1202.20.80 ............
1517.90.60 ............
1701.11.50 ............
1701.12.10 ............

Rate of duty for column 2 of the
HTS:
$1.443/kg
$1.241/kg
$2.121/kg
$2.525/kg
$1.631/kg
$1.328/kg
$1.775/kg
$2.67/kg
$1.443/kg
$1.241/kg
$2.121/kg
$2.525/kg
$2.67/kg
$1.443/kg
$1.241/kg
$2.121/kg
$2.525/kg
$1.631/kg
$1.328/kg
$1.775/kg
$2.67/kg
$1.443/kg
$1.241/kg
$2.121/kg
$1.631/kg
$2.67/kg
$1.443/kg
$1.241/kg
$2.121/kg
$2.525/kg
$1.631/kg
$1.328/kg
$1.775/kg
$2.67/kg
$1.443/kg
$2.121/kg
$2.525/kg
$2.525/kg
$2.525/kg
$2.208/kg
$1.241/kg
$2.525/kg
$2.67/kg
$1.443/kg
$1.241/kg
$2.121/kg
$1.631/kg
$1.328/kg
$1.775/kg
192.7%
155%
40.2¢/kg
39.85¢/kg
6.58170¢/kg less 0.0622005¢/kg for
each degree under 100 degrees
(and fractions of a degree in proportion) but not less than
5.031562¢/kg
42.05¢/kg
6.58170¢/kg less 0.0622005¢/kg for
each degree under 100 degrees
(and fractions of a degree in proportion) but not less than
5.031562¢/kg
42.05¢/kg
39.9¢/kg + 6%
39.9¢/kg + 6%
6.58170¢/kg less 0.0622005¢/kg for
each degree under 100 degrees
(and fractions of a degree in proportion) but not less than
5.031562¢/kg
42.05¢/kg
19.9¢/kg of total sugars + 6%
19.9¢/kg of total sugars + 6%
39.9¢/kg of total sugars + 6%

1701.12.50 ............
1701.91.10 ............

1701.91.30
1701.91.48
1701.91.58
1701.99.10

............
............
............
............

1701.99.50
1702.20.28
1702.30.28
1702.40.28

............
............
............
............


<table>
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<tr>
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<th>Column B</th>
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</thead>
<tbody>
<tr>
<td>1702.60.28</td>
<td>$39.9¢/kg of total sugars + 6%</td>
</tr>
<tr>
<td>1702.90.10</td>
<td>6.58170¢/kg of total sugars</td>
</tr>
<tr>
<td>1702.90.20</td>
<td>42.05¢/kg</td>
</tr>
<tr>
<td>1702.90.58</td>
<td>$39.9¢/kg of total sugars + 6%</td>
</tr>
<tr>
<td>1702.90.68</td>
<td>42.05¢/kg of total sugars + 6%</td>
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<tr>
<td>1704.90.58</td>
<td>47.4¢/kg + 12.2%</td>
</tr>
<tr>
<td>1704.90.68</td>
<td>47.4¢/kg + 12.2%</td>
</tr>
<tr>
<td>1806.10.15</td>
<td>25.5¢/kg</td>
</tr>
<tr>
<td>1806.10.28</td>
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<td>1806.10.75</td>
<td>35.9¢/kg</td>
</tr>
<tr>
<td>1806.20.26</td>
<td>43.8¢/kg + 5%</td>
</tr>
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<td>1806.20.36</td>
<td>43.8¢/kg + 5%</td>
</tr>
<tr>
<td>1806.20.38</td>
<td>62.1¢/kg + 5%</td>
</tr>
<tr>
<td>1806.20.73</td>
<td>35.9¢/kg + 10%</td>
</tr>
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<td>1806.20.77</td>
<td>35.9¢/kg + 10%</td>
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<td>62.1¢/kg + 10%</td>
</tr>
<tr>
<td>1806.20.87</td>
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<tr>
<td>1806.20.89</td>
<td>62.1¢/kg + 10%</td>
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<td>1806.20.93</td>
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<td>1806.20.96</td>
<td>43.8¢/kg + 10%</td>
</tr>
<tr>
<td>2008.11.15</td>
<td>155%</td>
</tr>
<tr>
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</tr>
<tr>
<td>2008.11.50</td>
<td>155%</td>
</tr>
<tr>
<td>2011.10.30</td>
<td>$1.217/kg + 17.5%</td>
</tr>
<tr>
<td>2011.10.40</td>
<td>$1.217/kg + 17.5%</td>
</tr>
<tr>
<td>2011.10.50</td>
<td>$1.217/kg + 17.5%</td>
</tr>
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<td>2011.10.65</td>
<td>$1.217/kg + 17.5%</td>
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<td>49.8¢/kg + 10%</td>
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<tr>
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<td>2011.40.94</td>
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</tr>
<tr>
<td>2011.90.50</td>
<td>27.9¢/kg + 10%</td>
</tr>
<tr>
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<tr>
<td>2008.11.35</td>
<td>155%</td>
</tr>
<tr>
<td>2008.11.50</td>
<td>155%</td>
</tr>
<tr>
<td>2101.10.30</td>
<td>35.9¢/kg + 10%</td>
</tr>
<tr>
<td>2011.10.48</td>
<td>35.9¢/kg + 10%</td>
</tr>
<tr>
<td>2011.10.58</td>
<td>35.9¢/kg + 10%</td>
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<td>2011.20.29</td>
<td>35.9¢/kg + 10%</td>
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<td>2011.90.02</td>
<td>$1,014/kg</td>
</tr>
<tr>
<td>2011.90.04</td>
<td>$2,348/kg</td>
</tr>
</tbody>
</table>

(e) Authority to consolidate subheadings and modify column 2 rates of duty for tariff simplification purposes

(1) In general

Whenever the HTS column 1 general rates of duty for 2 or more 8-digit subheadings are at
§ 3522. Liquidation or reliquidation and refund of duty paid on certain entries

(a) Liquidation or reliquidation

Notwithstanding section 1514 of this title or any other provision of law, and subject to subsection (b) of this section, the Secretary of the Treasury shall liquidate or reliquidate the entries listed or otherwise described in subsection (c) of this section and refund any duty or excess duty that was paid, as provided in subsection (c) of this section.

(b) Requests

Liquidation or reliquidation may be made under subsection (a) of this section with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date on which the WTO Agreement enters into force with respect to the United States, that contains sufficient information to enable the Customs Service—

(1) to locate the entry; or
(2) to reconstruct the entry if it cannot be located.

(c) Entries

The entries referred to in subsection (a) of this section are as follows:

(1) Agglomerated stone tiles

Any goods—
(A) for which the importer claimed or would have claimed entry under subheading 6810.19.12 of the HTS on or after October 1, 1990, and before the effective date of a proclamation issued by the President under section 3513(a) of this title with respect to items under such subheading in order to carry out Schedule XX, or
(B) entered on or after January 1, 1989, and before October 1, 1990, for which entry would have been claimed under subheading 6810.19.12 of the HTS on or after October 1, 1990,
shall be liquidated or reliquidated as if the wording of that subheading were “Of stone agglomerated with binders other than cement”, and the Secretary of the Treasury shall refund any excess duties paid with respect to such entries.

(2) Clomiphene citrate

(A) Any entry, or withdrawal from warehouse for consumption, of goods described in heading 9902.29.95 of the HTS (relating to clomiphene citrate) which was made after December 31, 1988, and before January 1, 1993, and with respect to which there would have been no duty if the reference to subheading “2922.19.15” in such heading were a reference to subheading “2922.19.15 or any subheading of chapter 30” at the time of such entry or withdrawal, shall be liquidated or reliquidated as free of duty.

(B) The Secretary of the Treasury shall refund any duties paid with respect to entries described in subparagraph (A).

§ 3523. Duty free treatment for octadecyl isocyanate and 5-Chloro-2-(2,4-dichlorophenox)phenol

The President—
(1) shall proclaim duty-free entry for octadecyl isocyanate and 5-Chloro-2-(2,4-dichlorophenoxy)phenol, to be effective on the effective date of the proclamation issued by the President under section 3513(a) of this title to carry out Schedule XX, and
(2) shall take such actions as are necessary to reflect such tariff treatment in Schedule XX.


§ 3524. Consultation and layover requirements for, and effective date of, proclaimed actions

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—
(1) the President has obtained advice regarding the proposed action from—
(A) the appropriate advisory committees established under section 2155 of this title, and
(B) the International Trade Commission;
(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—
(A) the action proposed to be proclaimed and the reasons for such actions, and
(B) the advice obtained under paragraph (1);
(3) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action, has expired; and
(4) the President has consulted with such committees regarding the proposed action during the period referred to in paragraph (3).


References in Text


Deligation of Authority

Functions of President under this section delegated to the United States Trade Representative by par. (4) of Proc. No. 6699, Jan. 27, 1997, 62 F.R. 4417.

Authority of President to perform certain functions in order to fulfill consultation and layover requirements set forth in this section delegated to United States Trade Representative by Memorandum of President of the United States, Sept. 29, 1995, 60 F.R. 52061, set out as a note under section 3313 of this title.

Part C—Uruguay Round Implementation and Dispute Settlement

§ 3531. Definitions

For purposes of this part:

(1) Administering authority

The term “administering authority” has the meaning given that term in section 1677(1) of this title.

(2) Appellate Body

The term “Appellate Body” means the Appellate Body established under Article 17.1 of the Dispute Settlement Understanding.

(3) Appropriate congressional committees; congressional committees

(A) Appropriate congressional committees

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

(B) Congressional committees

The term “congressional committees” means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(4) Dispute settlement panel; panel

The terms “dispute settlement panel” and “panel” mean a panel established pursuant to Article 6 of the Dispute Settlement Understanding.

(5) Dispute Settlement Body

The term “Dispute Settlement Body” means the Dispute Settlement Body administering the rules and procedures set forth in the Dispute Settlement Understanding.

(6) Dispute Settlement Understanding

The term “Dispute Settlement Understanding” means the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 3511(d)(16) of this title.

(7) General Council

The term “General Council” means the General Council established under paragraph 2 of Article IV of the WTO Agreement.

(8) Ministerial Conference

The term “Ministerial Conference” means the Ministerial Conference established under paragraph 1 of Article IV of the WTO Agreement.

(9) Other terms

The terms “Antidumping Agreement”, “Agreement on Subsidies and Countervailing Measures”, “Agreement on Safeguards”, and “Safeguards Agreement” mean the agreements referred to in section 3511(d)(7), (12), and (13) of this title, respectively.


References in Text

This part, referred to in text, was in the original “this subtitle”, meaning subtitle C (§§121 to 130) of title I of Pub. L. 103–465, which enacted this part, amended sections 1516a, 2155, and 2254 of this title, and enacted provisions set out below. For complete classification of subtitle C to the Code, see Tables.

Effective Date

Section 130 of title I of Pub. L. 103–465 provided that: “This subtitle [subtitle C (§§121–130) of title I of Pub. L. 103–465, enacting this part and amending sections 1516a, 2155, and 2254 of this title] and the amendments made...
by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995]."

§ 3532. Implementation of Uruguay Round Agreements

(a) Decisionmaking

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

(b) Consultations with congressional committees

In furtherance of the objective set forth in subsection (a) of this section, the Trade Representative shall consult with the appropriate congressional committees before any vote is taken by the Ministerial Conference or the General Council relating to—

(1) the adoption of an interpretation of the WTO Agreement or another multilateral trade agreement,
(2) the amendment of any such agreement,
(3) the granting of a waiver of any obligation under any such agreement,
(4) the adoption of any amendment to the rules or procedures of the Ministerial Conference or the General Council,
(5) the accession of a state or separate customs territory to the WTO Agreement, or
(6) the adoption of any other decision, if the action described in paragraph (1), (2), (3), (4), (5), or (6) would substantially affect the rights or obligations of the United States under the WTO Agreement or another multilateral trade agreement or potentially entails a change in Federal or State law.

(c) Report on decisions

(1) In general

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

(A) the nature of the decision;
(B) the efforts made by the United States to have the matter decided by consensus pursuant to paragraph 1 of article IX of the WTO Agreement, and the results of those efforts;
(C) which countries voted for, and which countries voted against, the decision;
(D) the rights or obligations of the United States affected by the decision and any Federal or State law that would be amended or repealed, if the President after consultation with the Congress determined that such amendment or repeal was an appropriate response; and
(E) the action the President intends to take in response to the decision or, if the President does not intend to take any action, the reasons therefor.

(2) Additional reporting requirements

(A) Grant of waiver

In the case of a decision to grant a waiver described in subsection (b)(2) of this section, the report under paragraph (1) shall describe the terms and conditions of the waiver and the rights and obligations of the United States that are affected by the waiver.

(B) Accession

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

(d) Consultation on report

Promptly after the submission of a report under subsection (c) of this section, the Trade Representative shall consult with the appropriate congressional committees with respect to the report.


§ 3533. Dispute settlement panels and procedures

(a) Review by President

The President shall review annually the WTO panel roster and shall include the panel roster and the list of persons serving on the Appellate Body in the annual report submitted by the President under section 2213(a) of this title.

(b) Qualifications of appointees to panels

The Trade Representative shall—

(1) seek to ensure that persons appointed to the WTO panel roster are well-qualified, and that the roster includes persons with expertise in the subject areas covered by the Uruguay Round Agreements; and
(2) inform the President of persons nominated to the roster by other WTO member countries.

(c) Rules governing conflicts of interest

The Trade Representative shall seek the establishment by the General Council and the Dispute Settlement Body of rules governing conflicts of interest by persons serving on panels and members of the Appellate Body and shall describe, in the annual report submitted under section 3534 of this title, any progress made in establishing such rules.

(d) Notification of disputes

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

(1) the nature of the dispute, including the matters set forth in the request for the establishment of the panel, the legal basis of the complaint, and the specific measures, in particular any State or Federal law cited in the request for establishment of the panel;
(2) the identity of the persons serving on the panel; and
(3) whether there was any departure from the rule of consensus with respect to the selection of persons to serve on the panel.
(e) Notice of appeals of panel reports

If an appeal is taken of a report of a panel in a proceeding described in subsection (d) of this section, the Trade Representative shall, promptly after the notice of appeal is filed, notify the appropriate congressional committees of—

(1) the issues under appeal; and
(2) the identity of the persons serving on the Appellate Body who are reviewing the report of the panel.

(f) Actions upon circulation of reports

Promptly after the circulation of a report of a panel or of the Appellate Body to WTO members in a proceeding described in subsection (d) of this section, the Trade Representative shall—

(1) notify the appropriate congressional committees of the report;
(2) in the case of a report of a panel, consult with the appropriate congressional committees concerning the nature of any appeal that may be taken of the report; and
(3) if the report is adverse to the United States, consult with the appropriate congressional committees concerning whether to implement the report’s recommendation and, if so, the manner of such implementation and the period of time needed for such implementation.

(g) Requirements for agency action

(1) Changes in agency regulations or practice

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

(A) the appropriate congressional committees have been consulted under subsection (f) of this section;
(B) the Trade Representative has sought advice regarding the modification from relevant private sector advisory committees established under section 2155 of this title;
(C) the head of the relevant department or agency has provided an opportunity for public comment by publishing in the Federal Register the proposed modification and the explanation for the modification;
(D) the Trade Representative has submitted to the appropriate congressional committees a report describing the proposed modification, the reasons for the modification, and a summary of the advice obtained under subparagraph (B) with respect to the modification;
(E) the Trade Representative and the head of the relevant department or agency have consulted with the appropriate congressional committees on the proposed contents of the final rule or other modification; and
(F) the final rule or other modification has been published in the Federal Register.

(2) Effective date of modification

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

(3) Vote by congressional committees

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

(4) Inapplicability to ITC

This subsection does not apply to any regulation or practice of the International Trade Commission.

(h) Consultations regarding review of WTO rules and procedures

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


§ 3534. Annual report on WTO

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

(1) the major activities and work programs of the WTO, including the functions and activities of the committees established under article IV of the WTO Agreement, and the expenditures made by the WTO in connection with those activities and programs;
(2) the percentage of budgetary assessments by the WTO that were accounted for by each WTO member country, including the United States;
(3) the total number of personnel employed or retained by the Secretariat of the WTO, and the number of professional, administrative, and support staff of the WTO;
(4) for each personnel category described in paragraph (3), the number of citizens of each country, and the average salary of the personnel, in that category;
(5) each report issued by a panel or the Appellate Body in a dispute settlement proceeding regarding Federal or State law, and any efforts by the Trade Representative to provide for implementation of the recommendations contained in a report that is adverse to the United States;
(6) each proceeding before a panel or the Appellate Body that was initiated during that fiscal year regarding Federal or State law, the
status of the proceeding, and the matter at issue;
(7) the status of consultations with any State whose law was the subject of a report adverse to the United States that was issued by a panel or the Appellate Body; and
(8) any progress achieved in increasing the transparency of proceedings of the Ministerial Conference and the General Council, and of dispute settlement proceedings conducted pursuant to the Dispute Settlement Understanding.


§ 3535. Review of participation in WTO

(a) Report on operation of WTO

The first annual report submitted to the Congress under section 3534 of this title—
(1) after the end of the 5-year period beginning on the date on which the WTO Agreement enters into force with respect to the United States, and
(2) after the end of every 5-year period thereafter,
shall include an analysis of the effects of the WTO Agreement on the interests of the United States, the costs and benefits to the United States of its participation in the WTO, and the value of the continued participation of the United States in the WTO.

(b) Congressional disapproval of U.S. participation in WTO

(1) General rule

The approval of the Congress, provided under section 3511(a) of this title, of the WTO Agreement shall cease to be effective if, and only if, a joint resolution described in subsection (c) of this section is enacted into law pursuant to the provisions of paragraph (2).

(2) Procedural provisions

(A) The requirements of this paragraph are met if the joint resolution is enacted under subsection (c) of this section, and—
(i) the Congress adopts and transmits the joint resolution to the President before the end of the 90-day period (excluding any day described in section 2194(b) of this title) beginning on the date on which the Congress receives a report referred to in subsection (a) of this section, and
(ii) if the President vetoes the joint resolution, each House of Congress votes to override that veto on or before the later of the last day of the 90-day period referred to in clause (i) or the last day of the 15-day period (excluding any day described in section 2194(b) of this title) beginning on the date on which the Congress receives the veto message from the President.

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

(c) Joint resolutions

(1) Joint resolutions

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

(2) Procedures

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

(B) Subject to the provisions of this subsection, the provisions of subsections (b), (d), (e), and (f) of section 2192 of this title apply to joint resolutions to the same extent as such provisions apply to resolutions under such section.

(C) If the committee of either House to which a joint resolution has been referred has not reported it by the close of the 45th day after its introduction (excluding any day described in section 2194(b) of this title), such committee shall be automatically discharged from further consideration of the joint resolution and it shall be placed on the appropriate calendar.

(D) It is not in order for—
(i) the Senate to consider any joint resolution unless it has been reported by the Committee on Finance or the committee has been discharged under subparagraph (C); or
(ii) the House of Representatives to consider any joint resolution unless it has been reported by the Committee on Ways and Means or the committee has been discharged under subparagraph (C).

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

(3) Consideration of second resolution not in order

It shall not be in order in either the House of Representatives or the Senate to consider a joint resolution (other than a joint resolution received from the other House), if that House has previously adopted a joint resolution under this section.

(d) Rules of House of Representatives and Senate

This section is enacted by the Congress—

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

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.
§ 3536. Increased transparency

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


§ 3537. Access to WTO dispute settlement process

(a) In general

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

(b) Notice and public comment

In any proceeding described in subsection (a) of this section, the Trade Representative shall—

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

(A) identifying the initial parties to the dispute,

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

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

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

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

(c) Access to documents

In each proceeding described in subsection (a) of this section, the Trade Representative shall—

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

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

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

(d) Requests for nonconfidential summaries

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

(e) Public file

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


§ 3538. Administrative action following WTO panel reports

(a) Action by United States International Trade Commission

(1) Advisory report

If a dispute settlement panel finds in an interim report under Article 15 of the Dispute Settlement Understanding, or the Appellate Body finds in a report under Article 17 of that Understanding, that an action by the Inter-
national Trade Commission in connection with a particular proceeding is not in conformity with the obligations of the United States under the Antidumping Agreement, the Safeguards Agreement, or the Agreement on Subsidies and Countervailing Measures, the Trade Representative may request the Commission to issue an advisory report on whether title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.] or title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], as the case may be, permits the Commission to take steps in connection with the particular proceeding that would render its action not inconsistent with the findings of the panel or the Appellate Body concerning those obligations. The Trade Representative shall notify the congressional committees of such request.

(2) Time limits for report

The Commission shall transmit its report under paragraph (1) to the Trade Representative—

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

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

(3) Consultations on request for Commission determination

If a majority of the Commissioners issues an affirmative report under paragraph (1), the Trade Representative shall consult with the congressional committees concerning the matter.

(4) Commission determination

Notwithstanding any provision of the Tariff Act of 1930 [19 U.S.C. 1202 et seq.] or title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], if a majority of the Commissioners issues an affirmative report under paragraph (1), the Commission, upon the written request of the Trade Representative, shall issue a determination in connection with the particular proceeding that would render the Commission’s action described in paragraph (1) not inconsistent with the findings of the panel or Appellate Body. The Commission shall issue its determination not later than 120 days after the request from the Trade Representative is made.

(5) Consultations on implementation of Commission determination

The Trade Representative shall consult with the congressional committees before the Commission’s determination under paragraph (4) is implemented.

(6) Revocation of order

If, by virtue of the Commission’s determination under paragraph (4), an antidumping or countervailing duty order with respect to some or all of the imports that are subject to the action of the Commission described in paragraph (1) is no longer supported by an affirmative Commission determination under title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.] or this section, the Trade Representative may, after consulting with the congressional committees under paragraph (5), direct the administering authority to revoke the antidumping or countervailing duty order in whole or in part.

(b) Action by administering authority

(1) Consultations with administering authority and congressional committees

Promptly after a report by a dispute settlement panel or the Appellate Body is issued that contains findings that an action by the administering authority in a proceeding under title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.] is not in conformity with the obligations of the United States under the Antidumping Agreement or the Agreement on Subsidies and Countervailing Measures, the Trade Representative shall consult with the administering authority and the congressional committees on the matter.

(2) Determination by administering authority

Notwithstanding any provision of the Tariff Act of 1930 [19 U.S.C. 1202 et seq.], the administering authority shall, within 180 days after receipt of a written request from the Trade Representative, issue a determination in connection with the particular proceeding that would render the administering authority’s action described in paragraph (1) not inconsistent with the findings of the panel or the Appellate Body.

(3) Consultations before implementation

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

(4) Implementation of determination

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

(c) Effects of determinations; notice of implementation

(1) Effects of determinations

Determinations concerning title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.] that are implemented under this section shall apply with respect to unliquidated entries of the subject merchandise (as defined in section 771 of that Act [19 U.S.C. 1677]) that are entered, or withdrawn from warehouse, for consumption on or after—

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

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

(2) Notice of implementation

(A) The administering authority shall publish in the Federal Register notice of the implementation of any determination made under this section with respect to title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.].

(B) The Trade Representative shall publish in the Federal Register notice of the implementation of any determination made under this section with respect to title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.].

(d) Opportunity for comment by interested parties

Prior to issuing a determination under this section, the administering authority or the Commission, as the case may be, shall provide interested parties with an opportunity to submit written comments and, in appropriate cases, may hold a hearing, with respect to the determination.


REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsecs. (a)(1), (4), (6), (b)(1), (2), and (c)(1), (2)(A), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§ 1202 et seq.) of this title. Title VII of the Act is classified generally to subtitle IV (§ 1671 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

The Trade Act of 1974, referred to in subsecs. (a)(1), (4) and (c)(2)(B), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Title II of the Act is classified generally to subchapter II (§ 2251 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

CODIFICATION

Section was enacted as part of the Trade Act of 2002, and not as part of the Uruguay Round Agreements Act which enacted this chapter.

PART D—RELATED PROVISIONS

§ 3551. Working party on worker rights

(a) In general

The President shall seek the establishment in the GATT 1947, and, upon entry into force of the WTO Agreement with respect to the United States, in the WTO, of a working party to examine the relationship of internationally recognized worker rights, as defined in section 2467(4) of this title, to the articles, objectives, and related instruments of the GATT 1947 and of the WTO, respectively.

(b) Objectives of working party

The objectives of the United States for the working party described in subsection (a) of this section are to—

(1) explore the linkage between international trade and internationally recognized worker rights, as defined in section 2467(4) of this title, taking into account differences in the level of development among countries;

(2) examine the effects on international trade of the systematic denial of such rights;

(3) consider ways to address such effects; and

(4) develop methods to coordinate the work program of the working party with the International Labor Organization.

(c) Report to Congress

The President shall report to the Congress, not later than 1 year after December 8, 1994, on the progress made in establishing the working party under this section, and on United States objectives with respect to the working party’s work program.


AMENDMENTS


§ 3539. Fund for WTO dispute settlements

(a) Establishment of fund

There is established in the Treasury a fund for the payment of settlements under this section.

(b) Authority of USTR to pay settlements

Amounts in the fund established under subsection (a) of this section shall be available, as provided in appropriations Acts, only for the payment of settlements under this section.

(c) Appropriations

There are authorized to be appropriated to the fund established under subsection (a) of this section—

(1) $50,000,000; and

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

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

(d) Management of fund

Sections 9601 and 9602(b) of title 26 shall apply to the fund established under subsection (a) of this section to the same extent as such provisions apply to trust funds established under subchapter A of chapter 98 of such title.


CODIFICATION

Section was enacted as part of the Trade Act of 2002, and not as part of the Uruguay Round Agreements Act which enacted this chapter.
§ 3552. Implementation of Rules of Origin work program

If the President enters into an agreement developed under the work program described in Article 9 of the Agreement on Rules of Origin referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1996. See note set out under section 3511 of this title.


REFERENCES IN TEXT

For effective date of this section, referred to in text, see Effective Date note below.

AMENDMENTS

1996—Pub. L. 104–295 substituted “effective date of this section” for “effective date of this title”.

§ 3553. Membership in WTO of boycotting countries

It is the sense of the Congress that the Trade Representative should vigorously oppose the admission into the World Trade Organization of any country which, through its laws, regulations, official policies, or governmental practices, fosters, imposes, complies with, furthers, or supports any boycott described in section 2407(a) of title 50, Appendix (as in effect on August 20, 1994), including requiring or encouraging entities within that country to refuse to do business with persons who do not comply with requests to take any action prohibited under that section.


§ 3554. Africa trade and development policy

(a) Development of policy

The President should develop and implement a comprehensive trade and development policy for the countries of Africa.

(b) Reports to Congress

The President shall, not later than 12 months after December 8, 1994, and annually thereafter for a period of 4 years, transmit to the Committee on Ways and Means and the Committee on Foreign Affairs of the House of Representatives, the Committee on Finance and the Committee on Foreign Relations of the Senate, and other appropriate committees of the Congress, a report on the steps taken to carry out subsection (a) of this section.


§ 3555. Objectives for extended negotiations

(a) Trade in financial services

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

(1) offering commitments to provide national treatment and market access in each of the financial services subsectors, and

(2) making such commitments on a normal trade relations basis.

(b) Trade in basic telecommunications services

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

(c) Trade in civil aircraft

(1) Negotiations

The principal negotiating objectives of the United States in the extended negotiations on trade in civil aircraft to be conducted under the auspices of the WTO are—

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

(B) to obtain the reduction or elimination of specific tariff and nontariff barriers, in-
 TITLE 19—CUSTOMS DUTIES § 3571

§ 3571. Subsidies enforcement

(a) Assistance regarding multilateral subsidy remedies

The administering authority shall provide information to the public upon request, and, to the extent feasible, assistance and advice to interested parties concerning—

(1) remedies and benefits available under relevant provisions of the Subsidies Agreement, and

(2) the procedures relating to such remedies and benefits.

(b) Prohibited subsidies

(1) Notification of Trade Representative

If the administering authority determines pursuant to title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.] that a class or kind of merchandise is benefiting from a subsidy which is prohibited under Article 3 of the Subsidies Agreement, the administering authority shall notify the Trade Representative and shall provide the Trade Representative with the information upon which the administering authority based its determination.

(2) Request by interested party regarding prohibited subsidy

An interested party may request that the administering authority determine if there is reason to believe that merchandise produced in a WTO member country is benefiting from a subsidy which is prohibited under Article 3 of the Subsidies Agreement. The request shall contain such information as the administering authority may require to support the allegations contained in the request. If the administering authority, after analyzing the request and other information reasonably available to the administering authority, determines that there is reason to believe that such merchandise is benefiting from a subsidy which is prohibited under Article 3 of the Subsidies Agreement, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(c) Subsidies actionable under Agreement

(1) In general

If the administering authority determines pursuant to title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.] that a class or kind of merchandise is benefiting from a subsidy described in Article 6.1 of the Subsidies Agreement.
ment, the administering authority shall notify the Trade Representative, and shall provide the Trade Representative with the information upon which the administering authority based its determination.

(2) Request by interested party regarding adverse effects

An interested party may request the administering authority to determine if there is reason to believe that a subsidy which is actionable under the Subsidies Agreement is causing adverse effects. The request shall contain such information as the administering authority may require to support the allegations contained in the request. At the request of the administering authority, the Commission shall assist the administering authority in analyzing the information pertaining to the existence of such adverse effects. If the administering authority, after analyzing the request and other information reasonably available to the administering authority, determines that there is reason to believe that a subsidy which is actionable under the Subsidies Agreement is causing adverse effects, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(d) Initiation of section 2411 investigation

On the basis of the notification and information provided by the administering authority pursuant to subsection (b) or (c) of this section, such other information as the Trade Representative may have or obtain, and where applicable, after consultation with an interested party referred to in subsection (b)(2) or (c)(2) of this section, the Trade Representative shall, unless such interested party objects, determine as expeditiously as possible, in accordance with the procedures in section 302(b)(A) of the Trade Act of 1974 (19 U.S.C. 2412(b)(A)), whether to initiate an investigation pursuant to title III of that Act (19 U.S.C. 2411 et seq.). At the request of the Trade Representative, the administering authority and the Commission shall assist the Trade Representative in an investigation initiated pursuant to this subsection.

(e) Nonactionable subsidies

(1) Compliance with Article 8 of the Subsidies Agreement

(A) Monitoring

In order to monitor whether a subsidy meets the conditions and criteria described in Article 8.2 of the Subsidies Agreement and is nonactionable, the Trade Representative shall provide the administering authority on a timely basis with any information submitted or report made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding a notified subsidy program. The administering authority shall review such information and reports, and where appropriate, shall recommend to the Trade Representative that the Trade Representative seek pursuant to Article 8.3 or 8.4 of the Subsidies Agreement additional information regarding the notified subsidy program or a subsidy granted pursuant to the notified subsidy program. If the administering authority has reason to believe that a violation of Article 8.2 of the Subsidies Agreement exists, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(B) Request by interested party regarding violation of Article 8

An interested party may request the administering authority to determine if there is reason to believe that a violation of Article 8 of the Subsidies Agreement exists. The request shall contain such information as the administering authority may require to support the allegations contained in the request. If the administering authority, after analyzing the request and other information reasonably available to the administering authority, determines that additional information is needed, the administering authority shall recommend to the Trade Representative that the Trade Representative seek, pursuant to Article 8.3 or 8.4 of the Subsidies Agreement, additional information regarding the particular notified subsidy program or a subsidy granted pursuant to the notified subsidy program. If the administering authority determines that there is reason to believe that a violation of Article 8 of the Subsidies Agreement exists, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(C) Action by Trade Representative

(i) If the Trade Representative, on the basis of the notification and information provided by the administering authority pursuant to subparagraph (A) or (B), and such other information as the Trade Representative may have or obtain, and after consulting with the interested party referred to in subparagraph (B) and appropriate domestic industries, determines that there is reason to believe that a violation of Article 8 of the Subsidies Agreement exists, the Trade Representative shall invoke the procedures of Article 8.4 or 8.5 of the Subsidies Agreement.

(ii) For purposes of clause (i), the Trade Representative shall determine that there is reason to believe that a violation of Article 8 exists in any case in which the Trade Representative determines that a notified subsidy program or a subsidy granted pursuant to a notified subsidy program does not satisfy the conditions and criteria required for a nonactionable subsidy program under this Act, the Subsidies Agreement, and the statement of administrative action approved under section 3511(a) of this title.

(D) Notification of administering authority

The Trade Representative shall notify the administering authority whenever a violation of Article 8 of the Subsidies Agreement has been found to exist pursuant to Article 8.4 or 8.5 of that Agreement.
(2) Serious adverse effects

(A) Request by interested party

An interested party may request the administering authority to determine if there is reason to believe that serious adverse effects resulting from a program referred to in Article 8.2 of the Subsidies Agreement exist. The request shall contain such information as the administering authority may require to support the allegations contained in the request.

(B) Action by administering authority

Within 90 days after receipt of the request described in subparagraph (A), the administering authority, after analyzing the request and other information reasonably available to the administering authority, shall determine if there is reason to believe that serious adverse effects resulting from a program referred to in Article 8.2 of the Subsidies Agreement exist. If the determination of the administering authority is affirmative, it shall so notify the Trade Representative and shall include supporting information with the notification. The Commission shall assist the administering authority in analyzing the information pertaining to the existence of such serious adverse effects if the administering authority requests the Commission’s assistance. If the subsidy program that is alleged to result in serious adverse effects has been the subject of a countervailing duty investigation or review under subtitle A or C of title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq., 1675 et seq.], the administering authority shall take into account the determinations made by the administering authority and the Commission in such investigation or review and the administering authority shall complete its analysis as expeditiously as possible.

(C) Action by Trade Representative

The Trade Representative, on the basis of the notification and information provided by the administering authority pursuant to subparagraph (B), and such other information as the Trade Representative may have or obtain, shall determine as expeditiously as possible, but not later than 30 days after receipt of the notification provided by the administering authority, if there is reason to believe that serious adverse effects exist resulting from the subsidy program which is the subject of the administering authority’s notification. The Trade Representative shall make an affirmative determination regarding the existence of such serious adverse effects unless the Trade Representative finds that the notification of the administering authority is not supported by the facts.

(D) Consultations

If the Trade Representative determines that there is reason to believe that serious adverse effects resulting from the subsidy program exist, the Trade Representative, unless the interested party referred to in subparagraph (A) objects, shall invoke the procedures of Article 9 of the Subsidies Agreement, and shall request consultations pursuant to Article 9.2 of the Subsidies Agreement with respect to such serious adverse effects. If such consultations have not resulted in a mutually acceptable solution within 60 days after the request is made for such consultations, the Trade Representative shall refer the matter to the Subsidies Committee pursuant to Article 9.3 of the Subsidies Agreement.

(E) Determination by Subsidies Committee

If the Trade Representative determines that—

(i) the Subsidies Committee has been prevented from making an affirmative determination regarding the existence of serious adverse effects under Article 9 of the Subsidies Agreement by reason of the refusal of the WTO member country with respect to which the consultations have been invoked to join in an affirmative consensus—

(I) that such serious adverse effects exist, or

(II) regarding a recommendation to such WTO member country to modify the subsidy program in such a way as to remove the serious adverse effects, or

(ii) the Subsidies Committee has not presented its conclusions regarding the existence of such serious adverse effects within 120 days after the date the matter was referred to it, as required by Article 9.4 of the Subsidies Agreement,

the Trade Representative shall, within 30 days after such determination, make a determination under section 301(a)(1) of the Trade Act of 1974 [19 U.S.C. 2411(a)(1)] regarding what action to take under section 301(a)(1)(A) of that Act [19 U.S.C. 2411(a)(1)(A)].

(F) Noncompliance with Committee recommendation

In the event that the Subsidies Committee makes a recommendation under Article 9.4 of the Subsidies Agreement and the WTO member country with respect to which such recommendation is made does not comply with such recommendation within 6 months after the date of the recommendation, the Trade Representative shall make a determination under section 301(a)(1) of the Trade Act of 1974 [19 U.S.C. 2411(a)(1)] regarding what action to take under section 301(a)(1) of that Act [19 U.S.C. 2411(a)].

(f) Notification, consultation, and publication

(1) Notification of Congress

The Trade Representative shall submit promptly to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and other appropriate committees of the Congress any information submitted or report made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding a notified subsidy program.

(2) Publication in the Federal Register

The administering authority shall publish regularly in the Federal Register a summary
notice of any information submitted or report made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding notified subsidy programs.

(3) Consultations with Congress and private sector
The Trade Representative and the administering authority promptly shall consult with the committees referred to in paragraph (1), and with interested representatives of the private sector, regarding all information submitted or reports made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding a notified subsidy program.

(4) Annual report
Not later than February 1 of each year beginning in 1996, the Trade Representative and the administering authority shall issue a joint report to the Congress detailing—
(A) the subsidies practices of major trading partners of the United States, including subsidies that are prohibited, are causing serious prejudice, or are nonactionable, under the Subsidies Agreement, and
(B) the monitoring and enforcement activities of the Trade Representative and the administering authority during the preceding calendar year which relate to subsidies practices.

(g) Cooperation of other agencies
All agencies, departments, and independent agencies of the Federal Government shall cooperate fully with one another in carrying out the provisions of this section, and, upon the request of the administering authority, shall furnish to the administering authority all records, papers, and information in their possession which relate to the requirements of this section.

(h) Definitions
For purposes of this section:
(1) Adverse effects
The term “adverse effects” has the meaning given that term in Articles 5(a) and 5(c) of the Subsidies Agreement.

(2) Administering authority
The term “administering authority” has the meaning given that term in section 771(1) of the Tariff Act of 1930 (19 U.S.C. 1677(1)).

(3) Commission
The term “Commission” means the United States International Trade Commission.

(4) Interested party
The term “interested party” means a party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Tariff Act of 1930 (19 U.S.C. 1677(9)(C), (D), (E), (F), or (G)).

(5) Nonactionable subsidy
The term “nonactionable subsidy” means a subsidy described in Article 8.1(b) of the Subsidies Agreement.

(6) Notified subsidy program
The term “notified subsidy program” means a subsidy program which has been notified pursuant to Article 8.3 of the Subsidies Agreement.

(7) Serious adverse effects
The term “serious adverse effects” has the meaning given that term in Article 9.1 of the Subsidies Agreement.

(8) Subsidies Agreement
The term “Subsidies Agreement” means the Agreement on Subsidies and Countervailing Measures described in section 771(8) of the Tariff Act of 1930 (19 U.S.C. 1677(8)).

(9) Subsidies Committee
The term “Subsidies Committee” means the committee established pursuant to Article 24 of the Subsidies Agreement.

(10) Subsidy
The term “subsidy” has the meaning given that term in Article 1 of the Subsidies Agreement.

(11) Trade Representative
The term “Trade Representative” means the United States Trade Representative.

(12) Violation of Article 8
The term “violation of Article 8” means the failure of a notified subsidy program or an individual subsidy granted pursuant to a notified subsidy program to meet the applicable conditions and criteria described in Article 8.2 of the Subsidies Agreement.

(i) Treatment of proprietary information
Notwithstanding any other provision of law, the administering authority may provide the Trade Representative with a copy of proprietary information submitted to, or obtained by, the administering authority that the Trade Representative considers relevant in carrying out its responsibilities under this subchapter. The Trade Representative shall protect from public disclosure proprietary information obtained from the administering authority under this subchapter.


References in Text
The Tariff Act of 1930, referred to in subsecs. (b)(1), (c)(1), and (e)(2)(B), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Act is classified generally to subtitle IV (§ 1671 et seq.) of chapter 4 of this title. Subtitles A and C of title VII of the Act are classified generally to parts 1 (§ 1671 et seq.) and III (§ 1675 et seq.), respectively, of subtitle IV of chapter 4 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.


This subchapter, referred to in subsec. (i), was in the original “this part”, meaning part 4 (§§ 281 to 283) of subtitle B of title II of Pub. L. 103–465, which enacted this subchapter and amended sections 1671b, 1675, 1677d, and 2191 of this title. For complete classification of this part to the Code, see Tables.
(a) General objectives

The general objectives of the United States under this subchapter are—
(1) to ensure that parts II and III of the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of this title (hereafter in this section referred to as the “Subsidies Agreement”) are effective in disciplining the use of subsidies and in remedying the adverse effects of subsidies, and
(2) to ensure that part IV of the Subsidies Agreement does not undermine the benefits derived from any other part of that Agreement.

(b) Specific objective

The specific objective of the United States under this subchapter shall be to create a mechanism which will provide for an ongoing review of the operation of part IV of the Subsidies Agreement.

(c) Sunset of noncountervailable subsidies provisions

(1) In general

Subparagraphs (B), (C), (D), and (E) of section 1677(5B) of this title shall cease to apply as provided in subparagraph (G)(i) of such section, unless, before the date referred to in such subparagraph (G)(i)—
(A) the Subsidies Committee determines to extend Articles 6.1, 8, and 9 of the Subsidies Agreement as in effect on the date on which the Subsidies Agreement enters into force or in a modified form, in accordance with Article 31 of such Agreement,
(B) the President consults with the Congress in accordance with paragraph (2), and
(C) an implementing bill is submitted and enacted into law in accordance with paragraphs (3) and (4).

(2) Consultation with Congress before Subsidies Committee agrees to extend

Before a determination is made by the Subsidies Committee to extend Articles 6.1, 8, and 9 of the Subsidies Agreement, the President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding such extension.

(3) Implementation of extension

(A) Notification and submission

Any extension of subparagraphs (B), (C), (D), and (E) of section 1677(5B) of this title shall take effect if (and only if)—

(i) after the Subsidies Committee determines to extend Articles 6.1, 8, and 9 of the Subsidies Agreement, the President submits to the committees referred to in paragraph (2) a copy of the document describing the terms of such extension, together with—

(I) a draft of an implementing bill,
(II) a statement of any administrative action proposed to implement the extension, and
(III) the supporting information described in subparagraph (C); and

(ii) the implementing bill is enacted into law.

(B) Implementing bill

The implementing bill referred to in subparagraph (A) shall contain only those provisions that are necessary or appropriate to implement an extension of the provisions of section 1677(5B)(B), (C), (D), and (E) of this title as in effect on the day before the date of the enactment of the implementing bill or as modified to reflect the determination of the Subsidies Committee to extend Articles 6.1, 8, and 9 of the Subsidies Agreement.

(C) Supporting information

The supporting information required under subparagraph (A)(i)(III) consists of—

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

(ii) a statement regarding—

(I) how the extension serves the interests of United States commerce, and

(II) why the implementing bill and proposed administrative action is required or appropriate to carry out the extension.

(4) Omitted

(5) Report by the Trade Representative

Not later than the date referred to in section 1677(5B)(G)(i) of this title, the Trade Representative shall submit to the Congress a report setting forth the provisions of law which were enacted to implement Articles 6.1, 8, and 9 of the Subsidies Agreement and should be repealed or modified if such provisions are not extended.

(d) Review of operation of Subsidies Agreement

The Secretary of Commerce, in consultation with other appropriate departments and agencies of the Federal Government, shall undertake an ongoing review of the operation of the Subsidies Agreement. The review shall address—

(1) the effectiveness of part II of the Subsidies Agreement in disciplining the use of subsidies which are prohibited under Article 3 of the Agreement,

(2) the effectiveness of part III and, in particular, Article 6.1 of the Subsidies Agreement, in remedying the adverse effects of subsidies which are actionable under the Agreement, and

(3) the extent to which the provisions of part IV of the Subsidies Agreement may have un-
dermined the benefits derived from other parts of the Agreement, and, in particular—

(A) the extent to which WTO member countries have cooperated in reviewing and improving the operation of part IV of the Subsidies Agreement.

(B) the extent to which the provisions of Articles 8.4 and 8.5 of the Subsidies Agreement have been effective in identifying and remediying violations of the conditions and criteria described in Article 8.2 of the Agreement, and

(C) the extent to which the provisions of Article 9 of the Subsidies Agreement have been effective in remedying the serious adverse effects of subsidy programs described in Article 8.2 of the Agreement.

Not later than 4 years and 6 months after December 8, 1994, the Secretary of Commerce shall submit to the Congress a report on the review required under this subsection.


CODIFICATION


AMENDMENTS


URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

SUBCHAPTER III—ADDITIONAL IMPLEMENTATION OF AGREEMENTS

PART A—FOREIGN TRADE BARRIERS AND UNFAIR TRADE PRACTICES

§ 3581. Objectives in intellectual property

It is the objective of the United States—

(1) to accelerate the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 3511(d)(15) of this title,

(2) to seek enactment and effective implementation by foreign countries of laws to protect and enforce intellectual property rights that supplement and strengthen the standards of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 3511(d)(15) of this title and the North American Free Trade Agreement and, in particular—

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

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

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

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

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


EFFECTIVE DATE

Section 316 of title III of Pub. L. 103–465 provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this subtitle [subtitle B (§§ 311–316) of title III of Pub. L. 103–465, enacting this section and amending sections 221H, 2242, 2411, 2414, 2416, and 2420 of this title] and the amendments made by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995]."

"(b) SECTION 314(f).—The amendment made by section 314(f) [amending section 2420 of this title] takes effect on the date of the enactment of this Act [Dec. 8, 1994]."

PART B—TEXTILES

§ 3591. Textile product integration

Not later than 120 days after the date that the WTO Agreement enters into force with respect to the United States, the Secretary of Commerce shall publish in the Federal Register a notice containing the list of products to be integrated in each stage set out in Article 2(8) of the Agreement on Textiles and Clothing referred to in section 3511(d)(4) of this title. After publication of such list, the list may not be changed unless otherwise required by statute or the international obligations of the United States, to correct technical errors, or to reflect reclassifications. Within 30 days after the publication of such list, the Trade Representative shall notify the list to the Textiles Monitoring Body established under Article 8 of the Agreement on Textiles and Clothing.


AMENDMENTS

1996—Pub. L. 104–295 struck out "‘, as defined in section 3501(9) of this title,’" after "WTO Agreement".

EFFECTIVE DATE

Section 335 of title III of Pub. L. 103–465 provided that: "‘Except as provided in section 334 [enacting section 3502 of this title], this subtitle [subtitle D (§§ 331–335) of title III of Pub. L. 103–465, enacting this part and section 1502a of this title, and amending section 1894 of Title 7, Agriculture] and the amendments made by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].’"

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements an-
nexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

§ 3592. Rules of origin for textile and apparel products

(a) Regulatory authority

The Secretary of the Treasury shall prescribe rules implementing the principles contained in subsection (b) of this section for determining the origin of textiles and apparel products. Such rules shall be promulgated in final form not later than July 1, 1995.

(b) Principles

(1) In general

Except as otherwise provided for by statute, a textile or apparel product, for purposes of the customs laws and the administration of quantitative restrictions, originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession, if—

(A) the product is wholly obtained or produced in that country, territory, or possession;

(B) the product is a yarn, thread, twine, cordage, rope, cable, or braiding and—

(i) the constituent staple fibers are spun in that country, territory, or possession, or

(ii) the continuous filament is extruded in that country, territory, or possession;

(C) the product is a fabric, including a fabric classified under chapter 59 of the HTS, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in that country, territory, or possession;

(D) the product is any other textile or apparel product that is wholly assembled in that country, territory, or possession from its component pieces.

(2) Special rules

(A) Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (B) and (C) of paragraph (1),—

(i) the origin of a good that is classified under one of the following HTS headings or subheadings shall be determined under subparagraph (A), (B), or (C) of paragraph (1), as appropriate: 5609, 5807, 5811, 6209.20.50.40, 6213, 6214, 6301, 6302, 6303, 6304, 6305, 6306, 6307.10, 6307.90, 6308, or 9404.90; and

(ii) a textile or apparel product which is knit to shape shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which it is knit.

(B) Notwithstanding paragraph (1)(C), fabric classified under the HTS as of silk, cotton, man-made fiber, or vegetable fiber shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which the fabric is both dyed and printed when accompanied by two or more of the following finishing operations:

bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

(C) Notwithstanding paragraph (1)(D), goods classified under HTS heading 6117.10, 6213.00, 6214.00, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85, or 9404.90.95, except for goods classified under such headings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton, shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which the fabric is both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

(3) Multicountry rule

If the origin of a good cannot be determined under paragraph (1) or (2), then that good shall be considered to originate in, and be the growth, product, or manufacture of—

(A) the country, territory, or possession in which the most important assembly or manufacturing process occurs, or

(B) if the origin of the good cannot be determined under subparagraph (A), the last country, territory, or possession in which important assembly or manufacturing occurs.

(4) Components cut in the United States

(A) The value of a component that is cut to shape (but not to length, width, or both) in the United States from foreign fabric and exported to another country, territory, or insular possession for assembly into an article that is then returned to the United States—

(i) shall not be included in the dutiable value of such article, and

(ii) may be applied toward determining the percentage referred to in General Note 7(b)(i)(B) of the HTS, subject to the limitation provided in that note.

(B) No article (except a textile or apparel product) assembled in whole of components described in subparagraph (A), or of such components and components that are products of the United States, in a beneficiary country as defined in General Note 7(a) of the HTS shall be treated as a foreign article, or as subject to duty if—

(i) the components after exportation from the United States, and

(ii) the article itself before importation into the United States
do not enter into the commerce of any foreign country other than such a beneficiary country.

(5) Exception for United States-Israel Free Trade Agreement

This section shall not affect, for purposes of the customs laws and administration of quantitative restrictions, the status of goods that, under rulings and administrative practices in effect immediately before December 8, 1994, would have originated in, or been the growth,
product, or manufacture of, a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1987. For such purposes, such rulings and administrative practices that were applied, immediately before December 8, 1994, to determine the origin of textile and apparel products covered by such agreement shall continue to apply after December 8, 1994, and on and after the effective date described in subsection (c) of this section, unless such rulings and practices are modified by the mutual consent of the parties to the agreement.

(c) Effective date

This section shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, except that this section shall not apply to goods if—

(1) the contract for the sale of such goods to the United States is entered into before July 20, 1994;

(2) all of the material terms of sale in such contract, including the price and quantity of the goods, are fixed and determinable before July 20, 1994;

(3) a copy of the contract is filed with the Commissioner of Customs within 60 days after December 8, 1994, together with a certification that the contract meets the requirements of paragraphs (1) and (2); and

(4) the goods are entered, or withdrawn from warehouse, for consumption on or before January 1, 1998.

The origin of goods to which this section does not apply shall be determined in accordance with the applicable rules in effect on July 20, 1994.


AMENDMENTS

2000—Subsec. (b)(2). Pub. L. 106–200 designated existing provisions as subpars. (A), in introductory provi- sions substituted “Notwithstanding paragraph (1)(D) and except as provided in subparagraphs (B) and (C)”, for “Notwithstanding paragraph (1)(D)”, added subpars. (B) and (C), and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A).


EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–200, title IV, §405(b), May 18, 2000, 114 Stat. 293, provided that: “The amendments made by this section (amending this section) apply to goods entered, or withdrawn from warehouse, for consumption, on or after the date of the enactment of this Act [May 18, 2000].”

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Homeland Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

§3601. Administration of tariff-rate quotas

SUBCHAPTER IV—AGRICULTURE-RELATED PROVISIONS

PART A—MARKET ACCESS

§3601. Administration of tariff-rate quotas

(a) Orderly marketing

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

(b) Inadequate supply

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

(c) Monitoring

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

(d) Coverage of tariff-rate quotas

(1) Exclusions

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

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

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

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

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

(2) **Reclassification**

Subject to the consultation and layover requirements of section 3524 of this title, the President may proclaim a modification to the coverage of a tariff-rate quota for any agricultural product if the President determines that the modification is necessary or appropriate to conform the tariff-rate quota to Schedule XX as a result of a reclassification of any item by the Secretary of the Treasury.

(3) **Allocation**

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

(4) **Bilateral agreement**

The President may proclaim an increase in the tariff-rate quota for beef if the President determines that an increase is necessary to implement—

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

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

(5) **Continuation of sugar headnote**

The President is authorized to proclaim additional United States note 3 to chapter 17 of the HTS, and to proclaim the modifications to the note, as determined appropriate by the President to reflect Schedule XX.


**Codification**

Section is comprised of section 404 of Pub. L. 103–465. Subsec. (e) of section 404 of Pub. L. 103–465 amended sections 1313, 2463, 2703, and 3203 of this title and section 1359a of Title 7, Agriculture, and enacted provisions set out as a note under section 1313 of this title.

**Effective Date**

Section 451 of title IV of Pub. L. 103–465 provided that: “Except as otherwise provided in this title, this title [enacting this subchapter, sections 2578 to 2787b of this title, and section 1585 of Title 7, Agriculture, amending sections 1306, 1313, 2463, 2703, 2704, 2705, and 3303 of this title, sections 149, 150bb, 150cc, 154, 156, 281, 624, 13141, 1589a, 1442–2, 1445, 1581, 1582, 1586, 1852, 2803, 5623, and 5601 of Title 7, section 713a–14 of Title 13, Commerce and Trade, and sections 104, 105, 132, 466, and 620 of Title 21, Food and Drugs, repealing sections 1585 and 1853 of Title 7, enacting provisions set out as notes under section 2136 of this title and sections 624, 1314, 1445, and 5601 of Title 7, amending provisions set out as a note under section 1313 of this title and section 1371 of Title 7, and repealing provisions set out as a note under section 2253 of this title], and the amendments made by this title, shall take effect on the date of entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995].”

**Delegation of Authority**

Authority of President under subsec. (d)(3) of this section delegated to United States Trade Representative by par. (5) of Proc. No. 6780, Mar. 15, 1995, 60 F.R. 15847, set out as a note under section 3511 of this title.

**Provision of Title**

PROVISION OF TITLE

**Proc. No. 7235. To Delegate Authority for the Administration of the Tariff-Rate Quotas on Sugar-Containing Products and Other Agricultural Products to the United States Trade Representative and the Secretary of Agriculture**

Proc. No. 7235, Oct. 7, 1999, 64 F.R. 56111, provided:

1. On April 15, 1994, the President entered into trade agreements resulting from the Uruguay Round of multilateral trade negotiations ("Uruguay Round Agreements"). As part of those agreements, the United States converted quotas on imports of beef, cotton, dairy products, peanuts, peanut butter and peanut paste, sugar, and sugar-containing products (as defined in additional U.S. notes 2 and 3 of the Harmonized Tariff Schedule of the United States) to tariff-rate quotas. In section 103(a) of the Uruguay Round Agreements Act (19 U.S.C. 3511(a)) (the "URAAs") (Public Law 101–65) [Pub. L. 103–465]; 108 Stat. 4809), Congress approved the Uruguay Round Agreements listed in section 101(d) of that Act, including the General Agreement on Tariffs and Trade 1994.

2. On December 23, 1994, the President issued Presidential Proclamation 6763 [19 U.S.C. 3511 note] implementing the Uruguay Round Agreements consistent with the URAA. Presidential Proclamation 6763 included a delegation of the President’s authority under the statutes cited in the proclamation, including section 404(a) of the URAA, 19 U.S.C. 3561(a), to the Secretary of Agriculture, the Secretary of the Treasury, and the United States Trade Representative, as necessary to perform functions assigned to them to implement the proclamation. Section 404(a) directs the President to take such action as may be necessary in implementing the tariff-rate quotas set out in Schedule XX - United States of America, annexed to the Marrakech Protocol to the General Agreement on Tariffs and Trade 1994, to ensure that imports of agricultural products do not disrupt the orderly marketing of commodities in the United States.

3. I have determined that it is necessary to delegate my authority under section 404(a) to administer the tariff-rate quotas relating to cotton, dairy products, peanuts, peanut butter and peanut paste, sugar, and sugar-containing products to the United States Trade Representative and to delegate to the Secretary of Agriculture authority to issue licenses governing the importation of such products under the applicable tariff-rate quotas. The Secretary of Agriculture shall exercise such licensing authority in consultation with the United States Trade Representative.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 301 of Title 3, United States Code, and section 404(a) of the URAA, do hereby proclaim:

(1) The United States Trade Representative is authorized to exercise my authority pursuant to section 404(a) of the URAA to take all action necessary, including the promulgation of regulations, to administer the tariff-rate quotas relating respectively, to cotton, dairy products, peanuts, peanut butter and peanut paste, sugar, and sugar-containing products, as the latter products are defined in additional U.S. notes 2 and 3 of the Harmonized Tariff Schedule of the United States. The Secretary of Agriculture, in consultation with the United States Trade Representative, is authorized to exercise my authority pursuant to section 404(a) to issue import licenses governing the importation of such products within the applicable tariff-rate quotas.

(2) All provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Argentine statutes, which was determined appropriate by the President.
§ 3602 Special agricultural safeguard authority

(a) Determination of trigger levels

Consistent with Article 5 as determined by the President, the President shall cause to be published in the Federal Register—

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

(2) for each special safeguard agricultural good—

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

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

(C) the relevant period.

(b) Determination of safeguard

If the President determines with respect to a special safeguard agricultural good that it is appropriate to impose—

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

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

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

(c) Imposition of safeguard

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

(d) No simultaneous safeguard

A duty may not be in effect for a special safeguard agricultural good pursuant to this section during any period in which such good is the subject of any action proclaimed pursuant to section 3511(d) or 2252 or 2253 of this title.

(e) Exclusion of NAFTA countries

The President may exempt from any duty imposed under this section any good originating in a NAFTA country (as determined in accordance with section 3322 of this title).

(f) Advice of Secretary of Agriculture

The Secretary of Agriculture shall advise the President on the implementation of this section.

(g) Termination date

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

(h) Definitions

For purposes of this section—

(1) the term “Article 5” means Article 5 of the Agreement on Agriculture described in section 3511(d)(2) of this title; (2) the term “relevant period” means the period determined by the President to be applicable to a special safeguard agricultural good for purposes of applying this section; and

(3) the term “special safeguard agricultural good” means an agricultural good on which an additional duty may be imposed pursuant to the special safeguard provisions of Article 5.


AMENDMENTS


Subsec. (b)(2). Pub. L. 104–295, §11(2), substituted “1(a)” for “1(b)”.

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

DELEGATION OF AUTHORITY

Authority of President under subsec. (a) of this section delegated to Secretary of Agriculture by par. (4) of Proc. No. 6763, Dec. 23, 1994, 60 F.R. 1010, set out as a note under section 3511 of this title.

PART B—EXPORTS


Section, Pub. L. 103–465, title IV, §411(e), Dec. 8, 1994, 108 Stat. 4963, reaffirmed commitment of United States to provide food aid to developing countries.

PART C—OTHER PROVISIONS

§ 3621. Tobacco proclamation authority

(a) In general

The President, after consultation with the Committee on Ways and Means of the House of Representatives and with the Committee on Finance of the Senate, may proclaim the reduction or elimination of any duty with respect to cigar binder and filler tobacco, wrapper tobacco, or oriental tobacco set forth in Schedule XX.

(b) Effective date

This section shall take effect on December 8, 1994.


§ 3623. Study of milk marketing order system

The Secretary of Agriculture shall conduct a study to determine the effects of the Uruguay Round Agreements on the Federal milk marketing order system. Not later than 6 months after the date of entry into force of the WTO Agreement with respect to the United States, the Sec-
retary of Agriculture shall report to the Congress on the results of the study.


URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

§ 3624. Additional program funding

(a) Use of additional funds

Consistent, as determined by the President, with the obligations undertaken by the United States set forth in the Uruguay Round Agreements, the Commodity Credit Corporation shall use, in addition to any other funds appropriated or made available for such purposes, any funds made available under subsection (b) of this section for authorized export promotion, foreign market development, export credit financing, and promoting the development, commercialization, and marketing of products resulting from alternative uses of agricultural commodities.

(b) Amount of additional funds

Amounts shall be credited to the Commodity Credit Corporation in fiscal year 1995 equal to the lesser of the dollar amount of—

(1) the fiscal year 1995 Pay-As-You-Go savings; and

(2) the 5-year Pay-As-You-Go savings;


(c) Effective date

This section shall take effect on December 8, 1994.


REFERENCES IN TEXT


CHAPTER 23—EXTENSION OF CERTAIN TRADE BENEFITS TO SUB-SAHARAN AFRICA

SUBCHAPTER I—TRADE POLICY FOR SUB-SAHARAN AFRICA

Sec. 3701. Findings.
3702. Statement of policy.
3703. Eligibility requirements.
3705. Reporting requirement.
3706. Sub-Saharan Africa defined.

SUBCHAPTER II—TRADE BENEFITS

3721. Treatment of certain textiles and apparel.
3722. Protections against transshipment.
3723. Free trade agreements with sub-Saharan African countries.
3724. Assistant United States Trade Representative for African Affairs.

§ 3701. Findings

Congress finds that—

(1) it is in the mutual interest of the United States and the countries of sub-Saharan Africa to promote stable and sustainable economic growth and development in sub-Saharan Africa;

(2) the 48 countries of sub-Saharan Africa form a region richly endowed with both natural and human resources;

(3) sub-Saharan Africa represents a region of enormous economic potential and of enduring political significance to the United States;

(4) the region has experienced the strengthening of democracy as countries in sub-Saharan Africa have taken steps to encourage broader participation in the political process;

(5) certain countries in sub-Saharan Africa have increased their economic growth rates, taken significant steps towards liberalizing their economies, and made progress toward regional economic integration that can have positive benefits for the region;

(6) despite those gains, the per capita income in sub-Saharan Africa averages approximately $500 annually;

(7) trade and investment, as the American experience has shown, can represent powerful tools both for economic development and for encouraging broader participation in a political process in which political freedom can flourish;

(8) increased trade and investment flows have the greatest impact in an economic environment in which trading partners eliminate barriers to trade and capital flows and encourage the development of a vibrant private sector that offers individual African citizens the freedom to expand their economic opportunities and provide for their families;

(9) offering the countries of sub-Saharan Africa enhanced trade preferences will encourage both higher levels of trade and direct invest-
ment in support of the positive economic and political developments under way throughout the region; and

(10) encouraging the reciprocal reduction of trade and investment barriers in Africa which quotas maintained by WTO member countries on textile and apparel products end on January 1, 2005, sub-Saharan Africa’s textile and apparel industry will be severely challenged by countries whose industries are more developed and have greater capacity, economies of scale, and better infrastructure.

"(10) African countries continue to be the HIV/AIDS epidemic, which has infected as many as one out of four people in some countries, creating tremendous social, political, and economic costs. African countries need continued United States financial and technical assistance to combat this epidemic.

"(9) (A) One of the greatest challenges facing African countries continues to be the HIV/AIDS epidemic, which has infected as many as one out of four people in some countries, creating tremendous social, political, and economic costs. African countries need continued United States financial and technical assistance to combat this epidemic.

"(B) More awareness and involvement by governments are necessary. Countries like Uganda, recognizing the threat of HIV/AIDS, have boldly attacked it through a combination of education, public awareness, enhanced medical infrastructure and resources, and greater access to medical treatment. An effective HIV/AIDS prevention and treatment strategy involves all of these steps.

"(10) African countries continue to need trade capacity assistance to establish viable economic capacity, a well-grounded rule of law, and efficient government practices.

"The Congress supports—

"(1) a continued commitment to increase trade between the United States and sub-Saharan Africa and increase investment in sub-Saharan Africa to the benefit of workers, businesses, and farmers in the United States and in sub-Saharan Africa, including by developing innovative approaches to encourage development and investment in sub-Saharan Africa;

"(2) a reduction of tariff and nontariff barriers and other obstacles to trade between the countries of sub-Saharan Africa and the United States, with particular emphasis on reducing barriers to trade in emerging sectors of the economy that have the greatest potential for development;

"(3) development of sub-Saharan Africa’s physical and financial infrastructure;

"(4) international efforts to fight HIV/AIDS, malaria, tuberculosis, other infectious diseases, and serious public health problems;

"(5) many of the aims of the New Partnership for African Development (NEPAD), which include—

"(A) reducing poverty and increasing economic growth;

"(B) promoting peace, democracy, security, and human rights;

"(C) promoting African integration by deepening linkages between African countries and by accelerating Africa’s economic and political integration into the rest of the world;

"(D) attracting investment, debt relief, and development assistance;

"(E) promoting trade and economic diversification;

"(F) broadening global market access for United States and African exports;

"(G) improving transparency, good governance, and political accountability;

"(H) expanding access to social services, education, and health services with a high priority given to addressing HIV/AIDS, malaria, tuberculosis, other infectious diseases, and other public health problems;

"(I) promoting the role of women in social and economic development by reinforcing education and training and by ensuring their participation in political and economic arenas; and

"(J) building the capacity of governments in sub-Saharan Africa to set and enforce a legal framework, as well as to enforce the rule of law;
“6) negotiation of reciprocal trade agreements between the United States and sub-Saharan African countries, with the overall goal of expanding trade across all of sub-Saharan Africa;

“7) the President seeking to negotiate, with interested eligible sub-Saharan African countries, bilateral trade agreements that provide investment opportunities, in accordance with section 2010(b)(3) of the Trade Act of 2002 (19 U.S.C. 3802(b)(3));

“8) efforts by the President to negotiate with the member countries of the Southern African Customs Union in order to provide the opportunity to deepen and make permanent the benefits of the Act while giving the United States access to the markets of these African countries for United States goods and services, by reducing tariffs and non-tariff barriers, strengthening intellectual property protection, improving transparency, establishing general dispute settlement mechanisms, and investor-state and state-to-state dispute settlement mechanisms in investment;

“9) a comprehensive and ambitious trade agreement with the Southern African Customs Union, covering all products and sectors, in order to mature the economic relationship between sub-Saharan African countries and the United States and because such an agreement would deepen United States economic and political ties to the region, lend momentum to United States development efforts, encourage greater United States investment, and promote regional integration and economic growth;

“10) regional integration among sub-Saharan African countries and business partnerships between United States and African firms; and

“11) economic diversification in sub-Saharan African countries and expansion of trade beyond textiles and apparel.

“SEC. 4. SENSE OF CONGRESS ON RECIPROCITY AND REGIONAL ECONOMIC INTEGRATION.

“It is the sense of the Congress that—

“(1) the preferential market access opportunities for eligible sub-Saharan African countries will be complemented and enhanced if those countries are implementing actively and fully, consistent with any remaining applicable phase-in periods, their obligations under the World Trade Organization, including obligations under the Agreement on Trade-Related Aspects of Intellectual Property, the Agreement on the Application of Sanitary and Phytosanitary Measures, and the Agreement on Trade-Related Investment Measures, as well as the other agreements described in section 101(d) of the Uruguay Round Agreement Act (19 U.S.C. 3511(d));

“(2) eligible sub-Saharan African countries should participate in and support mutual trade liberalization, including ongoing negotiations under the auspices of the World Trade Organization, including by making reciprocal commitments with respect to improving market access for industrial and agricultural goods, and for services, recognizing that such commitments may need to reflect special and differential treatment for developing countries;

“(3) some of the most pernicious trade barriers against exports by developing countries are the trade barriers maintained by other developing countries; therefore, eligible sub-Saharan African countries will benefit from the reduction of trade barriers in other developing countries, especially in developing countries that represent some of the greatest potential markets for African goods and services; and

“(4) all countries should make sanitary and phytosanitary decisions on the basis of sound science.

“SEC. 5. SENSE OF CONGRESS ON INTERPRETATION OF TEXTILE AND APPAREL PROVISIONS OF AGOA.

“It is the sense of the Congress that the executive branch, particularly the Committee for the Implementation of Textile Agreements (CITA), the Bureau of Customs and Border Protection of the Department of Homeland Security, and the Department of Commerce, should interpret, implement, and enforce the provisions of section 112 of the African Growth and Opportunity Act (19 U.S.C. 3721), relating to preferential treatment of textile and apparel articles, broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible sub-Saharan African countries.

“SEC. 6. DEFINITION.

“In this Act, the term ‘eligible sub-Saharan African country’ means an eligible sub-Saharan African country under the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.].

“SEC. 7. EXTENSION OF AFRICAN GROWTH AND OPPORTUNITY ACT.

[Amended sections 2466a, 2466b, and 3721 of this title.]

“SEC. 8. ENTRIES OF CERTAIN APPAREL ARTICLES PURSUANT TO THE AFRICAN GROWTH AND OPPORTUNITY ACT.

“(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the Secretary of the Treasury shall liquidate or reliquidate as free of duty and free of any quantitative restrictions, limitations, or conditions described in subsection (d) on or after October 1, 2000, and before the date of the enactment of this Act [July 13, 2004].

“(b) REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Secretary of the Treasury within 90 days after the date of the enactment of this Act [July 13, 2004].

“(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of any entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.


“SEC. 9. DEVELOPMENT STUDY AND CAPACITY BUILDING.

“(a) REPORTS.—The President shall, by not later than 1 year after the date of the enactment of this Act [July 13, 2004], conduct a study on each eligible sub-Saharan African country, that—

“(1) identifies sectors of the economy of that country with the greatest potential for growth, including through export sales;

“(2) identifies barriers, both domestically and internationally, that are impeding growth in such sectors; and

“(3) makes recommendations on how the United States Government and the private sector can provide technical assistance to that country to assist in dismantling such barriers and in promoting investment in such sectors.

“(b) DISSEMINATION OF INFORMATION.—The President shall disseminate information in each study conducted under subsection (a) to the appropriate United States agencies for the purpose of implementing recommendations on the provision of technical assistance and in identifying opportunities for United States investors, businesses, and farmers.

“SEC. 10. ACTIVITIES IN SUPPORT OF INFRASTRUCTURE TO SUPPORT INCREASING TRADE CAPACITY AND ECOTOURISM.

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

“(1) Ecotourism, which consists of—

“(A) responsible and sustainable travel and visitation to relatively undisturbed natural areas in order to enjoy and appreciate nature (and any ac-
companying cultural features, both past and present) and animals, including species that are rare or endangered.

promotion of conservation and provision for beneficial involvement of local populations, and

(C) visitation designed to have low negative impact upon the environment.

is expected to expand 30 percent globally over the next decade.

(2) Ecotourism will increase trade capacity by sustaining otherwise unsustainable infrastructure, such as road, port, water, energy, and telecommunication development.

(3) According to the United States Department of State and the United Nations Environment Programme, sustainable tourism, such as ecotourism, can be an important part of the economic development of a region, especially a region with natural and cultural protected areas.

(4) Sub-Saharan Africa enjoys an international comparative advantage in ecotourism because it features extensive protected areas that host a variety of ecosystems and traditional cultures that are major attractions for nature-oriented tourism.

(5) National parks and reserves in sub-Saharan Africa should be considered a basis for regional development, involving communities living within and adjacent to them, and, given their strong international recognition, provide an advantage in ecotourism marketing and promotion.

(6) Desert areas in sub-Saharan Africa represent complex ecotourism attractions, showcasing natural, geological, and archaeological features, and nomad and other cultures and traditions.

(7) Many natural zones in sub-Saharan Africa cross the political borders of several countries; therefore, transboundary cooperation is fundamental for all types of ecotourism development.

(8) The commercial viability of ecotourism is enhanced when small and medium enterprises, particularly microenterprises, successfully engage with the tourism industry in sub-Saharan Africa.

(9) Adequate capacity building is an essential component of ecotourism development if local communities are to be real stakeholders that can sustain an equitable approach to ecotourism management.

(10) Ecotourism needs to generate local community benefits by utilizing sub-Saharan Africa’s natural heritage, parks, wildlife reserves, and other protected areas that can play a significant role in encouraging local economic development by sourcing food and other locally produced resources.

(b) Action by the President.—The President shall develop and implement policies to:

(1) encourage the development of infrastructure projects that will help to increase trade capacity and a sustainable ecotourism industry in eligible Sub-Saharan African countries;

(2) encourage and facilitate transboundary cooperation among sub-Saharan African countries in order to facilitate trade;

(3) encourage the provision of technical assistance to eligible sub-Saharan African countries to establish and sustain adequate trade capacity development, and

(4) encourage micro-, small-, and medium-sized enterprises in eligible sub-Saharan African countries to participate in the ecotourism industry.

SEC. 11. ACTIVITIES IN SUPPORT OF TRANSPORTATION, ENERGY, AGRICULTURE, AND TELECOMMUNICATIONS INFRASTRUCTURE.

(a) Findings.—The Congress finds the following:

(1) in order to increase exports and trade among, eligible sub-Saharan African countries, transportation systems in those countries must be improved to increase trade efficiency and lower transport costs.

(2) Vibrant economic growth requires a developed telecommunication and energy infrastructure.

(3) Sub-Saharan Africa is rich in exportable agricultural goods, but development of this industry remains stymied because of an underdeveloped infrastructure.

(b) Action by the President.—In order to enhance trade with Africa and to bring the benefits of trade to African countries, the President shall develop and implement policies to encourage appropriate investment in eligible sub-Saharan African countries, particularly with respect to the following:

(1) Infrastructure projects that support, in particular, development of land transport road and railroad networks and ports, and the continued upgrading and liberalization of the energy and telecommunications sectors.

(2) The establishment and expansion of modern information and communication technologies and practices to improve the ability of citizens to research and disseminate information relating to, among other things, the economy, education, trade, health, agriculture, the environment, and the media.

(3) Agriculture, particularly in processing and capacity enhancement.

SEC. 12. FACILITATION OF TRANSPORTATION.

In order to facilitate and increase trade flows between eligible sub-Saharan African countries and the United States, the President shall foster improved port-to-port and airport-to-airport relationships. These relationships should facilitate—

(1) increased coordination between customs services at ports and airports in the United States and such countries in order to reduce time in transit;

(2) interaction between customs and technical staff from ports and airports in the United States and such countries in order to increase efficiency and safety procedures and protocols relating to trade;

(3) coordination between chambers of commerce, freight forwarders, customs brokers, and others involved in consolidating and moving freight; and

(4) trade through air service between airports in the United States and such countries by increasing frequency and capacity.

SEC. 13. AGRICULTURAL TECHNICAL ASSISTANCE.

(a) Identification of Countries.—The President shall identify not fewer than 10 eligible sub-Saharan African countries as having the greatest potential to increase marketable exports of agricultural products to the United States and the greatest need for technical assistance, particularly with respect to pest risk assessments and complying with sanitary and phytosanitary rules of the United States.

(b) Personnel.—The President shall assign at least 20 full-time personnel for the purpose of providing assistance to the countries identified under subsection (a) to ensure that exports of agricultural products from those countries meet the requirements of United States law.

SEC. 14. TRADE ADVISORY COMMITTEE ON AFRICA.

The President shall convene the trade advisory committee on Africa established by Executive Order 11846 of March 27, 1975 [19 U.S.C. 2111 note], under section 135(c) of the Trade Act of 1974 [19 U.S.C. 2155(c)], in order to facilitate the goals and objectives of the African Growth and Opportunity Act [19 U.S.C. 3701 et seq.] and this Act, and to maintain ongoing discussions with African trade and agriculture ministries and private sector organizations on issues of mutual concern, including regional and international trade concerns and World Trade Organization issues.


(B) Requests for Retroactive Application.—Section 8(b) of the AGOA Acceleration Act of 2004 shall be
§ 3702. Statement of policy

Congress supports—
(1) encouraging increased trade and investment between the United States and sub-Saharan Africa;
(2) reducing tariff and nontariff barriers and other obstacles to sub-Saharan African and United States trade;
(3) expanding United States assistance to sub-Saharan Africa’s regional integration efforts;
(4) negotiating reciprocal and mutually beneficial trade agreements, including the possibility of establishing free trade areas that serve the interests of both the United States and the countries of sub-Saharan Africa;
(5) focusing on countries committed to the rule of law, economic reform, and the eradication of poverty;
(6) strengthening and expanding the private sector in sub-Saharan Africa, especially enterprises owned by women and small businesses;
(7) facilitating the development of civil societies and political freedom in sub-Saharan Africa;
(8) establishing a United States-Sub-Saharan Africa Trade and Economic Cooperation Forum; and
(9) the accession of the countries in sub-Saharan Africa to the Organization for Economic Cooperation and Development (OEC) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

§ 3703. Eligibility requirements

(a) In general

The President is authorized to designate a sub-Saharan African country as an eligible sub-Saharan African country if the President determines that the country—
(1) has established, or is making continual progress toward establishing—
(A) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;
(B) the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;
(C) the elimination of barriers to United States trade and investment, including by—
(i) the provision of national treatment and measures to create an environment conducive to domestic and foreign investment;
(ii) the protection of intellectual property; and
(iii) the resolution of bilateral trade and investment disputes;
(D) economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through micro-credit or other programs;
(E) a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and
(F) protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;
(2) does not engage in activities that undermine United States national security or foreign policy interests; and
(3) does not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

(b) Continuing compliance

If the President determines that an eligible sub-Saharan African country is not making continual progress in meeting the requirements described in subsection (a)(1) of this section, the President shall terminate the designation of the country made pursuant to subsection (a) of this section.

§ 3704. United States-Sub-Saharan Africa Trade and Economic Cooperation Forum

(a) Declaration of policy

The President shall convene annual high-level meetings between appropriate officials of the United States Government and officials of the governments of sub-Saharan African countries in order to foster close economic ties between the United States and sub-Saharan Africa.

(b) Establishment

Not later than 12 months after May 18, 2000, the President, after consulting with Congress and the governments concerned, shall establish a United States-Sub-Saharan Africa Trade and Economic Cooperation Forum (in this section referred to as the “Forum”).

(c) Requirements

In creating the Forum, the President shall meet the following requirements:
(1) The President shall direct the Secretary of Commerce, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative to host the first annual meeting with their counterparts from the governments of sub-Saharan African countries eligible under section 3703 of this title, and
those sub-Saharan African countries that the President determines are taking substantial positive steps towards meeting the eligibility requirements in section 3703 of this title. The purpose of the meeting shall be to discuss expanded trade and investment relations between the United States and sub-Saharan Africa and the implementation of this chapter including encouraging joint ventures between small and large businesses. The President shall also direct the Secretaries and the United States Trade Representative to invite to the meeting representatives from appropriate sub-Saharan African regional organizations and government officials from other appropriate countries in sub-Saharan Africa.

(2)(A) The President, in consultation with the Congress, shall encourage United States nongovernmental organizations to host annual meetings with nongovernmental organizations from sub-Saharan Africa in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).

(B) The President, in consultation with the Congress, shall encourage United States representatives of the private sector to host annual meetings with representatives of the private sector from sub-Saharan Africa in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).

(3) The President shall, to the extent practicable, meet with the heads of governments of sub-Saharan African countries eligible for assistance under section 3703 of this title, and those sub-Saharan African countries that the President determines are taking substantial positive steps toward meeting the eligibility requirements in section 3703 of this title, not less than once every 2 years for the purpose of discussing the issues described in paragraph (1). The first such meeting should take place not later than 12 months after May 18, 2000.

d) Dissemination of information by USIS

In order to assist in carrying out the purposes of the Forum, the United States Information Service shall disseminate regularly, through multiple media, economic information in support of the free market economic reforms described in this chapter.

e) HIV/AIDS effect on the sub-Saharan African workforce

In selecting issues of common interest to the United States-Sub-Saharan Africa Trade and Economic Cooperation Forum, the President shall instruct the United States delegates to the Forum to promote a review by the Forum of the HIV/AIDS epidemic in each sub-Saharan African country and the effect of the HIV/AIDS epidemic on economic development in each country.


References in Text

This chapter, referred to in subsections (c)(1) and (d), was in the original “this title”, meaning title I of Pub. L. 106–200, May 18, 2000, 114 Stat. 252, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 3701 of this title and Tables.
Democratic Republic of Sao Tomé and Principe (Sao Tomé and Principe).
Republic of Senegal (Senegal).
Republic of Seychelles (Seychelles).
Republic of Sierra Leone (Sierra Leone).
Sierra Leone.
Republic of South Africa (South Africa).
Republic of Sudan (Sudan).
Kingdom of Swaziland (Swaziland).
Republic of Tanzania (Tanzania).
Republic of Togo (Togo).
Republic of Uganda (Uganda).
Republic of Zambia (Zambia).
Republic of Zimbabwe (Zimbabwe).


SUBCHAPTER II—TRADE BENEFITS

§ 3721. Treatment of certain textiles and apparel

(a) Preferential treatment

Textile and apparel articles described in subsection (b) of this section that are imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country described in section 2466a(c) of this title, shall enter the United States free of duty and free of any quantitative limitations in accordance with the provisions set forth in subsection (b) of this section, if the country has satisfied the requirements set forth in section 3722 of this title.

(b) Products covered

Subject to subsection (c), the preferential treatment described in subsection (a) of this section shall apply only to the following textile and apparel products:

(1) Apparel articles assembled in one or more beneficiary sub-Saharan African countries

Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, or from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in a beneficiary sub-Saharan African country), or apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2)), subject to the following:

(A) Limitations on benefits

(i) In general

Preferential treatment under this paragraph shall be extended in the 1-year period beginning October 1, 2003, and in each of the 11 succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

(ii) Applicable percentage

For purposes of this subparagraph, the term “applicable percentage” means—

(I) 4.747 percent for the 1-year period beginning October 1, 2003, increased in each of the 5 succeeding 1-year periods by equal increments, so that for the 1-year period beginning October 1, 2007, the applicable percentage does not exceed 7 percent; and
§ 3721

TITLE 19—CUSTOMS DUTIES

(II) for each succeeding 1-year period until September 30, 2015, not to exceed 7 percent.

(B) Surge mechanism

(i) Import monitoring

The Secretary of Commerce shall monitor imports of articles described in this paragraph on a monthly basis to determine if there has been a surge in imports of such articles. In order to permit public access to preliminary international trade data and to facilitate the early identification of potentially disruptive import surges, the Director of the Office of Management and Budget may grant an exception to the publication dates established for the release of data on United States international trade in covered articles, if the Director notifies Congress of the early release of the data.

(ii) Determination of damage or threat thereof

Whenever the Secretary of Commerce determines, based on the data described in clause (i), or pursuant to a written request made by an interested party, that there has been a surge in imports of an article described in this paragraph from a beneficiary sub-Saharan African country, the Secretary shall determine whether such article from such country is being imported in such increased quantities as to cause serious damage, or threat thereof, to the domestic industry producing a like or directly competitive article. If the Secretary’s determination is affirmative, the President shall suspend the duty-free treatment provided for such article under this paragraph. If the inquiry is initiated at the request of an interested party, the Secretary shall make the determination within 60 days after the date of the request.

(iii) Factors to consider

In determining whether a domestic industry has been seriously damaged, or is threatened with serious damage, the Secretary shall examine the effect of the imports on relevant economic indicators such as: domestic production, sales, market share, capacity utilization, inventories, employment, profits, exports, prices, and investment.

(iv) Procedure

(I) Initiation

The Secretary of Commerce shall initiate an inquiry within 10 days after receiving a written request and supporting information for an inquiry from an interested party. Notice of initiation of an inquiry shall be published in the Federal Register.

(II) Participation by interested parties

The Secretary of Commerce shall establish procedures to ensure participation in the inquiry by interested parties.

(III) Notice of determination

The Secretary shall publish the determination described in clause (ii) in the Federal Register.

(IV) Information available

If relevant information is not available on the record or any party withholds information that has been requested by the Secretary, the Secretary shall make the determination on the basis of the facts available. When the Secretary relies on information submitted in the inquiry as facts available, the Secretary shall, to the extent practicable, corroborate the information from independent sources that are reasonably available to the Secretary.

(v) Interested party

For purposes of this subparagraph, the term “interested party” means any producer of a like or directly competitive article, a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or sale in the United States of a like or directly competitive article, a trade or business association representing producers or sellers of like or directly competitive articles, producers engaged in the production of essential inputs for like or directly competitive articles, a certified union or group of workers which is representative of an industry engaged in the manufacture, production, or sale of essential inputs for the like or directly competitive article, or a trade or business association representing companies engaged in the manufacture, production, or sale of such essential inputs.

(4) Sweaters knit-to-shape from cashmere or merino wool

(A) Cashmere

Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary sub-Saharan African countries and classifiable under subheading 6110.10 of the Harmonized Tariff Schedule of the United States.

(B) Merino wool

Sweaters, 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries.

(5) Apparel articles wholly assembled from fabric or yarn not available in commercial quantities in the United States

(A) In general

Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 to the NAFTA.

(B) Additional apparel articles

At the request of any interested party and subject to the following requirements, the President is authorized to proclaim the treatment provided under subparagraph (A) for yarns or fabrics not described in subparagraph (A) if—
(i) the President determines that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(ii) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 2155 of this title and the United States International Trade Commission;

(iii) within 60 calendar days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—

(I) the action proposed to be proclaimed and the reasons for such action; and

(II) the advice obtained under clause (ii);

(iv) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclauses (I) and (II) of clause (iii), has expired; and

(v) the President has consulted with such committees regarding the proposed action during the period referred to in clause (iii).

(C) Removal of designation of fabrics or yarns not available in commercial quantities

If the President determines that any fabric or yarn was determined to be eligible for preferential treatment under subparagraph (A) on the basis of fraud, the President is authorized to remove that designation from that fabric or yarn with respect to articles entered after such removal.

(6) Handloomed, handmade, folklore articles and ethnic printed fabrics

(A) In general

A handloomed, handmade, folklore article or an ethnic printed fabric of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of such beneficiary country or countries for purposes of this section, the President, after consultation with the beneficiary sub-Saharan African country or countries concerned, shall determine which, if any, particular textile and apparel goods of the country (or countries) shall be treated as being handloomed, handmade, or folklore articles or an ethnic printed fabric.

(B) Requirements for ethnic printed fabric

Ethnic printed fabrics qualified under this paragraph are—

(i) fabrics containing a selvedge on both edges, having a width of less than 50 inches, classifiable under subheading 5208.52.30 or 5208.52.40 of the Harmonized Tariff Schedule of the United States;

(ii) of the type that contains designs, symbols, and other characteristics of African prints—

(I) normally produced for and sold on the indigenous African market; and

(II) normally sold in Africa by the piece as opposed to being tailored into garments before being sold in indigenous African markets; and

(iii) printed, including waxed, in one or more eligible beneficiary sub-Saharan countries; and

(iv) fabrics formed in the United States, from yarns formed in the United States, or from fabric formed in one or more beneficiary sub-Saharan African country from yarn originating in either the United States or one or more beneficiary sub-Saharan African countries.

(7) Apparel articles assembled in one or more beneficiary sub-Saharan African countries from United States and beneficiary sub-Saharan African country components

Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from components cut in the United States and one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States).

(8) Textile articles originating entirely in one or more lesser developed beneficiary sub-Saharan African countries

Textile and textile articles classifiable under chapters 50 through 60 or chapter 63 of the Harmonized Tariff Schedule of the United States that are products of a lesser developed beneficiary sub-Saharan African country and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more such countries.

(c) Lesser developed countries

(1) Preferential treatment of products through September 30, 2012

(A) Products covered

In addition to the products described in subsection (b)1 the preferential treatment described in subsection (a) shall apply through September 30, 2012, to apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric or the yarn used to make such articles, in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the

1 So in original. Probably should be followed by a comma.
preceding 12-month period for which data are available.

(B) Applicable percentage

For purposes of subparagraph (A), the term "applicable percentage" means—

(i) 2.9285 percent for the 1-year period beginning on October 1, 2005; and
(ii) 2.5 percent for the 1-year period beginning on October 1, 2006, and each 1-year period thereafter through September 30, 2012.

(2) Applicability of other provisions

Subsection (b)(3)(B) applies to apparel articles eligible for preferential treatment under this subsection to the same extent as that subsection applies to apparel articles eligible for preferential treatment under subsection (b)(3).

(3) Definition

In this subsection, the term "lesser developed beneficiary sub-Saharan African country" means—

(A) a beneficiary sub-Saharan African country that had a per capita gross national product of less than $1,500 in 1998, as measured by the International Bank for Reconstruction and Development;
(B) Botswana;
(C) Namibia; and
(D) Mauritius.

(d) Treatment of quotas on textile and apparel imports from Kenya and Mauritius

The President shall eliminate the existing quotas on textile and apparel articles imported into the United States—

(1) from Kenya within 30 days after that country adopts an effective visa system to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents relating to the importation of the articles into the United States; and
(2) from Mauritius within 30 days after that country adopts such a visa system.

The Customs Service shall provide the necessary technical assistance to Kenya and Mauritius in the development and implementation of the visa systems.

(e) Special rules

(1) Findings and trimmings

(A) General rule

An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(B) Certain interlinings

(i) General rule

An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(ii) Interlinings described

Interlinings eligible for the treatment described in clause (i) include only a chest type plate, a "hymo" piece, or "sleeve header", of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(iii) Termination of treatment

The treatment described in this subparagraph shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(C) Exception

In the case of an article described in subsection (b)(2) of this section, sewing thread shall not be treated as findings or trimmings under subparagraph (A).

(2) De minimis rule

An article otherwise eligible for preferential treatment under this section shall not be ineligible for such treatment because the article contains fibers or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all such fibers and yarns is not more than 10 percent of the total weight of the article.

(3) Certain components

An article otherwise eligible for preferential treatment under this section will not be ineligible for such treatment because the article contains—

(A) any collars or cuffs (cut or knit-to-shape),
(B) drawstrings,
(C) shoulder pads or other padding,
(D) waistbands,
(E) belt attached to the article,
(F) straps containing elastic, or
(G) elbow patches,

that do not meet the requirements set forth in subsections (b) and (c) of this section, regardless of the country of origin of the item referred to in the applicable subparagraph of this paragraph.

(f) Definitions

In this section and section 3722 of this title:

(1) Agreement on textiles and clothing

The term "Agreement on Textiles and Clothing" means the Agreement on Textiles and Clothing referred to in section 3511(d)(4) of this title.

(2) Beneficiary sub-Saharan African country, etc.

The terms "beneficiary sub-Saharan African country" and "beneficiary sub-Saharan Afri-
can countries’ have the same meaning as such terms have under section 2466(a)(c) of this title.

(3) NAFTA

The term “NAFTA” means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(4) Former sub-Saharan African country

The term “former sub-Saharan African country” means a country that, after being designated as a beneficiary sub-Saharan African country under this chapter, ceased to be designated as such a beneficiary sub-Saharan African country by reason of its entering into a free trade agreement with the United States.

(5) Enter; entered

The terms “enter” and “entered” refer to the entry, or withdrawal from warehouse for consumption, in the customs territory of the United States.

(g) Effective date

This section takes effect on October 1, 2000, and shall remain in effect through September 30, 2015.

References in Text

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

Amendments


Subsec. (c)(1)(A). Pub. L. 110–436, § 3(a)(2)(A), struck out par. (4), and subject to paragraph (2), after “described in subsection (b)’’.

Subsec. (c)(2). Pub. L. 110–436, § 3(a)(2)(B), (C)(1), redesignated par. (4) as (2) and struck out former par. (2) which provided special rules for products in commercial quantities in Africa.

Subsec. (c)(3). Pub. L. 110–436, § 3(a)(2)(B), (D), added par. (3) and struck out former par. (3) which provided, for removal of designation of fabrics or yarns not available in commercial quantities.


Subsec. (b)(7)(B). Pub. L. 110–432, § 6002(a)(2)(B), as amended by Pub. L. 110–436, § 3(d), redesignated subpar. (C) as (B) and struck out former subpar. (B), which related to extension of preferential treatment though Sept. 30, 2007, for apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries.


2002—Subsec. (b)(5). Pub. L. 116–103, § 3108(a), Aug. 6, 2002, 116 Stat. 1038; Pub. L. 109–432, § 6002(a)(1), redesignated subsec. (c) as (d) and redesignated former subsec. (c) as (C).


Subsec. (e)(3). Pub. L. 110–432, § 6002(c), redesignated “subsections (b) and (c)” for “subsection (b)” in concluding provisions.


amended heading and text generally. Prior to amendment, text read as follows: "Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in the United States and are wholly formed and cut in the United States and are wholly formed and cut in the United States) that are

Subsec. (d)(2). Pub. L. 108–274, §7(e)(2), inserted "or former beneficiary sub-Saharan African countries" after "and one or more beneficiary sub-Saharan African countries" in two places.


§ 3722. Protections against transshipment

(a) Preferential treatment conditioned on enforcement measures

(1) In general

The preferential treatment under section 3721 of this title shall not be provided to textile and apparel articles that are imported from a beneficiary sub-Saharan African country unless that country—

(A) has adopted an effective visa system, domestic laws, and enforcement procedures applicable to covered articles to prevent unlawful transshipment of the articles and the use of counterfeit documents relating to the importation of the articles into the United States;

(B) has enacted legislation or promulgated regulations that would permit United States Customs Service verification teams to have the access necessary to investigate thoroughly allegations of transshipment through such country;

(C) agrees to report, on a timely basis, at the request of the United States Customs Service, on the total exports from and imports into that country of covered articles, consistent with the manner in which the records are kept by that country;

(D) will cooperate fully with the United States to address and take action necessary to prevent circumvention as provided in Article 5 of the Agreement on Textiles and Clothing;

(E) agrees to require all producers and exporters of covered articles in that country to maintain complete records of the production and the export of covered articles, including materials used in the production, for at least 2 years after the production or export (as the case may be); and

(F) agrees to report, on a timely basis, at the request of the United States Customs Service, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system.

(2) Country of origin documentation

For purposes of paragraph (1)(F), documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter.

(b) Customs procedures and enforcement

(1) In general

(A) Regulations

Any importer that claims preferential treatment under section 3721 of this title shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(B) Determination

(i) In general

In order to qualify for the preferential treatment under section 3721 of this title and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in clause (ii)—

(I) has implemented and follows; or

(II) is making substantial progress toward implementing and following, procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(ii) Country described

A country is described in this clause if it is a beneficiary sub-Saharan African country—

(I) from which the article is exported; or

(II) in which materials used in the production of the article originate or in which the article or such materials, undergone production that contributes to a claim that the article is eligible for preferential treatment.

(2) Certificate of Origin

The Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (1) shall not be required in the case of an article imported under section 3721 of this title if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(3) Penalties for exporters

If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment as defined in paragraph (4), then the President shall deny for a period of 5 years all benefits under section 3721 of this title to such exporter, any successor of such exporter, and any other entity owned or operated by the principal of the exporter.

(4) Transshipment described

Transshipment within the meaning of this subsection has occurred when preferential treatment for a textile or apparel article under this chapter has been claimed on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this paragraph, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under section 3721 of this title.

(5) Monitoring and reports to Congress

The Customs Service shall monitor and the Commissioner of Customs shall submit to Con-
Customs Service enforcement

The Customs Service shall—

(1) make available technical assistance to the beneficiary sub-Saharan African countries—

(A) in the development and implementation of visa systems, legislation, and regulations described in subsection (a)(1)(A) of this section; and

(B) to train their officials in anti-transshipment enforcement;

(2) send production verification teams to at least four beneficiary sub-Saharan African countries each year; and

(3) to the extent feasible, place beneficiary sub-Saharan African countries on the Electronic Visa (ELVIS) program.

Authorization of appropriations

There is authorized to be appropriated to carry out subsection (c) of this section the sum of $5,894,913.

References in text

This chapter, referred to in subsec. (b)(4), was in the original “this Act”, and was translated as reading “this title”, meaning title I of Pub. L. 106–200, May 18, 2000, 114 Stat. 263.

Transfer of functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Delegation of authority

Authority of President under subsec. (b)(3) of this section delegated to the Committee for the Implementation of Textile Agreements by section 4 of Ex. Ord. No. 13191, Jan. 17, 2001, 66 F.R. 7271, set out as a note under section 709 of this title.

PROC. No. 7350. TO IMPLEMENT THE AFRICAN GROWTH AND OPPORTUNITY ACT AND TO DESIGNATE Eritrea AS A BENEFICIARY DEVELOPING COUNTRY FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES

PROC. No. 7350, Oct. 2, 2000, 65 F.R. 59321, provided in par. (4) that the United States Trade Representative is authorized to determine whether each designated beneficiary sub-Saharan African country has satisfied the requirements of section 3722(a) of this title, relating to the establishment of procedures to protect against unlawful transshipments and section 3722(b)(1)(B) of this title relating to the implementation of procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the North American Free Trade Agreement (NAFTA), is directed to set forth the determination in a notice to be published in the Federal Register which notice shall modify the Harmonized Tariff Schedule of the United States (HTS) by listing the countries that satisfy the requirements of sections 3722(a) and 3722(b)(1)(B) of this title, and is authorized to exercise the authority provided to the President under section 2463 of this title to embody modifications and technical or conforming changes in the HTS.

§ 3723. Free trade agreements with sub-Saharan African countries

(a) Declaration of policy

Congress declares that free trade agreements should be negotiated, where feasible, with interested countries in sub-Saharan Africa, in order to serve as the catalyst for increasing trade between the United States and sub-Saharan Africa and increasing private sector investment in sub-Saharan Africa.

(b) Plan requirement

(1) In general

The President, taking into account the provisions of the treaty establishing the African Economic Community and the willingness of the governments of sub-Saharan African countries to engage in negotiations to enter into free trade agreements, shall develop a plan for the purpose of negotiating and entering into one or more trade agreements with interested beneficiary sub-Saharan African countries.

(2) Elements of plan

The plan shall include the following:

(A) The specific objectives of the United States with respect to negotiations described in paragraph (1) and a suggested timetable for achieving those objectives.

(B) The benefits to both the United States and the relevant sub-Saharan African countries with respect to the applicable free trade agreement or agreements.

(C) A mutually agreed-upon timetable for the negotiations.

(D) The implications for and the role of regional and sub-regional organizations in sub-Saharan Africa with respect to such free trade agreement or agreements.

(E) Subject matter anticipated to be covered by the negotiations and United States laws, programs, and policies, as well as the laws of participating eligible African countries and existing bilateral and multilateral and economic cooperation and trade agreements, that may be affected by the agreement or agreements.

(F) Procedures to ensure the following:

(i) Adequate consultation with the Congress and the private sector during the negotiations.

(ii) Consultation with the Congress regarding all matters relating to implementation of the agreement or agreements.

(iii) Approval by the Congress of the agreement or agreements.

(iv) Adequate consultations with the relevant African governments and African re-
§ 3724. Assistant United States Trade Representative for African Affairs

It is the sense of the Congress that—

(1) the position of Assistant United States Trade Representative for African Affairs is integral to the United States commitment to increasing United States-sub-Saharan African trade and investment;

(2) prority of Assistant United States Trade Representative for African Affairs should be maintained within the Office of the United States Trade Representative to direct and coordinate interagency activities on United States-Africa trade policy and investment matters and serve as—

(A) a primary point of contact in the executive branch for those persons engaged in trade between the United States and sub-Saharan Africa; and

(B) the chief advisor to the United States Trade Representative on issues of trade and investment with Africa; and

(3) the United States Trade Representative should have adequate funding and staff to carry out the duties of the Assistant United States Trade Representative for African Affairs described in paragraph (2), subject to the availability of appropriations.


SUBCHAPTER III—ECONOMIC DEVELOPMENT RELATED ISSUES

§ 3731. Sense of the Congress regarding comprehensive debt relief for the world’s poorest countries

(a) Findings

Congress makes the following findings:

(1) The burden of external debt has become a major impediment to economic growth and poverty reduction in many of the world’s poorest countries.

(2) Until recently, the United States Government and other official creditors sought to address this problem by rescheduling loans and in some cases providing limited debt reduction.

(3) Despite such efforts, the cumulative debt of many of the world’s poorest countries continued to grow beyond their capacity to repay.

(4) In 1997, the Group of Seven, the World Bank, and the International Monetary Fund adopted the Heavily Indebted Poor Countries Initiative (HIPC), a commitment by the international community that all multilateral and bilateral creditors, acting in a coordinated and concerted fashion, would reduce poor country debt to a sustainable level.

(5) The HIPC Initiative is currently undergoing reforms to address concerns raised about country conditionality, the amount of debt forgiven, and the allocation of savings realized through the debt forgiveness program to ensure that the Initiative accomplishes the goals of economic growth and poverty alleviation in the world’s poorest countries.

(b) Sense of the Congress

It is the sense of the Congress that—

(1) Congress and the President should work together, without undue delay and in concert with the international community, to make comprehensive debt relief available to the world’s poorest countries in a manner that promotes economic growth and poverty alleviation;

(2) this program of bilateral and multilateral debt relief should be designed and implemented in a transparent manner and with the broad participation of the citizenry of the debtor country and should ensure that country circumstances are adequately taken into account;

(3) this program of debt relief should also support the adoption of policies to alleviate poverty and to ensure that benefits are shared widely among the population, such as through initiatives to advance education, improve health, combat AIDS, and promote clean water and environmental protection;

(4) these debt relief agreements should be designed and implemented in a transparent manner and with the broad participation of the citizenry of the debtor country and should ensure that country circumstances are adequately taken into account;

(5) no country should receive the benefits of debt relief if that country does not cooperate with the United States on terrorism or narcotics enforcement, is a gross violator of the human rights of its citizens, or is engaged in conflict or spends excessively on its military; and

(6) in order to prevent adverse impact on a key industry in many developing countries, the International Monetary Fund must mobilize its own resources for providing debt relief to eligible countries without allowing gold to reach the open market, or otherwise adversely affecting the market price of gold.


§ 3732. Executive branch initiatives

(a) Statement of the Congress

The Congress recognizes that the stated policy of the executive branch in 1997, the “Partnership for Growth and Opportunity in Africa” initiative, is a step toward the establishment of a comprehensive trade and development policy for sub-Saharan Africa. It is the sense of the Congress that this Partnership is a companion to the policy goals set forth in this chapter.

(b) Technical assistance to promote economic reforms and development

In addition to continuing bilateral and multilateral economic and development assistance,
the President shall target technical assistance toward—

(1) developing relationships between United States firms and firms in sub-Saharan Africa through a variety of business associations and networks;

(2) providing assistance to the governments of sub-Saharan African countries to—

(A) liberalize trade and promote exports;

(B) bring their legal regimes into compliance with the standards of the World Trade Organization in conjunction with membership in that Organization;

(C) make financial and fiscal reforms; and

(D) promote greater agribusiness linkages;

(3) addressing such critical agricultural policy issues as market liberalization, agricultural export development, and agribusiness investment in processing and transporting agricultural commodities;

(4) increasing the number of reverse trade missions to growth-oriented countries in sub-Saharan Africa;

(5) increasing trade in services; and

(6) encouraging greater sub-Saharan African participation in future negotiations in the World Trade Organization on services and making further commitments in their schedules to the General Agreement on Trade in Services in order to encourage the removal of tariff and nontariff barriers.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this title”, meaning title I of Pub. L. 106–200, May 18, 2000, 114 Stat. 252, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 3701 of this title and Tables.

§ 3733. Overseas Private Investment Corporation initiatives

(a) Initiation of funds

It is the sense of the Congress that the Overseas Private Investment Corporation should exercise the authorities it has to initiate an equity fund or equity funds in support of projects in the countries in sub-Saharan Africa, in addition to the existing equity fund for sub-Saharan Africa created by the Corporation.

(b) Structure and types of funds

(1) Structure

Each fund initiated under subsection (a) of this section should be structured as a partnership managed by professional private sector fund managers and monitored on a continuing basis by the Corporation.

(2) Capitalization

Each fund should be capitalized with a combination of private equity capital, which is not guaranteed by the Corporation, and debt for which the Corporation provides guaranties.

(3) Infrastructure fund

One or more of the funds, with combined assets of up to $500,000,000, should be used in support of infrastructure projects in countries of sub-Saharan Africa.

(4) Emphasis

The Corporation shall ensure that the funds are used to provide support in particular to women entrepreneurs and to innovative investments that expand opportunities for women and maximize employment opportunities for poor individuals.

(c) Overseas Private Investment Corporation

(1) Omitted

(2) Reports to Congress

Within 6 months after May 18, 2000, and annually for each of the 4 years thereafter, the Board of Directors of the Overseas Private Investment Corporation shall submit to Congress a report on the steps that the Board has taken to implement section 2193(e) of title 22 and any recommendations of the investment advisory council established pursuant to such section.


CODIFICATION


§ 3734. Export-Import Bank initiatives

(a) Sense of the Congress

It is the sense of the Congress that the Board of Directors of the Bank shall continue to take comprehensive measures, consistent with the credit standards otherwise required by law, to promote the expansion of the Bank’s financial commitments in sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank.

(b) Sub-Saharan Africa Advisory Committee

The sub-Saharan Africa Advisory Committee (SAAC) is to be commended for aiding the Bank in advancing the economic partnership between the United States and the nations of sub-Saharan Africa by doubling the number of sub-Saharan African countries in which the Bank is open for traditional financing and by increasing by tenfold the Bank’s support for sales to sub-Saharan Africa from fiscal year 1998 to fiscal year 1999. The Board of Directors of the Bank and its staff shall continue to review carefully the sub-Saharan Africa Advisory Committee recommendations on the development and implementation of new and innovative policies and programs designed to promote the Bank’s expansion in sub-Saharan Africa.


§ 3735. Expansion of the United States and Foreign Commercial Service in sub-Saharan Africa

(a) Findings

The Congress makes the following findings:

(1) The United States and Foreign Commercial Service (hereafter in this section referred to as the “Commercial Service”) plays an im-
portant role in helping United States businesses identify export opportunities and develop reliable sources of information on commercial prospects in foreign countries.

(2) During the 1980s, the presence of the Commercial Service in sub-Saharan Africa consisted of 14 professionals providing services in eight countries. By early 1997, that presence had been reduced by half to seven professionals in only four countries.

(3) Since 1997, the Department of Commerce has slowly begun to increase the presence of the Commercial Service in sub-Saharan Africa, adding five full-time officers to established posts.

(4) Although the Commercial Service Officers in these countries have regional responsibilities, this kind of coverage does not adequately service the needs of United States businesses attempting to do business in sub-Saharan Africa.

(5) The Congress has, on several occasions, encouraged the Commercial Service to focus its resources and efforts in countries or regions in Europe or Asia to promote greater United States export activity in those markets, and similar encouragement should be provided for countries in sub-Saharan Africa as well.

(6) Because market information is not widely available in many sub-Saharan African countries, the presence of additional Commercial Service Officers and resources can play a significant role in assisting United States businesses in markets in those countries.

(b) Appointments

Subject to the availability of appropriations, by not later than December 31, 2001, the Secretary of Commerce, acting through the Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service, shall take steps to ensure that—

(1) at least 20 full-time Commercial Service employees are stationed in sub-Saharan Africa; and

(2) full-time Commercial Service employees are stationed in not less than 10 different sub-Saharan African countries.

(c) Initiative for sub-Saharan Africa

In order to encourage the export of United States goods and services to sub-Saharan African countries, the International Trade Administration shall make a special effort to—

(1) identify United States goods and services which are the best prospects for export by United States companies to sub-Saharan Africa;

(2) identify, where appropriate, tariff and nontariff barriers that are preventing or hindering sales of United States goods and services to, or the operation of United States companies in, sub-Saharan Africa;

(3) hold discussions with appropriate authorities in sub-Saharan Africa on the matters described in paragraphs (1) and (2) with a view to securing increased market access for United States exporters of goods and services;

(4) identify current resource allocations and personnel levels in sub-Saharan Africa for the Commercial Service and consider plans for the deployment of additional resources or personnel to that region; and

(5) make available to the public, through printed and electronic means of communication, the information derived pursuant to paragraphs (1) through (4) for each of the 4 years after May 18, 2000.


§ 3736. Donation of air traffic control equipment to eligible sub-Saharan African countries

It is the sense of the Congress that, to the extent appropriate, the United States Government should make every effort to donate to governments of sub-Saharan African countries determined to be eligible under section 3703 of this title air traffic control equipment that is no longer in use, including appropriate related reimbursable technical assistance.


§ 3737. Additional authorities and increased flexibility to provide assistance under the Development Fund for Africa

(a) Use of sustainable development assistance to support further economic growth

It is the sense of the Congress that sustained economic growth in sub-Saharan Africa depends in large measure upon the development of a receptive environment for trade and investment, and that to achieve this objective the United States Agency for International Development should continue to support programs which help to create this environment. Investments in human resources, development, and implementation of free market policies, including policies to liberalize agricultural markets and improve food security, and the support for the rule of law and democratic governance should continue to be encouraged and enhanced on a bilateral and regional basis.

(b) Declarations of policy

The Congress makes the following declarations:

(1) The Development Fund for Africa established under chapter 10 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2293 et seq.) has been an effective tool in providing development assistance to sub-Saharan Africa since 1988.

(2) The Development Fund for Africa will complement the other provisions of this chapter and lay a foundation for increased trade and investment opportunities between the United States and sub-Saharan Africa.

(3) Assistance provided through the Development Fund for Africa will continue to support programs and activities that promote the long term economic development of sub-Saharan Africa, such as programs and activities relating to the following:

(A) Strengthening primary and vocational education systems, especially the acquisition of middle-level technical skills for operating modern private businesses and the introduction of college level business edu-
§ 3738. Assistance from United States private sector to prevent and reduce HIV/AIDS in sub-Saharan Africa

It is the sense of the Congress that United States businesses should be encouraged to provide assistance to sub-Saharan African countries to prevent and reduce the incidence of HIV/AIDS in sub-Saharan Africa. In providing such assistance, United States businesses should be encouraged to consider the establishment of an HIV/AIDS Response Fund in order to provide for coordination among such businesses in the collection and distribution of the assistance to sub-Saharan African countries.


§ 3739. Sense of the Congress relating to HIV/AIDS crisis in sub-Saharan Africa

(a) Findings

The Congress finds the following:

(1) Sustained economic development in sub-Saharan Africa depends in large measure upon successful trade with and foreign assistance to the countries of sub-Saharan Africa.

(2) The HIV/AIDS crisis has reached epidemic proportions in sub-Saharan Africa, where more than 21,000,000 men, women, and children are infected with HIV.

(3) Eighty-three percent of the estimated 11,700,000 deaths from HIV/AIDS worldwide have been in sub-Saharan Africa.

(4) The HIV/AIDS crisis in sub-Saharan Africa is weakening the structure of families and societies.

(5)(A) The HIV/AIDS crisis threatens the future of the workforce in sub-Saharan Africa.

(B) Studies show that HIV/AIDS in sub-Saharan Africa most severely affects individuals between the ages of 15 and 49—the age group that provides the most support for the economies of sub-Saharan African countries.

(6) Clear evidence demonstrates that HIV/AIDS is destructive to the economies of sub-Saharan African countries.

(7) Sustained economic development is critical to creating the public and private sector resources in sub-Saharan Africa necessary to fight the HIV/AIDS epidemic.

(b) Sense of the Congress

It is the sense of the Congress that—

(1) addressing the HIV/AIDS crisis in sub-Saharan Africa should be a central component of United States foreign policy with respect to sub-Saharan Africa;

(2) significant progress needs to be made in preventing and treating HIV/AIDS in sub-Saharan Africa in order to sustain a mutually beneficial trade relationship between the United States and sub-Saharan African countries; and

(3) the HIV/AIDS crisis in sub-Saharan Africa is a global threat that merits further attention through greatly expanded public, private, and joint public-private efforts, and through appropriate United States legislation.


§ 3740. Study on improving African agricultural practices

(a) In general

The Secretary of Agriculture, in consultation with American Land Grant Colleges and Univer-
The Secretary of Agriculture shall submit the committee on Agriculture of the House of Representatives not later than September 30, 2001.

(b) Land Grant Colleges and not-for-profit institutions

In conducting the study under subsection (a) of this section, the Secretary of Agriculture is encouraged to consult with American Land Grant Colleges and not-for-profit international organizations that have firsthand knowledge of current African farming practices.


§ 3741. Sense of the Congress regarding efforts to combat desertification in Africa and other countries

(a) Findings

The Congress finds that—

(1) desertification affects approximately one-sixth of the world’s population and one-quarter of the total land area;

(2) over 1,000,000 hectares of Africa are affected by desertification;

(3) dryland degradation is an underlying cause of recurrent famine in Africa;

(4) the United Nations Environment Programme estimates that desertification costs the world $42,000,000,000 a year, not including incalculable costs in human suffering; and

(5) crop maximization practices.

(b) Sense of the Congress

It is the sense of the Congress that the United States should expeditiously work with the international community, particularly Africa and other countries affected by desertification, to—

(1) strengthen international cooperation to combat desertification;

(2) promote the development of national and regional strategies to address desertification and increase public awareness of this serious problem and its effects;

(3) develop and implement national action programs that identify the causes of desertification and measures to address it; and

(4) recognize the essential role of local governments and nongovernmental organizations in developing and implementing measures to address desertification.


CHAPTER 24—BIPARTISAN TRADE PROMOTION AUTHORITY

Sec. 3801. Short title and findings.

3802. Trade negotiating objectives.

3803. Trade agreements authority.

3804. Consultations and assessment.

3805. Implementation of trade agreements.

3806. Treatment of certain trade agreements for which negotiations have already begun.

3807. Congressional Oversight Group.

3808. Additional implementation and enforcement requirements.

3809. Committee staff.

3810. Application of certain provisions.


3812. Interests of small business.

3813. Definitions.

§ 3801. Short title and findings

(a) Short title

This chapter may be cited as the “Bipartisan Trade Promotion Authority Act of 2002”.

(b) Findings

The Congress makes the following findings:

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

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

(3) Support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. Therefore—
(A) the recent pattern of decisions by dispute settlement panels of the WTO and the Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing, and safeguard measures by WTO members under the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards has raised concerns; and

(B) the Congress is concerned that dispute settlement panels of the WTO and the Appellate Body appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member of provisions of that Agreement, and to the evaluation by a WTO member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "This title", meaning title XXI of Pub. L. 107–210, div. B, Aug. 6, 2002, 116 Stat. 993, which enacted this chapter and amended sections 2151 to 2153, 2191, and 2212 of this title. For complete classification of title XXI to the Code, see Tables.


2. Amendments of this section by Ex. Ord. No. 13346, § 4, July 8, 2004, 69 F.R. 41906, provided:

(i) The authority to proclaim under sections 204(b)(1) and 204(b)(8)(A)(ii), and the authority to designate beneficiary countries under section 204(b)(6)(B), of the Andean Trade Preference Act [19 U.S.C. 3202(b)(1), (3)(B)(ii), (6)(B)] as amended by section 3103(a)(2) of the Act; and


3. Section 2102(c)(3)(B) of the Act is amended by inserting "and the Secretary of Health and Human Services, the Administrator of the Environmental Protection Agency, the Secretary of Commerce and, as the Secretary of State determines appropriate, the heads of such other departments and agencies."


(a) The authority vested in me as President by the Constitution and the laws of the United States, including the Trade Act of 2002 (the "Act") [Public Law 107–210] [see Short Title note above] and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Trade Promotion. (a) Except as provided in subsections (b) and (c) of this section, the authorities granted to and functions specifically assigned to the President under Division B of the Act [19 U.S.C. 3801 et seq.] are delegated and assigned, respectively, to the United States Trade Representative (U.S. Trade Representative).

(b) The exercise of the following authorities of, and functions specifically assigned to, the President under Division C of the Act are reserved to the President:

(i) The authority to proclaim under sections 204(b)(1) and 204(b)(8)(A)(ii), and the authority to designate beneficiary countries under section 204(b)(6)(B), of the Andean Trade Preference Act [19 U.S.C. 3202(b)(1), (3)(B)(ii), (6)(B)] as amended by section 3103(a)(2) of the Act; and


(c) The head of the executive department of which the United States Customs Service is a part shall take such actions to carry out determinations and actions pursuant to the Andean Trade Preference Act, as amended [19 U.S.C. 3202 et seq.], as directed pursuant to the authority delegated to the U.S. Trade Representative under this order.

Section 2. Andean Trade. (a) Except as provided in subsection (b) of this section, the authorities granted to and the functions specifically assigned to the President under Division C of the Act [see Short Title of 2002 Amendment note set out under section 3201 of this title] are delegated and assigned respectively, to the U.S. Trade Representative, in consultation with the Secretaries of State, Commerce, the Treasury, and Labor.

(b) The exercise of the following authorities of, and functions specifically assigned to, the President under Division C of the Act are reserved to the President:

(i) The authority to proclaim under sections 204(b)(1) and 204(b)(8)(A)(ii), and the authority to designate beneficiary countries under section 204(b)(6)(B), of the Andean Trade Preference Act [19 U.S.C. 3202(b)(1), (3)(B)(ii), (6)(B)] as amended by section 3103(a)(2) of the Act; and


Section 3. Guidance for Exercising Authority and Performing Duties. (a) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) In exercising authority delegated by, or performing functions assigned in, this order, and in performing duties related to the trade agreements program as defined in Executive Order 11846 [19 U.S.C. 2111 note], officers of the United States:

(i) Shall ensure that all actions taken by them are consistent with the President's constitutional authority to (A) conduct the foreign affairs of the United States, including the commencement, conclusion, and termination of negotiations with foreign countries and international organizations, (B) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties, (C) recommend for congressional consideration such measures as the President may judge necessary or expedient, and (D) superintend the unitary executive branch.

(ii) May redelegate authority delegated by this order and may further assign functions assigned by
The principal negotiating objectives of the United States regarding trade barriers and other trade distortions are—

(A) to expand competitive market opportunities for United States exports and to obtain fairer and more open conditions of trade by reducing or eliminating tariff and non-tariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for United States exports or otherwise distort United States trade; and

(B) to obtain reciprocal tariff and nontariff barrier elimination agreements, with particular attention to those tariff categories covered in section 3521(b) of this title.

(2) Trade in services

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

(3) Foreign investment

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

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

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

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

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

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

(F) providing meaningful procedures for resolving investment disputes;

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

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

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

(iii) procedures to enhance opportunities for public input into the formulation of government positions; and

(iv) providing for an appellate body or similar mechanism to provide coherence to

\[\text{§ 3802. Trade negotiating objectives} \]

(a) Overall trade negotiating objectives

The overall trade negotiating objectives of the United States for agreements subject to the provisions of section 3803 of this title are—

(1) to obtain more open, equitable, and reciprocal market access;

(2) to obtain the reduction or elimination of barriers and distortions that are directly related to trade and that decrease market opportunities for United States exports or otherwise distort United States trade;

(3) to further strengthen the system of international trading disciplines and procedures, including dispute settlement;

(4) to foster economic growth, raise living standards, and promote full employment in the United States and to enhance the global economy;

(5) to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources;

(6) to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO (as defined in section 3813(6) of this title) and an understanding of the relationship between trade and worker rights;

(7) to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade;

(8) to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export market opportunities, and provide for the reduction or elimination of trade barriers that disproportionately impact small businesses; and

(9) to promote universal ratification and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

(b) Principal trade negotiating objectives

(1) Trade barriers and distortions

The principal negotiating objectives of the United States regarding trade barriers and other trade distortions are—

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

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

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

(iii) procedures to enhance opportunities for public input into the formulation of government positions; and

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

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

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

(ii) ensuring that—

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

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

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

(4) Intellectual property

The principal negotiating objectives of the United States regarding trade-related intellectual property are—

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

(i) ensuring accelerated and full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 3511(d)(15) of this title, particularly with respect to meeting enforcement obligations under that agreement; and

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

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

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

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

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

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

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

(5) Transparency

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

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

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

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

(6) Anti-corruption

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

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

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

(7) Improvement of the WTO and multilateral trade agreements

The principal negotiating objectives of the United States regarding the improvement of the World Trade Organization, the Uruguay Round Agreements, and other multilateral and bilateral trade agreements are—

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

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

(8) Regulatory practices

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

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

(B) to require that proposed regulations be based on sound science, cost-benefit analysis, risk assessment, or other objective evidence;
(C) to establish consultative mechanisms among parties to trade agreements to promote increased transparency in developing guidelines, rules, regulations, and laws for government procurement and other regulatory regimes; and

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

(9) Electronic commerce

The principal negotiating objectives of the United States with respect to electronic commerce are—

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

(B) to ensure that—

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

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

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

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

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

(10) Reciprocal trade in agriculture

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

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

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

(II) providing reasonable adjustment periods for United States import-sensitive products, in close consultation with the Congress on such products before initiating tariff reduction negotiations;

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

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

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

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

(vii) eliminating state trading policies that create price-depressing surpluses;

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

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

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

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

(IV) other unjustified technical barriers to trade; and

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

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

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

(xi) taking into account whether a party to the negotiations has failed to adhere to the provisions of already existing trade agreements with the United States or has circumvented obligations under those agreements;

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

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

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

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

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

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

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

(iii) The negotiating objective provided in subparagraph (A) applies with respect to agricultural matters to be addressed in any trade agreement entered into under section 3803(a) or (b) of this title, including any trade agreement entered into under section 3803(a) or (b) of this title that provides for accession to a trade agreement to which the United States is already a party, such as the North American Free Trade Agreement and the United States-Canada Free Trade Agreement.

(11) Labor and the environment

The principal negotiating objectives of the United States with respect to dispute settlement and enforcement of trade agreements are—

(A) to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party after entry into force of a trade agreement to which the United States is already a party, such as the North American Free Trade Agreement and the United States-Canada Free Trade Agreement.

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

(C) to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 3813(6) of this title);

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

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

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

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

(12) Dispute settlement and enforcement

The principal negotiating objectives of the United States with respect to dispute settlement and enforcement of trade agreements are—

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

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

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

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

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

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

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

(ii) is appropriate to the parties, nature, subject matter, and scope of the violation; and
(iii) has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism; and

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

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

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

(iii) the availability of equivalent remedies.

(13) WTO extended negotiations

The principal negotiating objectives of the United States regarding trade in civil aircraft are those set forth in section 3555(c) of this title and regarding rules of origin are the conclusion of an agreement described in section 3552 of this title.

(14) Trade remedy laws

The principal negotiating objectives of the United States with respect to trade remedy laws are—

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

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

(15) Border taxes

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

(16) Textile negotiations

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

(17) Worst forms of child labor

The principal negotiating objective of the United States with respect to the trade-related aspects of the worst forms of child labor are to seek commitments by parties to trade agreements to vigorously enforce their own laws prohibiting the worst forms of child labor.

(c) Promotion of certain priorities

In order to address and maintain United States competitiveness in the global economy, the President shall—

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

(2) seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 3813(6) of this title) and to promote compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the content and operation of such mechanisms;

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

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

(5) review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public;

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

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

(8) in connection with any trade negotiations entered into under this chapter, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating, on a time frame determined in accordance with section 3807(b)(2)(E) of this title;

(9) with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor;
(10) continue to promote consideration of multilateral environmental agreements and consult with parties to such agreements regarding the consistency of any such agreement that includes trade measures with existing environmental exceptions under Article XX of the GATT 1994;

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

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

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

(d) Consultations

(1) Consultations with congressional advisers

In the course of negotiations conducted under this chapter, the United States Trade Representative shall consult closely and on a timely basis with, and keep fully apprised of, the negotiations, the congressional advisers for trade policy and negotiations appointed under section 3807 of this title and all committees of the House of Representatives and the Senate with jurisdiction over laws that would be affected by a trade agreement resulting from the negotiations.

(2) Consultation before agreement initialed

In the course of negotiations conducted under this chapter, the United States Trade Representative shall—

(A) consult closely and on a timely basis (including immediately before initiating an agreement) with, and keep fully apprised of, the negotiations, the congressional advisers for trade policy and negotiations appointed under section 2211 of this title, the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Congressional Oversight Group convened under section 3807 of this title; and

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

(e) Adherence to obligations under Uruguay Round Agreements

In determining whether to enter into negotiations with a particular country, the President shall take into account the extent to which that country has implemented, or has accelerated the implementation of, its obligations under the Uruguay Round Agreements.


REFERENCES IN TEXT

Executive Order 13141, referred to in subsec. (c)(4) and (5), is set out as a note under section 2112 of this title.

This chapter, referred to in subsec. (c)(8), was in the original “this title”; meaning title XXI of Pub. L. 107–210, div. B, Aug. 6, 2002, 116 Stat. 993, which enacted this chapter and amended sections 2151 to 2159, 2191, and 2212 of this title. For complete classification of title XXI to the Code, see Tables.

AMENDMENTS


DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70805, set out as a note under section 3801 of this title.

§ 3803. Trade agreements authority

(a) Agreements regarding tariff barriers

(1) In general

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

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

(i) July 1, 2005; or

(ii) July 1, 2007, if trade authorities procedures are extended under subsection (c) of this section; and

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

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

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

(iii) such additional duties, as the President determines to be required or appropriate to carry out any such trade agreement.

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

(2) Limitations

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

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent
ad valorem on August 6, 2002) to a rate of duty which is less than 50 percent of the rate of such duty that applies on August 6, 2002;
(B) reduces the rate of duty below that applicable under the Uruguay Round Agreements, on any import sensitive agricultural product; or
(C) increases any rate of duty above the rate that applied on August 6, 2002.

(3) Aggregate reduction; exemption from staging

(A) Aggregate reduction

Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if—
(i) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed under paragraph (1) to carry out such agreement with respect to such article; and
(ii) a reduction equal to the amount applicable under clause (i) had taken effect at 1-year intervals after the effective date of such first reduction.

(B) Exemption from staging

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

(4) Rounding

If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by an amount equal to the lesser of—
(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or
(B) one-half of 1 percent ad valorem.

(5) Other limitations

A rate of duty reduction that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction is included within an implementing bill provided for under section 3805 of this title and that bill is enacted into law.

(6) Other tariff modifications

Notwithstanding paragraphs (1)(B), (2)(A), (2)(C), and (3) through (5), and subject to the consultation and layover requirements of section 115 of the Uruguay Round Agreements Act [19 U.S.C. 3521], the President may proclaim the modification of any duty or staged rate reduction of any duty set forth in Schedule XX, as defined in section 2(5) of that Act [19 U.S.C. 3501(5)], if the United States agrees to such modification or staged rate reduction in a negotiation for the reciprocal elimination or harmonization of duties under the auspices of the World Trade Organization.

(7) Authority under Uruguay Round Agreements Act not affected

Nothing in this subsection shall limit the authority provided to the President under section 111(b) of the Uruguay Round Agreements Act (19 U.S.C. 3521(b)).

(b) Agreements regarding tariff and nontariff barriers

(1) In general

(A) Whenever the President determines that—
(i) one or more existing duties or any other import restriction of any foreign country or the United States or any other barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy, or
(ii) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, and that the purposes, policies, priorities, and objectives of this chapter will be promoted thereby, the President may enter into a trade agreement described in subparagraph (B) during the period described in subparagraph (C).

(B) The President may enter into a trade agreement under subparagraph (A) with foreign countries providing for—
(i) the reduction or elimination of a duty, restriction, barrier, or other distortion described in subparagraph (A); or
(ii) the prohibition of, or limitation on, the imposition of, such barrier or other distortion.

(C) The President may enter into a trade agreement under this paragraph before—
(i) July 1, 2005; or
(ii) July 1, 2007, if trade authorities procedures are extended under subsection (c) of this section.

(2) Conditions

A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 3802(a) and (b) of this title and the President satisfies the conditions set forth in section 3804 of this title.

(3) Bills qualifying for trade authorities procedures

(A) The provisions of section 2191 of this title (in this chapter referred to as “trade authorities procedures”) apply to a bill of either House of Congress which contains provisions described in subparagraph (B) to the same extent as such section 2191 of this title applies to implementing bills under that section. A bill to which this paragraph applies shall hereafter in this chapter be referred to as an “implementing bill”.

(B) The provisions referred to in subparagraph (A) are—
(i) a provision approving a trade agreement entered into under this subsection and
§ 3803

written report that contains a request for such trade agreement; and

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

c) Extension disapproval process for Congressional trade authorities procedures
(1) In general

Except as provided in section 3805(b) of this title—

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

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

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

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

(2) Report to Congress by the President

If the President is of the opinion that the trade authorities procedures should be extended to implementing bills described in paragraph (1)(B), the President shall submit to Congress, not later than April 1, 2005, a written report that contains—

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

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

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

(3) Other reports to Congress

(A) Report by the Advisory Committee

The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 2155 of this title of the President’s decision to submit a report to the Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but not later than June 1, 2005, a written report that contains a review and analysis of the economic impact on the United States of all trade agreements implemented between August 6, 2002, and the date on which the President decides to seek an extension requested under paragraph (2).

(B) Report by ITC

The President shall promptly inform the International Trade Commission of the President’s decision to submit a report to the Congress under paragraph (2). The International Trade Commission shall submit to the Congress such a report not later than June 1, 2005, a written report that contains—

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

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

(4) Status of reports

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

(5) Extension disapproval resolutions

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

(B) Extension disapproval resolutions—

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

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

(C) The provisions of section 2192(d) and (e) of this title (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

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

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

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

(d) Commencement of negotiations

In order to contribute to the continued economic expansion of the United States, the President shall commence negotiations covering tariff and nontariff barriers affecting any industry,
product, or service sector, and expand existing sectoral agreements to countries that are not parties to those agreements, in cases where the President determines that such negotiations are feasible and timely and would benefit the United States. Such sectors include agriculture, commercial services, intellectual property rights, industrial and capital goods, government procurement, information technology products, environmental technology and services, medical equipment and services, civil aircraft, and infrastructure products. In so doing, the President shall take into account all of the principal negotiating objectives set forth in section 3802(b) of this title.


REFERENCES IN TEXT

The Bipartisan Trade Promotion Authority Act of 2002, referred to in subsec. (c)(5)(A), is title XXI of Pub. L. 107–210, div. B, Aug. 6, 2002, 116 Stat. 993, which is classified principally to this chapter. Section 2103 of the Act is classified to this section. For complete classification of title XXI to the Code, see section 3801(a) of this title and Tables.

AMENDMENTS


DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 3804. Consultations and assessment

(a) Notice and consultation before negotiation

The President, with respect to any agreement that is subject to the provisions of section 3803(b) of this title, shall—

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

(2) before and after submission of the notice, consult regarding the negotiations with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, such other committees of the House and Senate as the President deems appropriate, and the Congressional Oversight group convened under section 3807 of this title; and

(3) upon the request of a majority of the members of the Congressional Oversight Group under section 3807(c) of this title, meet with the Congressional Oversight Group before initiating the negotiations or at any other time concerning the negotiations.

(b) Negotiations regarding agriculture

(1) In general

Before initiating or continuing negotiations the subject matter of which is directly related to the subject matter under section 3802(b)(10)(A)(i) of this title with any country, the President shall assess whether United States tariffs on agricultural products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In addition, the President shall consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than United States tariffs and whether the negotiation provides an opportunity to address any such disparity. The President shall consult with the Committee on Ways and Means and the Committee on Agriculture of the House of Representatives and the Committee on Finance and the Committee on Agriculture, Nutrition, and Forestry of the Senate concerning the results of the assessment, whether it is appropriate for the United States to agree to further tariff reductions based on the conclusions reached in the assessment, and how all applicable negotiating objectives will be met.

(2) Special consultations on import sensitive products

(A) Before initiating negotiations with regard to agriculture, and, with respect to the Free Trade Area for the Americas and negotiations with regard to agriculture under the auspices of the World Trade Organization, as soon as practicable after August 6, 2002, the United States Trade Representative shall—

(i) identify those agricultural products subject to tariff-rate quotas on August 6, 2002, and agricultural products subject to tariff reductions by the United States as a result of the Uruguay Round Agreements, for which the rate of duty was reduced on January 1, 1995, to a rate which was not less than 97.5 percent of the rate of duty that applied to such article on December 31, 1994;

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

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

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

(III) whether the countries participating in the negotiations maintain export subsidies or other programs, policies, or prac-
States tariffs on textile and apparel products

try, the President shall assess whether United

tatives will be met.

States to agree to further tariff reductions

ment, whether it is appropriate for the United

resentatives and the Committee on Finance of

mittee on Ways and Means of the House of Rep-

vides an opportunity to address any such dispar-

Agreements are lower than the tariffs bound by

that were bound under the Uruguay Round

subject matter of which is directly related

practicable, notify the committees referred to

the Trade Representative shall, as soon as

the negotiations, the reasons for seeking such

tariff liberalization.

(B) If, after negotiations described in sub-

partment (A) are commenced—

(i) the United States Trade Representative

identifies any additional agricultural prod-

uct described in subparagraph (A)(i) for tar-

iff reductions which were not the subject of

a notification under subparagraph (A)(iv), or

(ii) any additional agricultural product de-

scribed in subparagraph (A)(iv) is the subject

of a request for tariff reductions by a party
to the negotiations,

the Trade Representative shall, as soon as

practicable, notify the committees referred to

in subparagraph (A)(iv) of those products and

the reasons for seeking such tariff reductions.

(3) Negotiations regarding the fishing industry

Before initiating, or continuing, negotia-
tions which directly relate to fish or shellfish
trade with any country, the President shall

consult with the Committee on Ways and

Means and the Committee on Agriculture of

the House of Representatives and the Com-

mittee on Finance and the Committee on

Agriculture, Nutrition, and Forestry of the

Senate of those products identified under

clause (i) for which the Trade Represen-
tative intends to seek tariff liberalization.

(B) If, after negotiations described in sub-

paragraph (A) are commenced—

(i) the United States Trade Representative

identifies any additional agricultural prod-

uct described in subparagraph (A)(i) for tar-

iff reductions which were not the subject of

a notification under subparagraph (A)(iv), or

(ii) any additional agricultural product de-

scribed in subparagraph (A)(iv) is the subject

of a request for tariff reductions by a party
to the negotiations,

the Trade Representative shall, as soon as

practicable, notify the committees referred to

in subparagraph (A)(iv) of those products and

the reasons for seeking such tariff reductions.

(3) Negotiations regarding textiles

Before initiating or continuing negotia-
tions the subject matter of which is directly related
to textiles and apparel products with any coun-

try, the President shall assess whether United

States tariffs on textile and apparel products

that were bound under the Uruguay Round

Agreements are lower than the tariffs bound by

that country and whether the negotiation pro-

vides an opportunity to address any such dispar-

ity. The President shall consult with the Com-

mittee on Ways and Means of the House of Rep-

resentatives and the Committee on Finance of

the Senate concerning the results of the assess-

ment, whether it is appropriate for the United

States to agree to further tariff reductions

based on the conclusions reached in the assess-

ment, and how all applicable negotiating objec-

tives will be met.

(d) Consultation with Congress before agree-

ments entered into

(1) Consultation

Before entering into any trade agreement

under section 3803(b) of this title, the Presi-

dent shall consult with—

(A) the Committee on Ways and Means of

the House of Representatives and the Com-

mittee on Finance of the Senate;

(B) each other committee of the House and

the Senate, and each joint committee of the

Congress, which has jurisdiction over legis-

lation involving subject matters which

would be affected by the trade agreement;

and

(C) the Congressional Oversight Group

convened under section 3807 of this title.

(2) Scope

The consultation described in paragraph (1)

shall include consultation with respect to—

(A) the nature of the agreement;

(B) how and to what extent the agreement

will achieve the applicable purposes, poli-

cies, priorities, and objectives of this chap-

ter; and

(C) the implementation of the agreement

under section 3805 of this title, including the

general effect of the agreement on existing

laws.

(3) Report regarding United States trade rem-

edy laws

(A) Changes in certain trade laws

The President, at least 180 calendar
days before the day on which the President

enters into a trade agreement under section 3803(b)
of this title, shall report to the Committee on

Ways and Means of the House of Rep-

resentatives and the Committee on Finance of

the Senate—

(i) the range of proposals advanced in the

negotiations with respect to that agree-

ment, that may be in the final agree-

ment, and that could require amendments to

section 3805 of this title, including the

general effect of the agreement on existing

laws.

(B) Certain agreements

With respect to a trade agreement entered

into with Chile or Singapore, the report re-

ferred to in subparagraph (A) shall be sub-

mitted by the President at least 90 calendar
days before the day on which the President

enters into that agreement.

(C) Resolutions

(i) At any time after the transmission of

the report under subparagraph (A), if a reso-

lution is introduced with respect to that re-

port in either House of Congress, the proce-

dures set forth in clauses (ii) through (vi) shall

apply to that resolution if—

(I) no other resolution with respect to

that report has previously been reported in

that House of Congress by the Committee
on Ways and Means or the Committee on Finance, as the case may be, pursuant to those procedures; and

(ii) no procedural disapproval resolution under section 3803(b) of this title introduced with respect to a trade agreement entered into pursuant to the negotiations to which the report under subparagraph (A) relates has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be.

(ii) For purposes of this subparagraph, the term "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the President does not later than 30 days after the date on which the President transmitted to the Congress on under section 2102(b)(14) of that Act., with the first blank space being filled with the name of the resolving House of Congress, the second blank space being filled with the appropriate date of the report, and the third blank space being filled with the name of the country or countries involved.

(iii) Resolutions in the House of Representatives—

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

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

(III) may not be amended by either Committee.

(iv) Resolution in the Senate—

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

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

(III) may not be amended.

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

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

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

(e) Advisory Committee reports

The report required under section 135(e)(1) of the Trade Act of 1974 (19 U.S.C. 2155(e)(1)) regarding any trade agreement entered into under section 3803(a) or (b) of this title shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 3803(a)(1) or 3805(a)(1)(A) of this title of the President's intention to enter into the agreement.

(f) ITC assessment

(1) In general

The President, at least 90 calendar days before the day on which the President enters into a trade agreement under section 3803(b) of this title, shall provide the International Trade Commission (referred to in this subsection as "the Commission") with the details of the agreement as it exists at that time and request the Commission to prepare and submit an assessment of the agreement as described in paragraph (2). Between the time the President makes the request under this paragraph and the time the Commission submits the assessment, the President shall keep the Commission current with respect to the details of the agreement.

(2) ITC assessment

Not later than 90 calendar days after the President enters into the agreement, the Commission shall submit to the President and the Congress a report assessing the likely impact of the agreement on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers.

(3) Review of empirical literature

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


References in Text


So in original. Two cls. (iv) have been enacted.
§ 3805. Implementation of trade agreements

(a) In general

(1) Notification and submission

Any agreement entered into under section 3803(b) of this title shall enter into force with respect to the United States if (and only if)—

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

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

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

(i) a draft of an implementing bill described in section 3803(b)(3) of this title;

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

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

(D) the implementing bill is enacted into law.

(2) Supporting information

The supporting information required under paragraph (1)(C)(iii) consists of—

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

(B) a statement—

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

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

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (1);

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

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

(IV) how the implementing bill meets the standards set forth in section 3803(b)(3) of this title; and

(V) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in section 3802(c) of this title regarding the promotion of certain priorities.

(3) Reciprocal benefits

In order to ensure that a foreign country that is not a party to a trade agreement entered into under section 3803(b) of this title does not receive benefits under the agreement unless the country is also subject to the obligations under the agreement, the implementing bill submitted with respect to the agreement shall provide that the benefits and obligations under the agreement apply only to the parties to the agreement, if such application is consistent with the terms of the agreement.

The implementing bill may also provide that the benefits and obligations under the agreement do not apply uniformly to all parties to the agreement, if such application is consistent with the terms of the agreement.

(4) Disclosure of commitments

Any agreement or other understanding with a foreign government or governments (whether oral or in writing) that—

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

(B) is not disclosed to the Congress before an implementing bill with respect to that agreement is introduced in either House of Congress,

shall not be considered to be part of the agreement approved by the Congress and shall have no force and effect under United States law or in any dispute settlement body.

(b) Limitations on trade authorities procedures

(1) For lack of notice or consultations

(A) In general

The trade authorities procedures shall not apply to any implementing bill submitted with respect to a trade agreement or trade agreements entered into under section 3803(b) of this title if during the 60-day period beginning on the date that one House of Congress agrees to a procedural disapproval resolution for lack of notice or consultations with respect to such trade agreement or agreements, the other House separately agrees to a procedural disapproval resolution with respect to such trade agreement or agreements.

(B) Procedural disapproval resolution

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

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

(1) the President has failed or refused to consult (as the case may be) in accordance with section 3804 of this title or this section with respect to the negotiations, agreement, or agreements;

(II) guidelines under section 3807(b) of this title have not been developed or met with respect to the negotiations, agreement, or agreements;

(III) the President has not met with the Congressional Oversight Group pursuant to a request made under section 3807(c) of this title with respect to the negotiations, agreement, or agreements; or

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

(2) Procedures for considering resolutions

(A) Procedural disapproval resolutions—

(i) in the House of Representatives—

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

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

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

(ii) in the Senate—

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

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

(III) may not be amended.

(B) The provisions of section 2192(d) and (e) of this title (relating to the floor consideration of certain resolutions in the House and Senate) apply to a procedural disapproval resolution introduced with respect to a trade agreement if no other procedural disapproval resolution with respect to that trade agreement has previously been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, and if no resolution described in section 3804(d)(3)(C)(ii) of this title with respect to that trade agreement has been reported in that House of Congress by the Committee on Ways and Means or the Committee on Finance, as the case may be, pursuant to the procedures set forth in clauses (ii) through (vi) of such section 3804(d)(3)(C) of this title.

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

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

(3) For failure to meet other requirements

Not later than December 31, 2002, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, the Attorney General, and the United States Trade Representative, shall transmit to the Congress a report setting forth the strategy of the executive branch to address concerns of the Congress regarding whether dispute settlement panels and the Appellate Body of the WTO have added to obligations, or diminished rights, of the United States, as described in section 3801(b)(3) of this title. Trade authorities procedures shall not apply to any implementing bill with respect to an agreement negotiated under the auspices of the WTO unless the Secretary of Commerce has issued such report in a timely manner.

(c) Rules of House of Representatives and Senate

Subsection (b) of this section, section 3803(c) of this title, and section 3804(d)(3)(C) of this title are enacted by the Congress—

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

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


DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

UNITED STATES-PERU TRADE PROMOTION AGREEMENT IMPLEMENTATION ACT


‘‘SECTION 1. SHORT TITLE: TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the ‘United States-Peru Trade Promotion Agreement Implementation Act’.
"(b) Table of Contents.—[Omitted.]

"SEC. 2. PURPOSES.
"The purposes of this Act are—
"(1) to approve and implement the free trade agreement between the United States and Peru entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));
"(2) to strengthen and develop economic relations between the United States and Peru for their mutual benefit;
"(3) to establish free trade between the United States and Peru through the reduction and elimination of barriers to trade in goods and services and to investment; and
"(4) to lay the foundation for further cooperation to expand and enhance the benefits of the Agreement.

"SEC. 3. DEFINITIONS.
"In this Act:
"(1) Agreement.—The term ‘Agreement’ means the United States-Peru Trade Promotion Agreement approved by Congress under section 101(a)(1).
"(3) HTS.—The term ‘HTS’ means the Harmonized Tariff Schedule of the United States.
"(4) textile or apparel good.—The term ‘textile or apparel good’ means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)), other than a good listed in Annex 3-C of the Agreement.

"TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

"SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.
"(1) the United States-Peru Trade Promotion Agreement entered into on April 12, 2006, with the Government of Peru, as amended on June 24 and June 25, 2007, respectively, by the United States and Peru, and submitted to Congress on September 27, 2007; and
"(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on September 27, 2007.

"(b) Conditions for Entry Into Force of the Agreement.—At such time as the President determines that Peru has taken measures necessary to comply with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force (Feb. 1, 2009), the President is authorized to exchange notes with the Government of Peru providing for the entry into force, on or after January 1, 2008, of the Agreement with respect to the United States.

"SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.
"(a) Relationship of Agreement to United States Law.—
"(1) United States Law to Prevail in Conflict.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.
"(2) Construction.—Nothing in this Act shall be construed—
"(A) to amend or modify any law of the United States; or
"(B) to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.

"(b) Relationship of Agreement to State Law.—
"(1) Legal Challenge.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.
"(2) Definition of State Law.—For purposes of this subsection, the term ‘State law’ includes—
"(A) any law of a political subdivision of a State; and
"(B) any State law regulating or taxing the business of insurance.

"(c) Effect of Agreement With Respect to Private Remedies.—No person other than the United States—
"(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or
"(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the Agreement.

"SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.
"(a) Implementing Actions.—

"(1) Proclamation Authority.—After the date of the enactment of this Act [Dec. 14, 2007]—
"(A) the President may proclaim such actions, and
"(B) other appropriate officers of the United States Government may issue such regulations, as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date on which the Agreement enters into force (Feb. 1, 2009) is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date on which the Agreement enters into force.

"(2) Effective Date of Certain Proclaimed Actions.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

"(3) Waiver of 15-Day Restriction.—The 15-day restriction contained in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

"(b) Initial Regulations.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

"SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.
"If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—
"(1) the President has obtained advice regarding the proposed action from—
"(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and
“(B) the Commission;
“(2) the President has submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that sets forth—
“(A) the action proposed to be proclaimed and the reasons therefor; and
“(B) the advice obtained under paragraph (1);
“(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met, has expired; and
“(4) the President has consulted with the committees referred to in paragraph (2) regarding the proposed action during the period referred to in paragraph (3).

“SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.
“(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 21 of the Agreement. The office shall not be considered to be an agency for purposes of section 552 of title 5, United States Code.
“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2007, to the Department of Commerce such sums as may be necessary for the establishment and operations of the office established or designated under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 21 of the Agreement.

“SEC. 106. ARBITRATION OF CLAIMS.
“The United States is authorized to resolve any claim against the United States covered by article 10.16.1(a)(i)(C) or article 10.16.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

“SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.
“(a) EFFECTIVE DATES.—Except as provided in subsection (b), this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force [Feb. 1, 2009].
“(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act [Dec. 14, 2007].
“(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement terminates, this Act (other than this subsection) and the amendments made by this Act shall cease to have effect.

“TITLE II—CUSTOMS PROVISIONS

“SEC. 201. TARIFF MODIFICATIONS.
“(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.
“(1) PROCLAMATION AUTHORITY.—The President may proclaim—
“(A) such modifications or continuation of any duty,
“(B) such continuation of duty-free orexcise treatment, or
“(C) such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 3.3.13, and Annex 2.3 of the Agreement.
“(2) EFFECT ON OSP STATUS.—Notwithstanding section 522(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall, on the date on which the Agreement enters into force [Feb. 1, 2009], terminate the designation of Peru as a beneficiary developing country for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.).
“(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—
“(1) such modifications or continuation of any duty,
“(2) such modifications as the United States may agree to with Peru regarding the staging of any duty treatment set forth in Annex 2.3 of the Agreement,
“(3) such continuation of duty-free orexcise treatment, or
“(4) such additional duties, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Peru provided for by the Agreement.
“(c) CONVERSION TO APPROPRIATE NTR RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 2.3 of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.
“(d) TARIFF RATE QUOTAS.—In implementing the tariff rate quotas set forth in Appendix I to the Schedule of the United States to Annex 2.3 of the Agreement, the President shall take such action as may be necessary to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

“SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.
“(a) DEFINITIONS.—In this section:
“(1) APPLICABLE NTR (MFN) RATE OF DUTY.—The term ‘applicable NTR (MFN) rate of duty’ means, with respect to a safeguard good, a rate of duty equal to the lowest of—
“(A) the base rate in the Schedule of the United States to Annex 2.3 of the Agreement;
“(B) the column 1 general rate of duty that would, on the day before the date on which the Agreement enters into force [Feb. 1, 2009], apply to a good classifiable in the same 8-digit subheading of the HTS as the safeguard good;
“(C) the column 1 general rate of duty that would, at the time the additional duty is imposed under subsection (b), apply to a good classifiable in the same 8-digit subheading of the HTS as the safeguard good.
“(2) SCHEDULE RATE OF DUTY.—The term ‘schedule rate of duty’ means, with respect to a safeguard good, the rate of duty for that good that is set forth in the Schedule of the United States to Annex 2.3 of the Agreement.
“(3) SAFEGUARD GOOD.—The term ‘safeguard good’ means a good—
“(A) that is included in the Schedule of the United States to Annex 2.18 of the Agreement;
“(B) that qualifies as an originating good under section 263, except that operations performed in or material obtained from the United States shall be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement; and
“(C) for which a claim for preferential tariff treatment under the Agreement has been made.
“(b) ADDITIONAL DUTIES ON SAFEGUARD GOODS.—
“(1) IN GENERAL.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (2), on a safeguard good imported into the United States in a calendar year if the Secretary determines that, prior to such importation, the total volume of that safeguard good that is imported into the United States in that calendar year, or, if the safeguard good is so provided, the total volume of that safeguard good that is imported into the United States in that calendar year, exceeds 130 percent of the volume that is provided for that safeguard good in the corresponding year in the applicable table contained in Appendix I of the General Notes to the Schedule of the United States to Annex 2.3 of the Agreement. For purposes of this subsection, year 1 in that table corresponds to the calendar year in which the Agreement enters into force.
“(2) CALCULATION OF ADDITIONAL DUTY.—The additional duty on a safeguard good under this subsection shall be—
§ 3805

TITLE 19—CUSTOMS DUTIES

Page 870

“(A) in years 1 through 12, an amount equal to 100 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(B) in years 13 through 16, an amount equal to 50 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.

(3) NOTICE.—Not later than 60 days after the Secretary of the Treasury first assesses an additional duty in a calendar year on a good under this subsection, the Secretary shall notify the Government of Peru in writing of such action and shall provide to that Government data supporting the assessment of the additional duty.

(c) EXCEPTIONS.—No additional duty shall be assessed on a good under subsection (b) if, at the time of entry, the good is subject to import relief under—

(1) subtitle A of title III of this Act; or

(2) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(d) TERMINATION.—The assessment of an additional duty on a good under subsection (b) shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 2.3 of the Agreement.

‘‘SEC. 203. RULES OF ORIGIN.

‘‘(a) APPLICATION AND INTERPRETATION.—In this section:

‘‘(1) Tariff Classification.—The basis for any tariff classification is the HTS.

‘‘(2) Reference to HTS.—Whenever in this section there is a reference to a chapter, heading, or subheading, such reference shall be a reference to a chapter, heading, or subheading of the HTS.

‘‘(3) Cost or Value.—Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Peru or the United States).

(b) ORIGINATING GOODS.—For purposes of this Act and for purposes of implementing the preferential tariff treatment provided for under the Agreement, except as otherwise provided in this section, a good is an originating good if—

‘‘(1) the good is a good wholly obtained or produced entirely in the territory of Peru, the United States, or both;

‘‘(2) the good—

‘‘(A) is produced entirely in the territory of Peru, the United States, or both, and—

‘‘(i) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 3-A or Annex 4.1 of the Agreement; or

‘‘(ii) the good otherwise satisfies any applicable regional value-content or other requirements specified in Annex 3-A or Annex 4.1 of the Agreement; and

‘‘(B) satisfies all other applicable requirements of this section; or

‘‘(3) the good is produced entirely in the territory of Peru, the United States, or both, exclusively from materials described in paragraph (1) or (2).

(c) REGIONAL VALUE-CONTENT.—

‘‘(1) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of a good referred to in Annex 4.1 of the Agreement, except for goods to which paragraph (4) applies, shall be calculated by the importer, exporter, or producer of the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3).

‘‘(2) BUILD-DOWN METHOD.—

‘‘(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-down method:

\[
RVC = \frac{AV - VNM}{AV} \times 100
\]

‘‘(B) DEFINITIONS.—In subparagraph (A):

‘‘(i) RVC.—The term ‘RVC’ means the regional value-content of the good, expressed as a percentage.

‘‘(ii) AV.—The term ‘AV’ means the adjusted value of the good.

‘‘(iii) VNM.—The term ‘VNM’ means the value of nonoriginating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

‘‘(3) BUILD-UP METHOD.—

‘‘(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-up method:

\[
RVC = \frac{VOM}{AV} \times 100
\]

‘‘(B) DEFINITIONS.—In subparagraph (A):

‘‘(i) RVC.—The term ‘RVC’ means the regional value-content of the good, expressed as a percentage.

‘‘(ii) AV.—The term ‘AV’ means the adjusted value of the good.

‘‘(iii) VOM.—The term ‘VOM’ means the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

‘‘(4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE GOODS.—

‘‘(A) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of an automotive good referred to in Annex 4.1 of the Agreement shall be calculated by the importer, exporter, or producer of the good, on the basis of the following net cost method:

\[
RVC = \frac{NC - VNM}{NC} \times 100
\]

‘‘(B) DEFINITIONS.—In subparagraph (A):

‘‘(i) Automotive Good.—The term ‘automotive good’ means a good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or any of headings 8701 through 8708.

‘‘(ii) RVC.—The term ‘RVC’ means the regional value-content of the automotive good, expressed as a percentage.

‘‘(B) IN GENERAL.—For purposes of determining the regional value-content under subparagraph (A) for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula contained in subparagraph (A), over the producer’s fiscal year—

‘‘(I) with respect to all motor vehicles in any one of the categories described in clause (ii); or

‘‘(II) with respect to all motor vehicles in any such category that are exported to the territory of the United States or Peru.

‘‘(ii) CATEGORIES.—A category is described in this clause if it—

‘‘(I) is the same model line of motor vehicles, is in the same class of motor vehicles, and is produced in the same plant in the territory of Peru or the United States, as the good described in clause (i) for which regional value-content is being calculated;

‘‘(II) is the same class of motor vehicles, and is produced in the same plant in the territory of

...
Peru or the United States, as the good described in clause (i) for which regional value-content is being calculated; or

"(III) is the same model line of motor vehicles produced in the territory of Peru or the United States as the good described in clause (i) for which regional value-content is being calculated.

"(D) OTHER AUTOMOTIVE GOODS.—For purposes of determining the regional value-content under sub-paragraph (A) for automotive materials provided for in any of subheadings 8407.31 through 8407.34, in subheading 8408.20, or in heading 8409, 8706, 8707, or 8708, that are produced in the same plant, an importer, exporter, or producer may

"(i) average the amounts calculated under the formula contained in subparagraph (A) over—

"(I) the fiscal year of the motor vehicle producer to whom the automotive goods are sold,

"(II) any quarter or month, or

"(III) the fiscal year of the producer of such goods, if the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

"(ii) determine the average referred to in clause (I) separately for such goods sold to 1 or more motor vehicle producers; or

"(iii) make a separate determination under clause (I) or (ii) for such goods that are exported to the territory of Peru or the United States.

"(E) CALCULATING NET COST.—The importer, exporter, or producer of an automotive good shall, consistent with the provisions regarding allocation of costs provided for in generally accepted accounting principles, determine the net cost of the automotive good under subparagraph (B) by—

"(i) calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

"(ii) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

"(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

"(F) VALUE OF MATERIALS.—

"(1) IN GENERAL.—For the purpose of calculating the regional value-content of a good under subsection (c), and for purposes of applying the de minimis rules under subsection (f), the value of a material is—

"(A) in the case of a material that is imported by the producer of the good, the adjusted value of the material;

"(B) in the case of a material acquired in the territory in which the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretive notes, of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 3805(a)(2) of the Uruguay Round Agreement Act (19 U.S.C. 3805(a)(2)), as set forth in regulations promulgated by the Secretary of the Treasury providing for the application of such Articles in the absence of an importation by the producer;

"(C) in the case of a material that is self-produced, the sum of—

"(i) all expenses incurred in the production of the material, including general expenses; and

"(ii) an amount for profit equivalent to the profit added in the normal course of trade.

"(2) FURTHER ADJUSTMENTS TO THE VALUE OF MATERIALS.—

"(A) ORIGINATING MATERIAL.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

"(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of Peru, the United States, or both, to the location of the producer.

"(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Peru, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

"(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products.

"(B) NONORIGINATING MATERIAL.—The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

"(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of Peru, the United States, or both, to the location of the producer.

"(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Peru, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

"(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products.

"(E) ACCUMULATION.—

"(1) ORIGINATING MATERIALS USED IN PRODUCTION OF GOODS OF ANOTHER COUNTRY.—Originating materials from the territory of Peru or the United States that are used in the production of a good in the territory of the other country shall be considered to originate in the territory of such other country.

"(2) MULTIPLE PRODUCERS.—A good that is produced in the territory of Peru, the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

"(F) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a good that does not undergo a change in tariff classification pursuant to Annex 4.1 of the Agreement is an originating good if—

"(A)(i) the value of all nonoriginating materials that—

"(I) are used in the production of the good, and

"(II) do not undergo the applicable change in tariff classification (set forth in Annex 4.1 of the Agreement),

"(ii) does not exceed 10 percent of the adjusted value of the good;

"(ii) the good meets all other applicable requirements of this section; and
(iii) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement for the good; or

(B) the good meets the requirements set forth in paragraph 2 of Annex 4.6 of the Agreement.

(2) EXCEPTIONS.—Paragraph (1) does not apply to the following:

(A) A nonoriginating material provided for in chapter 4, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, that is used in the production of a good provided for in chapter 4.

(B) A nonoriginating material provided for in chapter 4, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, that is used in the production of a good provided for in subheading 2106.90.

(III) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90.

(iv) Goods provided for in heading 2105.

(v) Beverages containing milk provided for in subheading 2202.90.

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90.

(C) A nonoriginating material provided for in heading 0805, or any of subheadings 2009.11 through 2009.39, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90.

(D) A nonoriginating material provided for in heading 0901 or 2101 that is used in the production of a good provided for in heading 0901 or 2101.

(E) A nonoriginating material provided for in chapter 15 that is used in the production of a good provided for in any of headings 1501 through 1508, or any of headings 1511 through 1515.

(F) A nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703.

(G) A nonoriginating material provided for in chapter 17 that is used in the production of a good provided for in subheading 1806.10.

(H) Except as provided in subparagraphs (A) through (G) and Annex 4.1 of the Agreement, a nonoriginating material used in the production of a good provided for in any of chapters 1 through 24, unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(1) A nonoriginating material that is a textile or apparel good.

(3) TEXTILE OR APPAREL GOODS.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification, set forth in Annex 3-A of the Agreement, shall be considered to be an originating good if—

(i) the total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) the yarns are those described in section 24(b)(3)(B)(vi)(IV) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(vi)(IV)) (as in effect on the date of the enactment of this Act (Dec. 14, 2007)).

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric fibers, wherever they are mentioned in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Peru, the United States, or both.

(C) YARN, FABRIC, OR FIBER.—For purposes of this paragraph, in the case of a good that is a yarn, fabric, or fiber, the term 'component of the good that determines the tariff classification of the good' means all of the fibers in the good.

(4) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

(A) CLAIM FOR PREFERENTIAL TARIFF TREATMENT.—A person claiming that a fungible good or fungible material is an originating good may base the claim either on the physical segregation of the fungible good or fungible material or by using an inventory management method with respect to the fungible good or fungible material.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term 'inventory management method' means—

(i) averaging;

(ii) 'last-in, first-out';

(iii) 'first-in, first-out'; or

(iv) any other method—

(I) recognized in the generally accepted accounting principles of the country in which the production is performed (whether Peru or the United States); or

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for a particular fungible good or fungible material shall continue to use that method for that fungible good or fungible material throughout the fiscal year of such person.

(h) ACCESSORIES, SPARE PARTS, OR TOOLS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), accessories, spare parts, or tools shall—

(A) be treated as originating goods if the good is that form part of the good's standard accessories, spare parts, or tools shall—

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set forth in Annex 4.1 of the Agreement.

(2) CONDITIONS.—Paragraph (1) shall apply only if—

(A) the accessories, spare parts, or tools are classified with and not invoiced separately from the good, regardless of whether such accessories, spare parts, or tools are specified or are separately identified in the invoice for the good; and

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good.

(3) REGIONAL VALUE-CONTENT.—If the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.
"(j) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers for shipment shall be disregarded in determining whether a good is an originating good.

"(k) INDIRECT MATERIALS.—An indirect material shall be treated as an originating material without regard to where it is produced.

"(l) TRANSIT AND TRANSPORTMENT.—A good that has undergone production necessary to qualify as an originating good under subsection (b) shall not be considered to be an originating good if, subsequent to that production, the good—

"(1) undergoes further production or any other operation outside the territory of Peru or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of Peru or the United States; or

"(2) is not subject to the control of customs authorities in the territory of a country other than Peru or the United States.

"(m) GOODS CLASSIFIABLE AS GOODS PUT UP IN SETS.—Notwithstanding the rules set forth in Annex 3-A and Annex 4.1 of the Agreement, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless—

"(1) each of the goods in the set is an originating good; or

"(2) the total value of the nonoriginating goods in the set does not exceed—

"(A) in the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

"(B) in the case of a good, other than a textile or apparel good, 15 percent of the adjusted value of the set.

"(n) DEFINITIONS. —In this section:

"(1) ADJUSTED VALUE.—The term 'adjusted value' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes, of the Agreement, Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(8)), adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation.

"(2) CLASS OF MOTOR VEHICLES.—The term 'class of motor vehicles' means any one of the following categories of motor vehicles:

"(A) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90.

"(B) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90.

"(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90. or motor vehicles provided for in subheading 8704.21 or 8704.31.

"(D) Motor vehicles provided for in any of subheadings 8705.21 through 8705.90.

"(3) FUNGIBLE GOOD OR FUNGIBLE MATERIAL.—The term 'fungible good' or 'fungible material' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material.

"(4) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term 'generally accepted accounting principles' means the recognized consensus or substantial authoritative support in the United States, the United States, or both, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. The principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

"(5) GOOD WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF PERU, THE UNITED STATES, OR BOTH.—The term 'good wholly obtained or produced entirely in the territory of Peru, the United States, or both' means any of the following:

"(A) Plants and plant products harvested or gathered in the territory of Peru, the United States, or both.

"(B) Live animals born and raised in the territory of Peru, the United States, or both.

"(C) Goods obtained in the territory of Peru, the United States, or both from live animals.

"(D) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of Peru, the United States, or both.

"(E) Minerals and other natural resources not included in subparagraphs (A) through (D) that are extracted or taken from the territory of Peru, the United States, or both.

"(F) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of Peru or the United States by—

"(i) a vessel that is registered or recorded with Peru and flying the flag of Peru; or

"(ii) a vessel that is documented under the laws of the United States.

"(G) Goods produced on board a factory ship from goods referred to in subparagraph (F), if such factory ship—

"(i) is registered or recorded with Peru and Peru and flying the flag of Peru; or

"(ii) is a vessel that is documented under the laws of the United States.

"(H) Goods taken by the United States or a person of the United States from the seabed or subsoil outside the territorial waters of Peru, if Peru has rights to exploit such seabed or subsoil.

"(I) Goods taken from outer space, if the goods are obtained by Peru or the United States or a person of Peru or the United States and not processed in the territory of a country other than Peru or the United States.

"(J) Waste and scarp derived from manufacturing or processing operations in the territory of Peru, the United States, or both; or

"(ii) used goods collected in the territory of Peru, the United States, or both, if such goods are fit only for the recovery of raw materials.

"(K) Recovered goods derived in the territory of Peru, the United States, or both, from used goods, and used in the territory of Peru, the United States, or both, in the production of remanufactured goods.

"(L) Goods, at any stage of production, produced in the territory of Peru, the United States, or both, exclusively from—

"(i) goods referred to in any of subparagraphs (A) through (J), or

"(ii) the derivatives of goods referred to in clause (i).

"(6) IDENTICAL GOODS.—The term 'identical goods' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating goods.

"(7) INDIRECT MATERIAL.—The term 'indirect material' means a good used in the production, testing, or inspection of another good but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good, including—

"(A) fuel and energy;

"(B) tools, dies, and molds;

"(C) spare parts and materials used in the maintenance of equipment or buildings;
“(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

“(E) footwear, clothing, safety equipment, and supplies;

“(F) equipment, devices, and supplies used for testing or inspecting the good;

“(G) catalysts and solvents; and

“(H) any other goods that are not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production.

“(8) MATERIAL.—The term ‘material’ means a good that is used in the production of another good, including a part or an ingredient.

“(9) MATERIAL THAT IS SELF-PRODUCED.—The term ‘material’ that is self-produced means an originating material that is produced by a producer of a good and used in the production of that good.

“(10) MODEL LINE OF MOTOR VEHICLES.—The term ‘model line of motor vehicles’ means a group of motor vehicles having the same platform or model name.

“(11) NET COST.—The term ‘net cost’ means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost.

“(12) NONALLOWABLE INTEREST COSTS.—The term ‘nonallowable interest costs’ means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the country in which the producer is located.

“(13) NONORIGINATING GOOD OR NONORIGINATING MATERIAL.—The terms ‘nonoriginating good’ and ‘non-originating material’ mean a good or material, as the case may be, that does not qualify as originating under this section.

“(14) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—The term ‘packing materials and containers for shipment’ means goods used to protect another good during its transportation and does not include the packaging materials and containers in which the other good is packaged for retail sale.

“(15) PREFERENTIAL TARIFF TREATMENT.—The term ‘preferential tariff treatment’ means the custom duty rate, and the treatment under article 2.10.4 of the Agreement, that are applicable to an originating good pursuant to the Agreement.

“(16) PRODUCER.—The term ‘producer’ means a person who engages in the production of a good in the territory of Peru or the United States.

“(17) PRODUCTION.—The term ‘production’ means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

“(18) REASONABLY ALLOCATE.—The term ‘reasonably allocate’ means to apportion in a manner that would be appropriate under generally accepted accounting principles.

“(19) RECOVERED GOODS.—The term ‘recovered goods’ means materials in the form of individual parts that are the result of—

“(A) the disassembly of used goods into individual parts; and

“(B) the cleaning, inspecting, testing, or other processing that is necessary for improvement to sound working condition of such individual parts.

“(20) REMANUFACTURED.—The term ‘remanufactured good’ means an industrial good assembled in the territory of Peru or the United States, or both, that is classified under chapter 84, 85, 87, or 90 or heading 9402, other than a good classified under heading 8418 or 8516, and that—

“(A) is entirely or partially comprised of recovered goods; and

“(B) has a similar life expectancy and enjoys a factory warranty similar to such a good that is new.

“(21) TOTAL COST.—

“(A) IN GENERAL.—The term ‘total cost’—

“(i) means all product costs, period costs, and other costs for a good incurred in the territory of Peru, the United States, or both; and

“(ii) does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes.

“(B) OTHER DEFINITIONS.—In this paragraph:

“(i) PRODUCT COSTS.—The term ‘product costs’ means costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead.

“(ii) PERIOD COSTS.—The term ‘period costs’ means costs, other than product costs, that are incurred in the period in which they are incurred, such as selling expenses and general and administrative expenses.

“(iii) OTHER COSTS.—The term ‘other costs’ means all costs recorded on the books of the producer that are not product costs or period costs, such as interest.

“(22) USED.—The term ‘used’ means utilized or consumed in the production of goods.

“(c) PRESIDENTIAL PROCLAMATION AUTHORITY.—

“(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

“(A) the provisions set forth in Annex 3-A and Annex 4.1 of the Agreement; and

“(B) any additional subordinate category that is necessary to carry out this title consistent with the Agreement.

“(2) FABRICS AND YARNS NOT AVAILABLE IN COMMERCIAL QUANTITIES IN THE UNITED STATES.—The President is authorized to proclaim that a fabric or yarn is added to the list in Annex 3-B of the Agreement in an unrestricted quantity, as provided in article 3.3.5(e) of the Agreement.

“(3) MODIFICATIONS.—

“(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 (as included in Annex 3-A of the Agreement).

“(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(B), other than provisions of chapters 50 through 63 (as included in Annex 3-A of the Agreement).

“(4) FABRICS, YARNS, OR FIBERS NOT AVAILABLE IN COMMERCIAL QUANTITIES IN PERU AND THE UNITED STATES.—

“(A) IN GENERAL.—Notwithstanding paragraph (3)(A), the list of fabrics, yarns, and fibers set forth in Annex 3-B of the Agreement may be modified as provided for in this paragraph.

“(B) DEFINITIONS.—In this paragraph:

“(i) The term ‘interested entity’ means the Government of Peru, a potential or actual purchaser of a textile or apparel good, or a potential or actual supplier of a textile or apparel good.

“(ii) All references to ‘day’ and ‘days’ exclude Saturdays, Sundays, and legal holidays observed by the Government of the United States.

“(C) REQUESTS TO ADD FABRICS, YARNS, OR FIBERS.—(i) An interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in Peru and the United States and to add that fabric, yarn, or fiber to the list in Annex 3-B of the Agreement in a restricted or unrestricted quantity.
“(i) After receiving a request under clause (i), the President may determine whether—
“(I) the fabric, yarn, or fiber is available in commercial quantities in a timely manner in Peru or the United States; or
“(II) any interested entity objects to the request.
“(iii) The President may, within the time periods specified in clause (iv), proclaim that the fabric, yarn, or fiber that is the subject of the request is added to the list in Annex 3-B of the Agreement in an unrestricted quantity, or in any restricted quantity that the President may establish, if the President has determined under clause (ii) that—
“(I) the fabric, yarn, or fiber is available in commercial quantities in a timely manner in Peru and the United States; or
“(II) no interested entity has objected to the request.
“(iv) The time periods within which the President may issue a proclamation under clause (iii) are—
“(I) not later than 30 days after the date on which a request is submitted under clause (i); or
“(II) not later than 44 days after the request is submitted, if the President determines, within 30 days after the date on which the request is submitted, that the President does not have sufficient information to make a determination under clause (i).
“(v) Notwithstanding section 103(a)(2), a proclamation made under clause (iii) shall take effect on the date on which the text of the proclamation is published in the Federal Register.
“(vi) Not later than 6 months after proclaiming under clause (iii) that a fabric, yarn, or fiber is added to the list in Annex 3-B of the Agreement in a restricted quantity, the President may eliminate the restriction if the President determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in Peru and the United States.
“(D) DEEMED APPROVAL OF REQUEST.—If, after an interested entity submits a request under subparagraph (C)(i), the President does not, within the applicable time period specified in subparagraph (C)(iv), make a determination under subparagraph (C)(i), regarding the request, the fabric, yarn, or fiber that is the subject of the request shall be considered to be added, in an unrestricted quantity, to the list in Annex 3-B of the Agreement beginning—
“(I) not later than 45 days after the date on which the request was submitted; or
“(II) 60 days after the date on which the request was submitted, if the President made a determination under subparagraph (C)(iv)(II).
“(E) REQUESTS TO RESTRICT OR REMOVE FABRICS, YARNS, OR FIBERS.—(i) Subject to clause (ii), an interested entity may request the President to restrict the quantity of, or remove from the list in Annex 3-B of the Agreement, any fabric, yarn, or fiber—
“(I) that has been added to that list in an unrestricted quantity pursuant to paragraph (2) or subparagraph (C)(iii) or (D) of this paragraph; or
“(II) with respect to which the President has eliminated a restriction under subparagraph (C)(vi).
“(ii) An interested entity may submit a request under clause (i) at any time beginning 6 months after the date of the action described in subclause (I) or (II) of that clause.
“(iii) Not later than 30 days after the date on which a request under clause (i) is submitted, the President may proclaim an action provided for under clause (i) if the President determines that the fabric, yarn, or fiber that is the subject of the request is available in commercial quantities in a timely manner in Peru or the United States.
“(iv) A proclamation under clause (iii) shall take effect no earlier than the date that is 6 months after the date on which the text of the proclamation is published in the Federal Register.
“(F) PROCEDURES.—The President shall establish procedures—
“(i) governing the submission of a request under subparagraphs (C) and (E); and
“(ii) providing an opportunity for interested entities to submit comments and supporting evidence before the President makes a determination under subparagraph (C)(ii) or (vi) or (E)(iii).
(a)(2)(B), if the Secretary determines that a person has provided incorrect information to support that claim; 

“(3) detention of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A) or a claim described in subsection (a)(2)(B), if the Secretary determines that there is insufficient information to determine the country of origin of any such good; and

“(4) denial of entry into the United States of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A) or a claim described in subsection (a)(2)(B), if the Secretary determines that the person has provided incorrect information as to the country of origin of any such good.

“Completion of a Verification.—On completion of a verification under subsection (a), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the President may direct the Secretary to take appropriate action under subsection (c).

“PUBLICATION OF NAME OF PERSON.—In accordance with subtitle D, the Secretary may publish the name of any person that the Secretary has determined—

“(1) is engaged in circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or

“(2) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

“SEC. 209. REGULATIONS.

“The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

“(1) subsections (a) through (n) of section 203;

“(2) the amendment made by section 204; and

“(3) any proclamation issued under section 203(c).

“TITLE III—RELIEF FROM IMPORTS

“SEC. 301. DEFINITIONS.

“In this title:

“(1) PERUVIAN ARTICLE.—The term ‘Peruvian article’ means an article that qualifies as an originating good under section 3(4).

“(2) PERUVIAN TEXTILE OR APPAREL ARTICLE.—The term ‘Peruvian textile or apparel article’ means a textile or apparel good (as defined in section 3(4)) that is a Peruvian article.

“SUBTITLE A—RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

“SEC. 311. COMMENCING OF ACTION FOR RELIEF.

“(a) FILING OF PETITION.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

“(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of any such good under the Agreement, a Peruvian article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production and consumption, and under such conditions that imports of the Peruvian article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

“(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b): 

“(1) Paragraphs (1)(B) and (3) of subsection (b).

“(2) Subsection (c).

“(3) Subsection (i).

“(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Peruvian article if, after the date on which the Agreement enters into force [Feb. 1, 2009], import relief has been provided with respect to that Peruvian article under this subtitle.

“SEC. 312. COMMISSION ACTION ON PETITION.

“(a) DETERMINATION.—Not later than 120 days after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.

“(b) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

“(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.— 

“(1) IN GENERAL.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

“(2) LIMITATION ON RELIEF.—The import relief recommended by the Commission under this subsection shall be limited to the relief described in section 313(c). 

“(3) VOTING; SEPARATE VIEWS.—Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the re-
port required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

“2. Report to Congress.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

“(1) the determination made under subsection (a) and an explanation of the basis for the determination;

“(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

“(3) a report of the Commission regarding the determination referred to in paragraph (1) and any finding or recommendation referred to in paragraph (2).

“(c) Public Notice.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public the report (with the exception of information which the Commission determines to be confidential) and shall publish a summary of the report in the Federal Register.

“SEC. 313. PROVISION OF RELIEF.

“(a) In General.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission’s determination under section 312(a) is affirmative, or the determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

“(b) Exception.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

“(c) Nature of Relief.—

“(1) In General.—The import relief that the President is authorized to provide under this section with respect to imports of an article is as follows:

“(A) The suspension of any further reduction provided for under Annex 2.3 of the Agreement in the rate of duty imposed on the article;

“(B) an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

“(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

“(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [Feb. 1, 2009].

“(2) Progressive Liberalization.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 2.2.2 of the Agreement) of such relief at regular intervals during the period of its application.

“(d) Period of Relief.—

“(1) In General.—Subject to paragraph (2), any import relief that the President provides under this section may not be in effect for more than 2 years.

“(2) Exception.—

“(A) In General.—Subject to subparagraph (C), the President, after receiving a determination from the Commission under subparagraph (B) that is affirmative, or which the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), may extend the effective period of any import relief provided under this section by up to 2 years, if the President determines that—

“(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

“(ii) there is evidence that the industry is making a positive adjustment to import competition.

“(B) Action by Commission.—

“(i) Investigation.—Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date that is 9 months, and not later than the date that is 6 months, before the date on which any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

“(ii) Notice and Hearing.—The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

“(iii) Report.—The Commission shall submit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

“(e) Period of Import Relief.—Any import relief provided under this section, including any extensions thereof, may not, in the aggregate, be in effect for more than 4 years.

“(f) Rate After Termination of Import Relief.—When import relief under this section is terminated with respect to an article—

“(1) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States to Annex 2.3 of the Agreement, would have been in effect 1 year after the provision of relief under subsection (a); and

“(2) the rate of duty for that article after December 31 of the year in which such termination occurs shall be, at the discretion of the President, either—

“(A) the applicable rate of duty for that article set forth in the Schedule of the United States to Annex 2.3 of the Agreement; or

“(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set forth in the Schedule of the United States to Annex 2.3 of the Agreement for the elimination of the tariff.

“(g) Articles Exempt from Relief.—No import relief may be provided under this section on—

“(1) any article that is subject to import relief under—

“(A) subtitle B; or

“(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.); or

“(2) any article on which an additional duty assessed under section 202(b) is in effect.

“SEC. 314. TERMINATION OF RELIEF AUTHORITY.

“(a) General Rule.—Subject to subsection (b), no import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force [Feb. 1, 2009].

“(b) Exception.—If an article for which relief is provided under this subtitle is an article for which the pe-
riod for tariff elimination, set forth in the Schedule of the United States to Annex 2.3 of the Agreement, is greater than 10 years, no relief under this subtitle may be provided for that article after the date on which that period ends.

"SEC. 315. COMPENSATION AUTHORITY.

"For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act (19 U.S.C. 2251 et seq.)."

"SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

[Amended section 2252 of this title.]

"SUBTITLE B—TEXTILE AND APPAREL SAFEGUARD MEASURES"

"SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

"(a) In General.—A request for action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

"(b) Publication of Request.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall publish in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

"SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

"(a) Determination.—

"(1) In General.—If a positive determination is made under section 321(b), the President shall determine whether, as a result of the elimination of a duty under the Agreement, a Peruvian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

"(2) Serious Damage.—In making a determination under paragraph (1), the President—

"(A) shall examine the effect of increased imports of the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and losses, and investment, one of which is necessarily decisive; and

"(B) shall not consider changes in consumer preference or changes in technology in the United States as factors supporting a determination of serious damage or actual threat thereof.

"(b) Provision of Relief.—

"(1) In General.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is subject of such determination, as provided in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry.

"(2) Nature of Relief.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

"(A) the column 1 general rate of duty imposed under the HTS on like articles at the time that the import relief is provided; or

"(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [Feb. 1, 2009]."

"SEC. 323. PERIOD OF RELIEF.

"(a) In General.—Subject to subsection (b), the import relief that the President provides under section 322(b) may not be in effect for more than 2 years.

"(b) Extension.—

"(1) In General.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 1 year, if the President determines that—

"(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

"(B) there is evidence that the industry is making a positive adjustment to import competition.

"(2) Limitation.—Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 3 years.

"SEC. 324. ARTICLES EXEMPT FROM RELIEF.

"The President may not provide import relief under this subtitle with respect to an article if—

"(1) import relief previously has been provided under this subtitle with respect to that article; or

"(2) the article is subject to import relief under—

"(A) subtitle A; or

"(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.)."

"SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

"On the date on which import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief.

"SEC. 326. TERMINATION OF RELIEF AUTHORITY.

"No import relief may be provided under this subtitle with respect to any article after the date that is 5 years after the date on which the Agreement enters into force [Feb. 1, 2009]."

"SEC. 327. COMPENSATION AUTHORITY.

"For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act (19 U.S.C. 2251 et seq.)."

"SEC. 328. CONFIDENTIAL BUSINESS INFORMATION.

"The President may not release information received in connection with an investigation or determination under this subtitle which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information, the party shall also provide a nonconfidential version of the information in which the confidential business information is summarized or, if necessary, deleted.

"SUBTITLE C—CASES UNDER TITLE II OF THE TRADE ACT OF 1974"

"SEC. 331. FINDINGS AND ACTION ON GOODS OF PERU.

"(a) Effect of Imports.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1980 (19 U.S.C. 1330(d))), the Commiss-
sion shall also find (and report to the President at the time such injury determination is submitted to the President) whether imports of the article of Peru that qualify as originating goods under section 202(b) are a substantial cause of serious injury or threat thereof.

“(b) PRESIDENTIAL DETERMINATION REGARDING IMPORTS OF PERU.—In determining the nature and extent of action to be taken under paragraphs (1) and (2) of section 202 of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the President may exclude from the action goods of Peru with respect to which the Commission has made a negative finding under subsection (a).

“TITLE IV—PROCUREMENT

“SEC. 401. ELIGIBLE PRODUCTS.

“TITLE V—TRADE IN TIMBER PRODUCTS OF PERU

“SEC. 501. ENFORCEMENT RELATING TO TRADE IN TIMBER PRODUCTS OF PERU.

“(a) Establishment of Interagency Committee.—Not later than 90 days after the date on which the Agreement enters into force (Feb. 1, 2009), the President shall establish an Interagency Committee (in this section referred to as the ‘Committee’). The Committee shall be responsible for overseeing the implementation of Annex 18.3.4 of the Agreement, including by undertaking such actions and making such determinations provided for in this section that are not otherwise authorized under law.

“(b) Audit.—The Committee may request that the Government of Peru conduct an audit, pursuant to paragraph (b) of Annex 18.3.4 of the Agreement, to determine whether a particular producer or exporter in Peru is complying with all applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, timber products.

“(c) Verification.—

“(1) In general.—The Committee may request the Government of Peru to conduct a verification, pursuant to paragraph 7 of Annex 18.3.4 of the Agreement, for the purpose of determining whether, with respect to a particular shipment of timber products from Peru to the United States, the producer or exporter of the products has complied with applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, the products.

“(2) Actions of Committee.—If the Committee requests a verification under paragraph (1), the Committee shall—

“(A) to the extent authorized under law, provide the Government of Peru with trade and transit documents and other information to assist Peru in conducting the verification; and

“(B) direct U.S. Customs and Border Protection to take any appropriate action described in paragraph (4).

“(3) Request to participate in verification visit.—The Committee may request the Government of Peru to permit officials of any agency represented on the Committee to participate in any visit conducted by Peru of the premises of a person that is the subject of the verification requested under paragraph (1) (in this section referred to as a ‘verification visit’). Such request shall be submitted in writing not later than 10 days before any scheduled verification visit and shall identify the names and titles of the officials intending to participate.

“(4) Appropriate action pending the results of verification.—While the results of a verification requested under paragraph (1) are pending, the Committee may direct U.S. Customs and Border Protection to—

“(A) detain the shipment that is the subject of the verification; or

“(B) if the Committee has requested under paragraph (3) to have an official of any agency represented on the Committee participate in the verification visit and the Government of Peru has denied the request, deny entry to the shipment that is the subject of the verification.

“(5) Determination upon receipt of report.—

“(A) In general.—Within a reasonable time after the Government of Peru provides a report to the Committee describing the results of a verification requested under paragraph (1), the Committee shall determine whether any action is appropriate.

“(B) Determination of appropriate action.—In determining the appropriate action to take and the duration of the action, the Committee shall consider any relevant factors, including—

“(i) the verification report issued by the Government of Peru;

“(ii) any information that officials of the United States have obtained regarding the shipment or person that is the subject of the verification; and

“(iii) any information that officials of the United States have obtained during a verification visit.

“(6) Notification.—Before directing that action be taken under paragraph (7), the Committee shall notify the Government of Peru in writing of the action that will be taken and the duration of the action.

“(7) Appropriate action.—If the Committee makes an affirmative determination under paragraph (5), it may take any action with respect to the shipment that was the subject of the verification, or the products of the relevant producer or exporter, that the Committee considers appropriate, including directing U.S. Customs and Border Protection to—

“(A) deny entry to the shipment or products that producer or exporter has knowingly provided false information to officials of Peru or the United States regarding a shipment, deny entry to products of that producer or exporter derived from any tree species listed in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington March 3, 1973 (27 UST 1087; TIAS 8249); or

“(B) if a determination has been made that a producer or exporter has knowingly provided false information to officials of Peru or the United States regarding a shipment, deny entry to products of that producer or exporter derived from any tree species listed in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington March 3, 1973 (27 UST 1087; TIAS 8249); or

“(C) take any other action the Committee determines to be appropriate.

“(8) Termination of appropriate action.—Any action under paragraph (7)(B) shall terminate not later than the later of—

“(A) the end of the period specified in the written notification pursuant to paragraph (6); or

“(B) 15 days after the date on which the Government of Peru submits to the United States the results of an audit under paragraph 6 of Annex 18.3.4 of the Agreement that concludes that the person has complied with all applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, timber products.

“(9) Failure to provide verification report.—If the Committee determines that the Government of Peru has failed to provide a verification report, as required by paragraph 12 of Annex 18.3.4 of the Agreement, the Committee may take such action with respect to the relevant exporter’s timber products as the Committee considers appropriate, including any action described in paragraph (7).

“(d) Confidentiality of information.—The Committee and any agency represented on the Committee shall not disclose to the public, except with the specific permission of the Government of Peru, any documents or information received in the course of an audit under subsection (b) or in the course of a verification under subsection (c).

“(e) Publicly available information.—The Committee shall make any information exchanged with Peru under paragraph 17 of Annex 18.3.4 of the Agreement publicly available in a timely manner, in accordance with paragraph 18 of Annex 18.3.4 of the Agreement.

“(f) Coordination with other laws.—

“(1) Endangered Species Act; Lacey Act.—In implementing this section, the Secretary of Agri-
§ 3805 TITLE 19—CUSTOMS DUTIES
Page 880

culture, the Secretary of the Interior, the Secretary of Homeland Security, and the Secretary of the Treasury shall provide for appropriate coordination with the administration of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(2) OTHER LAWS.—Nothing in this section supersedes any other law relating to the protection or restriction or limitation in any manner the functions or authority of the Secretary of State, the Secretary of the Interior, the Secretary of Homeland Security, or the Secretary of the Treasury under any other law, including laws relating to prohibited or restricted imports or possession of animals, plants, or other articles.

(3) EFFECT OF DETERMINATION.—No determination under this section shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any law administered by the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Homeland Security, or the Secretary of the Treasury.

(4) FURTHER IMPLEMENTATION.—The Secretary of Agriculture, the Secretary of the Interior, the Secretary of Homeland Security, and the Secretary of the Treasury, in consultation with the Committee, shall prescribe such regulations as are necessary to carry out this section.

(5) RESOURCES FOR IMPLEMENTATION.—Not later than 90 days after the date on which the Agreement enters into force, and as appropriate thereafter, the President shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the resources, including staffing, needed to implement Annex 18.3.4 of the Agreement.

SEC. 502. REPORT TO CONGRESS.

(a) IN GENERAL.—The United States Trade Representative, in consultation with the appropriate agencies, including the United States Customs and Border Protection, the United States Fish and Wildlife Service, the Animal and Plant Health Inspection Service, the Forestry Service, and the Department of State, shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the resources, including staffing, needed to implement Annex 18.3.4 of the Agreement.

SEC. 601. CUSTOMS USER FEES.

[Amended section 58c of this title.]

SEC. 602. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.


The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

[Proc. No. 8341, Jan. 16, 2009, 74 F.R. 4105, provided in par. (4) that the Secretary of Commerce is authorized to exercise the authority of the Secretary of the Treasury under section 105(a) of the United States-Peru Trade Promotion Agreement Implementation Act (Implementation Act) (Pub. L. 110–138, set out above) to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section; in par. (5) that the United States Trade Representative is authorized to exercise the authority of the President under section 201(d) of the Implementation Act to take such action as may be necessary in implementing the tariff-rate quotas set forth in Appendix I to the Schedule of the United States to Annex 2.3 (not set out in the Code) of the United States-Peru Trade Promotion Agreement (Agreement) to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States, which action is set forth in Annex I of Publication 4058 (not set out in the Code); in par. (6) that the Committee for the Implementation of Textile Agreements (CITA) is authorized to exercise the authority of the President under section 105(e) of the Implementation Act to determine that a fabric, yarn, or fiber is or is not available in commercial quantities in a timely manner in the United States and Peru, to establish procedures governing the request for any such determination and ensuring appropriate public participation in any such determination, to add any fabric, yarn, or fiber determined to be not available in commercial quantities in a timely manner in the United States and Peru to the list in Annex 3–B (not set out in the Code) of the Agreement in a restricted or unrestricted quantity, to eliminate a restriction on the quantity of a fabric, yarn, or fiber within 6 months after adding the fabric, yarn, or fiber to the list in Annex 3–B in a restricted quantity, and to restrict the quantity of, or remove from the list in Annex 3–B, certain fabrics, yarns, or fibers; in par. (7) that the CITA is authorized to exercise the authority of the President under section 208 of the Implementation Act to exclude certain textile and apparel goods from the customs territory of the United States, to determine whether an enterprise’s production of, and capacity to produce, goods are consistent with statements by the enterprise, to find that an enterprise has knowingly or willfully engaged in circumvention, and to deny preferential tariff treatment to textile and apparel goods; in par. (8) that the USTR is authorized to exercise the functions of the President under subtitle B of title III of the Implementation Act to review requests, and to determine whether to commence consideration of such requests, to cause to be published in the Federal Register a notice of commencement of consideration of a request and notice seeking public comment, to determine whether imports of a Peruvian textile or apparel article are causing serious damage, or a substantial threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article, and to provide relief from imports of an article that is the subject of such a determination; and in par. (10) that the USTR is authorized to fulfill the obligations of the President under section 104 of the Implementation Act to obtain advice from the appropriate advisory committees and the United States International Trade Commission on the proposed implementation of an action by presidential proclamation, to submit a report on such proposed action to the appropriate congressional committees, and to consult with those congressional committees regarding the proposed action.]
Title 19—Customs Duties

United States-Oman Free Trade Agreement Implementation Act

Pub. L. 109-283, Sept. 26, 2006, 120 Stat. 1191, provided that:

"SEC. 101. APPROVAL AND ENTRY INTO FORCE OF
United States-Oman Free Trade Agreement approved by Congress under section 101(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

"(2) to strengthen and develop economic relations between the United States and Oman for their mutual benefit;

"(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

"(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

"SEC. 3. DEFINITIONS.

"In this Act:

"(1) AGREEMENT.—The term ‘Agreement’ means the United States-Oman Free Trade Agreement approved by Congress under section 101(a)(1).

"(2) HTS.—The term ‘H TS’ means the Harmonized Tariff Schedule of the United States.

"(3) TEXTILE OR APPAREL GOOD.—The term ‘textile or apparel good’ means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

"TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

"SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT

"(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves:

"(1) the United States-Oman Free Trade Agreement entered into on January 19, 2006, with Oman and submitted to Congress on June 26, 2006; and

"(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on June 26, 2006; and

"(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Oman has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force [Jan. 1, 2009], the President is authorized to exchange notes with the Government of Oman providing for the entry into force, on or after January 1, 2007, of the Agreement with respect to the United States.

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

"(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

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

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

"(A) to amend or modify any law of the United States, or

"(B) to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.

"(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

"(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

"(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term ‘State law’ includes—

"(A) any law of a political subdivision of a State; and

"(B) any State law regulating or taxing the business of insurance.

"(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

"(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

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

"SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS

"(a) IMPLEMENTING ACTIONS.—

"(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act [Sept. 26, 2006],—

"(A) the President may proclaim such actions, and

"(B) other appropriate officers of the United States Government may issue such regulations, as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date on which the Agreement enters into force [Jan. 1, 2009] is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date on which the Agreement enters into force.

"(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 101 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

"(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date on which the Agreement enters into force of any action proclaimed under this section.

"(d) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

"SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

"If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—
"(1) the President has obtained advice regarding the proposed action from—

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

"(B) the United States International Trade Commission;

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

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with the Committees referred to in paragraph (2) regarding the proposed action during the period referred to in paragraph (3).

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEDURES.

"(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 522 of title 5, United States Code.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2006 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office established or designated under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106. ARBITRATION OF CLAIMS.

"The United States is authorized to resolve any claim against the United States covered by article 10.15.1(a)(i)(C) or article 10.15.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

"(a) EFFECTIVE DATES; EFFECT OF TERMINATION.—

(1) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force [Jan. 1, 2009].

(2) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act [Sept. 26, 2006].

(3) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

"(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 3.2.8, and 3.2.9, and Annex 2-B of the Agreement.

(2) EFFECT ON OMAN GSP STATUS.—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall, on the date on which the Agreement enters into force [Jan. 1, 2009], terminate the designation of Oman as a beneficiary developing country for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2661 et seq.).

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with Oman regarding the staging of any duty treatment set forth in Annex 2-B of the Agreement,

(3) such continuation of duty-free or excise treatment, or

(4) such additional duties, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Oman provided for by the Agreement.

(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Tariff Schedule of the United States to Annex 2-B of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. RULES OF ORIGIN.

"(a) APPLICATION AND INTERPRETATION.—In this section:

(1) TARIFF CLASSIFICATION.—The basis for any tariff classification is the HTS.

(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a heading or subheading, such reference shall be a reference to a heading or subheading of the HTS.

"(b) ORIGINATING GOODS.—

(1) IN GENERAL.—For purposes of this Act and for purposes of implementing the preferential tariff treatment provided for under the Agreement, a good is an originating good if—

(A) the good is imported directly—

(i) from the territory of Oman into the territory of the United States;

(ii) from the territory of the United States into the territory of Oman; and

(B) (i) the good is a good wholly the growth, product, or manufacture of Oman or the United States, or both;

(ii) the good (other than a good to which clause (III) applies) is a new or different article of commerce that has been grown, produced, or manufactured in Oman or the United States, or both, and meets the requirements of paragraph (2); or

(III) the good is a good covered by Annex 3-A or 4-A of the Agreement.

(2) APPLICATION AND INTERPRETATION OF RULES OF ORIGIN.

"(a) APPLICATION OF RULES.—

(1) GENERAL RULES.—The basis for any tariff classification is the HTS.

(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a heading or subheading, such reference shall be a reference to a heading or subheading of the HTS.

(3) RULES OF ORIGIN.—Subject to the

"(1) ORIGINATING GOOD OR MATERIAL INCORPORATED INTO GOODS OF OTHER COUNTRY.—An originating good, or a material produced in the territory of Oman or the United States, or both, that is incorporated into
a good in the territory of the other country shall be considered to originate in the territory of the other country.

(1) MULTIPLE PRODUCERS.—A good that is grown, produced, or manufactured in the territory of Oman or the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(2) VALUE OF MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the value of a material produced in the territory of Oman or the United States, or both, includes the following:

(A) The price actually paid or payable for the material by the producer of the good.

(B) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in subparagraph (A).

(C) The cost of waste or spoilage resulting from the use of the material, manufacture, or processing, or manufacture of the good, less the value of recoverable scrap.

(D) Taxes or customs duties imposed on the material by Oman or the United States, or both, if the taxes or customs duties are not remitted upon exportation from the territory of Oman or the United States, as the case may be.

(2) EXCEPTION.—If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of Oman or the United States, or both, includes the following:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses.

(B) A reasonable amount for profit.

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

(3) PACKAGING AND PACKING MATERIALS AND CONTAINERS FOR RETAIL SALE AND FOR SHIPMENT.—Packaging and packing materials and containers for retail sale and shipment shall be disregarded in determining whether a good qualifies as an originating good, except to the extent that the value of such packaging and packing materials and containers has been included in meeting the requirements set forth in subsection (b)(2).

(4) INDIRECT MATERIALS.—Indirect materials shall be disregarded in determining whether a good qualifies as an originating good, except that the cost of such indirect materials may be included in meeting the requirements set forth in subsection (b)(2).

(5) TRANSIT AND TRANSSHIPMENT.—A good shall not be considered to meet the requirement of subsection (b)(1)(A) if, after exportation from the territory of Oman or the United States, the good undergoes production, manufacturing, or any other operation outside the territory of Oman or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of Oman or the United States.

(6) TEXTILE AND APPAREL GOODS.—

(1) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3-A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Oman or the United States.

(2) GOODS PUT UP IN SETS FOR RETAIL SALE.—Notwithstanding the rules set forth in Annex 3-A of the Agreement, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

(1) DEFINITIONS.—In this section:

(a) DIRECT COSTS OF PROCESSING OPERATIONS.—

(A) IN GENERAL.—The term ‘direct costs of processing operations’, with respect to a good, includes, to the extent they are includable in the appraised value of the good when imported into Oman or the United States, as the case may be, the following:

(i) All actual labor costs incurred in the growth, production, or manufacture of the good, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel.

(ii) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the good.

(iii) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the good.

(iv) Costs of inspecting and testing the good.

(v) Costs of packaging the good for export to the territory of the other country.

(B) EXCEPTIONS.—The term ‘direct costs of processing operations’ does not include costs that are not directly attributable to a good or are not costs of growth, production, or manufacture of the good, such as—

(i) profit; and

(ii) general expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and sales staff salaries, commissions, or expenses.

(ii) GOODS.—The term ‘good’ means any merchandise, product, article, or material.

(iii) GOOD WHOLLY THE GROWTH, PRODUCT, OR MANUFACTURE OF OMAN OR THE UNITED STATES, OR BOTH.—The term ‘good wholly the growth, product, or manufacture of Oman or the United States, or both’ means—

(A) a mineral good extracted in the territory of Oman or the United States, or both;

(B) a vegetable good, as such a good is provided for in the HTS, harvested in the territory of Oman or the United States, or both;

(C) a live animal born and raised in the territory of Oman or the United States, or both;

(D) a good obtained from live animals raised in the territory of Oman or the United States, or both;

(E) a good obtained from hunting, trapping, or fishing in the territory of Oman or the United States, or both;

(F) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Oman or the United States and flying the flag of that country;

(G) a good produced from goods referred to in subparagraph (F) on board factory ships registered...
or recorded with Oman or the United States and flying the flag of that country;

(‘H) a good taken by Oman or the United States or a person of Oman or the United States from the seabed or beneath the seabed outside territorial waters, if Oman or the United States, as the case may be, has rights to exploit such seabed;

(‘I) a good taken from outer space, if such good is obtained by Oman or the United States or a person of Oman or the United States and not processed in the territory of a country other than Oman or the United States;

(‘J) waste and scrap derived from—

(i) production or manufacture in the territory of Oman or the United States, or both; or

(ii) used goods collected in the territory of Oman or the United States, or both, if such goods are fit only for the recovery of raw materials;

(‘K) a recovered good derived in the territory of Oman or the United States from goods and utilized in the territory of that country in the production of remanufactured goods; and

(‘L) a good produced in the territory of Oman or the United States, or both, exclusively—

(i) from goods referred to in subparagraphs (A) through (J), or

(ii) from the derivatives of goods referred to in clause (i), at any stage of production.

(‘M) INDIRECT MATERIAL.—The term ‘indirect material’ means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment and buildings;

(D) lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture.

(‘N) MATERIAL.—The term ‘material’ means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that has limited uses;

(‘O) MANUFACTURED GOOD.—The term ‘manufactured good’ means an industrial good that is assembled in the territory of Oman or the United States and that—

(A) is entirely or partially comprised of recovered goods;

(B) has a similar life expectancy to a like good that is new; and

(C) enjoys a factory warranty similar to that of a like good that is new.

(‘P) SIMPLE COMBINING OR PACKAGING OPERATIONS.—The term ‘simple combining or packaging operations’ means operations such as adding batteries to devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking or packaging components together.

(R) SUBSTANTIALLY TRANSFORMED.—The term ‘substantially transformed’ means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that—

(A)(i) the good or material is converted from a good that has multiple uses into a good or material that has limited uses;

(ii) the physical properties of the good or material are changed to a significant extent; or

(iii) the operation undergone by the good or material is complex by reason of the number of different processes and materials involved and the time and level of skill required to perform those processes; and

(B) the good or material loses its separate identity in the manufacturing or processing operation.

(‘Q) PRESIDENTIAL PROCLAMATION AUTHORITY.—

(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

(A) the provisions set forth in Annex 3–A and Annex 4–A of the Agreement; and

(B) any additional subordinate category that is necessary to carry out this title, consistent with the Agreement.

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may make modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 of the HTS (as included in Annex 3–A of the Agreement).

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 104, the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Oman pursuant to article 3.2.5 of the Agreement, and

(ii) before the end of the 1-year period beginning on the date of the enactment of this Act [Sept. 26, 2006], modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS (as included in Annex 3–A of the Agreement).

SEC. 203. CUSTOMS USER FEES.
[Amended section 58c of this title.]
SEC. 206. REGULATIONS.

SEC. 205. RELIQUIDATION OF ENTRIES.

regulations as may be necessary to carry out—

(a) that an exporter or producer in Oman is complying with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods; or

(b) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 202, or

(ii) is a good of Oman, is accurate.

Appropriate action under subsection (a)(1) includes—

(1) suspension of liquidation of the entry of any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A), in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such good; and

(2) suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—

(1) publication of the name and address of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B); and

(3) denial of entry into the United States of—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

SEC. 205. RELIQUIDATION OF ENTRIES.

[Amended section 1530 of this title.]

SEC. 206. REGULATIONS.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(a) that an exporter or producer in Oman is complying with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods; or

(b) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 202, or

(ii) is a good of Oman, is accurate.

Appropriate action under subsection (a)(1) includes—

(1) suspension of liquidation of the entry of any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A), in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such good; and

(2) suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—

(1) publication of the name and address of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B); and

(3) denial of entry into the United States of—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).
may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(2) LIMITATION ON RELIEF.—The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c).

(3) VOTING; SEPARATE VIEWS.—Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(4) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(5) PUBLICATION.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) EXCEPTION.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) NATURE OF RELIEF.—

(1) IN GENERAL.—The import relief that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex 2-B of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [Jan. 1, 2009].

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization of the relief at regular intervals during the period in which the relief is in effect.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President provides under this section may not, in the aggregate, be in effect for more than 3 years.

(2) EXTENSION.—

(A) In general.—If the initial period for any import relief provided under this section is less than 3 years, the President, after receiving a determination from the Commission under subparagraph (B) that is affirmative, or which the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), may extend the effective period of any import relief provided under this section, subject to the limitation under paragraph (1), if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) ACTION BY COMMISSION.—

(i) INVESTIGATION.—Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) NOTICE.—The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) REPORT.—The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this section on any article that is an Omani article after the date on which the Agreement enters into force [Jan. 1, 2009].

(b) PRESIDENTIAL DETERMINATION.—Import relief may be provided under this section on any article that is an Omani article after the date on which such relief would, but for this subsection, terminate under sub-
section (a), if the President determines that Oman has consented to such relief.

**SEC. 315. COMPENSATION AUTHORITY.**

"For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2219), any import relief provided by the President under section 315 shall be treated as action taken under chapter 1 of title II of such Act (19 U.S.C. 2251 et seq.)."

**SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

[Amended section 2232 of this title.]

**SUBTITLE B—TEXTILE AND APPAREL SAFEGUARD MEASURES**

**SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.**

"(a) IN GENERAL.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

"(b) PUBLICATION OF REQUEST.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

**SEC. 322. DETERMINATION AND PROVISION OF RELIEF.**

"(a) DETERMINATION.—

"(1) IN GENERAL.—If a positive determination is made under section 322(b), the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, an Omani textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious injury, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

"(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

"(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

"(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

"(b) PROVISION OF RELIEF.—

"(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition.

"(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

"(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

"(B) the column 1 general rate of duty imposed under the HTS on like articles on the date before the date on which the Agreement enters into force [Jan. 1, 2009]."

**SEC. 323. PERIOD OF RELIEF.**

"(a) IN GENERAL.—Subject to subsection (b), any import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

"(b) EXTENSION.—If the initial period for any import relief provided under section 322 is less than 3 years, the President may extend the effective period of any import relief provided under that section, subject to the limitation set forth in subsection (a), if the President determines that—

"(1) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

"(2) there is evidence that the industry is making a positive adjustment to import competition.

**SEC. 324. ARTICLES EXEMPT FROM RELIEF.**

"The President may not provide import relief under this subtitle with respect to any article if—

"(1) the article has been subject to import relief under this subtitle after the date on which the Agreement enters into force [Jan. 1, 2009]; or

"(2) the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.)."

**SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.**

"When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, for the provision of such relief, on the date on which the relief terminates.

**SEC. 326. TERMINATION OF RELIEF AUTHORITY.**

"No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

**SEC. 327. COMPENSATION AUTHORITY.**

"For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2219), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act.

**SEC. 328. CONFIDENTIAL BUSINESS INFORMATION.**

"The President may not release information that is submitted in a proceeding under this subtitle and that the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information.

"To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party shall also submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

**TITLE IV—PROCUREMENT**

**SEC. 401. ELIGIBLE PRODUCTS.**

[Amended section 2518 of this title.]

[The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.]

[Proc. No. 8332, Dec. 29, 2008, 73 F.R. 80290, provided in par. (4) that the Secretary of Commerce is authorized to exercise the authority of the President under section 105(a) of the United States-Oman Free Trade Agreement Implementation Act (Implementation Act) (Pub. L. 109–283, set out above) to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section; in par. (5) that
the Committee for the Implementation of Textile Agreements (CITA) is authorized to examine the reports of the President under section 101(a)(1) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Bahrain for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term ‘Agreement’ means the United States-Bahrain Free Trade Agreement approved by Congress under section 101(a)(1).

(2) HTS.—The term ‘HTS’ means the Harmonized Tariff Schedule of the United States.

(3) TEXTILE OR APPAREL GOOD.—The term ‘textile or apparel good’ means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

‘TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.


(1) the United States-Bahrain Free Trade Agreement entered into on September 14, 2004, with Bahrain and submitted to Congress on November 16, 2005; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on November 16, 2005.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Bahrain has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force [Aug. 1, 2006], the President is authorized to exchange notes with the Government of Bahrain providing for the entry into force, on or after January 1, 2006, of the Agreement with respect to the United States.

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

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

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

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

(A) to amend or modify any law of the United States;

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

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term ‘State law’ includes

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

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

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

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act [Jan. 11, 2006]—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations, as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date on which the Agreement enters into force [Aug. 1, 2006] is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date on which the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 101(b) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restoration in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking
effect on the date on which the Agreement enters into force of any action proclaimed under this section.

"(b) Initial Regulations.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 19 of the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force [Aug. 1, 2006]. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

"SEC. 104. Consultation and Layover Provisions for, and Effective Date of, Proclaimed Actions.

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

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

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

"(B) the United States International Trade Commission;

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

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

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

"(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

"(4) the President has consulted with the Committees referred to in paragraph (2) regarding the proposed action during the period referred to in paragraph (3).

"SEC. 105. Administration of Dispute Settlement Proceedings.

"(a) Establishment or Designation of Office.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 19 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

"(b) Authorization of Appropriations.—There are authorized to be appropriated for each fiscal year after fiscal year 2005 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office established or designated under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 19 of the Agreement.

"SEC. 106. Effective Dates; Effect of Termination.

"(a) Effective Dates.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act shall take effect on the date on which the Agreement enters into force [Aug. 1, 2006].

"(b) Exceptions.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act [Jan. 11, 2006].

"(c) Termination of the Agreement.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

"TITLE II—CUSTOMS PROVISIONS

"SEC. 201. Tariff Modifications.

"(a) Tariff Modifications Provided for in the Agreement.—

"(1) Proclamation Authority.—The President may proclaim—

"(A) such modifications or continuation of any duty,

"(B) such continuation of duty-free or excise treatment, or

"(C) such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 3.2.8, and 3.2.9, and Annex 2-B of the Agreement.

"(2) Effect on Bahrain GSP Status.—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462a(a)(1)), the President shall, on the date on which the Agreement enters into force [Aug. 1, 2006], terminate the designation of Bahrain as a beneficiary developing country for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.).

"(b) Other Tariff Modifications.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

"(1) such modifications or continuation of any duty,

"(2) such modifications as the United States may agree to with Bahrain regarding the staging of any duty treatment set forth in Annex 2-B of the Agreement,

"(3) such continuation of duty-free or excise treatment, or

"(4) such additional duties, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Bahrain provided for by the Agreement.

"(c) Conversion to Ad Valorem Rates.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Tariff Schedule of the United States to Annex 2-B of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.


"(a) Application and Interpretation.—In this section:

"(1) Tariff Classification.—The basis for any tariff classification is the HTS.

"(2) Reference to HTS.—Whenever in this section there is a reference to a heading or subheading, such reference shall be a reference to a heading or subheading of the HTS.

"(b) Originating Goods.—

"(1) In General.—For purposes of this Act and for purposes of implementing the preferential tariff treatment provided for under the Agreement, a good is an originating good if—

"(A) the good is imported directly—

"(i) from the territory of Bahrain into the territory of the United States; or

"(ii) from the territory of the United States into the territory of Bahrain; and

"(B)(i) the good is a good wholly the growth, product, or manufacture of Bahrain or the United States, or both;

"(ii) the good (other than a good to which clause (iii) applies) is a new or different article of commerce that has been grown, produced, or manufactured in Bahrain or the United States, or both, and meets the requirements of paragraph (2); or

"(III)(i) the good is a good covered by Annex 3-A or 4-A of the Agreement;

"(II)(aa) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in such Annex as a result of production occurring entirely in the territory of Bahrain or the United States, or both; or

"(bb) the good otherwise satisfies the requirements specified in such Annex; and

"(III) the good satisfies all other applicable requirements of this section.
§ 3805

TITLE 19—CUSTOMS DUTIES

Page 890

"(2) REQUIREMENTS.—A good described in paragraph (1)(B)(ii) is an originating good only if the sum of—
"(A) the value of each material produced in the territory of Bahrain or the United States, or both, and
"(B) the direct costs of processing operations performed in the territory of Bahrain or the United States, or both, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

"(c) CUMULATION.

"(1) ORIGINATING GOOD OR MATERIAL INCORPORATED INTO GOODS OF OTHER COUNTRY.—An originating good, or a material produced in the territory of Bahrain or the United States, or both, that is incorporated into a good in the territory of the other country shall be considered to originate in the territory of the other country.

"(2) MULTIPLE PRODUCERS.—A good that is grown, produced, or manufactured in the territory of Bahrain or the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

"(d) VALUE OF MATERIALS.

"(1) IN GENERAL.—Except as provided in paragraph (2), the value of a material produced in the territory of Bahrain or the United States, or both, includes the following:

"(A) The price actually paid or payable for the material by the producer of the good.

"(B) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in subparagraph (A).

"(C) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap.

"(D) Taxes or customs duties imposed on the material by Bahrain or the United States, or both, if the taxes or customs duties are not remitted upon exportation from the territory of Bahrain or the United States, as the case may be.

"(E) Cost of all processing operations, including, but not limited to—

"(i) All actual labor costs involved in the growth, production, or manufacture of the material, including general expenses.

"(ii) A reasonable amount for profit.

"(iii) Freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

"(iv) Packaging and packing materials and containers for retail sale and shipment shall be disregarded in determining whether a good qualifies as an originating good, except to the extent that the value of such packaging and packing materials and containers has been included in the requirements set forth in subsection (b)(2).

"(E) INDIRECT MATERIALS.—Indirect materials shall be disregarded in determining whether a good qualifies as an originating good, except to the extent that the cost of such indirect materials may be included in the requirements set forth in subsection (b)(2).

"(F) TRANSPORT AND TRANSSHIPMENT.—A good shall not be considered to meet the requirement of subsection (b)(1)(A) if, after exportation from the territory of Bahrain or the United States, the good undergoes production, manufacturing, or any other operation outside the territory of Bahrain or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of Bahrain or the United States.

"(H) TEXTILE AND APPAREL GOODS.—

"(1) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

"(A) IN GENERAL.—Except as provided in subparagraph (b), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3-A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

"(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Bahrain or the United States.

"(C) YARN, FABRIC, OR GROUP OF FIBERS.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term ‘component of the good that determines the tariff classification of the good’ means all of the fibers in the yarn, fabric, or group of fibers.

"(2) GOODS PUT UP IN SETS FOR RETAIL SALE.—Notwithstanding the rules set forth in Annex 3-A of the Agreement, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

"(I) DEFINITIONS.—In this section:

"(1) DIRECT COSTS OF PROCESSING OPERATIONS.—

"(A) IN GENERAL.—The term ‘direct costs of processing operations’, with respect to a good, includes, to the extent they are includable in the appraised value of the good that determines the tariff classification of the good, such as—

"(i) Freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

"(ii) Packaging and packing materials and containers for retail sale.

"(iii) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the good.

"(iv) Costs of inspecting and testing the good.

"(v) Costs of packaging the good for export to the territory of the other country.

"(B) EXCEPTIONS.—The term ‘direct costs of processing operations’ does not include costs that are not directly attributable to a good or are not costs of growth, production, or manufacture of the good, such as—

"(i) Profits; and

"(ii) General expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and sales staff salaries, commissions, or expenses.

"(2) GOOD.—The term ‘good’ means any merchandise, product, article, or material.

"(3) GOOD WHOLLY THE GROWTH, PRODUCT, OR MANUFACTURE OF BAHRAIN OR THE UNITED STATES, OR BOTH.—The term ‘good wholly the growth, product, or manufacture of Bahrain or the United States, or both’ means—
“(A) a mineral good extracted in the territory of Bahrain or the United States, or both;

“(B) a vegetable good, as such a good is provided for in the HTS, harvested in the territory of Bahrain or the United States, or both;

“(C) a live animal born and raised in the territory of Bahrain or the United States, or both;

“(D) a good obtained from live animals raised in the territory of Bahrain or the United States, or both;

“(E) a good obtained from hunting, trapping, or fishing in the territory of Bahrain or the United States, or both;

“(F) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Bahrain or the United States and flying the flag of that country;

“(G) a good produced from goods referred to in subparagraph (F) on board factory ships registered or recorded with Bahrain or the United States and flying the flag of that country;

“(H) a good taken by Bahrain or the United States or a person of Bahrain or the United States from the seabed or beneath the seabed outside territorial waters, if Bahrain or the United States, as the case may be, has rights to exploit such seabed; or

“(I) a good taken from outer space, if such good is obtained by Bahrain or the United States or a person of Bahrain or the United States and not processed in the territory of a country other than Bahrain or the United States;

“(J) waste and scrap derived from—

“(i) from goods referred to in subparagraphs (A) through (J), or

“(ii) from the derivatives of goods referred to in clause (i), at any stage of production;

“(4) INDIRECT MATERIAL.—The term ‘indirect material’ means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including—

“(A) fuel and energy;

“(B) tools, dies, and molds;

“(C) spare parts and materials used in the maintenance of equipment and buildings;

“(D) lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

“(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

“(F) equipment, devices, and supplies used for testing or inspecting the good;

“(G) catalysts and solvents; and

“(H) any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

“(5) MATERIAL.—The term ‘material’ means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a good of commerce that has been grown, produced, or manufactured in Bahrain or the United States, or both.

“(6) MATERIAL PRODUCED IN THE TERRITORY OF BAHRAIN OR THE UNITED STATES, OR BOTH.—The term ‘material produced in the territory of Bahrain or the United States, or both’ means a good that is either wholly the growth, product, or manufacture of Bahrain or the United States, or both, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of Bahrain or the United States, or both.

“(7) NEW OR DIFFERENT ARTICLE OF COMMERCE.—

“(A) IN GENERAL.—The term ‘new or different article of commerce’ means, except as provided in subparagraph (B), a good that—

“(i) has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of Bahrain or the United States, or both; and

“(ii) has a new name, character, or use distinct from the good or material from which it was transformed.

“(B) EXCEPTION.—A good shall not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

“(8) RECOVERED GOODS.—The term ‘recovered goods’ means materials in the form of individual parts that result from—

“(A) the complete disassembly of used goods into individual parts; and

“(B) the cleaning, inspecting, testing, or other processing of those parts that is necessary for improvement to sound working condition.

“(9) REMANUFACTURED GOOD.—The term ‘remanufactured good’ means an industrial good that is assembled in the territory of Bahrain or the United States and that—

“(A) is entirely or partially comprised of recovered goods;

“(B) has a similar life expectancy to, and meets similar performance standards as, a like good that is new; and

“(C) enjoys a factory warranty similar to that of a like good that is new.

“(10) SIMPLE COMBINING OR PACKAGING OPERATIONS.—The term ‘simple combining or packaging operations’ means operations such as adding batteries to devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking or packaging components together.

“(11) SUBSTANTIALLY TRANSFORMED.—The term ‘substantially transformed’ means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that—

“(A)(i) the good or material is converted from a good that has multiple uses into a good or material that has limited uses;

“(ii) the physical properties of the good or material are changed to a significant extent; or

“(iii) the operation undergone by the good or material is complex by reason of the number of different processes and materials involved and the time and level of skill required to perform those processes; and

“(B) the good or material loses its separate identity in the manufacturing or processing operation.

“(12) PRESIDENTIAL PROCLAMATION AUTHORITY.—

“(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

“(A) the provisions set forth in Annex 3–A and Annex 4–A of the Agreement; and

“(B) any additional subordinate category that is necessary to carry out this title, consistent with the Agreement.

“(2) MODIFICATIONS.—

“(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A),
other than provisions of chapters 50 through 63 of the HTS (as included in Annex 3-A of the Agreement).

**§ 3805**

**SEC. 301. DEFINITIONS.**

"In this title:

"(1) BAHRAINI ARTICLE.—The term 'Bahraini article' means an article that—

"(A) qualifies as an originating good under section 202(b); or

"(B) receives preferential tariff treatment under paragraphs 8 through 11 of article 3.2 of the Agreement.

"(2) BAHRAINI TEXTILE OR APPAREL ARTICLE.—The term 'Bahraini textile or apparel article' means an article that—

"(A) is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3311(d)(4)); and

"(B) is a Bahraini article.

"(3) COMMISSION.—The term 'Commission' means the United States International Trade Commission.

**SUBTITLE A—RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT**

**SEC. 311. COMMENCING OF ACTION FOR RELIEF.**

"(a) FILING OF PETITION.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

"(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Bahraini article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Bahraini article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

"(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2212) apply with respect to any investigation initiated under subsection (b):

"(1) Paragraphs (1)(B) and (3) of subsection (b).

"(2) Subsection (c).

"(3) Subsection (i).

"(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Bahraini article if, after the date on which the Agreement enters into force with respect to the United States [Aug. 1, 2006], import relief has been provided with respect to that Bahraini article under this subtitle.
"SEC. 312. COMMISSION ACTION ON PETITION.

(a) Determination.—Not later than 120 days after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) Applicable Provisions.—For purposes of this subsection, the provisions of paragraphs (1), (2), and (3) of section 201(g) of the Trade Act of 1974 (19 U.S.C. 1330(d)(1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) Additional Finding and Recommendation if Determination Affirmative.—

(1) In General.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(2) Limitation on Relief.—The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c).

(3) Voting; Separate Views.—Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) Report to President.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(i) the determination made under subsection (a) and an explanation of the basis for the determination;

(ii) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(iii) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) Public Notice.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

"SEC. 313. PROVISION OF RELIEF.

(a) In General.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission’s determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) Exception.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) Nature of Relief.—

(1) In General.—The import relief that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex 2-B of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [Aug. 1, 2006].

(2) Progressive Liberalization.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization of such relief at regular intervals during the period in which the relief is in effect.

(d) Period of Relief.—

(1) In General.—Subject to paragraph (2), any import relief that the President provides under this section may not, in the aggregate, be in effect for more than 3 years.

(2) Extension.—

(A) In General.—If the initial period for any import relief provided under this section is less than 3 years, the President, after receiving a determination from the Commission under subparagraph (B) that is affirmative, or which the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), may extend the effective period of any import relief provided under this section, subject to the limitation under paragraph (1), if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) Action by Commission.—

(i) Investigation.—Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) Notice and Hearing.—The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) Report.—The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(e) Rate After Termination of Import Relief.—When import relief under this section is terminated...
with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

(2) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) General Rule.—Subject to subsection (b), no import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force [Aug. 1, 2006].

(b) Presidential Determination.—Import relief may be provided under this subtitle in the case of a Bahraini article after the date on which such relief would, but for this subsection, terminate under subsection (a), if the President determines that Bahrain has consented to such relief.

SEC. 315. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act (19 U.S.C. 2251 et seq.).

SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

[Amended section 2252 of this title.]

SUBTITLE B—TEXTILE AND APPAREL SAFEGUARD MEASURES

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) IN GENERAL.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) PUBLICATION OF REQUEST.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) DETERMINATION.—

(1) IN GENERAL.—If a positive determination is made under section 321(b), the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, a Bahraini textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(3) Shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat there of.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [Aug. 1, 2006].

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), any import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

(b) EXTENSION.—If the initial period for any import relief provided under section 322 is less than 3 years, the President may extend the effective period of any import relief provided under that section, subject to the limitation set forth in subsection (a), if the President determines that—

(1) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(2) there is evidence that the industry is making a positive adjustment to import competition.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(A) the article has been subject to import relief under this subtitle after the date on which the Agreement enters into force [Aug. 1, 2006]; or

(B) the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which the Agreement enters into force.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 328. CONFIDENTIAL BUSINESS INFORMATION.

The President may not release information that is submitted in a proceeding under this subtitle and that the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party shall also submit a non-
confidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

“TITLE IV—PROCUREMENT

“SEC. 401. ELIGIBLE PRODUCTS.”

[Amended section 2518 of this title.]

(The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.]

[Proc. No. 8039, July 27, 2006, 71 F.R. 43636, provided in par. (3) that the Secretary of Commerce is authorized to exercise the authority of the President under section 105(a) of the United States-Bahrain Free Trade Agreement Implementation Act (USBFTA Act) (Pub. L. 109–169, set out above) to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section; in par. (5) that the Committee for the Implementation of Textile Agreements (CITA) is authorized to exercise the authority of the President under section 204 of the USBFTA Act to exclude textile and apparel goods from the customs territory of the United States, to determine whether an enterprise's production of and capability to produce goods are consistent with statements by the enterprise, to find that an enterprise has knowingly or willfully engaged in circumvention, and to deny preferential tariff treatment to textile and apparel goods; and in par. (6) that the CITA is authorized to exercise the authority of the President under subtitle B of Title III of the USBFTA Act to review requests and determine whether imports of a Bahraini textile or apparel good are causing serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article, and to provide relief from imports of an article that is the subject of such a determination.]

UNITED STATES-MOROCCO FREE TRADE AGREEMENT IMPLEMENTATION ACT


“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

“(a) SHORT TITLE.—This Act may be cited as the ‘United States-Morocco Free Trade Agreement Implementation Act’.

“(b) TABLE OF CONTENTS.—[Omitted.]

“SEC. 2. PURPOSES.

“The purposes of this Act are—

“(1) to approve and implement the Free Trade Agreement between the United States and Morocco entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

“(2) to strengthen and develop economic relations between the United States and Morocco for their mutual benefit;

“(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

“(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

“SEC. 3. DEFINITIONS.

“In this Act:

“(1) AGREEMENT.—The term ‘Agreement’ means the United States-Morocco Free Trade Agreement approved by Congress under section 101(a)(1).

“(2) HTS.—The term ‘HTS’ means the Harmonized Tariff Schedule of the United States.

“(3) TEXTILE OR APPAREL GOOD.—The term ‘textile or apparel good’ means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

“TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

“SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.


“(1) the United States-Morocco Free Trade Agreement entered into on June 15, 2004, with Morocco and submitted to Congress on July 15, 2004; and

“(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 15, 2004.

“(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Morocco has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force [July 1, 2005], the President is authorized to exchange notes with the Government of Morocco providing for the entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.

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

“(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

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

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

“(A) to amend or modify any law of the United States, or

“(B) to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.

“(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

“(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

“(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term ‘State law’ includes—

“(A) any law of a political subdivision of a State; and

“(B) any State law regulating or taxing the business of insurance.

“(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

“(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

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

“SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

“(a) IMPLEMENTING ACTIONS.—

“(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act [Aug. 17, 2004]—

“(A) the President may proclaim such actions, and

“(B) other appropriate officers of the United States Government may issue such regulations,
as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force [July 1, 2005] is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force [July 1, 2005] of any action proclaimed under this section.

(4) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force [July 1, 2005]. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

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

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

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2215); and

(B) the United States International Trade Commission;

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

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met, has expired; and

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

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) Establishment or Designation of Office.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) Authorization of Appropriations.—There are authorized to be appropriated for each fiscal year after fiscal year 2001 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106. ARBITRATION OF CLAIMS.

The United States is authorized to resolve any claim against the United States covered by article 10.15.1(a)(1)(C) or article 10.15.1(b)(1)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force [July 1, 2005].

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act [Aug. 17, 2004].

(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTUMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 4.1, 4.3.9, 4.3.10, 4.3.11, 4.3.13, 4.3.14, and 4.3.15, and Annex IV of the Agreement.

(2) EFFECT ON MOROCCAN GSP STATUS.—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall terminate the designation of Morocco as a beneficiary developing country for purposes of title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.] on the date of entry into force of the Agreement [July 1, 2005].

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with Morocco regarding the staging of any duty treatment set forth in Annex IV of the Agreement,

(3) such continuation of duty-free or excise treatment, or

(4) such additional duties, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Morocco provided for by the Agreement.

(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Tariff Schedule of the United States to Annex IV of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.

(a) DEFINITIONS.—In this section:

(1) AGRICULTURAL SAFEGUARD GOOD.—The term ‘agricultural safeguard good’ means a good—

(A) that qualifies as an originating good under section 203;

(B) that is included in the U.S. Agricultural Safeguard List set forth in Annex 3-A of the Agreement; and

(C) for which a claim for preferential treatment under the Agreement has been made.

(2) APPLICABLE NTR (MFN) RATE OF DUTY.—The term ‘applicable NTR (MFN) rate of duty’ means, with respect to an agricultural safeguard good, a rate of duty that is the lesser of—
“(A) the column 1 general rate of duty that would have been imposed under the HTS on the same agricultural safeguard good entered, without a claim for preferential tariff treatment, on the date on which the additional duty is imposed under subsection (b); or

“(B) the column 1 general rate of duty that would have been imposed under the HTS on the same agricultural safeguard good entered, without a claim for preferential tariff treatment, on the date on which the Secretary of the Treasury shall assess an additional duty on a good under this subsection shall be applied only to over-quota imports of the good.

“(6) NOTICE.—Not later than 60 days after the date on which the Secretary of the Treasury assesses an additional duty on a good under this subsection, the Secretary shall notify the Government of Morocco in writing of such action and shall provide to the Government of Morocco data supporting the assessment of additional duties.

“SEC. 203. RULES OF ORIGIN.

“(a) APPLICATION AND INTERPRETATION.—In this section:

“(1) TARIFF CLASSIFICATION.—The basis for any tariff classification is the HTS.

“(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a heading or sub-heading, such reference shall be to a reference to a heading or sub-heading of the HTS.

“(b) ORIGINATING GOODS.—

“(1) IN GENERAL.—For purposes of this Act and for purposes of implementing the preferential tariff treatment provided for under the Agreement, a good is an originating good if—

“(A) the good is imported directly—

“(ii) from the territory of Morocco into the territory of the United States; or

“(iii) from the territory of the United States into the territory of Morocco; and

“(B)(i) the good is a good wholly the growth, product, or manufacture of Morocco or the United States, or both;

“(ii) the good (other than a good to which clause (iii) applies) is a new or different article of commerce that has been grown, produced, or manufactured in Morocco, the United States, or both, and meets the requirements of paragraph (2); or

“(iii)(I) the good is a good covered by Annex 4-A or 5-A of the Agreement;

“(II)(aa) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in such Annex as a result of production occurring entirely in the territory of Morocco or the United States, or both; or

“(bb) the good otherwise satisfies the requirements specified in such Annex; and

“(III) the good satisfies all other applicable requirements of this section.

“(2) REQUIREMENTS.—A good described in paragraph (1)(B)(ii) is an originating good only if the sum of—

“(A) the value of each material produced in the territory of Morocco or the United States, or both, and

“(B) the direct costs of processing operations performed in the territory of Morocco or the United States, or both, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

“(c) CUMULATION.—

“(1) ORIGINATING GOOD OR MATERIAL INCORPORATED INTO GOODS OF OTHER COUNTRY.—An originating good or a material produced in the territory of Morocco or the United States, or both, that is incorporated into a good in the territory of the other country shall be considered to originate in the territory of the other country.

“(2) MULTIPLE PROCEDURES.—A good that is grown, produced, or manufactured in the territory of Morocco or the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) on a good by all other applicable requirements of this section.

“(d) VALUE OF MATERIALS.—
§ 3805

TITLED 19—CUSTOMS DUTIES

Page 898

"(1) In General.—Except as provided in paragraph (2), the value of a material produced in the territory of Morocco or the United States, or both, includes the following:

(A) The price actually paid or payable for the material by the producer of such good.

(B) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer’s plant, if such costs are not included in the price referred to in subparagraph (A).

(C) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap.

(D) Taxes or customs duties imposed on the material by Morocco, the United States, or both, if the taxes or customs duties are not remitted upon exportation from the territory of Morocco or the United States, as the case may be.

"(2) Exception.—If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of Morocco or the United States, or both, includes the following:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses.

(B) A reasonable amount for profit.

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the producer’s plant.

"(e) Packaging and Packing Materials and Containers for Retail Sale and for Shipment.—Packaging and packing materials and containers for retail sale and shipment shall be disregarded in determining whether a good qualifies as an originating good, except to the extent that the value of such packaging and packing materials and containers have been included in meeting the requirements set forth in subsection (b)(2).

"(f) Indirect Materials.—Indirect materials shall be disregarded in determining whether a good qualifies as an originating good, except that the cost of such indirect materials may be included in meeting the requirements set forth in subsection (b)(2).

"(g) Transit and Transshipment.—A good shall not be considered to meet the requirement of subsection (b)(1)(A) if, after exportation from the territory of Morocco or the United States, the good undergoes production, manufacturing, or any other operation outside the territory of Morocco or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of the United States or Morocco.

"(h) Textile and Apparel Goods.—

(1) De minimis amounts of nonoriginating materials.—

(A) In General.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4-A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) Certain textile or apparel goods.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Morocco or the United States.

(C) Yarn, Fabric, or Group of Fibers.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term ‘component of the good that determines the tariff classification of the good’ means all of the fibers in the yarn, fabric, or group of fibers, the term ‘component of the good that determines the tariff classification of the good’ means all of the fibers in the yarn, fabric, or group of fibers.
“(I) a good taken from outer space, if such good is obtained by Morocco or the United States or a person of Morocco or the United States and not processed in the territory of a country other than Morocco or the United States;

“(J) waste and scrap derived from—

“(i) production or manufacture in the territory of Morocco or the United States, or both; or

“(ii) goods collected in the territory of Morocco or the United States, or both, if such goods are fit only for the recovery of raw materials;

“(K) a recovered good derived in the territory of Morocco or the United States from used goods and utilized in the territory of that country in the production of remanufactured goods; and

“(L) a good produced in the territory of Morocco or the United States, or both, exclusively—

“(i) from goods referred to in subparagraphs (A) through (J), or

“(ii) from the derivatives of goods referred to in clause (I), at any stage of production.

“(4) INDIRECT MATERIAL.—The term ‘indirect material’ means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including—

“(A) fuel and energy;

“(B) tools, dies, and molds;

“(C) spare parts and materials used in the maintenance of equipment and buildings;

“(D) lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

“(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

“(F) equipment, devices, and supplies used for testing or inspecting the good;

“(G) catalysts and solvents; and

“(H) any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture.

“(5) MATERIAL.—The term ‘material’ means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in Morocco, the United States, or both.

“(6) MATERIAL PRODUCED IN THE TERRITORY OF MOROCCO OR THE UNITED STATES, OR BOTH.—The term ‘material produced in the territory of Morocco or the United States, or both’ means a good that is either wholly the growth, product, or manufacture of Morocco, the United States, or both, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of Morocco or the United States, or both.

“(7) NEW OR DIFFERENT ARTICLE OF COMMERCE.—

“(A) IN GENERAL.—The term ‘new or different article of commerce’ means, except as provided in subparagraph (B), a good that—

“(i) has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of Morocco, the United States, or both; and

“(ii) has a new name, character, or use distinct from the good or material from which it was transformed.

“(B) EXCEPTION.—A good shall not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

“(8) RECOVERED GOODS.—The term ‘recovered goods’ means materials in the form of individual parts that result from—

“(A) the complete disassembly of used goods into individual parts; and

“(B) the cleaning, inspecting, testing, or other processing of those parts that is necessary for improvement to sound working condition.

“(9) REMANUFACTURED GOOD.—The term ‘remanufactured good’ means an industrial good that is assembled in the territory of Morocco or the United States and that—

“(A) is entirely or partially comprised of recovered goods;

“(B) has a similar life expectancy to, and meets similar performance standards as, a like good that is new; and

“(C) enjoys a factory warranty similar to that of a like good that is new.

“(10) SIMPLE COMBINING OR PACKAGING OPERATIONS.—

“The term ‘simple combining or packaging operations’ means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, or repackaging or repacking components together.

“(11) SUBSTANTIALLY TRANSFORMED.—The term ‘substantially transformed’ means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that—

“(A)(i) the good or material is converted from a good that has multiple uses into a good or material that has limited uses;

“(ii) the physical properties of the good or material are changed to a significant extent; or

“(iii) the operation undergone by the good or material is complex by reason of the number of processes and materials involved and the time and level of skill required to perform those processes; and

“(B) the good or material loses its separate identity in the manufacturing or processing operation.

“(J) PRESIDENTIAL PROCLAMATION AUTHORITY.—

“(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

“(A) the provisions set out in Annex 4–A and Annex 5–A of the Agreement; and

“(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

“(2) MODIFICATIONS.—

“(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than modifications to the provisions of Annex 5–A of the HTS, as included in Annex 4–A of the Agreement.

“(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 104, the President may proclaim—

“(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Morocco pursuant to article 4.3.6 of the Agreement; and

“(ii) before the end of the 1-year period beginning on the date of the enactment of this Act [Aug. 17, 2004], modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

“SEC. 204. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

“(1) ACTION DURING VERIFICATION.—

“(A) IN GENERAL.—If the Secretary of the Treasury requests the Government of Morocco to conduct a verification pursuant to article 4.4 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.
"SEC. 205. REGULATIONS.
regulations as may be necessary to carry out—
request for a verification under subsection (a)(1) is in -
sufficient to make a determination under subsection 
verification was based on a reasonable suspicion of unlawful activity related to such goods; and
(2) suspension of liquidation of the entry of a textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A), in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and
(2) suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).
"(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.
"(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—
(1) publication of the name and address of the person that is the subject of the verification;
(2) denial of preferential tariff treatment under the Agreement to—
(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or
(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).
"SEC. 205. REGULATIONS.
The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—
(1) subsections (a) through (i) of section 203;
(2) amendments to existing law made by the sub-sections referred to in paragraph (1); and
(3) proclamations issued under section 203(j).
"TITLE III—RELIEF FROM IMPORTS
SEC. 301. DEFINITIONS.
In this title:
(1) MOROCCAN ARTICLE.—The term ‘Mooroccan article’ means an article that qualifies as an originating good under section 203(b) of this Act or receives preferential tariff treatment under paragraphs 9 through 15 of article 4.3 of the Agreement.
(2) MOROCCAN TEXTILE OR APPAREL ARTICLE.—The term ‘Moroccan textile or apparel article’ means an article that—
(A) is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3311(d)(4)); and
(B) is a Moroccan article.
(3) COMMISSION.—The term ‘Commission’ means the United States International Trade Commission.
"SUBTITLE A—RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT
"SEC. 311. COMMENCING OF ACTION FOR RELIEF.
(a) FILING OF PETITION.
(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.
(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).
(3) CRITICAL CIRCUMSTANCES.—Any allegation that critical circumstances exist shall be included in the petition.
(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Moroccan article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Moroccan article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.
(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):
(1) Paragraphs (1)(B) and (3) of subsection (b).
(2) Subsection (c).
(3) Subsection (d).
(4) Subsection (i).
(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Moroccan article if, after the date on which the Agreement enters into force (July 1, 2005), imports of the article for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).
"SEC. 312. COMMISSION ACTION ON PETITION.
(a) DETERMINATION.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.
(b) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).
(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under
subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission’s determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate adjustment by the domestic industry to make a positive adjustment to import competition.

(b) EXCEPTION.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) NATURE OF RELIEF.—

(1) IN GENERAL.—The import relief (including provisional relief) that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex IV of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [July 1, 2005].

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles for the immediately preceding corresponding season; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization of such relief at regular intervals during the period in which the relief is in effect.

(3) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President provides under this section may not be in effect for more than 3 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) ACTION BY COMMISSION.—(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) PERIOD OF IMPORT RELIEF.—Any import relief provided under this section, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

(d) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

(e) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that—

(1) is subject to an assessment of additional duty under section 202(b); or

(2) has been subject to import relief under this subtitle after the date on which the Agreement enters into force [July 1, 2005].

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this subtitle with respect to a good after the date that is 5 years after the date on which duty-free treatment must be provided by the United States to that good pursuant to Annex IV of the Agreement.
“(b) President’s Determination.—Import relief may be provided under this subtitle in the case of a Moroccan article after the date on which such relief would, but for this subsection, terminate under subsection (a), if the President determines that Morocco has consented to such relief.

“SEC. 315. COMPENSATION AUTHORITY.

“(a) For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act (19 U.S.C. 2251 et seq.).

“SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

[Amended section 2252 of this title.]

“SUBTITLE B—TEXTILE AND APPAREL SAFEGUARD MEASURES

“SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

“(a) In General.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by a party to the Agreement.

“SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

“(a) Determination.—

“(1) In General.—If a positive determination is made under section 322(b), the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, a Moroccan textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

“(2) Serious Damage.—In making a determination under paragraph (1), the President—

“(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

“(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

“(b) Provision of Relief.—

“(1) In General.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition.

“(2) Nature of Relief.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

“(A) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [July 1, 2005];

“(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [July 1, 2005];

“(c) Period of Relief.

“(a) In General.—Subject to subsection (b), the import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

“(b) Extension.—

“(1) In General.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

“(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

“(B) there is evidence that the industry is making a positive adjustment to import competition.

“(2) Limitation.—Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

“SEC. 323. ARTICLES EXEMPT FROM RELIEF.

“The President may not provide import relief under this subtitle with respect to any article if—

“(1) the article has been subject to import relief under this subtitle after the date on which the Agreement enters into force [July 1, 2005]; or

“(2) the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.].

“SEC. 324. RATE AFTER TERMINATION OF IMPORT RELIEF.

“When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

“SEC. 325. TERMINATION OF RELIEF AUTHORITY.

“No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

“SEC. 326. COMPENSATION AUTHORITY.

“For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act (19 U.S.C. 2251 et seq.).

“SEC. 327. BUSINESS CONFIDENTIAL INFORMATION.

“The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

[The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.]

[Proc. No. 7971, Dec. 22, 2005, 70 F.R. 76652, provided in par. (3) that the Secretary of Commerce is authorized to exercise the authority of the President under section 106(a) of the United States-Morocco Free Trade Agreement Implementation Act (USMPTA Act) (Pub. L. 108-302, set out above) to establish or designate an of-
Title 19—Customs Duties

SEC. 3. DEFINITIONS.

The purposes of this Act are—
"(a) to approve and implement the Free Trade Agreement between the United States and Australia, entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));
"(b) to strengthen and develop economic relations between the United States and Australia for their mutual benefit;
"(c) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and
"(d) to provide relief from imports of an article that is like, or directly competitive with, the imported article, and to provide relief from imports of a Moroccan textile or apparel article are causing serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article; and to provide relief from imports of an article that is the subject of such a determination.

United States-Australia Free Trade Agreement Implementation Act

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ‘United States-Australia Free Trade Agreement Implementation Act’.
(b) TABLE OF CONTENTS.—[Omitted.]

SEC. 2. PURPOSES.

The purposes of this Act are—
"(a) to approve and implement the Free Trade Agreement between the United States and Australia, as negotiated by the United States, the President having determined that such agreement is in the national interest of the United States and is consistent with the laws of the United States and the Constitution of the United States;
"(b) to expand and enhance the benefits of such Agreement.

SEC. 3. DEFINITIONS.

In this Act:
"(a) AGREEMENT.—The term ‘Agreement’ means the United States-Australia Free Trade Agreement approved by Congress under section 2101(a)(1).
"(b) HTS.—The term ‘HTS’ means the Harmonized Tariff Schedule of the United States.
"(c) TEXTILE OR APPAREL GOOD.—The term ‘textile or apparel good’ means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

"(1) the United States-Australia Free Trade Agreement entered into on May 18, 2004, with the Government of Australia and submitted to Congress on June 6, 2004; and
"(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 6, 2004.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Australia has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Australia providing for the entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.

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

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—
"(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.
"(2) CONSTRUCTION.—Nothing in this Act shall be construed—
"(A) to amend or modify any law of the United States, or
"(B) to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—
"(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.
"(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term ‘State law’ includes—
"(A) any law of a political subdivision of a State; and
"(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—
"(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or
"(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the Agreement.

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—
"(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act [Aug. 3, 2004]—
"(A) the President may proclaim such actions, and
"(B) other appropriate officers of the United States Government may issue such regulations, as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force [Jan. 1, 2005] is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date on which the Agreement enters into force.

(b) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 101, may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(c) WAIVER OF 15-DAY RESTRICTION.—The 15-day re-
effect on the date the Agreement enters into force [Jan. 1, 2005] of any action proclaimed under this section.

"(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 190(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force [Jan. 1, 2005], initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

"SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

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

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

"(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2150); and

"(B) the United States International Trade Commission;

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

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

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

"(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

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

"SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

"(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 21 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 21 of the Agreement.

"SEC. 106. EFFECTIVE DATES; EFFECT OF TERMINATION.

"(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force [Jan. 1, 2005].

"(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act [Aug. 3, 2004].

"(c) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

"TITLE II—CUSTOMS PROVISIONS

"SEC. 201. TARIFF MODIFICATIONS.

"(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—The President may proclaim—

"(1) such modifications or continuation of any duty,

"(2) such continuation of duty-free or excise treatment, or

"(3) such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, and 2.6, and Annex 2-B of the Agreement.

"(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

"(1) such modifications or continuation of any duty,

"(2) such modifications as the United States may agree to with Australia regarding the staging of any duty treatment set forth in Annex 2-B of the Agreement,

"(3) such continuation of duty-free or excise treatment, or

"(4) such additional duties, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Australia provided for by the Agreement.

"(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 2-B of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

"SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.

"(a) GENERAL PROVISIONS.—

"(1) APPLICABILITY OF SUBSECTION.—This subsection applies to additional duties assessed under subsections (b), (c), and (d).

"(2) APPLICABLE NTR (MFN) RATE OF DUTY.—For purposes of subsections (b), (c), and (d), the term ‘applicable NTR (MFN) rate of duty’ means, with respect to a safeguard good, a rate of duty that is the lesser of—

"(A) the column 1 general rate of duty that would have been imposed under the HTS on the same safeguard good entered, without a claim for preferential treatment, at the time the additional duty is imposed under subsection (b), (c), or (d), as the case may be; or

"(B) the column 1 general rate of duty that would have been imposed under the HTS on the same safeguard good entered, without a claim for preferential treatment, on December 31, 2004.

"(3) SCHEDULE RATE OF DUTY.—For purposes of subsections (b) and (c), the term ‘schedule rate of duty’ means, with respect to a safeguard good, the rate of duty for that good set out in the Schedule of the United States to Annex 2-B of the Agreement.

"(4) SAFEGUARD GOOD.—In this subsection, the term ‘safeguard good’ means—

"(A) a horticulture safeguard good described [in] subsection (b)(1)(B); or

"(B) a beef safeguard good described in subsection (c)(1) or subsection (d)(1)(A).

"(5) EXCEPTIONS.—No additional duty shall be assessed on a good under subsection (b), (c), or (d) if, at the time of entry, the good is subject to import relief under—

"(A) subtitle A of title III of this Act; or

"(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

"(6) TERMINATION.—The assessment of an additional duty on a good under subsection (b) or (c), whichever is applicable, shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 2-B of the Agreement.

"(7) NOTICE.—Not later than 60 days after the date on which the Secretary of the Treasury assesses an additional duty on a good under subsection (b), (c), or (d), the Secretary shall notify the Government of
Australia in writing of such action and shall provide to that Government data supporting the assessment of the additional duty.

(2) ADDITIONAL DUTIES—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section and paragraphs (4) and (5) of this subsection, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (3), on a beef safeguard good imported into the United States in a calendar year, if the Secretary determines that, prior to such importation, the total volume of beef safeguard goods imported into the United States in that calendar year is equal to or greater than 110 percent of the volume set out for beef safeguard goods in the corresponding year in the table contained in paragraph (3) of such Annex I of the General Notes to the Schedule of the United States to Annex 2–B of the Agreement. For purposes of this subsection, the years 1 through 19 set out in the table contained in paragraph (3) of such Annex I correspond to the calendar years 2005 through 2023.

(b) ADJUSTMENT OF ADDITIONAL DUTY—The additional duty on a beef safeguard good under this subsection shall be an amount equal to 75 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.

(4) WAIVER—

(A) IN GENERAL.—The United States Trade Representative is authorized to waive the application of this subsection, if the Trade Representative determines that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States, after the requirements of subparagraph (B) are met.

(B) NOTICE AND CONSULTATIONS.—Promptly after receiving a request for a waiver of this subsection, the Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and may make the determination provided for in subparagraph (A) only after consulting with—

(i) appropriate private sector advisory committees established under section 138 of the Trade Act of 1974 (19 U.S.C. 2155); and

(ii) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding—

(I) the reasons supporting the determination to grant the waiver; and

(II) the proposed scope and duration of the waiver.

(C) NOTIFICATION OF THE SECRETARY OF THE TREASURY AND PUBLICATION.—Upon granting a waiver under this paragraph, the Trade Representative shall promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

(5) EFFECTIVE DATES.—This subsection takes effect on January 1, 2013, and shall not be effective after December 31, 2022.

(2) ADDITIONAL DUTIES ON HORTICULTURE SAFEGUARD GOODS—

(1) DEFINITIONS.—In this subsection:

(A) F.O.B.—The term 'F.O.B.' means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(B) HORTICULTURE SAFEGUARD GOOD.—The term 'horticulture safeguard good' means a good—

(i) that qualifies as an originating good under section 203;

(ii) that is included in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement; and

(iii) for which a claim for preferential treatment under the Agreement has been made.

(C) UNIT IMPORT PRICE.—The 'unit import price' of a good means the price of the good determined on the basis of the F.O.B. import price of the good, expressed in either dollars per kilogram or dollars per liter, whichever unit of measure is indicated for the good in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement.

(D) TRIGGER PRICE.—The 'trigger price' for a good is the trigger price indicated for that good in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement or any amendment thereto.

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section, the Secretary of the Treasury shall assess a duty on a horticulture safeguard good, in the amount determined under paragraph (3), if the Secretary determines that the unit import price of the good when it enters the United States is less than the trigger price for that good.

(3) CALCULATION OF ADDITIONAL DUTY.—The additional duty assessed under this subsection on a horticulture safeguard good shall be an amount determined in accordance with the following table:

<table>
<thead>
<tr>
<th>Percentage of the trigger price</th>
<th>Additional duty is an amount equal to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 10 percent of the trigger price</td>
<td>0% of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.</td>
</tr>
<tr>
<td>More than 10 percent but not more than 40 percent of the trigger price</td>
<td>30% of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.</td>
</tr>
<tr>
<td>More than 40 percent but not more than 60 percent of the trigger price</td>
<td>50% of such excess.</td>
</tr>
<tr>
<td>More than 60 percent but not more than 75 percent of the trigger price</td>
<td>70% of such excess.</td>
</tr>
<tr>
<td>More than 75 percent of the trigger price</td>
<td>100% of such excess.</td>
</tr>
</tbody>
</table>

(c) ADDITIONAL DUTIES ON BEEF SAFEGUARD GOODS BASED ON QUANTITY OF IMPORTS.—

(1) DEFINITION.—In this subsection:

(A) BEEF SAFEGUARD GOOD.—The term 'beef safeguard good' means a good—

(i) that qualifies as an originating good under section 203;

(ii) that is classified under subheading 0201.10.50, 0201.20.80, 0201.30.80, 0202.10.50, 0202.20.80, or 0202.30.80 of the HTSs; and

(iii) for which a claim for preferential treatment under the Agreement has been made.

(B) CALENDAR QUARTER.—

(I) IN GENERAL.—The term 'calendar quarter' means any 3-month period beginning on January 1, April 1, July 1, or October 1 of a calendar year.

(II) FIRST CALENDAR QUARTER.—The term 'first calendar quarter' means the calendar quarter beginning on January 1.

(III) SECOND CALENDAR QUARTER.—The term 'second calendar quarter' means the calendar quarter beginning on April 1.
§ 3805

TITLE 19—CUSTOMS DUTIES

Page 906

“(iv) Third calendar quarter.—The term ‘third calendar quarter’ means the calendar quarter beginning on July 1.

“(v) Fourth calendar quarter.—The term ‘fourth calendar quarter’ means the calendar quarter beginning on October 1.

“MONTHLY AVERAGE INDEX PRICE.—The term ‘monthly average index price’ means the simple average, as determined by the Secretary of Agriculture, for a calendar month of the daily average index prices for Wholesale Boxed Beef Cut-Out Value Select 1–3 Central U.S. 600–750 lbs., or its equivalent, as such simple average is reported by the Agricultural Marketing Service of the Department of Agriculture in Report LM-XB459 or any equivalent report.

“(D) 24-Month Trigger Price.—The term ‘24-month trigger price’ means, with respect to any calendar month, the average of the monthly average index prices for the 24 preceding calendar months, multiplied by 0.935.

“(2) Additional Duties.—In addition to any duty otherwise provided under this subsection on a (b) or (c) section 201, and subject to subsection (a) of this section and paragraphs (4) through (6) of this subsection, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (3), on a beef safeguard good imported into the United States if—

“(A)(i) the good is produced entirely in the territory of the United States; and

“(ii) the monthly average index price, in any 2 calendar months of the preceding calendar quarter, is less than the 24-month trigger price; or

“(B)(i) the good is produced in the fourth calendar quarter of a calendar year; and

“(ii) the monthly average index price, in any 2 calendar months of the preceding calendar quarter, is less than the 24-month trigger price; or

“(I) the good is a good wholly obtained or produced in Australia, the United States, or both; and

“(ii) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 5-A of the Agreement; or

“(iii) the good meets any other requirements referred to in Annex 5-A of the Agreement; and

“(c) The value of such nonoriginating materials is less than the 24-month trigger price.

“(3) Calculation of Additional Duty.—The additional duty assessed under this subsection on a beef safeguard good imported into the United States in a calendar year only if, prior to the importation of that good, the total quantity of beef safeguard goods imported into the United States in that calendar year is equal to or greater than the sum of—

“(A) the quantity of goods of Australia eligible to enter the United States in that year specified in Additional United States Note 3 to Chapter 2 of the HTS; and

“(B)(i) in 2023, 70,420 metric tons; or

“(ii) in 2024, and in each year thereafter, a quantity that is 0.6 percent greater than the quantity provided for in the preceding year under this subparagraph.

“(3) Waiver.—

“(A) In General.—The United States Trade Representative is authorized to waive the application of this subsection, if the Trade Representative determines that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States, after the requirements of subparagraph (B) are met.

“(B) Notice and Consultations.—Promptly after receiving a request for a waiver of this subsection, the Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and may make the determination provided for in subparagraph (A) only after consulting with—

“(1) appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

“(ii) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding—

“(i) the reasons supporting the determination to grant the waiver; and

“(ii) the proposed scope and duration of the waiver.

“(C) Notification of the Secretary of the Treasury and Publication.—Upon granting a waiver under this paragraph, the Trade Representative shall promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

“(6) Effective Date.—This subsection takes effect on January 1, 2023.

“SEC. 203. RULES OF ORIGIN.

“(1) Application and Interpretation.—In this section:

“(a) Basis for Tariff Classification.—The basis for any tariff classification is the HTS.

“(1) Reference to HTS.—Whenever in this section there is a reference to a heading or subheading, such reference shall be a reference to a heading or subheading of the HTS.

“(3) Cost or Value.—Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country, in which the good is produced (whether Australia or the United States).

“(b) Originating Goods.—For purposes of this Act and for purposes of implementing the preferential treatment provided for under the Agreement, a good is an originating good if—

“(i) the good is a good wholly obtained or produced entirely in the territory of Australia, the United States, or both; or

“(ii) the good is produced entirely in the territory of Australia, the United States, or both, and—

“(A) is produced entirely in the territory of Australia, the United States, or both; and

“(B) the good satisfies all other applicable requirements of this paragraph.

“(B) the good is produced entirely in the territory of Australia; and

“(i) appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

“(ii) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding—

“(i) the reasons supporting the determination to grant the waiver; and

“(ii) the proposed scope and duration of the waiver.

“(C) Notification of the Secretary of the Treasury and Publication.—Upon granting a waiver under this paragraph, the Trade Representative shall promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

“(6) Effective Date.—This subsection takes effect on January 1, 2023.

“SEC. 203. RULES OF ORIGIN.

“(1) Application and Interpretation.—In this section:

“(a) Application and Interpretation.—In this section:

“(1) Reference to HTS.—Whenever in this section there is a reference to a heading or subheading, such reference shall be a reference to a heading or subheading of the HTS.

“(3) Cost or Value.—Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country, in which the good is produced (whether Australia or the United States).

“(b) Originating Goods.—For purposes of this Act and for purposes of implementing the preferential treatment provided for under the Agreement, a good is an originating good if—

“(i) the good is a good wholly obtained or produced entirely in the territory of Australia, the United States, or both; or

“(ii) the good is produced entirely in the territory of Australia, the United States, or both, and—

“(A) is produced entirely in the territory of Australia, the United States, or both; and

“(B) the good satisfies all other applicable requirements of this paragraph.

“(B) the good is produced entirely in the territory of Australia; and

“(i) appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

“(ii) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding—

“(i) the reasons supporting the determination to grant the waiver; and

“(ii) the proposed scope and duration of the waiver.

“(C) Notification of the Secretary of the Treasury and Publication.—Upon granting a waiver under this paragraph, the Trade Representative shall promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

“(6) Effective Date.—This subsection takes effect on January 1, 2023.
“(A) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 that is used in the production of a good provided for in chapter 17 of the HTS.

“(B) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 that is used in the production of a good provided for in subheading 1901.10, 1901.20, or 1901.90, heading 2106, or subheading 2106.90, 2202.90, or 2309.90.

“(C) A nonoriginating material provided for in heading 9650 or any of subheadings 2009.11 through 2009.39 that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, or in subheading 2106.90 or 2202.90.

“(D) A nonoriginating material provided for in chapter 16 of the HTS that is used in the production of a good provided for in any of headings 1501.00.00 through 1508, or in heading 1512, 1514, or 1515.

“(E) A nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703.

“(F) A nonoriginating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in subheading 1806.10.

“(G) A nonoriginating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in subheading 1806.10.

“(H) A nonoriginating material used in the production of a good provided for in any of chapters 1 through 21 of the HTS unless the nonoriginating material is provided for in a different subheading in the HTS than the good for which origin is being determined under this section.

“(3) TEXTILE AND APPAREL GOODS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4-A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

“(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good if such yarns are wholly formed in the territory of Australia or the United States.

“(C) YARN, FABRIC, OR FIBER.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term ‘component of the good that determines the tariff classification of the good’ means all of the fibers in the yarn, fabric, or group of fibers.

“(4) ACCUMULATION.—

“(1) ORIGINATING MATERIALS USED IN PRODUCTION OF GOODS OF OTHER COUNTRY.—Originating materials from the territory of Australia or the United States that are used in the production of a good in the territory of the other country shall be considered to originate in the territory of the other country.

“(2) MULTIPLE PROCEDURES.—A good that is produced in the territory of Australia, the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

“(e) REGIONAL VALUE-CONTENT.—

“(1) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of a good referred to in Annex 5-A of the Agreement, except for goods to which paragraph (4) applies, shall be calculated by the importer, exporter, or producer of the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3).

“(2) BUILD-DOWN METHOD.—

“(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-down method:

\[ RVC = \frac{AV-VNM}{AV} \times 100 \]

“(B) DEFINITIONS.—In subparagraph (A):

“(i) RVC.—The term ‘RVC’ means the regional value-content of the good, expressed as a percentage.

“(ii) AV.—The term ‘AV’ means the adjusted value of the good.

“(iii) VOM.—The term ‘VOM’ means the value of nonoriginating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

“(3) BUILD-UP METHOD.—

“(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-up method:

\[ RVC = \frac{VOM}{AV} \times 100 \]

“(B) DEFINITIONS.—In subparagraph (A):

“(i) RVC.—The term ‘RVC’ means the regional value-content of the good, expressed as a percentage.

“(ii) AV.—The term ‘AV’ means the adjusted value of the good.

“(iii) VOM.—The term ‘VOM’ means the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

“(4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE GOODS.—

“(A) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of an automotive good referred to in Annex 5-A of the Agreement shall be calculated by the importer, exporter, or producer of the good, on the basis of the following net cost method:

\[ RVC = \frac{NC-VNM}{NC} \times 100 \]

“(B) DEFINITIONS.—In subparagraph (A):

“(i) AUTOMOTIVE GOOD.—The term ‘automotive good’ means a good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or in any of headings 8701 through 8708.

“(ii) AV.—The term ‘AV’ means the regional value-content of the automotive good, expressed as a percentage.

“(iii) NC.—The term ‘NC’ means the net cost of the automotive good.

“(iv) VNM.—The term ‘VNM’ means the value of nonoriginating materials that are acquired and used by the producer in the production of the automotive good, but does not include the value of a material that is self-produced.

“(C) MOTOR VEHICLES.—

“(i) BASIS OF CALCULATION.—For purposes of determining the regional value-content under subparagraph (A) of this paragraph, a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula contained in subparagraph (A) over the producer’s fiscal year.

“(i) with respect to all motor vehicles in any one of the categories described in clause (ii); or

“(ii) with respect to all motor vehicles in any such category that are exported to the territory of the United States or Australia.
§ 3805

TITLE 19—CUSTOMS DUTIES

Page 908

“(ii) CATEGORIES.—A category is described in this clause if it—

“(I) is the same model line of motor vehicles, is in the same class of vehicles, and is produced in the same plant in the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated;

“(II) is the same class of motor vehicles, and is produced in the same plant in the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated; or

“(III) is the same model line of motor vehicles produced in either the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated.

“(d) ORIGinating AUTOMOTIVE GOODS.—For purposes of determining the regional value-content under subparagraph (A) for automotive goods provided for in any of subheadings 6407.31 through 6407.34, in subheading 8408.20, or in heading 8409, 8706, 8707, or 8708, that are produced in the same plant, an importer, exporter, or producer may—

“(1) average the amounts calculated under the form contained in subparagraph (A) over—

“(I) the fiscal year of the motor vehicle producer to whom the automotive goods are sold, or

“(II) any quarter or month, or

“(III) its own fiscal year;

if the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation:

“(ii) determine the average referred to in clause (i) separately for such goods sold to one or more motor vehicle producers; or

“(iii) make a separate determination under clause (i) or (ii) for automotive goods that are exported to the territory of the United States or Australia.

“(E) CALCULATING NET COST.—Consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, the net cost of the automotive good under subparagraph (B) shall be calculated by—

“(1) calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

“(ii) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good, or

“(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

“(F) VALUE OF MATERIALS.—

“(1) IN GENERAL.—For the purpose of calculating the regional value-content of a good under subsection (e), and for purposes of applying the de minimis rules under subsection (c), the value of a material is—

“(A) in the case of a material that is imported by the producer of the good, the adjusted value of the material;

“(B) in the case of a material acquired in the territory in which the good is produced, the value determined in accordance with Articles 1 through 8, article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 10(d)(8) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(8)), as set forth in regulations promulgated by the Secretary of the Treasury providing for the application of such Articles in the absence of an importation; or

“(C) in the case of a material that is self-produced, the sum of—

“(i) all expenses incurred in the production of the material, including general expenses; and

“(ii) an amount for profit equivalent to the profit added in the normal course of trade.

“(2) FURTHER ADJUSTMENTS TO THE VALUE OF MATERIALS.—

“(A) ORIGinating MATERIAL.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

“(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of Australia, the United States, or both, to the location of the producer.

“(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Australia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

“(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products.

“(B) NONORIGINATING MATERIAL.—The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

“(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of Australia, the United States, or both, to the location of the producer.

“(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Australia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

“(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products.

“(iv) The cost of processing incurred in the territory of Australia, the United States, or both, in the production of the nonoriginating material.

“(v) The cost of originating materials used in the production of the nonoriginating material in the territory of Australia, the United States, or both.

“(g) ACCESSORIES, SPARE PARTS, OR TOOLS.—

“(1) IN GENERAL.—Subject to paragraph (2), accessories, spare parts, or tools delivered with a good that form part of the good’s standard accessories, spare parts, or tools shall—

“(A) be treated as originating goods if the good is an originating good; and

“(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 5-A of the Agreement.

“(2) CONDITIONS.—Paragraph (1) shall apply only if—

“(A) the accessories, spare parts, or tools are not invoiced separately from the good;

“(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and
(C) if the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(B) Fungible Goods and Materials.—

(1) In GENERAL.—

(A) CLAIM FOR PREFERENTIAL TREATMENT.—A person claiming that a fungible good or fungible material is an originating good may base the claim either on the physical segregation of the fungible good or fungible material or by using an inventory management method with respect to the fungible good or fungible material.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term ‘inventory management method’ means—

(i) ‘last-in, first-out’;

(ii) ‘first-in, first-out’;

(iv) any other method.

(I) recognized in the generally accepted accounting principles of the country in which the production is performed (whether Australia or the United States); or

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for a particular fungible good or fungible material shall continue to use that method for that fungible good or fungible material throughout the fiscal year of that person.

(i) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 5-A of the Agreement, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(ii) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packaging materials and containers for shipment shall be disregarded in determining whether—

(I) the nonoriginating materials used in the production of a good undergo the applicable change in tariff classification set out in Annex 4-A or Annex 5-A of the Agreement; and

(II) the good satisfies a regional value-content requirement.

(K) INDIRECT MATERIALS.—An indirect material shall be treated as an originating material without regard to where it is produced, and its value shall be the cost registered in the accounting records of the producer of the good.

(i) THIRD COUNTRY OPERATIONS.—A good that has undergone production necessary to qualify as an originating good under subsection (b) shall not be considered to be an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territory of Australia or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of Australia or the United States.

(ii) Tmntile and Apparel Goods Classifiable as Goods Put Up in Sets.—Notwithstanding the rules set forth in Annex 4-A of the Agreement, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in the General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

(ii) DEFINITIONS.—In this section:

(1) ADJUSTED VALUE.—The term ‘adjusted value’ means the value determined under Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act (19 U.S.C. 2910(d)(8)), adjusted to include any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the good from the country of exportation to the place of importation.

(2) CLASS OF MOTOR VEHICLES.—The term ‘class of motor vehicles’ means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90.

(B) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90.

(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, or motor vehicles provided for in subheading 8704.21 or 8704.31.

(D) Motor vehicles provided for in any of subheadings 8705.21 through 8705.90.

(3) FUNGIBLE GOOD OR FUNGIBLE MATERIAL.—The term ‘fungible good’ or ‘fungible material’ means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material.

(4) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term ‘generally accepted accounting principles’ means the recognized consensus or substantial authoritative support in the territory of Australia or the United States, as the case may be, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

(5) GOOD WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF AUSTRALIA, THE UNITED STATES, OR BOTH.—The term ‘good wholly obtained or produced entirely in the territory of Australia, the United States, or both’ means—

(A) a mineral good extracted in the territory of Australia, the United States, or both;

(B) a vegetable good, as such goods are provided for in the HTS, harvested in the territory of Australia, the United States, or both;

(C) a live animal born and raised in the territory of Australia, the United States, or both;

(D) a good obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of Australia, the United States, or both;

(E) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Australia or the United States and flying the flag of that country;

(F) a good produced exclusively from products referred to in subparagraph (E) on board factory ships registered or recorded with Australia or the United States and flying the flag of that country;

(G) a good taken by Australia or the United States from a person of Australia or the United States or a person of Australia or the United States from the seabed or beneath the seabed outside territorial waters, if Australia or the United States has rights to exploit such seabed;

(H) a good taken from outer space, if such good is obtained by Australia or the United States or a person of Australia or the United States and not processed in the territory of a country other than Australia or the United States;

(I) waste and scrap derived from—
§ 3905

TITLe 19—CUSTOMS DUTIES

Page 910

“(i) production in the territory of Australia, the United States, or both; or

“(ii) used goods collected in the territory of Australia, the United States, or both, if such goods are fit only for the recovery of raw materials;

“(J) a recovered good derived in the territory of Australia, the United States, or both, exclusively—

“(1) from the derivatives of goods referred to in any of subparagraphs (A) through (I), or

“(ii) from the derivatives of goods referred to in clause (i), at any stage of production.

“(6) INDIRECT MATERIAL.—The term ‘indirect material’ means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including—

“(A) fuel and energy;

“(B) tools, dies, and molds;

“(C) spare parts and materials used in the maintenance of equipment or buildings;

“(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

“(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

“(F) equipment, devices, and supplies used for testing or inspecting the good;

“(G) catalysts and solvents; and

“(H) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

“(7) MATERIAL.—The term ‘material’ means a good that is used in the production of another good.

“(8) MATERIAL THAT IS SELF-PRODUCED.—The term ‘material that is self-produced’ means an originating material that is produced by a producer of a good and used in the production of that good.

“(9) MODEL LINE.—The term ‘model line’ means a group of motor vehicles having the same platform or model name.

“(10) NONALLOWABLE INTEREST COSTS.—The term ‘nonallowable interest costs’ means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the country (whether Australia or the United States).

“(11) NONORIGINATING MATERIAL.—The term ‘non-originating material’ means a material that does not qualify as originating under this section.

“(12) PREFERENTIAL TREATMENT.—The term ‘preferential treatment’ means the customs duty rate, and the treatment under article 2.12 of the Agreement, that are applicable to an originating good pursuant to the Agreement.

“(13) PRODUCER.—The term ‘producer’ means a person who engages in the production of a good in the territory of Australia or the United States.

“(14) PRODUCTION.—The term ‘production’ means growing, raising, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

“(15) REASONABLY ALLOCATE.—The term ‘reasonably allocate’ means to apportion in a manner that would be appropriate under generally accepted accounting principles.

“(16) RECOVERED GOODS.—The term ‘recovered goods’ means materials in the form of individual parts that result from—

“(A) the complete disassembly of goods which have passed their life expectancy, or are no longer usable due to defects, into individual parts; and

“(B) the cleaning, inspecting, or testing, or other processing that is necessary for improvement to sound working condition of such individual parts.

“(17) REMANUFACTURED GOOD.—The term ‘remanufactured good’ means an industrial good that is assembled in the territory of Australia or the United States, that is classified under chapter 84, 85, or 87 of the HTS or heading 9611 or 9002, other than a different good classified under heading 8148 or 8516 or any of headings 8701 through 8706, and that—

“(A) is entirely or partially comprised of recovered goods;

“(B) has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

“(C) enjoys a factory warranty similar to a like good that is new.

“(18) TOTAL COST.—The term ‘total cost’ means all product costs, period costs, and other costs for a good incurred in the territory of Australia, the United States, or both.

“(19) USED.—The term ‘used’ means used or consumed in the production of goods.

“(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

“(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

“(A) the provisions set out in Annex 4-A and Annex 5-A of the Agreement; and

“(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

“(2) MODIFICATIONS.—

“(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 of the HTS, as included in Annex 4-A of the Agreement.

“(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 104, the President may proclaim—

“(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Australia pursuant to article 4.2.5 of the Agreement; and

“(ii) before the end of the 1-year period beginning on the date of the enactment of this Act [Aug. 3, 2004], modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4-A of the Agreement.

“SEC. 294. CUSTOMS USER FEES.

[Amended section 58c of this title.]

“SEC. 295. DISCLOSURE OF INCORRECT INFORMATION.

[Amended section 1592 of this title.]

“SEC. 296. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

“(a) ACTION DURING VERIFICATION.—

“(1) IN GENERAL.—If the Secretary of the Treasury requests the Government of Australia to conduct a verification pursuant to article 4.3 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

“(2) DETERMINATION.—A determination under this paragraph is a determination

“(A) that an exporter or producer in Australia is complying with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods; or

“(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—
“(a) Filing of Petition.—

“(1) In general.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an individual, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

“(2) Provisional relief.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).

“(3) Critical circumstances.—Any allegation that critical circumstances exist shall be included in the petition.

“(b) Investigation and determination.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, an Australian article is being imported into the United States, and whether the efforts of the domestic industry to make a positive adjustment to import competition are necessary to remedy or prevent the injury found by the Commission. Members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on imports of an article is affirmative, or if the President may consider a determination of the Commission to be affirmative under subsection (a) with respect to the petition filed under this subsection. The import relief described in sections 310(b) and 311 with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 312. COMMISSION ACTION ON PETITION.

“(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 313. COMMISSION ACTION ON PETITION.

“(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 314. COMMISSION ACTION ON PETITION.

“(a) Restrictions on imports.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 315. COMMISSION ACTION ON PETITION.

“(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 316. COMMISSION ACTION ON PETITION.

“(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 317. COMMISSION ACTION ON PETITION.

“(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 318. COMMISSION ACTION ON PETITION.

“(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 319. COMMISSION ACTION ON PETITION.

“(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 320. COMMISSION ACTION ON PETITION.

“(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 321. COMMISSION ACTION ON PETITION.

“(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.

“SEC. 322. COMMISSION ACTION ON PETITION.

“(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to any Australian article if, after the date on which the Agreement enters into force [Jan. 1, 2005], import relief has been provided with respect to that Australian article under this subtitle.
report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(c) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes:

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission’s determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) EXCEPTION.—The President is not required to provide relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) NATURE OF RELIEF.—

(1) IN GENERAL.—The import relief (including provisional relief) that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex 2-B of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [Jan. 1, 2005].

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) PROGRESSIVE LiberalIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 9.2.7 of the Agreement) of such relief at regular intervals during the period in which the relief is in effect.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President provides under this section may not be in effect for more than 2 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) ACTION BY COMMISSION.—(1) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) Any finding and recommendation for import relief that the President provides under this section if the President determines that—

(i) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States to Annex 2-B of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the provision of relief under subsection (a); and

(ii) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 2-B of the Agreement for the elimination of the tariff.

(3) Articles Exempt from Relief.—No import relief may be provided under this section on any article after December 31 of the year in which termination occurs as follows:

(A) The applicable NTR (MFN) rate of duty for that article set out in the Schedule of the United States to Annex 2-B of the Agreement; or

(B) The rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 2-B of the Agreement for the elimination of the tariff.

(e) Rate After Termination of Import Relief.—When import relief under this section is terminated with respect to an article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States to Annex 2-B of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the provision of relief under subsection (a); and

(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either:

(A) The applicable NTR (MFN) rate of duty for that article set out in the Schedule of the United States to Annex 2-B of the Agreement; or

(B) The rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 2-B of the Agreement for the elimination of the tariff.

(f) Articles Exempt from Relief.—No import relief may be provided under this section on any article after December 31 of the year in which termination occurs as follows:

(1) is subject to—

(A) import relief under subtitle B; or

(B) an assessment of duties under section 201 or 202; or

(2) has been subject to import relief under this subtitle after the date on which the Agreement enters into force [Jan. 1, 2005].

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this subtitle after
the date that is 10 years after the date on which the Agreement enters into force [Jan. 1, 2005].

“(b) EXCEPTION.—If an article for which relief is pro-
vided under this subtitle is an article that is subject to
tariff elimination, set out in the Schedule of
Critical Circumstances and a request for provisional
relief under section 321(a), the President shall, not
later than 60 days after the request is filed, deter-
mine, on the basis of available information, wheth-
er—

“(A) there is clear evidence that—

“(i) imports from Australia have increased as a
result of the reduction or elimination of a
customs duty under the Agreement; and

“(ii) such imports are causing serious damage,
or actual threat thereof, to the domestic industry
producing an article like or directly competitive
with the imported article; and

“(B) delay in taking action under this subtitle
would cause damage to that industry that would be
difficult to repair.

“(2) EXTENT OF PROVISIONAL RELIEF.—If the deter-
minations under subparagraphs (A) and (B) of para-
graph (1) are affirmative, the President shall deter-
mine the extent of provisional relief that is necessary
to remedy or prevent the serious damage. The nature
of the provisional relief available shall be the relief
described in subsection (b)(2). Within 30 days after
making affirmative determinations under subpara-
graphs (A) and (B) of paragraph (1), the President, if
the President considers provisional relief to be war-
ranted, shall provide, for a period not to exceed 200
days, such provisional relief that the President con-
siders necessary to remedy or prevent the serious
damage.

“(3) SUSPENSION OF LIQUIDATION.—If provisional
relief is provided under paragraph (2), the President
shall order the suspension of liquidation of all
imported articles subject to the affirmative determina-
tions under subparagraphs (A) and (B) of paragraph
(1) that are entered, or withdrawn from warehouse for
consumption, on or after the date of the determina-
tions.

“(4) TERMINATION OF PROVISIONAL RELIEF.—

“(A) IN GENERAL.—Any provisional relief imple-
mented under this subsection with respect to an
imported article shall terminate on the day on which

“(i) the President makes a negative determina-
tion under subsection (a) regarding serious dam-
age or actual threat thereof by imports of such
article;

“(ii) action described in subsection (b) takes ef-
fect with respect to such article;

“(iii) a decision by the President not to take
any action under subsection (b) with respect to
such article becomes final; or

“(iv) the President determines that, because of
changed circumstances, such relief is no longer
warranted.

“(B) SUSPENSION OF LIQUIDATION.—Any suspension
of liquidation ordered under paragraph (3) with re-

“(c) PRESIDENTIAL DETERMINATION.—Import relief
may be provided under this subtitle in the case of an
Australian article after the date on which such relief
would, but for this subsection, terminate under sub-
section (a) or (b), if the President determines that Aus-
tralia has consented to such relief.

“SEC. 315. COMPENSATION AUTHORITY.

“For purposes of section 123 of the Trade Act of 1974
(19 U.S.C. 2338), any import relief provided by the Presi-
dent under section 313 shall be treated as action taken
under chapter 1 of title II of such Act [19 U.S.C. 2251 et
seq.].

“SEC. 316. CONFIDENTIAL BUSINESS INFORMA-
TION.

[Amended section 2252 of this title.]

“SUBTITLE B—TEXTILE AND APPAREL SAFEGUARD
MEASURES

“SEC. 321. COMMENCEMENT OF ACTION FOR RE-
LIEF.

“(a) IN GENERAL.—A request under this subtitle for
the purpose of adjusting to the obligations of the
United States under the Agreement may be filed with
the President by an interested party. Upon the filing of
a request, the President shall review the request to de-
terminate, from information presented in the request,
whether to commence consideration of the request.

“(c) ALLEGATION OF CRITICAL CIRCUMSTANCES.—An in-
terested party filing a request under this section may—

“(1) allege that critical circumstances exist such that
delay in the provision of relief would cause dam-
age that would be difficult to repair; and

“(2) based on such allegation, request that relief be
provided on a provisional basis.

“(e) DETERMINATION AND PROVISION OF RE-
LIEF.

“(a) DETERMINATION.—

“(1) IN GENERAL.—If a positive determination is
made under section 321(c), the President shall deter-
mine whether, as a result of the reduction or elimi-
nation of a duty under the Agreement, an Australian
textile or apparel article is being imported into the
United States in such increased quantities, in abso-
lute terms or relative to the domestic market for
that article, and under such conditions as to cause se-
rious damage, or actual threat thereof, to a domestic
industry producing an article that is like, or directly
competitive with, the imported article.

“(2) SERIOUS DAMAGE.—In making a determination
under paragraph (1), the President—

“(A) shall examine the effect of increased imports
on the domestic industry, as reflected in changes in
such relevant economic factors as output, produc-
tivity, utilization of capacity, inventories, market
share, exports, wages, employment, domestic
prices, profits, and investment, none of which is
necessarily decisive; and

“(B) shall not consider changes in technology or
consumer preference as factors supporting a deter-
mination of serious damage or actual threat there-
of.
§ 3805

TITLE 19—CUSTOMS DUTIES Page 914

spect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

4. Rates of Duty—If provisional relief is provided under subsection (b) on an imported article is different from a duty increase or imposition that was provided for such an article under this subsection, then the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at whichever of such rates of duty is lower.

5. PERIOD OF RELIEF—If provisional relief is provided under this subsection with respect to an imported article and neither a duty increase nor a duty imposition is provided under subsection (b) for such article, the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at the rate of duty that applied before the provisional relief was provided.

6. PERIOD OF RELIEF—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 336(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d))), the Commission shall also find (and report to the President at the time such injury determination is in the negative, or if the President determines that—

(a) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(b) there is evidence that the industry is making a positive adjustment to import competition.

7. LIMITATION—Any relief provided under this subsection, including any extensions thereof, may not, in the aggregate, be in effect for more than 4 years.

8. ARTICLES EXEMPT FROM RELIEF—The President may not provide import relief under this subsection with respect to any article if—

(a) import relief previously has been provided under this subsection with respect to that article; or

(b) the article is subject to import relief under—

(A) subtitle A; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

9. RATE AFTER TERMINATION OF IMPORT RELIEF—When import relief under this subsection is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

10. TERMINATION OF RELIEF AUTHORITY—No import relief may be provided under this subsection with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

11. COMPENSATION AUTHORITY—For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2213), any import relief provided by the President under this subsection shall be treated as action taken under chapter 1 of title II of such Act (19 U.S.C. 2251 et seq.).

12. BUSINESS CONFIDENTIAL INFORMATION—The President may not release information which is submitted in a proceeding under this subsection and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

13. FINDINGS AND ACTION ON GOODS FROM AUSTRALIA—

(a) EFFECT OF IMPORTS.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 336(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d))), the Commission shall also find (and report to the President at the time such injury determination is in the negative, or if the President determines that—

(a) the President considers to be confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

14. TITLE IV—PROCUREMENT

15. ELIGIBLE PRODUCTS—(Amended section 2513 of this title.)

16. [The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.]

17. [Proc. No. 7857, Dec. 20, 2004, 69 F.R. 77136, provided in par. (3) that the Secretary of Commerce is authorized to exercise the authority of the President under section 106(a) of the United States-Australia Free Trade Agreement Implementation Act (USAFTA Act) (Pub. L. 108-286, set out above) to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section; in par. (5) that the Committee for the Implementation of Textile Agreements (CITA) is authorized to exercise the authority of the President under section 206 of the USAFTA Act to exclude textile and apparel goods from the customs territory of the United States, to determine whether an enterprise’s production of and capability to produce goods are consistent with statements by the enterprise, to find that an enterprise has knowingly or willfully engaged in circumvention, and to deny preferential tariff treatment to textile and apparel goods; and in par. (6) that the CITA is authorized to exercise the authority of the President under sections 911–912, 1211–1212 of the USAFTA Act to review requests, including allegations of critical circumstances, and to determine whether to commence consideration of such requests, to cause to be published in the Federal Register a notice of commencement of consideration of a request and notice seeking public comment, to determine whether imports of an Australian textile or apparel article are causing serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article, and to provide relief from imports of an article that is the subject of such a determination, and if critical circumstances are alleged, to determine whether there is clear evidence that imports from Australia have increased as the result of the reduction or elimination of a customs duty under the United States-Australia Free Trade Agreement, whether there is clear evidence that such imports are causing serious damage, or actual threat thereof, to a domestic industry produc-
ing an article that is like, or directly competitive with, the imported article, and whether delay in taking action would cause damage to that industry that would be difficult to repair, and to provide provisional relief with respect to imports that are subject to an affirmative determination of critical circumstances that is necessary to remedy or prevent the serious damage.)

**United States-Singapore Free Trade Agreement Implementation Act**


"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

"(a) Short Title.—This Act may be cited as the ‘United States-Singapore Free Trade Agreement Implementation Act’."

"(b) Table of Contents.—[Omitted.]"

"SEC. 2. PURPOSES.

"The purposes of this Act are—"

"(1) to approve and implement the Free Trade Agreement between the United States and the Republic of Singapore entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 [19 U.S.C. 3803(b)];

"(2) to strengthen and develop economic relations between the United States and Singapore for their mutual benefit;

"(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

"(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

"SEC. 3. DEFINITIONS.

"In this Act:

"(1) AGREEMENT.—The term ‘Agreement’ means the United States-Singapore Free Trade Agreement approved by Congress under section 101(a).

"(2) HTS.—The term ‘HTS’ means the Harmonized Tariff Schedule of the United States.

"TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT"

"SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.


"(1) the United States-Singapore Free Trade Agreement entered into on May 6, 2003, with the Government of Singapore and submitted to Congress on July 15, 2003; and

"(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 15, 2003.

"(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Singapore has taken measures necessary to bring it into compliance with those provisions of the Agreement that take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Singapore providing for the entry into force, on or after January 1, 2004, of the Agreement for the United States.

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

"(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—"

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

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

"(A) to amend or modify any law of the United States, or

"(B) to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.

"(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—"

"(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

"(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term ‘State law’ includes—"

"(A) any law of a political subdivision of a State; and

"(B) any State law regulating or taxing the business of insurance.

"(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—"

"(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

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

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

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

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

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

"(B) the United States International Trade Commission;

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

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

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

"(3) a period of 60 calendar days beginning on the first day on which the requirements of paragraphs (1) and (2) have been met has expired; and

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

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

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

"(a) IMPLEMENTING ACTIONS.—"

"(1) PROCLAMATION AUTHORITY.—After the date of enactment of this Act [Sept. 3, 2003],—"

"(A) the President may proclaim such actions, and

"(B) other appropriate officers of the United States Government may issue such regulations as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force [Jan. 1, 2004] is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.
"(2) Waiver of 15-day restriction.—The 15-day restriction in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

"(b) Initial regulations.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 103(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement [Jan. 1, 2004]. In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

"SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) Establishment or designation of office.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. Such office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) Authorization of appropriations.—There are authorized to be appropriated for each fiscal year after fiscal year 2003 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

"SEC. 106. ARBITRATION OF CERTAIN CLAIMS.

(a) Submission of certain claims.—The United States is authorized to resolve any claim against the United States covered by article 15.15.1(a)(i)(C) or article 15.15.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section C of chapter 15 of the Agreement.

(b) Contract clauses.—All contracts executed by any agency of the United States on or after the date of entry into force of the Agreement [Jan. 1, 2004] shall contain a clause specifying the law that will apply to resolve any breach of contract claim.

"SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) Effective dates.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force [Jan. 1, 2004].

(b) Exceptions.—

(1) Sections 1 through 3 and this title take effect on the date of enactment of this Act [Sept. 3, 2003].

(2) Section 205 takes effect on the date on which the textile and apparel provisions of the Agreement take effect pursuant to article 16.10 of the Agreement.

(c) Termination of the Agreement.—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

"TITLE II—CUSTOMS PROVISIONS

"SEC. 201. TARIFF MODIFICATIONS.

(a) Tariff Modifications Provided for in the Agreement.—The President may proclaim—

(1) such modifications or continuation of any duty,

(2) such continuation of duty-free or excise treatment, or

(3) such additional duties—

as the President determines to be necessary or appropriate to carry out or apply articles 2.2, 2.5, 2.6, and 2.12 and Annex 2B of the Agreement.

(b) Other Tariff Modifications.—Subject to the consultation and layover provisions of section 103(a), the President may proclaim—

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with Singapore regarding the staging of any duty treatment set forth in Annex 2B of the Agreement,

(3) such continuation of duty-free or excise treatment, or

(4) such additional duties—

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Singapore provided for by the Agreement.

(c) Conversion to ad valorem rates.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States set forth in Annex 2B of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

"SEC. 202. RULES OF ORIGIN.

(a) Originating Goods.—For purposes of this Act and for purposes of implementing the tariff treatment provided for under the Agreement, except as otherwise provided in this section, a good is an originating good if—

(1) the good is wholly obtained or produced entirely in the territory of Singapore, the United States, or both;

(2) each nonoriginating material used in the production of the good—

"A" undergoes an applicable change in tariff classification set out in Annex 3A of the Agreement as a result of production occurring entirely in the territory of Singapore, the United States, or both; or

(3) the good, as imported, is listed in Annex 3B of the Agreement and is imported into the territory of the United States from the territory of Singapore.

(b) De minimis amounts of nonoriginating materials.—

(1) In general.—Except as provided for in paragraphs (2) and (3), a good shall be considered to be an originating good if—

(2) the value of all nonoriginating materials used in the production of the good that do not undergo the required change in tariff classification under Annex 3A of the Agreement does not exceed 10 percent of the adjusted value of the good;

(3) if the good is subject to a regional value-content requirement, the value of such nonoriginating materials is taken into account in calculating the regional value-content of the good; and

(4) the good satisfies all other applicable requirements of this section.

(2) Exceptions.—Paragraph (1) does not apply to the following:

(A) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 of the HTS that is used in the production of a good provided for in chapter 4 of the HTS;

(2) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 of the HTS that is used in the production of a good provided for in chapter 4 of the HTS;

(3) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 of the HTS that is used in the production of a good provided for in any of subheadings 1901.11.00 through 1909.11.00 of the HTS;

(4) A nonoriginating material provided for in chapter 15 of the HTS that is used in the production
of a good provided for in any of headings 1501.00.00 through 1508, 1512, 1514, and 1515 of the HTS.

"(E) A nonoriginating material provided for in heading 1701 of the HTS that is used in the production of a good provided for in any of headings 1701 through 1703 of the HTS.

"(F) A nonoriginating material provided for in chapter 17 of the HTS or heading 1805.00.00 of the HTS that is used in the production of a good provided for in subheading 1806.10 of the HTS.

"(G) A nonoriginating material provided for in any of headings 2203 through 2206 of the HTS that is used in the production of a good provided for in heading 2207 or 2208 of the HTS.

"(H) A nonoriginating material used in the production of a good provided for in any of chapters 1 through 21 of the HTS, unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

"(3) Goods provided for in chapters 50 through 63 of the HTS.

"(A) in general.—Except as provided in subparagraph (b), a good provided for in any of chapters 50 through 63 of the HTS that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

"(B) Certain textile or apparel goods.—

"(1) Treatment as originating good.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Singapore or the United States.

"(ii) Definition of textile or apparel good.—For purposes of this subparagraph, the term ‘textile or apparel good’ means a product listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Agreement.

"(ii) Accumulation.—

"(1) Originating goods incorporated in goods of other country.—Originating materials from the territory of either Singapore or the United States that are used in the production of a good in the territory of the other country shall be considered to originate in the territory of the other country.

"(2) Multiple procedures.—A good that is produced in the territory of Singapore, the United States, or both, by 1 or more producers is an originating good if the good satisfies the requirements of subsection (a) and all other applicable requirements of this section.

"(d) Regional Value-Content.—

"(1) In general.—For purposes of subsection (a)(2), the regional value-content of a good referred to in Annex 3A of the Agreement shall be calculated at the choice of the person claiming preferential tariff treatment for the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3), unless otherwise provided in Annex 3A of the Agreement.

"(2) Build-down method.—

"(A) in general.—The regional value-content of a good may be calculated on the basis of the following build-down method:

\[ RVC = \frac{AV - VOM}{AV} \times 100 \]

"(B) Definitions.—For purposes of subparagraph (A):

"(i) The term ‘RVC’ means the regional value-content, expressed as a percentage.

"(ii) The term ‘AV’ means the adjusted value.

"(iii) The term ‘VOM’ means the value of originating materials that are acquired or self-produced and are used by the producer in the production of the good.

"(3) Build-up method.—

"(A) In general.—The regional value-content of a good may be calculated on the basis of the following build-up method:

\[ RVC = \frac{VOM}{AV} \times 100 \]

"(B) Definitions.—For purposes of subparagraph (A):

"(i) The term ‘RVC’ means the regional value-content, expressed as a percentage.

"(ii) The term ‘AV’ means the adjusted value.

"(iii) The term ‘VOM’ means the value of originating materials that are acquired or self-produced and are used by the producer in the production of the good.

"(C) Value of materials.—

"(1) In general.—For purposes of calculating the regional value-content of a good under subsection (d), and for purposes of applying the de minimis rules under subsection (b), the value of a material is:

"(A) in the case of a material imported by the producer of the good, the adjusted value of the material;

"(B) in the case of a material acquired in the territory in which the good is produced, except for a material to which subparagraph (C) applies, the adjusted value of the material;

"(C) in the case of a material that is self-produced, or in a case in which the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, including a material obtained without charge, the sum of:

"(i) all expenses incurred in the production of the material, including general expenses; and

"(ii) an amount for profit.

"(2) Further adjustments to the value of materials.—

"(A) Originating materials.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

"(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer.

"(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Singapore, the United States, or both, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

"(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

"(B) Nonoriginating materials.—The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

"(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer.

"(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Singapore, the United States, or both, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

"(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.
“(iv) The cost of processing incurred in the territory of Singapore or the United States in the production of the nonoriginating material.

“(v) The cost of originating materials used in the production of the nonoriginating material in the territory of Singapore or the United States.

“(f) Accessories, Spare Parts, or Tools.—

“(1) In General.—Subject to paragraph (2), accessories, spare parts, or tools delivered with the good that form part of the good’s standard accessories, spare parts, or tools shall—

“(A) be treated as originating goods if the good is an originating good; and

“(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 3A of the Agreement.

“(2) Conditions.—Paragraph (1) shall apply only if—

“(A) the accessories, spare parts, or tools are not invoiced separately from the good;

“(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

“(C) if the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

“(g) Fungible Goods and Materials.—

“(1) In General.—

“(A) Claim for Preferential Treatment.—A person claiming preferential tariff treatment for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method.

“(B) Inventory Management Method.—In this subsection, the term ‘inventory management method’ means—

“(i) averaging;

“(ii) ‘last-in, first-out’;

“(iii) ‘first-in, first-out’; or

“(iv) any other method—

“(I) recognized in the generally accepted accounting principles of the country in which the production is performed (whether Singapore or the United States); or

“(II) otherwise accepted by that country.

“(2) Election of Inventory Method.—A person selecting an inventory management method under paragraph (1) for particular fungible goods or materials shall continue to use that method for those fungible goods or materials throughout the fiscal year of that person.

“(h) Packaging Materials and Containers for Retail Sale.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 3A of the Agreement and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

“(i) Packing Materials and Containers for Ship-ment.—Packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether—

“(1) the nonoriginating materials used in the production of a good undergo an applicable change in tariff classification set out in Annex 3A of the Agreement; and

“(2) the good satisfies a regional value-content requirement.

“(j) Indirect Materials.—An indirect material shall be considered to be an originating material without regard to where it is produced, and its value shall be the cost registered in the accounting records of the producer of the good.

“(k) Third Country Operations.—A good shall not be considered to be an originating good by reason of having undergone production that satisfies the conditions of subsection (a) if, subsequent to that production, the good undergoes further production or any other operation outside the territories of Singapore and the United States, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of Singapore or the United States.

“(l) Special Rule for Apparel Goods Listed in Chapter 61 or 62 of the HTS.—

“(1) In General.—An apparel good listed in chapter 61 or 62 of the HTS shall be considered to be an originating good if it is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Singapore, the United States, or both, from fabric or yarn, regardless of origin, designated in the manner described in paragraph (2) as fabric or yarn not available in commercial quantities in a timely manner in the United States.

“(2) Designation of Certain Fabric and Yarn.—The designation referred to in paragraph (1) means a designation made in a notice published in the Federal Register on or before November 15, 2002, identifying apparel goods made from fabric or yarn eligible for entry into the United States under subheading 6010.11.24 or 9820.11.27 of the HTS. For purposes of this subsection, a reference in the notice to fabric or yarn processed in the United States is deemed to include fabric or yarn formed in Singapore.

“(m) Application and Interpretation.—In this section:

“(1) The basis for any tariff classification is the HTS.

“(2) Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Singapore or the United States).

“(n) Definitions.—The term ‘adjusted value’ means the value of a good determined under articles 1 through 8, article 15, and the corresponding interpretative notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 10(d)(1) of the Uruguay Round Agreements Act [19 U.S.C. 3511(d)(8)], except that such value may be adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the good from the country of exportation to the place of importation.

“(1) Fungible Goods and Fungible Materials.—The terms ‘fungible goods’ and ‘fungible materials’ mean goods or materials, as the case may be, that are interchangeable for commercial purposes and the properties of which are essentially identical.

“(3) Generally Accepted Accounting Principles.—The term ‘generally accepted accounting principles’ means the recognized consensus or substantial authoritative support in the territory of Singapore or the United States, as the case may be, with respect to the recording of revenues, expenses, costs, and assets and liabilities, the disclosure of information, and the preparation of financial statements. The standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

“(4) Goods Wholly Obtained or Produced Entirely in the Territory of Singapore, the United States, or Both.—The term ‘goods wholly obtained or produced entirely in the territory of Singapore, the United States, or both’ means—

“(A) mineral goods extracted in the territory of Singapore, the United States, or both;
“(B) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of Singapore, the United States, or both;

“(D) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of Singapore, the United States, or both;

“(E) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Singapore or the United States and flying the flag of that country;

“(F) goods produced exclusively from products referred to in subparagraph (E) on board factory ships registered or recorded with Singapore or the United States and flying the flag of that country;

“(G) goods taken by Singapore or the United States, or a person of Singapore or the United States, from the seabed or beneath the seabed outside territorial waters, if Singapore or the United States has rights to exploit such seabed;

“(H) goods taken from outer space, if the goods are obtained by Singapore or the United States or a person of Singapore or the United States and not processed in the territory of a country other than Singapore or the United States;

“(I) waste and scrap derived from—

“(i) production in the territory of Singapore, the United States, or both; or

“(ii) used goods collected in the territory of Singapore, the United States, or both, if such goods are fit only for the recovery of raw materials;

“(J) recovered goods derived in the territory of Singapore, the United States, or both, from used goods;

“(K) goods produced in the territory of Singapore, the United States, or both, exclusively—

“(i) from goods referred to in any of subparagraphs (A) through (I); or

“(ii) from the derivatives of goods referred to in clause (I).

“(5) HARMONIZED SYSTEM.—The term ‘Harmonized System’ means the Harmonized Commodity Description and Coding System.

“(6) INDIRECT MATERIAL.—The term ‘indirect material’ means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including—

“(A) fuel and energy;

“(B) tools, dies, and molds;

“(C) spare parts and materials used in the maintenance of equipment or buildings;

“(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

“(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

“(F) equipment, devices, and supplies used for testing or inspecting the good;

“(G) catalysts and solvents; and

“(H) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

“(7) MATERIAL.—The term ‘material’ means a good that is used in the production of another good.

“(8) MATERIAL THAT IS SELF-PRODUCED.—The term ‘material that is self-produced’ means a material, such as a part or ingredient, produced by a producer of a good and used by the producer in the production of another good.

“(9) NONORIGINATING MATERIAL.—The term ‘non-originating material’ means a material that does not qualify as an originating good under the rules set out in this section.

“(10) PREFERENTIAL TARIFF TREATMENT.—The term ‘preferential tariff treatment’ means the customs duty rate that is applicable to an originating good pursuant to chapter 2 of the Agreement.

“(11) PRODUCER.—The term ‘producer’ means a person who grows, raises, mines, harvests, fishes, traps, hunts, manufactures, processes, assembles, or disassembles a good.

“(12) PRODUCTION.—The term ‘production’ means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

“(13) RECOVERED GOODS.—

“(A) IN GENERAL.—The term ‘recovered goods’ means materials in the form of individual parts that are the result of—

“(i) the complete disassembly of used goods into individual parts; and

“(ii) the cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the processes described in subparagraph (B), in order for such parts to be assembled with other parts, including other parts that have undergone the processes described in this paragraph, in the production of a remanufactured good described in Annex 3C of the Agreement.

“(B) PROCESSES.—The processes referred to in subparagraph (A)(i) are welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding.

“(14) REMANUFACTURED GOOD.—The term ‘remanufactured good’ means an industrial good assembled in the territory of Singapore or the United States, that is listed in Annex 3C of the Agreement, and—

“(A) is entirely or partially comprised of recovered goods;

“(B) has the same life expectancy and meets the same performance standards as a new good; and

“(C) enjoys the same factory warranty as such a new good.

“(15) TERRITORY.—The term ‘territory’ has the meaning given that term in Annex 1A of the Agreement.

“(16) USED.—The term ‘used’ means used or consumed in the production of goods.

“(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

“(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

“(A) the provisions set out in Annexes 3A, 3B, and 3C of the Agreement; and

“(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

“(2) MODIFICATIONS.—

“(A) IN GENERAL.—Subject to the consultation and layover provisions of section 103(a), the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than—

“(i) the provisions of Annex 3B of the Agreement; and

“(ii) provisions of chapters 50 through 63 of the HTS, as included in Annex 3A of the Agreement.

“(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 103(a), the President may proclaim—

“(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) that are necessary to implement an agreement with Singapore pursuant to article 3.18.4(c) of the Agreement; and

“(ii) before the 1st anniversary of the date of enactment of this Act [Sept. 3, 2003], modifications to correct any typographical, clerical, or other nonsubstantive technical errors regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 3A of the Agreement.

“SEC. 203. CUSTOMS USER FEES.

[Amended section 58c of this title.]
"SEC. 205. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

(a) DENIAL OF PERMISSION TO CONDUCT SITE VISITS.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary of the Treasury proposes to conduct a site visit at an enterprise as registered under article 5.3 of the Agreement, and responsible officials of the enterprise do not consent to the proposed visit, the President may—

(i) deny preferential tariff treatment to the goods involved in the circumvention; and

(ii) deny preferential tariff treatment, for a period not to exceed 4 years from the date on which a finding of knowing or willful circumvention is made and shall be in effect for a period not longer than the applicable period described in paragraph (2).

(2) TERMINATION OF EXCLUSION.—An exclusion of textile and apparel goods produced or exported by an enterprise under paragraph (1) shall terminate when the President determines that the enterprise’s production of, and capability to produce, the goods are consistent with statements by the enterprise that textile or apparel goods the enterprise produces or has produced are originating goods or products of Singapore, as the case may be.

(b) KNOWING OR WILLFUL CIRCUMVENTION.—

(1) IN GENERAL.—If the President finds that an enterprise of Singapore has knowingly or willfully engaged in circumvention, the President may exclude from the customs territory of the United States textile and apparel goods produced or exported by that enterprise.

(2) TERMINATION OF EXCLUSION.—An exclusion of textile and apparel goods produced or exported by an enterprise under paragraph (1) shall terminate when the President determines that the enterprise’s production of, and capability to produce, the goods are consistent with statements by the enterprise that textile or apparel goods the enterprise produces or has produced are originating goods or products of Singapore, as the case may be.

(c) CERTAIN OTHER INSTANCES OF CIRCUMVENTION.—If the President consults with Singapore pursuant to article 5.8 of the Agreement, the consultations fail to result in mutually satisfactory solution to the matters at issue, and the President presents to Singapore clear evidence of circumvention under the Agreement, the President may—

(1) deny preferential tariff treatment to the goods involved in the circumvention; and

(2) deny preferential tariff treatment, for a period not to exceed 4 years from the date on which consultations pursuant to article 5.8 of the Agreement conclude, to—

(A) textile and apparel goods produced by the enterprise to have engaged in the circumvention, including any successor of such enterprise; and

(B) textile and apparel goods produced by any other entity owned or operated by a principal of the enterprise, if the principal also is a principal of the other entity.

(d) DEFINITIONS.—In this section:

(1) GENERAL DEFINITIONS.—The terms ‘circumvention’, ‘preferential tariff treatment’, ‘principal’, and ‘textile and apparel goods’ have the meanings given such terms in chapter 5 of the Agreement.

(2) ENTERPRISE.—The term ‘enterprise’ has the meaning given that term in article 1.2.3 of the Agreement.

SEC. 206. REGULATIONS.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (n) of section 202, and section 203;

(2) amendments made by the sections referred to in paragraph (1); and

(3) proclamations issued under section 202(c).

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

(1) COMMISSION.—The term ‘Commission’ means the United States International Trade Commission.

(2) SINGAPOREAN ARTICLE.—The term ‘Singaporean article’ means an article that qualifies as an originating good under section 202(a) of this Act.

(3) SINGAPOREAN TEXTILE OR APPAREL ARTICLE.—The term ‘Singaporean textile or apparel article’ means an article—

(A) that is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)); and

(B) that is a Singaporean article.

SUBTITLE A—RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—

(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).

(3) CRITICAL CIRCUMSTANCES.—Any allegation that critical circumstances exist shall be included in the petition.

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Singaporean article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Singaporean article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

(1) Paragraphs (1)(B) and (3) of subsection (b).

(2) Subsection (c).

(3) Subsection (d).

(4) Subsection (l).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Singaporean article if, after the date that the Agreement enters into force [Jan. 1, 2004], import relief has been provided with respect to that Singaporean article under—

(1) this subtitle;

(2) subtitle B;

(3) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.);

(4) article 6 of the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)); or

(5) article 5 of the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(2)).
"SEC. 312. COMMISSION ACTION ON PETITION.

(a) Determination.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 313(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) Applicable Provisions.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) Additional Finding and Recommendation If Determination Affirmative.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to the relief described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) Report to President.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) Public Notice.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

"SEC. 313. PROVISION OF RELIEF.

(a) In General.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) Exception.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

"(c) Nature of Relief.—

(1) In General.—The import relief (including provisional relief) that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex 2B of the Agreement in the duty imposed on such article;

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; and

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [Jan. 1, 2004].

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles for the immediately preceding corresponding season; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) Progressive Liberalization.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 7.26 of the Agreement) of such relief at regular intervals during the period of its application.

(3) Period of Relief.—

(A) In General.—Subject to paragraph (2), the import relief that the President is authorized to provide under this section may not exceed 2 years.

(B) Extension.—

(A) In General.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to prevent or remedy serious injury and to facilitate adjustment; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) Action by Commission.—

(i) Upon a petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date on which any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) Period of Import Relief.—The effective period of any import relief imposed under this sec-
tion, including any extensions thereof, may not, in
the aggregate, exceed 4 years.

(6) RATE AFTER TERMINATION OF IMPORT RELIEF.—
When import relief under this section is terminated with
respect to an article, the rate of duty on that article
shall be the rate that would have been in effect, but
for the provision of such relief, on the date the relief
terminates.

(7) ARTICLES EXEMPT FROM RELIEF.—No import re-
lief may be provided under this section on any article
that has been subject to import relief, after the entry into
force of the Agreement [Jan. 1, 2001], under—

"(1) this subtitle;
"(2) subtitle B;
"(3) chapter 1 of title II of the Trade Act of 1974 [19
U.S.C. 2251 et seq.];
"(4) article 6 of the Agreement on Textiles and
Clothing referred to in section 101(d)(4) of the Ur-
guay Round Agreements Act (19 U.S.C. 3511(d)(4)); or
"(5) article 5 of the Agreement on Agriculture re-
ferred to in section 101(d)(2) of the Uruguay Round
Agreements Act (19 U.S.C. 3511(d)(2))."

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—No import relief may be pro-
vided under this subtitle after the date that is 10 years
after the date on which the Agreement enters into
force [Jan. 1, 2004].

(b) EXCEPTION.—Import relief may be provided under
this subtitle in the case of a Singaporean article af-
after the date on which such relief would, but for this sub-
section, terminate under subsection (a), if the Presi-
dent determines that Singapore has consented to such
relief.

SEC. 315. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974
(19 U.S.C. 2133), any import relief provided by the Presi-
dent under section 315 shall be treated as action taken
under chapter 1 of title II of such Act [19 U.S.C. 2251 et
seq.].

SEC. 316. CONFIDENTIAL BUSINESS INFORMA-
TION.
[Amended section 2252 of this title.]

"SUBTITLE B—TEXTILE AND APPAREL SAFEGUARD
MEASURES"

SEC. 321. COMMENCEMENT OF ACTION FOR RE-
LIEF.

(a) IN GENERAL.—A request under this subtitle for
the purpose of adjusting to the obligations of the United
States under the Agreement may be filed with the Presi-
dent by an interested party. Upon the filing of
a request, the President shall review the request to de-
terminate, from information presented in the request, whether
to commence consideration of the request.

(b) PUBLICATION OF REQUEST.—If the President
determines that the request under subsection (a) provides
the information necessary for the request to be consid-
ered, the President shall cause to be published in the
Federal Register a notice of commencement of consid-
eration of the request, and notice seeking public com-
ments regarding the request. The notice shall include
the request and the dates by which comments and
rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RE-
LIEF.

(a) DETERMINATION.—

"(1) IN GENERAL.—Pursuant to a request made by an
interested party, the President shall determine whether,
as a result of the reduction or elimination of a duty
under the Agreement, a Singaporean textile
or apparel article is being imported into the United
States in such increased quantities, in absolute terms
or relative to the domestic market for that article,
and under such conditions that imports of the article
constitute a substantial cause of serious damage, or
actual threat thereof, to a domestic industry produc-
ing an article that is like, or directly competitive
with, the imported article.

"(2) SERIOUS DAMAGE.—In making a determination
under paragraph (1), the President—
(A) shall examine the effect of increased imports
on the domestic industry, as reflected in changes in
such relevant economic factors as output, produc-
tivity, utilization of capacity, inventories, market
share, exports, wages, employment, domestic
prices, profits, and investment, none of which is
necessarily decisive; and
"(B) shall not consider changes in technology or
consumer preference as factors supporting a deter-
mination of serious damage or actual threat there-
of.

"(3) SUBSTANTIAL CAUSE.—For purposes of this sub-
section, the term ‘substantial cause’ means a cause
that is important and not less than any other cause.

(b) PROVISION OF RELIEF.—

"(1) IN GENERAL.—If a determination under sub-
section (a) is affirmative, the President may provide
relief from imports of the article that is the subject
of such determination, as described in paragraph (2),
to the extent that the President determines nec-
essary to remedy or prevent the serious damage and
to facilitate adjustment by the domestic industry.

"(2) NATURE OF RELIEF.—The relief that the Presi-
dent is authorized to provide under this subsection
with respect to imports of an article is—
(A) the suspension of any further reduction pro-
vided for under Annex 2B of the Agreement in the
duty imposed on the article; or
"(B) an increase in the rate of duty imposed on
the article to a level that does not exceed the lesser of—
"(i) the column 1 general rate of duty imposed
under the HTS on like articles at the time the
import relief is provided; or
"(ii) the column 1 general rate of duty imposed
under the HTS on like articles on the day before
the date on which the Agreement enters into
force [Jan. 1, 2004]."

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), the im-
port relief that the President is authorized to provide
under section 322 may not exceed 2 years.

(b) EXTENSION.—

"(1) IN GENERAL.—Subject to paragraph (2), the
President may extend the effective period of any im-
port relief provided under this subtitle if the Presi-
dent determines that—
"(A) the import relief continues to be necessary
to remedy or prevent serious damage and to facili-
tate adjustment; and
"(B) there is evidence that the industry is making
a positive adjustment to import competition.

"(2) LIMITATION.—The effective period of any action
under this subtitle, including any extensions thereof,
may not, in the aggregate, exceed 4 years.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

"The President may not provide import relief under
this subtitle with respect to any article if import relief
previously has been provided under this subtitle with
respect to that article.

SEC. 325. RATE AFTER TERMINATION OF IMPORT
RELIEF.

When import relief under this subtitle is terminated with
respect to an article, the rate of duty on that article
shall be the rate that would have been in effect, but
for the provision of such relief, on the date the relief
terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

"No import relief may be provided under this subtitle
with respect to an article after the date that is 10 years
after the date on which the provisions of the Agree-
ment relating to trade in textile and apparel goods
take effect pursuant to article 5.10 of the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974
(19 U.S.C. 2133), any import relief provided by the Presi-
dent under this subtitle shall be treated as action taken under chapter 1 of title II of such Act (19 U.S.C. 2251 et seq.).

"SEC. 328. BUSINESS CONFIDENTIAL INFORMATION."

"The President may not release information which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. To the extent business confidential information is provided, a nonconfidential version of the information shall also be provided, in which the business confidential information is summarized or, if necessary, deleted.

"Subtitle C—Cases Under Title II of the Trade Act of 1974"

"SEC. 330. FINDINGS AND ACTION ON GOODS FROM SINGAPORE.

"(a) Effect of Imports.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d))), the Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether imports of the article from Singapore are substantial cause of serious injury or threat thereof.

"(b) Presidential Determination Regarding Singaporean Imports.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the President shall determine whether imports from Singapore are a substantial cause of the serious injury or threat thereof found by the Commission and, if such determination is in the negative, may exclude from such action imports from Singapore.

"Title IV—Temporary Entry of Business Persons"

"SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.

"Upon a basis of reciprocity secured by the Agreement, an alien who is a national of Singapore (and any spouse or child of such an alien) may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101(a)(11)) of such alien, if accompanying or following to join the alien) may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if, for purposes of this section, the term 'national' has the meaning given such term in Annex I A of the Agreement.

"SEC. 402. NONIMMIGRANT PROFESSIONALS..."

"[Amended section 1184 of Title 8, Aliens and Nationality.]

"The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1292 of this title."

"[Proc. No. 7747, Dec. 30, 2003, 68 F.R. 75794, provided in par. (3) that the Secretary of Commerce is authorized to exercise the authority of the President under section 105(a) of the United States-Singapore Free Trade Agreement Implementation Act (USFTA Act) (Pub. L. 108-78, set out above) to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section; in par. (5) that the Committee for the Implementation of Textile Agreements (CITA) is authorized to exercise the authority of the President under section 205 of the USFTA Act to exclude textile and apparel goods from the customs territory of the United States, to determine whether an enterprise's production of, and capability to produce, textile and apparel goods are consistent with statements by the enterprise, to find that an enterprise has knowingly or willfully engaged in circumvention, and to deny preferential tariff treatment to textile and apparel goods; and in par. (6) that the CITA is authorized to exercise the authority of the President under subtitle B of title III of the USFTA Act to review requests and to determine whether to commence consideration of such requests, to cause to be published in the Federal Register a notice of commencement of consideration of a request and notice seeking public comment, to determine whether textile or apparel article constitute a substantial cause of serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article, and to provide relief from imports of an article that is the subject of such a determination.]

"SEC. 502. PROVISIONS RELATING TO, THE AGREEMENT.


"(1) the United States-Chile Free Trade Agreement entered into on June 6, 2003, with the Government of Chile and submitted to the Congress on July 15, 2003; and

"(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on July 15, 2003."

"TITLE I—Approval of, and General Provisions Relating to, the Agreement"

"SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.


"(1) the United States-Chile Free Trade Agreement..."
“SEC. 103. CONSULTATION AND LAYOVER PROVISIONS.—At such time as the President determines that Chile has taken measures necessary to bring it into compliance with the provisions of the Agreement that take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Chile providing for the entry into force, on or after January 1, 2004, of the Agreement for the United States.

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

“(a) RELATIONSHIP TO UNITED STATES LAW.—

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

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

“(A) to amend or modify any law of the United States;

“(B) to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.

“(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

“(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

“(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term ‘State law’ includes—

“(A) any law of a political subdivision of a State;

“(B) any State law regulating or taxing the business of insurance.

“(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

“(1) shall have any cause of action or defense under the Agreement or by virtue of Congressional approval thereof; or

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

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

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

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

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

“(B) the United States International Trade Commission;

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

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

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

“(3) the period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

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

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

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

“(a) IMPLEMENTING ACTIONS.—

“(1) PROCLAMATION AUTHORITY.—After the date of enactment of this Act (Sept. 3, 2003)—

“(A) the President may proclaim such actions, and

“(B) other appropriate officers of the United States Government may issue such regulations, as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force (Jan. 1, 2004) is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

“(2) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction contained in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

“(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action referred to in section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement (Jan. 1, 2004). In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

“SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

“(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 22 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2003 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 22 of the Agreement.

“SEC. 106. ARBITRATION OF CLAIMS.

“(a) SUBMISSION OF CERTAIN CLAIMS.—The United States is authorized to resolve any claim against the United States covered by article 10.15(1)(a)(i)(C) or 10.15(1)(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

“(b) CONTRACT CLAUSES.—All contracts executed by any agency of the United States on or after the date of entry into force of the Agreement (Jan. 1, 2004) shall contain a clause specifying the law that will apply to resolve any breach of contract claim.

“SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

“(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force (Jan. 1, 2004).

“(b) EXCEPTIONS.—Sections 1 through 3 and this title shall take effect on the date of the enactment of this Act (Sept. 3, 2003).
“(c) Termination of the Agreement.—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

“TITLE II—CUSTOMS PROVISIONS

“SEC. 201. TARIFF MODIFICATIONS.

“(a) Tariff Modifications Provided for in the Agreement.—

“(1) Proclamation Authority.—The President may proclaim—

“(A) such modifications or continuation of any duty,

“(B) such continuation of duty-free or excise treatment, or

“(C) such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 3.3, 3.7, 3.9, article 3.20 (8), (9), (10), and (11), and Annex 3.3 of the Agreement.


“(b) Other Tariff Modifications.—Subject to the consultation and layover provisions of section 103(a), the President may proclaim—

“(1) such modifications or continuation of any duty,

“(2) such modifications as the United States may agree to with Chile regarding the staging of any duty treatment set forth in Annex 3.3 of the Agreement,

“(3) such continuation of duty-free or excise treatment, or

“(4) such additional duties, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Chile provided for by the Agreement.

“(c) Additional Tariffs on Agricultural Safeguard Goods.—

“(1) In General.—In addition to any duty proclaimed under subsection (a) or (b), and subject to paragraphs (3) through (5), the Secretary of the Treasury shall assess a duty, in the amount prescribed under paragraph (2), on an agricultural safeguard good if the Secretary of the Treasury determines that the unit import price of the good when it enters the United States, determined on an F.O.B. basis, is less than the trigger price indicated for that good in Annex 3.18 of the Agreement or any amendment thereto.

“(2) Calculation of Additional Duty.—The amount of the additional duty assessed under this subsection shall be determined as follows:

“(A) If the difference between the unit import price and the trigger price is less than, or equal to, 10 percent of the trigger price, no additional duty shall be imposed.

“(B) If the difference between the unit import price and the trigger price is greater than 10 percent, but less than or equal to 40 percent, of the trigger price, the additional duty shall be equal to 30 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

“(C) If the difference between the unit import price and the trigger price is greater than 40 percent, but less than or equal to 60 percent, of the trigger price, the additional duty shall be equal to 50 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

“(D) If the difference between the unit import price and the trigger price is greater than 60 percent, but less than or equal to 75 percent, of the trigger price, the additional duty shall be equal to 70 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

“(E) If the difference between the unit import price and the trigger price is greater than 75 percent of the trigger price, the additional duty shall be equal to 100 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

“(3) Exceptions.—No additional duty under this subsection shall be assessed on an agricultural safeguard good if, at the time of entry, the good is subject to import relief under—

“(A) subtitle A of title III of this Act; or

“(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

“(4) Termination.—This subsection shall cease to apply on the date that is 12 years after the date on which the Agreement enters into force [Jan. 1, 2004].

“(5) Tariff-Rate Quotas.—If an agricultural safeguard good is subject to a tariff-rate quota, and the in-quota duty rate for the good proclaimed pursuant to subsection (a) or (b) is zero, any additional duty assessed under this subsection shall be applied only to over-quota imports of the good.

“(6) Notice.—Not later than 60 days after the Secretary of the Treasury first assesses additional duties on an agricultural safeguard good under this subsection, the Secretary shall notify the Government of Chile in writing of such action and shall provide to the Government of Chile data supporting the assessment of additional duties.

“(7) Modification of Trigger Prices.—Not later than 60 calendar days before agreeing with the Government of Chile pursuant to article 3.18(2)(b) of the Agreement on a modification to a trigger price for a good listed in Annex 3.18 of the Agreement, the President shall notify the Committees on Ways and Means and Agriculture of the House of Representatives and the Committees on Finance and Agriculture of the Senate of the proposed modification and the reasons therefor.

“(8) Definitions.—In this subsection:

“(A) Agricultural Safeguard Good.—The term ‘agricultural safeguard good’ means a good—

“(i) that qualifies as an originating good under section 202;

“(ii) that is included in the United States Agricultural Safeguard Product List set forth in Annex 3.18 of the Agreement; and

“(iii) for which a claim for preferential tariff treatment under the Agreement has been made.

“(B) F.O.B.—The term ‘F.O.B.’ means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

“(C) Unit Import Price.—The term ‘unit import price’ means the price expressed in dollars per kilogram.

“(D) Conversion to Ad Valorem Rates.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 3.3 of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

“SEC. 202. RULES OF ORIGIN.

“(a) Originating Goods.—

“(1) In General.—For purposes of this Act and for purposes of implementing the tariff treatment provided for under the Agreement, except as otherwise provided in this section, a good is an originating good if—
“(A) the good is wholly obtained or produced entirely in the territory of Chile, the United States, or both;

“(B) the good—

“(i) is produced entirely in the territory of Chile, the United States, or both, and

“(II) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification pursuant to Annex 4.1 of the Agreement, or

“(ii) satisfies the requirements of the build-down method described in paragraph (3), unless otherwise provided in Annex 4.1 of the Agreement; and

“(C) the good meets all other applicable requirements of this section.

“(B) De Minimis Amounts of Nonoriginating Materials—

“(1) In General.—Except as provided in paragraphs (2) and (3), a good that does not undergo a change in tariff classification pursuant to Annex 4.1 of the Agreement is an originating good if—

“(A) the value of all nonoriginating materials that are used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

“(B) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement; and

“(C) the good meets all other applicable requirements of this section.

“(2) Exceptions.—Paragraph (1) does not apply to the following:

“(A) A nonoriginating material provided for in chapter 4 of the HTS, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90 of the HTS, that is used in the production of a good provided for in chapter 17 of the HTS or in heading 1805.90.00 of the HTS that is used in the production of a good provided for in any of headings 1501.00.00 through 1508, 1512, 1514, and 1515 of the HTS.

“(B) A nonoriginating material provided for in heading 1701 of the HTS that is used in the production of a good provided for in any of headings 1701 through 1703 of the HTS.

“(C) A nonoriginating material provided for in chapter 17 of the HTS or in heading 1805.90.00 of the HTS that is used in the production of a good provided for in subheading 1806.19 of the HTS.

“(D) A nonoriginating material used in the production of a good provided for in any of chapters 1 through 21 of the HTS, unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

“(3) Goods Provided for in Chapters 50 Through 63 of the HTS.—

“(A) In General.—Except as provided in subparagraph (B), a good provided for in any of chapters 50 through 63 of the HTS that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4.1 of the Agreement, shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

“(B) Certain Textile or Apparel Goods.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Chile or the United States.

“(C) Accumulation.—

“(1) Originating Goods Incorporated in Goods of Other Country.—Originating goods or materials of Chile or the United States that are incorporated into a good in the territory of the other country shall be considered to originate in the territory of the other country.

“(2) Multiple Procedures.—A good that is produced in the territory of Chile, the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (a) and all other applicable requirements of this section.

“(D) Regional Value-Content.—

“(1) In General.—For purposes of subsection (a)(1)(B), the regional value-content of a good referred to in Annex 4.1 of the Agreement shall be calculated, at the choice of the person claiming preferential tariff treatment for the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3), unless otherwise provided in Annex 4.1 of the Agreement.

“(2) Build-Down Method.—

“(A) In General.—The regional value-content of a good may be calculated on the basis of the following build-down method:

\[
\text{RVC} = \frac{\text{AV} - \text{YNM}}{\text{AV}} \times 100
\]

“(B) Definitions.—For purposes of subparagraph (A):
“(i) The term ‘RVC’ means the regional value-content, expressed as a percentage.

“(ii) The term ‘AV’ means the adjusted value.

“(iii) The term ‘VNM’ means the value of non-originating materials used by the producer in the production of the good.

“(III) The term ‘VOM’ means the value of originating materials used by the producer in the production of the good.

“G. CLAIM FOR PREFERENTIAL TREATMENT.—A person claiming preferential tariff treatment for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method.

“B. INVENTORY MANAGEMENT METHOD.—In this subsection, the term ‘inventory management method’ means—

“(i) averaging;

“(ii) ‘last-in, first-out’;

“(iii) ‘first-in, first-out’; or

“(iv) any other method—

“(I) recognized in the generally accepted accounting principles of the country in which the production is performed (whether Chile or the United States); or

“(II) otherwise accepted by that country.

“(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for particular fungible goods or materials shall continue to use that method for those goods or materials throughout the fiscal year of that person.

“(b) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 4.1 of the Agreement, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

“(i) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packaging materials and containers for shipment shall be disregarded in determining whether—

“(1) the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 4.1 of the Agreement; and

“(2) the good satisfies a regional value-content requirement.

“(c) INDIRECT MATERIALS.—An indirect material shall be considered to be an originating material without regard to where it is produced.

“(k) TRANSIT AND TRANSSHIPMENT.—A good that has undergone production necessary to qualify as an originating good under subsection (a) shall not be considered to be an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territory of Chile or the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

“(l) TEXTILE AND APPAREL GOODS CLASSIFIABLE AS GOODS PUT UP IN SETS.—Notwithstanding the rules set
forth in Annex 4.1 of the Agreement, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 5 of the Harmonized System shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

"(m) APPLICATION AND INTERPRETATION.—In this section:

(1) The basis for any tariff classification is the HTS.

(2) Any cost or value referred to in this section shall be determined and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Chile or the United States).

(1) ADJUSTED VALUE.—The term 'adjusted value' means the value determined in accordance with articles 1 through 8, article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act (19 U.S.C. 3311(d)(8)), except that such value may be adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation.

"(2) FUNGIBLE GOODS OR FUNGIBLE MATERIALS.—The terms 'fungible goods' and 'fungible materials' mean goods or materials, as the case may be, that are interchangeable for commercial purposes and the properties of which are essentially identical.

"(3) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term 'generally accepted accounting principles' means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting policies accounted in accordance with the generally accepted accounting principles applicable in the territory of Chile or the United States, as the case may be.

"(4) GOODS WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF CHILE, THE UNITED STATES, OR BOTH.—The term 'goods wholly obtained or produced entirely in the territory of Chile, the United States, or both' means—

(A) raw materials, goods, fish, shellfish, and other marine life used in the production of goods or materials that are the result of—

(i) the complete disassembly of used goods into individual parts; and

(ii) the cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the processes described in subparagraph (B), in order for such parts to be assembled with other parts, including other parts that have undergone the processes described in this paragraph, in the production of a remanufactured good.

(B) PROCESSES.—The processes referred to in subparagraph (A)(ii) are welding, flame spraying,
surface machining, knurling, plating, sleeving, and rewinding.

(15) REMANUFACTURED GOOD.—The term ‘remanufactured good’ means an industrial good assembled in the territory of Chile or the United States, that is listed in Annex 4.18 of the Agreement, and—

(A) is entirely or partially comprised of recovered goods;

(B) has the same life expectancy and meets the same performance standards as a new good; and

(C) enjoys the same factory warranty as such a new good.

(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

(1) In General.—The President is authorized to proclaim, as part of the HTS—

(A) the provisions set out in Annex 4.1 of the Agreement; and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) MODIFICATIONS.—

(A) In General.—Subject to the consultation and layover provisions of section 106(a), the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 of the HTS, as included in Annex 4.1 of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 106(a), the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) that are necessary to implement an agreement with Chile pursuant to article 3.20(5) of the Agreement; and

(ii) before the 1st anniversary of the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4.1 of the Agreement.

SEC. 203. DRAWBACK.

(a) DEFINITION OF A GOOD SUBJECT TO CHILE PTA DRAWBACK.—For purposes of this Act and the amendments made by subsection (b), the term ‘good subject to Chile PTA drawback’ means any imported good other than the following:

(1) A good entered under bond for transportation and exportation to Chile.

(2)(A) A good exported to Chile in the same condition as when imported into the United States;

(B) A good exported to Chile for which a refund of customs duties is granted by reason of—

(i) the failure of the good to conform to sample or specification; or

(ii) the shipment of the good without the consent of the consignee.

(3) A good that qualifies under the rules of origin set out in section 202 that is—

(A) exported to Chile;

(B) used as a material in the production of another good that is exported to Chile; or

(C) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is exported to Chile.

(b) CONSEQUENTIAL AMENDMENTS.—

(1) BONDED MANUFACTURING WAREHOUSES.—

(2) BONDED SMELTING AND REFINING WAREHOUSES.—

(3) DRAWBACK.—

(4) MANIPULATION IN WAREHOUSE.—

(5) FOREIGN TRADE ZONES.—

(c) INAPPLICABILITY TO COUNTERVAILING AND ANTIDUMPING DUTIES.—Nothing in this section or the amendments made by this section shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

SEC. 204. CUSTOMS USER FEES.

SEC. 205. DISCLOSURE OF INCORRECT INFORMATION; DENIAL OF PREFERENTIAL TARIFF TREATMENT; FALSE CERTIFICATES OF ORIGIN.

(a) DISCLOSURE OF INCORRECT INFORMATION.—

(b) DENIAL OF PREFERENTIAL TARIFF TREATMENT.—

(c) SUBMISSION TO CUSTOMS OF CORRECT INFORMATION.—

SEC. 206. RELIQUIDATION OF ENTRIES.

SEC. 207. RECORDKEEPING REQUIREMENTS.

SEC. 208. ENFORCEMENT OF TEXTILE AND APPAREL RULES OF ORIGIN.

(a) ACTION DURING VERIFICATION.—If the Secretary of the Treasury requests the Government of Chile to conduct a verification pursuant to article 3.21 of the Agreement for purposes of determining that—

(1) an exporter or producer in Chile is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, or

(2) claims that textile or apparel goods exported or produced by such exporter or producer—

(A) qualify as originating goods under section 202 of this Act, or

(B) are goods of Chile, are accurate,

the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(b) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (a) includes—

(1) suspension of liquidation of entries of textile and apparel goods exported or produced by the person that is the subject of the verification, in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) publication of the name of the person that is the subject of the verification.

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the in-
SEC. 210. REGULATIONS.

regulations as may be necessary to carry out—

§ 3805

The Commission shall transmit a copy

representation may be filed with the Commission by an entity,

nized union, or group of workers, that is representative

ficient to make a determination under subsection (a), or until

time as the Secretary receives information sufficient

r 2252) apply with respect to any investigation initiated

tation to determine whether, as a result

determinations and findings made under this section as

the Agreement to any textile or apparel goods ex-

sion shall make the determination required under that

311(b) with respect to a petition, the Commiss-

"(d) APPROPRIATE ACTION DESCRIBED.—Appropriate

action under subsection (c) includes—

"(1) publication of the identity of the person that is

subject of the verification;

"(2) denial of preferential tariff treatment under

the Agreement to any textile or apparel goods ex-

or produced by the person that is the subject of

the verification; and

"(3) denial of entry into the United States of any

textile or apparel goods exported or produced by

the person that is the subject of the verification.

SEC. 299. CONFORMING AMENDMENTS.

[Amended section 1506 of this title.]

SEC. 310. REGULATIONS.

"SEC. 225. REGULATIONS.

The Secretary of the Treasury shall prescribe such

regulations as may be necessary to carry out—

"(1) subsections (a) through (n) of section 202, and

sections 203 and 204;

"(2) amendments made by the sections referred to

in paragraph (1); and

"(3) proclamations issued under section 202(c).

"SEC. 3. RELIEF FROM IMPORTS

"(a) FILING OF PETITION.—A petition requesting ac-

is made under subsection (a) with respect to an inves-

ation shall make the determination required under that


et seq.].

"(c) ADDITIONAL FINDING AND RECOMMENDATION IF

 Determination Affirmative.—If the determination made

by the Commission under subsection (a) with respect to

imports of an article is affirmative, or if the President

may consider a determination of the Commission to be

affirmative, any findings and recommendations for im-

riletions to the President in the report required under

subsection (d), the amount of import relief that is nec-

essary to remedy or prevent the injury found by

the Commission in the determination and to facilitate the

efforts of the domestic industry to make a positive ad-

justment to import competition. The import relief rec-

ommended by the Commission under this subsection

shall be limited to the relief described in section 313(c).

Only those members of the Commission who voted in

the affirmative under subsection (a) are eligible to vote

on the proposed action to remedy or prevent the injury

found by the Commission. Members of the Commission

who did not vote in the affirmative may submit, in the

report required under subsection (d), separate views re-

arding what action, if any, should be taken to remedy

or prevent the injury.

"(d) REPORT TO PRESIDENT.—Not later than the date

that is 30 days after the date on which a determination

is made under subsection (a) with respect to an inves-

tigation, the Commission shall submit to the President

a report that includes—

"(1) the determination made under subsection (a)

and an explanation of the basis for the determina-

"(2) if the determination under subsection (a) is af-

firmative, any findings and recommendations for im-

riletions to the President in the report required under

subsection (d), separate views re-

"(3) any dissenting or separate views by members of

the Commission regarding the determination and rec-

ommendation referred to in paragraphs (1) and (2).

"(e) PUBLIC NOTICE.—Upon submitting a report to

the President under subsection (d), the Commission

shall promptly make public such report (with the excep-

of information which the Commission determines to be

confidential) and shall cause a summary thereof to be

published in the Federal Register.

"SEC. 3. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30

days after the date on which the President receives the

report of the Commission in which the Commission’s

determination under section 312(a) is affirmative, or

contains a determination under section 312(a) that the

President considers to be affirmative under paragraph

(1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C.

1330(d)), the President, subject to subsection (b), shall

provide relief from imports of the article

that is the subject of such determination to the

entities referred to in section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the
extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

“(b) EXCEPTION.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

“(c) NATURE OF RELIEF.—

“(1) In general.—The import relief that the President is authorized to provide under this section with respect to imports of an article is as follows:

“(A) The suspension of any further reduction provided for under Annex 3.3 of the Agreement in the duty imposed on such article.

“(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of

“(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

“(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [Jan. 1, 2004].

“(2) Periodic Liberalization.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the periodic liberalization (described in article 8.2.2 of the Agreement) of such relief at regular intervals during the period of its application.

“(d) Period of Relief.—

“(1) In general.—Subject to paragraph (2), the import relief that the President is authorized to provide under this section, including any extensions thereof, may not, in the aggregate, exceed 3 years.

“(2) Extension.—

“(A) In general.—If the initial period for any import relief provided under this section is less than 3 years, the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section, subject to the limitation under paragraph (1), if the President determines that—

“(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment; and

“(ii) there is evidence that the industry is making a positive adjustment to import competition.

“(B) Action by Commission.—(i) Upon a petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date on which any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

“(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

“(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

“(e) Rate After Termination of Import Relief.—When import relief under this section is terminated with respect to an article—

“(1) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States in Annex 3.3 of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the provision of relief under subsection (a); and

“(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

“(A) the applicable rate of duty for that article set out in the Schedule of the United States in Annex 3.3 of the Agreement; or

“(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule in Annex 3.3 of the Agreement for the elimination of the tariff.

“(f) Articles Exempt From Relief.—No import relief may be provided under this section on any article subject to import relief under chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.].

“SEC. 311. Termination of Relief Authority.

“(a) General Rule.—No import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force [Jan. 1, 2004].

“(b) Exception.—If an article for which relief is provided under this subtitle is an article for which the period for tariff elimination, set out in the Schedule of the United States to Annex 3.3 of the Agreement, is 12 years, no relief under this subtitle may be provided for that article after the date that is 12 years after the date on which the Agreement enters into force [Jan. 1, 2004].

“SEC. 315. Compensation Authority.

“For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 315 shall be treated as action taken under chapter 1 of title II of such Act [19 U.S.C. 2251 et seq.].

“SEC. 316. Confidential Business Information.

[Amended section 2252 of this title.]

“Subtitle B—Textile and Apparel Safeguard Measures


“(a) In general.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

“(b) Publication of Request.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include the request and the dates by which comments and rebuttals must be received.

“SEC. 322. Determination and Provision of Relief.

“(a) Determination.—

“(1) In general.—If a positive determination is made under section 321(b), the President shall determine whether, as a result of the elimination of a duty under the Agreement, a Chilean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an
article that is like, or directly competitive with, the imported article.  

"(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat there of.

"(b) PROVISION OF RELIEF.—

"(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as provided in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry.

"(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force [Jan. 1, 2004].

"SEC. 323. PERIOD OF RELIEF.

"(a) IN GENERAL.—The import relief that the President is authorized to provide under section 322, including any extensions thereof, may not, in the aggregate, exceed 3 years.

(b) EXTENSION.—If the initial period for any import relief provided under this section is less than 3 years, the President may extend the effective period of any import relief provided under this section, subject to the limitation set forth in subsection (a), if the President determines that—

(1) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment; and

(2) there is evidence that the industry is making a positive adjustment to import competition.

"SEC. 324. ARTICLES EXEMPT FROM RELIEF.

"The President may not provide import relief under this subtitle with respect to any article if import relief previously has been provided under this subtitle with respect to that article.

"SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

"When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be duty-free.

"SEC. 326. TERMINATION OF RELIEF AUTHORITY.

"No import relief may be provided under this subtitle with respect to any article after the date that is 8 years after the date on which duties on the article are eliminated pursuant to the Agreement.

"SEC. 327. COMPENSATION AUTHORITY.

"For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2233), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of that Act [19 U.S.C. 2251 et seq.].

"SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

"The President may not release information which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. To the extent business confidential information is provided, a nonconfidential version of the information shall also be provided, in writing, which the business confidential information is summarized or, if necessary, deleted.

"TITLE IV.—TEMPORARY ENTRY OF BUSINESS PERSONS

"SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.

"Upon a basis of reciprocity secured by the Agreement, an alien who is a national of Chile (and any spouse or child as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1))) of such alien, if accompanying or following to join the alien may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in clause (i) or (ii) of such section 101(a)(15)(E). For purposes of this section, the term ‘national’ has the meaning given such term in article 14.9 of the Agreement.

"SEC. 402. NONIMMIGRANT PROFESSIONALS; LABOR ATTESTATIONS.

"(a) NONIMMIGRANT PROFESSIONALS.—

(1) DEFINITIONS.—[Amended section 1101 of Title 8, Aliens and Nationality.]  

(2) ADMISSION OF NONIMMIGRANTS.—[Amended section 1184 of Title 8.]

(b) LABOR ATTESATIONS.—[Amended section 1182 of Title 8.]

(c) SPECIAL RULE FOR COMPUTATION OF PREVAILING WAGE.—[Amended section 1182 of Title 8.]

(d) FEE.—

(1) IN GENERAL.—[Amended section 1184 of Title 8.]

(2) USE OF FEE.—[Amended section 1556 of Title 8.]

"SEC. 403. LABOR DISPUTES.

[Amended section 1184 of Title 8.]

"SEC. 404. CONFORMING AMENDMENTS.

[Amended section 1184 of Title 8.]

[The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.]

[Proc. No. 7746, Dec. 30, 2003, 68 F.R. 75790, provided in par. (3) that the Secretary of Commerce is authorized to exercise the authority of the President under section 105(a) of the United States-Chile Free Trade Agreement Implementation Act (USCFTA Act) (Pub. L. 108-77, set out above) to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section; in par. (4) that the Committee for the Implementation of Textile Agreements (CITA) is authorized to exercise the authority of the President under section 206 of the USCFTA Act with respect to verifications conducted in a manner consistent with article 3.21 of the United States-Chile Free Trade Agreement; and in par. (5) that the CITA is authorized to exercise the authority of the President under subtitle B of title III of the USCFTA Act to review requests and to determine whether to commence consideration of such requests, to cause to be published in the Federal Register a notice of commencement of consideration of a request and notice seeking public comment, to determine whether a Chilean textile or apparel article is being imported into the United States in such increased quantities and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article, and to provide relief from imports of an article that is the subject of such a determination.]
§ 3806. Treatment of certain trade agreements for which negotiations have already begun

(a) Certain agreements

Notwithstanding the prenegotiation notification and consultation requirement described in section 3804(a) of this title, if an agreement to which section 3803(b) of this title applies—

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

(2) is entered into with Chile, or

(3) is entered into with Singapore, or

(4) establishes a Free Trade Area for the Americas,

and results from negotiations that were commenced before August 6, 2002, subsection (b) of this section applies—

(b) Treatment of agreements

In the case of any agreement to which subsection (a) of this section applies—

(1) the applicability of the trade authorities procedures to implementing bills shall be determined without regard to the requirements of section 3804(a) of this title (relating only to 90 days notice prior to initiating negotiations), and any procedural disapproval resolution under section 3805(b)(1)(B) of this title shall not be in order on the basis of a failure or refusal to comply with the provisions of section 3804(a) of this title; and

(2) the President shall, as soon as feasible after August 6, 2002—

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

(B) before and after submission of the notice, consult regarding the negotiations with the committees referred to in section 3804(a)(2) of this title and the Congressional Oversight Group convened under section 3807 of this title.


DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 3807. Congressional Oversight Group

(a) Members and functions

(1) In general

By not later than 60 days after August 6, 2002, and not later than 30 days after the convening of each Congress, the chairman of the Committee on Ways and Means of the House of Representatives and the chairman of the Committee on Finance of the Senate shall convene the Congressional Oversight Group.

(2) Membership from the House

In each Congress, the Congressional Oversight Group shall be comprised of the following Members of the House of Representatives:

(A) The chairman and ranking member of the Committee on Ways and Means, and 3 additional members of such Committee (not more than 2 of whom are members of the same political party). (B) The chairman and ranking member, or their designees, of the committees of the House of Representatives which would have, under the Rules of the House of Representatives, jurisdiction over provisions of law affected by a trade agreement negotiations for which are conducted at any time during that Congress and to which this chapter would apply.

(3) Membership from the Senate

In each Congress, the Congressional Oversight Group shall also be comprised of the following members of the Senate:

(A) The chairman and ranking member of the Committee on Finance and 3 additional members of such Committee (not more than 2 of whom are members of the same political party). (B) The chairman and ranking member, or their designees, of the committees of the Senate which would have, under the Rules of the Senate, jurisdiction over provisions of law affected by a trade agreement negotiations for which are conducted at any time during that Congress and to which this chapter would apply.

(4) Accreditation

Each member of the Congressional Oversight Group described in paragraphs (2)(A) and (3)(A) shall be accredited by the United States Trade Representative on behalf of the President as an official adviser to the United States delegation in negotiations for any trade agreement to which this chapter applies. Each member of the Congressional Oversight Group described in paragraphs (2)(B) and (3)(B) shall be accredited by the United States Trade Representative on behalf of the President as an official adviser to the United States delegation in the negotiations by reason of which the member is in the Congressional Oversight Group. The Congressional Oversight Group shall consult with and provide advice to the Trade Representative regarding the formulation of specific objectives, negotiating strategies and positions, the development of the applicable trade agreement, and compliance and enforcement of the negotiated commitments under the trade agreement.

(5) Chair

The Congressional Oversight Group shall be chaired by the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate.

(b) Guidelines

(1) Purpose and revision

The United States Trade Representative, in consultation with the chairmen and ranking minority members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(A) shall, within 120 days after August 6, 2002, develop written guidelines to facilitate the useful and timely exchange of informa-
tion between the Trade Representative and the Congressional Oversight Group convened under this section; and
(B) may make such revisions to the guidelines as may be necessary from time to time.

(2) Content

The guidelines developed under paragraph (1) shall provide for, among other things—
(A) regular, detailed briefings of the Congressional Oversight Group regarding negotiating objectives, including the promotion of certain priorities referred to in section 3802(c) of this title, and positions and the status of the applicable negotiations, beginning as soon as practicable after the Congressional Oversight Group is convened, with more frequent briefings as trade negotiations enter the final stage;
(B) access by members of the Congressional Oversight Group, and staff with proper security clearances, to pertinent documents relating to the negotiations, including classified materials;
(C) the closest practicable coordination between the Trade Representative and the Congressional Oversight Group at all critical periods during the negotiations, including at negotiation sites;
(D) after the applicable trade agreement is concluded, consultation regarding ongoing compliance and enforcement of negotiated commitments under the trade agreement; and
(E) the time frame for submitting the report required under section 3802(c)(8) of this title.

(c) Request for meeting

Upon the request of a majority of the Congressional Oversight Group, the President shall meet with the Congressional Oversight Group before initiating negotiations with respect to a trade agreement, or at any other time concerning the negotiations.


AMENDMENTS


EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109–280, set out as a note under section 3801 of this title.

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 3808. Additional implementation and enforcement requirements

(a) In general

At the time the President submits to the Congress the final text of an agreement pursuant to section 3805(a)(1)(C) of this title, the President shall also submit a plan for implementing and enforcing the agreement. The implementation and enforcement plan shall include the following:

(1) Border personnel requirements

A description of additional personnel required at border entry points, including a list of additional customs and agricultural inspectors.

(2) Agency staffing requirements

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

(3) Customs infrastructure requirements

A description of the additional equipment and facilities needed by the United States Customs Service.

(4) Impact on State and local governments

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

(5) Cost analysis

An analysis of the costs associated with each of the items listed in paragraphs (1) through (4).

(b) Budget submission

The President shall include a request for the resources necessary to support the plan described in subsection (a) of this section in the first budget that the President submits to the Congress after the submission of the plan.


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 3809. Committee staff

The grant of trade promotion authority under this chapter is likely to increase the activities of the primary committees of jurisdiction in the area of international trade. In addition, the creation of the Congressional Oversight Group under section 3807 of this title will increase the
participation of a broader number of Members of Congress in the formulation of United States trade policy and oversight of the international trade agenda for the United States. The primary committees of jurisdiction should have adequate staff to accommodate these increases in activities.


§ 3810. Application of certain provisions

For purposes of applying sections 2135, 2136, and 2137 of this title—

(1) any trade agreement entered into under section 3803 of this title shall be treated as an agreement entered into under section 2111 or 2112 of this title, as appropriate; and

(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 3803 of this title shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 2112 of this title.


REFERENCES IN TEXT

Section 2137 of this title, referred to in text, was in the original a reference to section 127 of the Trade Act of 1974, Pub. L. 93–618, which enacted section 2137 of this title and amended section 1862 of this title.

§ 3811. Report on impact of trade promotion authority

(a) In general

Not later than 1 year after August 6, 2002, the International Trade Commission shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the economic impact on the United States of the trade agreements described in subsection (b) of this section.

(b) Agreements

The trade agreements described in this subsection are the following:

(1) The United States-Israel Free Trade Agreement.

(2) The United States-Canada Free Trade Agreement.

(3) The North American Free Trade Agreement.

(4) The Uruguay Round Agreements.

(5) The Tokyo Round of Multilateral Trade Negotiations.


§ 3812. Interests of small business

The Assistant United States Trade Representative for Industry and Telecommunications shall be responsible for ensuring that the interests of small business are considered in all trade negotiations in accordance with the objective described in section 3802(a)(8) of this title. It is the sense of the Congress that the small business functions should be reflected in the title of the Assistant United States Trade Representative assigned the responsibility for small business.


§ 3813. Definitions

In this chapter:

(1) Agreement on Agriculture

The term “Agreement on Agriculture” means the agreement referred to in section 3511(d)(2) of this title.

(2) Agreement on Safeguards

The term “Agreement on Safeguards” means the agreement referred to in section 3511(d)(13) of this title.

(3) Agreement on Subsidies and Countervailing Measures

The term “Agreement on Subsidies and Countervailing Measures” means the agreement referred to in section 3511(d)(12) of this title.

(4) Antidumping Agreement

The term “Antidumping Agreement” means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 referred to in section 3511(d)(7) of this title.

(5) Appellate Body

The term “Appellate Body” means the Appellate Body established under Article 17.1 of the Dispute Settlement Understanding.

(6) Core labor standards

The term “core labor standards” means—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(7) Dispute Settlement Understanding

The term “Dispute Settlement Understanding” means the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 3511(d)(16) of this title.

(8) GATT 1994

The term “GATT 1994” has the meaning given that term in section 3501 of this title.

(9) ILO

The term “ILO” means the International Labor Organization.

(10) Import sensitive agricultural product

The term “import sensitive agricultural product” means an agricultural product—

(A) with respect to which, as a result of the Uruguay Round Agreements the rate of duty was the subject of tariff reductions by the United States and, pursuant to such
Agreements, was reduced on January 1, 1995, to a rate that was not less than 95.7 percent of the rate of duty that applied to such article on December 31, 1994; or
(B) which was subject to a tariff-rate quota on August 6, 2002.

(11) United States person
The term “United States person” means—
(A) a United States citizen;
(B) a partnership, corporation, or other legal entity organized under the laws of the United States; and
(C) a partnership, corporation, or other legal entity that is organized under the laws of a foreign country and is controlled by entities described in subparagraph (B) or United States citizens, or both.

(12) Uruguay Round Agreements
The term “Uruguay Round Agreements” has the meaning given that term in section 3501(7) of this title.

(13) World Trade Organization; WTO
The terms “World Trade Organization” and “WTO” mean the organization established pursuant to the WTO Agreement.

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

(15) WTO member
The term “WTO member” has the meaning given that term in section 3501(10) of this title.

AMENDMENTS

CHAPTER 25—CLEAN DIAMOND TRADE

Sec.
3901. Findings.
3902. Definitions.
3903. Measures for the importation and exportation of rough diamonds.
3904. Regulatory and other authority.
3905. Importing and exporting authorities.
3906. Statement of policy.
3907. Enforcement.
3908. Technical assistance.
3909. Sense of Congress.
3911. Reports.
3912. GAO report.
3913. Delegation of authorities.

§ 3901. Findings
Congress finds the following:
(1) Funds derived from the sale of rough diamonds are being used by rebels and state actors to finance military activities, overthrow legitimate governments, subvert international efforts to promote peace and stability, and commit horrifying atrocities against unarmed civilians. During the past decade, more than 6,500,000 people from Sierra Leone, Angola, and the Democratic Republic of the Congo have been driven from their homes by wars waged in large part for control of diamond mining areas. A million of these are refugees eking out a miserable existence in neighboring countries, and tens of thousands have fled to the United States. Approximately 3,700,000 people have died during these wars.
(2) The countries caught in this fighting are home to nearly 70,000,000 people whose societies have been torn apart not only by fighting but also by terrible human rights violations.
(3) Human rights and humanitarian advocates, the diamond trade as represented by the World Diamond Council, and the United States Government have been working to block the trade in conflict diamonds. Their efforts have helped to build a consensus that action is urgently needed to end the trade in conflict diamonds.
(4) The United Nations Security Council has acted at various times under chapter VII of the Charter of the United Nations to address threats to international peace and security posed by conflicts linked to diamonds. Through these actions, it has prohibited all states from exporting weapons to certain countries affected by such conflicts. It has further required all states to prohibit the direct and indirect import of rough diamonds from Sierra Leone unless the diamonds are controlled under specified certificate of origin regimes and to prohibit absolutely the direct and indirect import of rough diamonds from Liberia.
(5) In response, the United States implemented sanctions restricting the importation of rough diamonds from Sierra Leone to those diamonds accompanied by specified certificates of origin and fully prohibiting the importation of rough diamonds from Liberia. The United States is now taking further action against trade in conflict diamonds.
(6) Without effective action to eliminate trade in conflict diamonds, the trade in legitimate diamonds faces the threat of a consumer backlash that could damage the economies of countries not involved in the trade in conflict diamonds and penalize members of the legitimate trade and the people they employ. To prevent that, South Africa and more than 30 other countries are involved in working, through the “Kimberley Process”, toward devising a solution to this problem. As the consumer of a majority of the world’s supply of diamonds, the United States has an obligation to help sever the link between diamonds and conflict and press for implementation of an effective solution.
(7) Failure to curtail the trade in conflict diamonds or to differentiate between the trade in conflict diamonds and the trade in legitimate diamonds could have a severe negative impact on the legitimate diamond trade in countries such as Botswana, Namibia, South Africa, and Tanzania.
(8) Initiatives of the United States seek to resolve the regional conflicts in sub-Saharan Africa which facilitate the trade in conflict diamonds.
(9) The Interlaken Declaration on the Kimberley Process Certification Scheme for Rough Diamonds of November 5, 2002, states that Participants will ensure that measures taken to implement the Kimberley Process Certification Scheme for Rough Diamonds will be consistent with international trade rules.

§ 3903. Measures for the importation and exportation of rough diamonds

(a) Prohibition

The President shall prohibit the importation into, or exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme.

(b) Waiver

The President may waive the requirements set forth in subsection (a) with respect to a particular country for periods of not more than 1 year each, if, with respect to each such waiver—

(1) the President determines and reports to the appropriate congressional committees that such country is taking effective steps to implement the Kimberley Process Certification Scheme; or

(2) the President determines that the waiver is in the national interests of the United States, and reports such determination to the appropriate congressional committees, together with the reasons therefor.


Delegation of Functions

For assignment of functions of President under subsec. (b) of this section, see section 2 of Ex. Ord. No. 13312, July 29, 2003, 68 F.R. 45151, set out as a note under section 3901 of this title.

§ 3904. Regulatory and other authority

(a) In general

The President is authorized to and shall as necessary issue such proclamations, regulations,
licences, and orders, and conduct such investigations, as may be necessary to carry out this chapter.

(b) Recordkeeping

Any United States person seeking to export from or import into the United States any rough diamonds shall keep a full record of, in the form of reports or otherwise, complete information relating to any act or transaction to which any prohibition imposed under section 3903(a) of this title applies. The President may require such person to furnish such information under oath, including the production of books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(c) Oversight

The President shall require the appropriate Government agency to conduct annual reviews of the standards, practices, and procedures of any entity in the United States that issues Kimberley Process Certificates for the exportation from the United States of rough diamonds to determine whether such standards, practices, and procedures are in accordance with the Kimberley Process Certification Scheme. The President shall transmit to the appropriate congressional committees a report on each annual review under this subsection.

(18 U.S.C. 2903.)

DELEGATION OF FUNCTIONS

For assignment of functions of President under this section, see section 2 of Ex. Ord. No. 13312, July 29, 2003, 68 F.R. 45151, set out as a note under section 3901 of this title.

§ 3905. Importing and exporting authorities

(a) In the United States

For purposes of this chapter—

(1) the importing authority shall be the United States Bureau of Customs and Border Protection or, in the case of a territory or possession of the United States with its own customs administration, analogous officials; and

(2) the exporting authority shall be the Bureau of the Census.

(b) Of other countries

The President shall publish in the Federal Register a list of all Participants, and all exporting authorities and importing authorities of Participants. The President shall update the list as necessary.

(18 U.S.C. 2905.)

DELEGATION OF FUNCTIONS

For assignment of functions of President under subsection (b) of this section, see section 2 of Ex. Ord. No. 13312, July 29, 2003, 68 F.R. 45151, set out as a note under section 3901 of this title.

§ 3906. Statement of policy

The Congress supports the policy that the President shall take appropriate steps to promote and facilitate the adoption by the international community of the Kimberley Process Certification Scheme implemented under this chapter.

(18 U.S.C. 2906.)

§ 3907. Enforcement

(a) In general

In addition to the enforcement provisions set forth in subsection (b)—

(1) a civil penalty of not to exceed $10,000 may be imposed on any person who violates, or attempts to violate, any license, order, or regulation issued under this chapter; and

(2) whoever willfully violates, or willfully attempts to violate, any license, order, or regulation issued under this chapter shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who willfully participates in such violation may be punished by a like fine, imprisonment, or both.

(b) Import violations

Those customs laws of the United States, both civil and criminal, including those laws relating to seizure and forfeiture, that apply to articles imported in violation of such laws shall apply with respect to rough diamonds imported in violation of this chapter.

(c) Authority to enforce

The United States Bureau of Customs and Border Protection and the United States Bureau of Immigration and Customs Enforcement are authorized, as appropriate, to enforce the provisions of subsection (a) and to enforce the laws and regulations governing exports of rough diamonds, including with respect to the validation of the Kimberley Process Certificate by the exporting authority.

(18 U.S.C. 2907.)

§ 3908. Technical assistance

The President may direct the appropriate agencies of the United States Government to make available technical assistance to countries seeking to implement the Kimberley Process Certification Scheme.

(18 U.S.C. 2908.)

§ 3909. Sense of Congress

(a) Ongoing process

It is the sense of the Congress that the Kimberley Process Certification Scheme, officially launched on January 1, 2003, is an ongoing process. The President should work with Participants to strengthen the Kimberley Process Certification Scheme through the adoption of measures for the sharing of statistics on the production of and trade in rough diamonds, and for monitoring the effectiveness of the Kimberley Process Certification Scheme in stemming trade in diamonds the importation or exportation of which is not controlled through the Kimberley Process Certification Scheme.

(b) Statistics and reporting

It is the sense of the Congress that under Annex III to the Kimberley Process Certification Scheme, Participants recognized that reliable and comparable data on the international trade in rough diamonds are an essential tool
for the effective implementation of the Kimberley Process Certification Scheme. Therefore, the executive branch should continue to—

(1) keep and publish statistics on imports and exports of rough diamonds under subheadings 7102.10.00, 7102.21, and 7102.31.00 of the Harmonized Tariff Schedule of the United States;

(2) make these statistics available for analysis by interested parties and by Participants; and

(3) take a leadership role in negotiating a standardized methodology among Participants for reporting statistics on imports and exports of rough diamonds.


REFERENCES IN TEXT


§3910. Kimberley Process Implementation Coordinating Committee

The President shall establish a Kimberley Process Implementation Coordinating Committee to coordinate the implementation of this chapter. The Committee shall be composed of the following individuals or their designees:

1. The Secretary of the Treasury and the Secretary of State, who shall be co-chairpersons.

2. The Secretary of Commerce.

3. The United States Trade Representative.


5. A representative of any other agency the President deems appropriate.


DELEGATION OF FUNCTIONS

For assignment of functions of President under this section, see section 2 of Ex. Ord. No. 13112, July 29, 2003, 68 F.R. 45151, set out as a note under section 3901 of this title.

§3911. Reports

(a) Annual reports

Not later than 1 year after April 25, 2003, and every 12 months thereafter for such period as this chapter is in effect, the President shall transmit to the Congress a report—

(1) describing actions taken by countries that have exported rough diamonds to the United States during the preceding 12-month period to control the exportation of the diamonds through the Kimberley Process Certification Scheme;

(2) describing whether there is statistical information or other evidence that would indicate efforts to circumvent the Kimberley Process Certification Scheme, including cutting rough diamonds for the purpose of circumventing the Kimberley Process Certification Scheme;

(3) identifying each country that, during the preceding 12-month period, exported rough diamonds to the United States and was exporting rough diamonds not controlled through the Kimberley Process Certification Scheme, if the failure to do so has significantly increased the likelihood that those diamonds not so controlled are being imported into the United States; and

(4) identifying any problems or obstacles encountered in the implementation of this chapter or the Kimberley Process Certification Scheme.

(b) Semiannual reports

For each country identified in subsection (a)(3), the President, during such period as this chapter is in effect, shall, every 6 months after the initial report in which the country was identified, transmit to the Congress a report that explains what actions have been taken by the United States or such country since the previous report to ensure that diamonds the exportation of which was not controlled through the Kimberley Process Certification Scheme are not being imported from that country into the United States. The requirement to issue a semiannual report with respect to a country under this subsection shall remain in effect until such time as the country is controlling the importation and exportation of rough diamonds through the Kimberley Process Certification Scheme.


DELEGATION OF FUNCTIONS

For assignment of functions of President under this section, see section 2 of Ex. Ord. No. 13112, July 29, 2003, 68 F.R. 45151, set out as a note under section 3901 of this title.

§3912. GAO report

Not later than 24 months after the effective date of this chapter, the Comptroller General of the United States shall transmit a report to the Congress on the effectiveness of the provisions of this chapter in preventing the importation or exportation of rough diamonds that is prohibited under section 3903 of this title. The Comptroller General shall include in the report any recommendations on any modifications to this chapter that may be necessary.


REFERENCES IN TEXT

For effective date of this chapter, see section 15 of Pub. L. 108–19, set out as an Effective Date note under section 3901 of this title.

§3913. Delegation of authorities

The President may delegate the duties and authorities under this chapter to such officers, officials, departments, or agencies of the United States Government as the President deems appropriate.


CHAPTER 26—DOMINICAN REPUBLIC-CENTRAL AMERICA FREE TRADE

Sec.
4001. Purposes.
4002. Definitions.

SUBCHAPTER I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

4011. Approval and entry into force of the Agreement.

*So in original. Probably should be “Kimberley”.*
SUBCHAPTER II—CUSTOMS PROVISIONS

4031. Tariff modifications.
4032. Additional duties on certain agricultural goods.
4033. Rules of origin.
4034. Retroactive application for certain liquidations and reliquidations of textile or apparel goods.
4035. Enforcement relating to trade in textile or apparel goods.
4036. Regulations.

SUBCHAPTER III—RELIEF FROM IMPORTS

4051. Definitions.

PART A—RELIEF FROM IMPORTS BENEFITTING FROM THE AGREEMENT

4061. Commencement of action for relief.
4062. Commission action on petition.
4063. Provision of relief.
4064. Termination of relief authority.
4065. Compensation authority.

PART B—TEXTILE AND APPAREL SAFEGUARD MEASURES

4081. Commencement of action for relief.
4082. Determination and provision of relief.
4083. Period of relief.
4084. Articles exempt from relief.
4085. Rate after termination of import relief.
4086. Termination of relief authority.
4087. Compensation authority.
4088. Confidential business information.

PART C—CASES UNDER TITLE II OF THE TRADE ACT OF 1974

4101. Findings and action on goods of CAFTA–DR countries.

SUBCHAPTER IV—MISCELLANEOUS

4111. Periodic reports and meetings on labor obligations and labor capacity-building provisions.
4112. Earned import allowance program.

TERMINATION OF CHAPTER

For termination of chapter by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note set out under section 4001 of this title.

§ 4001. Purposes

The purposes of this chapter are—

1. To approve and implement the Free Trade Agreement between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua entered into under the authority of section 3803(b) of this title;

2. To strengthen and develop economic relations between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua for their mutual benefit;

3. To establish free trade between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua through the reduction and elimination of barriers to trade in goods and services and to investment; and

4. To lay the foundation for further cooperation to expand and enhance the benefits of the Agreement.


TERMINATION OF SECTION

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 109–53, Aug. 2, 2005, 119 Stat. 462, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SCHEDULE AND TERMINATION DATES


"(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act [see Short Title note set out below] and the amendments made by this Act take effect on the date the Agreement [Dominican Republic-Central America-United States Free Trade Agreement] enters into force [Mar. 1, 2006]."

"(b) EXCEPTIONS.—Sections 1 through 3 and this title [enacting this section, section 4002 of this title, and provisions set out as a note below] take effect on the date of the enactment of this Act [Aug. 2, 2005]."

"(c) TERMINATION OF CAFTA–DR STATUS.—During any period in which a country ceases to be a CAFTA–DR country, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to have effect with respect to that country.

"(d) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement ceases to be in force with respect to the United States, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to have effect." [For definition of "CAFTA–DR country" as used in section 107(c) of Pub. L. 109–53, see set out above, see section 4002 of this title.]

SHORT TITLE

Pub. L. 109–53, § 1(a), Aug. 2, 2005, 119 Stat. 462, provided that: "This Act [enacting this chapter, amending sections 58c, 1508, 1514, 1530, 1592, 2252, 2518, 2702, and 2703 of this title, and enacting provisions set out as notes under this section and section 2702 of this title] may be cited as the 'Dominican Republic-Central America-United States Free Trade Agreement Implementation Act'."

§ 4002. Definitions

In this chapter:

(1) Agreement

The term "Agreement" means the Dominican Republic-Central America-United States Free Trade Agreement approved by the Congress under section 4011(a)(1) of this title.

(2) CAFTA–DR country

Except as provided in section 4033 of this title, the term "CAFTA–DR country" means—

(A) Costa Rica, for such time as the Agreement is in force between the United States and Costa Rica;

(B) the Dominican Republic, for such time as the Agreement is in force between the United States and the Dominican Republic;
(C) El Salvador, for such time as the Agreement is in force between the United States and El Salvador;
(D) Guatemala, for such time as the Agreement is in force between the United States and Guatemala;
(E) Honduras, for such time as the Agreement is in force between the United States and Honduras; and
(F) Nicaragua, for such time as the Agreement is in force between the United States and Nicaragua.

(3) Commission

The term “Commission” means the United States International Trade Commission.

(4) HTS

The term “HTS” means the Harmonized Tariff Schedule of the United States.

(5) Textile or apparel good

The term “textile or apparel good” means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 3511(d)(4) of this title, other than a good listed in Annex 3.29 of the Agreement.


TERMINATION OF SECTION

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 109–53, Aug. 2, 2005, 119 Stat. 462, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.


EFFECTIVE AND TERMINATION DATES

Section effective Aug. 2, 2005, and to cease to have effect on the date the Dominican Republic-Central America-United States Free Trade Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

SUBCHAPTER I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

§ 4011. Approval and entry into force of the Agreement

(a) Approval of Agreement and statement of administrative action

Pursuant to section 3805 of this title and section 2191 of this title, the Congress approves—

(1) the Dominican Republic-Central America-United States Free Trade Agreement entered into on August 5, 2004, with the Governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, and submitted to the Congress on June 23, 2005; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on June 23, 2005.

(b) Conditions for entry into force of the Agreement

At such time as the President determines that countries listed in subsection (a)(1) have taken measures necessary to comply with the provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to provide for the Agreement to enter into force with respect to those countries that provide for the Agreement to enter into force for them.


TERMINATION OF SECTION

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

EFFECTIVE AND TERMINATION DATES

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

§ 4012. Relationship of the Agreement to United States and State law

(a) Relationship of Agreement to United States law

(1) United States law to prevail in conflict

No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) Construction

Nothing in this chapter shall be construed—

(A) to amend or modify any law of the United States; or

(B) to limit any authority conferred under any law of the United States, unless specifically provided for in this chapter.

(b) Relationship of Agreement to State law

(1) Legal challenge

No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) Definition of State law

For purposes of this subsection, the term “State law” includes—

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

(B) any State law regulating or taxing the business of insurance.

(c) Effect of Agreement with respect to private remedies

No person other than the United States—
(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or
(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the Agreement.


**TERMINATION OF SECTION**

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (a)(2), was in the original “this Act”, meaning Pub. L. 109–53, Aug. 2, 2005, 119 Stat. 462, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

**EFFECTIVE AND TERMINATION DATES**

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

§4013. Implementing actions in anticipation of entry into force and initial regulations

(a) Implementing actions

(1) Proclamation authority

After August 2, 2005—

(A) the President may proclaim such actions, and
(B) other appropriate officers of the United States Government may issue such regulations,
as may be necessary to ensure that any provision of this chapter, or amendment made by this chapter, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date the Agreement enters into force.

(2) Effective date of certain proclaimed actions

Any action proclaimed by the President under the authority of this chapter that is not subject to the consultation and layover provisions under section 4014 of this title may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) Waiver of 15-day restriction

The 15-day restriction contained in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) Initial regulations

Initial regulations necessary or appropriate to carry out the actions required by or authorized under this chapter or proposed in the statement of administrative action submitted under section 4011(a)(2) of this title to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.


**TERMINATION OF SECTION**

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

**REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a)(1), (2) and (b), was in the original “this Act”, meaning Pub. L. 109–53, Aug. 2, 2005, 119 Stat. 462, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

**EFFECTIVE AND TERMINATION DATES**

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

§4014. Consultation and layover provisions for, and effective date of, proclaimed actions

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

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

(A) the appropriate advisory committees established under section 2155 of this title; and
(B) the Commission;

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

(A) the action proposed to be proclaimed and the reasons therefor; and
(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

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

§ 4015. Administration of dispute settlement proceedings

(a) Establishment or designation of office

The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5.

(b) Authorization of appropriations

There are authorized to be appropriated for each fiscal year after fiscal year 2005 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office established or designated under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.


Termination of section

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

§ 4016. Arbitration of claims

The United States is authorized to resolve any claim against the United States covered by article 10.16.1(a)(1)(C) or article 10.16.1(b)(1)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.


Termination of section

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

§ 4031. Tariff modifications

(a) Tariff modifications provided for in the Agreement

(1) Proclamation authority

The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or exception

treatment, or

(C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3, 3.27, and 3.28 of the Agreement.

(2) Effect on GSP status

Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall terminate the designation of each CAFTA–DR country as a beneficiary developing country for purposes of title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.) on the date the Agreement enters into force with respect to that country.

(3) Effect on CBERA status

(A) In general

Notwithstanding section 212(a) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)), the President shall terminate the designation of each CAFTA–DR country as a beneficiary country for purposes of that
Act [19 U.S.C. 2701 et seq.] on the date the Agreement enters into force with respect to that country.

(B) Exception

Notwithstanding subparagraph (A), each such country shall be considered a beneficiary country under section 212(a) of the Caribbean Basin Economic Recovery Act [19 U.S.C. 2702(a)], for purposes of—

(i) sections 1677(7)(G)(ii)(III) and 1677(7)(H) of this title;

(ii) the duty-free treatment provided under paragraph 12 of Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement; and

(iii) section 274(h)(6)(B) of title 26.

(b) Other tariff modifications

Subject to the consultation and layover provisions of section 4014 of this title, the President may proclaim—

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with a CAFTA-DR country regarding the staging of any duty treatment set forth in Annex 3.3 of the Agreement,

(3) such continuation of duty-free or excise treatment, or

(4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions provided for by the Agreement.

(c) Conversion to ad valorem rates

For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 3.3 of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.


TERMINATION OF SECTION

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

REFERENCES IN TEXT


Effective and Termination Dates

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

§ 4032. Additional duties on certain agricultural goods

(a) General provisions

(1) Applicability of subsection

This subsection applies to additional duties assessed under subsection (b).

(2) Applicable NTR (MFN) rate of duty

For purposes of subsection (b), the term “applicable NTR (MFN) rate of duty” means, with respect to a safeguard good, a rate of duty that is the lesser of—

(A) the column I general rate of duty that would, at the time the additional duty is imposed under subsection (b), apply to a good classifiable in the same 8-digit subheading of the HTS as the safeguard good; or

(B) the column I general rate of duty that would, on the day before the date on which the Agreement enters into force, apply to a good classifiable in the same 8-digit subheading of the HTS as the safeguard good.

(3) Schedule rate of duty

For purposes of subsection (b), the term “schedule rate of duty” means, with respect to a safeguard good, the rate of duty that is set out in the Schedule of the United States to Annex 3.3 of the Agreement.

(4) Safeguard good

In this section, the term “safeguard good” means a good—

(A) that is included in the Schedule of the United States to Annex 3.15 of the Agreement;

(B) that qualifies as an originating good under section 1033 of this title, except that operations performed in or material obtained from the United States shall be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement;

and

(C) for which a claim for preferential tariff treatment under the Agreement has been made.

(5) Exceptions

No additional duty shall be assessed on a good under subsection (b) if, at the time of entry, the good is subject to import relief under—

(A) part A of subchapter III of this chapter; or

(b) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(6) Termination

The assessment of an additional duty on a good under subsection (b) shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 3.3 of the Agreement.

(7) Notice

Not later than 60 days after the Secretary of the Treasury first assesses an additional duty
in a calendar year on a good under subsection (b), the Secretary shall notify the country whose good is subject to the additional duty in writing of such action and shall provide to that country data supporting the assessment of the additional duty.

(b) Additional duties on safeguard goods

(1) In general

In addition to any duty proclaimed under subsection (a) or (b) of section 4031 of this title, and subject to subsection (a), the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (2), on a safeguard good of a CAFTA–DR country imported into the United States in a calendar year if the Secretary determines that, prior to such importation, the total volume of that safeguard good of such country that is imported into the United States in that calendar year exceeds 130 percent of the volume that is set out for that safeguard good in the corresponding year in the table for that country contained in Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement. For purposes of this subsection, year 1 in that table corresponds to the year 1 in the data set out for that safeguard good in the corresponding year in the table for that country.

(2) Calculation of additional duty

The additional duty on a safeguard good under this subsection shall be—

(A) in the case of a good classified under subheading 1202.10.80, 1202.20.80, 2008.11.15, 2008.11.35, or 2008.11.60 of the HTS—

(i) in years 1 through 5, an amount equal to 100 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty;

(ii) in years 6 through 10, an amount equal to 75 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(iii) in years 11 through 14, an amount equal to 50 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(B) in the case of any other safeguard good—

(i) in years 1 through 14, an amount equal to 100 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(ii) in years 15 through 17, an amount equal to 75 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(iii) in years 18 and 19, an amount equal to 50 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.

(2) Reference to HTS

Whenever in this section there is a reference to a chapter, heading, or subheading, such reference shall be a reference to a chapter, heading, or subheading of the HTS.

(3) Cost or value

Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether the United States or another CAFTA–DR country).

(b) Originating goods

For purposes of this chapter and for purposes of implementing the preferential tariff treatment provided for under the Agreement, except as otherwise provided in this section, a good is an originating good if—

(1) the good is a good wholly obtained or produced entirely in the territory of one or more of the CAFTA–DR countries;

(2) the good—

(A) is produced entirely in the territory of one or more of the CAFTA–DR countries, and—

(i) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1 of the Agreement;

(ii) the good otherwise satisfies any applicable regional value-content or other requirements specified in Annex 4.1 of the Agreement; and

(B) satisfies all other applicable requirements of this section; or

(3) the good is produced entirely in the territory of one or more of the CAFTA–DR coun-
tries, exclusively from materials described in paragraph (1) or (2).

(c) Regional value-content

(1) In general
For purposes of subsection (b)(2), the regional value-content of a good referred to in Annex 4.1 of the Agreement, except for goods to which paragraph (4) applies, shall be calculated by the importer, exporter, or producer of the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3).

(2) Build-down method

(A) In general
The regional value-content of a good may be calculated on the basis of the following build-down method:

\[ RVC = \frac{AV - VNM}{AV} \times 100 \]

(B) Definitions
In subparagraph (A):

(i) RVC
The term “RVC” means the regional value-content of the good, expressed as a percentage.

(ii) AV
The term “AV” means the adjusted value of the good.

(iii) VNM
The term “VNM” means the value of nonoriginating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(3) Build-up method

(A) In general
The regional value-content of a good may be calculated on the basis of the following build-up method:

\[ RVC = \frac{VOM}{AV} \times 100 \]

(B) Definitions
In subparagraph (A):

(i) RVC
The term “RVC” means the regional value-content of the good, expressed as a percentage.

(ii) AV
The term “AV” means the adjusted value of the good.

(iii) VOM
The term “VOM” means the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

(4) Special rule for certain automotive goods

(A) In general
For purposes of subsection (b)(2), the regional value-content of an automotive good referred to in Annex 4.1 of the Agreement may be calculated by the importer, exporter, or producer of the good, on the basis of the following net cost method:

\[ RVC = \frac{NC - VNM}{NC} \times 100 \]

(B) Definitions
In subparagraph (A):

(i) Automotive good
The term “automotive good” means a good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or in any of headings 8701 through 8708.

(ii) RVC
The term “RVC” means the regional value-content of the automotive good, expressed as a percentage.

(iii) NC
The term “NC” means the net cost of the automotive good.

(iv) VNM
The term “VNM” means the value of nonoriginating materials that are acquired and used by the producer in the production of the automotive good, but does not include the value of a material that is self-produced.

(C) Motor vehicles

(i) Basis of calculation
For purposes of determining the regional value-content under subparagraph (A) for an automotive good provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula contained in subparagraph (A), over the producer’s fiscal year—

(I) with respect to all motor vehicles in any 1 of the categories described in clause (ii); or

(II) with respect to all motor vehicles in any such category that are exported to the territory of one or more of the CAFTA–DR countries.

(ii) Categories
A category is described in this clause if it—

(I) is the same model line of motor vehicles, is in the same class of vehicles, and is produced in the same plant in the territory of a CAFTA–DR country, as the good described in clause (i) for which regional value-content is being calculated;

(II) is the same class of motor vehicles, and is produced in the same plant in the territory of a CAFTA–DR country, as the good described in clause (i) for which regional value-content is being calculated; or

(III) is the same model line of motor vehicles produced in the territory of a CAFTA–DR country as the good described in clause (i) for which regional value-content is being calculated.
(D) Other automotive goods

For purposes of determining the regional value-content under subparagraph (A) for automotive goods provided for in any of subheadings 8407.31 through 8407.34, in subheading 8408.20, or in heading 8409, 8706, 8707, or 8708, that are produced in the same plant, an importer, exporter, or producer may—

(i) average the amounts calculated under the formula contained in subparagraph (A) over—

(I) the fiscal year of the motor vehicle producer to whom the automotive goods are sold,

(II) any quarter or month, or

(III) its own fiscal year,

if the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(ii) determine the average referred to in clause (i) separately for such goods sold to 1 or more motor vehicle producers; or

(iii) make a separate determination under clause (i) or (ii) for automotive goods that are exported to the territory of one or more of the CAFTA–DR countries.

(E) Calculating net cost

The importer, exporter, or producer shall, consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, determine the net cost of an automotive good under subparagraph (B) by—

(i) calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the automotive good so that the aggregate of all such costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(d) Value of materials

(1) In general

For the purpose of calculating the regional value-content of a good under subsection (c), and for purposes of applying the de minimis rules under subsection (f), the value of a material is—

(A) in the case of a material that is imported by the producer of the good, the adjusted value of the material;

(B) in the case of a material acquired in the territory in which the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 3511(d)(8) of this title, as set forth in regulations promulgated by the Secretary of the Treasury providing for the application of such Articles in the absence of an importation; or

(C) in the case of a material that is self-produced, the sum of—

(i) all expenses incurred in the production of the material, including general expenses; and

(ii) an amount for profit equivalent to the profit added in the normal course of trade.

(2) Further adjustments to the value of materials

(A) Originating material

The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the CAFTA–DR countries to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the CAFTA–DR countries, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(B) Nonoriginating material

The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the CAFTA–DR countries to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the CAFTA–DR countries, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.
(e) **Accumulation**

(1) **Originating materials used in production of goods of another country**

Originating materials from the territory of one or more of the CAFTA–DR countries that are used in the production of a good in the territory of another CAFTA–DR country shall be considered to originate in the territory of that other country.

(2) **Multiple procedures**

A good that is produced in the territory of one or more of the CAFTA–DR countries by 1 or more producers is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(f) **De minimis amounts of nonoriginating materials**

(1) **In general**

Except as provided in paragraphs (2) and (3), a good that does not undergo a change in tariff classification pursuant to Annex 4.1 of the Agreement is an originating good if—

(A) the value of all nonoriginating materials that—

(i) are used in the production of the good, and

(ii) do not undergo the applicable change in tariff classification (set out in Annex 4.1 of the Agreement),

does not exceed 10 percent of the adjusted value of the good;

(B) the good meets all other applicable requirements of this section; and

(C) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement for the good.

(2) **Exceptions**

Paragraph (1) does not apply to the following:

(A) A nonoriginating material provided for in chapter 4, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, that is used in the production of a good provided for in chapter 4.

(B) A nonoriginating material provided for in chapter 4, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, that is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10.

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20.

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90.

(iv) Goods provided for in heading 2105.

(v) Beverages containing milk provided for in subheading 2202.90.

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90.

(C) A nonoriginating material provided for in heading 0805, or any of subheadings 2009.11 through 2009.39, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90.

(D) A nonoriginating material provided for in heading 0901 or 2101 that is used in the production of a good provided for in heading 0901 or 2101.

(E) A nonoriginating material provided for in heading 1006 that is used in the production of a good provided for in heading 1102 or 1103 or subheading 1904.90.

(F) A nonoriginating material provided for in chapter 15 that is used in the production of a good provided for in chapter 15.

(G) A nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703.

(H) A nonoriginating material provided for in chapter 17 that is used in the production of a good provided for in subheading 1806.10.

(I) Except as provided in subparagraphs (A) through (H) and Annex 4.1 of the Agreement, a nonoriginating material used in the production of a good provided for in any of chapters 1 through 24, unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(3) **Textile or apparel goods**

(A) **In general**

Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification, set out in Annex 4.1 of the Agreement, shall be considered to be an originating good if—

(i) the total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) the yarns are those described in section 3203(b)(3)(B)(vi)(IV) of this title (as in effect on August 2, 2005).

(B) **Certain textile or apparel goods**

A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a CAFTA–DR country.

(C) **Yarn, fabric, or fiber**

For purposes of this paragraph, in the case of a good that is a yarn, fabric, or fiber, the term “component of the good that determines the tariff classification of the good” means all of the fibers in the good.
§ 4033  TITLE 19—CUSTOMS DUTIES

(g) Fungible goods and materials

(1) In general

(A) Claim for preferential tariff treatment

A person claiming that a fungible good or fungible material is an originating good may base the claim either on the physical segregation of the fungible good or fungible material or by using an inventory management method with respect to the fungible good or fungible material.

(B) Inventory management method

In this subsection, the term “inventory management method” means—

(i) averaging;
(ii) “last-in, first-out”;
(iii) “first-in, first-out”; or
(iv) any other method—

(I) recognized in the generally accepted accounting principles of the CAFTA–DR country in which the production is performed; or

(II) otherwise accepted by that country.

(2) Election of inventory method

A person selecting an inventory management method under paragraph (1) for a particular fungible good or fungible material shall continue to use that method for that fungible good or fungible material throughout the fiscal year of that person.

(h) Accessories, spare parts, or tools

(1) In general

Subject to paragraphs (2) and (3), accessories, spare parts, or tools delivered with a good that form part of the good’s standard accessories, spare parts, or tools shall—

(A) be treated as originating goods if the good is an originating good; and

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 of the Agreement.

(2) Conditions

Paragraph (1) shall apply only if—

(A) the accessories, spare parts, or tools are classified with and not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice for the good; and

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good.

(3) Regional value-content

If the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(i) Packaging materials and containers for retail sale

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 of the Agreement, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(j) Packing materials and containers for shipment

Packaging materials and containers for shipment shall be disregarded in determining whether a good is an originating good.

(k) Indirect materials

An indirect material shall be treated as an originating material without regard to where it is produced.

(l) Transit and transhipment

A good that has undergone production necessary to qualify as an originating good under subsection (b) shall not be considered to be an originating good if, subsequent to that production, the good—

(1) undergoes further production or any other operation outside the territories of the CAFTA–DR countries, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a CAFTA–DR country; or

(2) does not remain under the control of customs authorities in the territory of a country other than a CAFTA–DR country.

(m) Goods classifiable as goods put up in sets

Notwithstanding the rules set forth in Annex 4.1 of the Agreement, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless—

(1) each of the goods in the set is an originating good; or

(2) the total value of the nonoriginating goods in the set does not exceed—

(A) in the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(B) in the case of a good, other than a textile or apparel good, 15 percent of the adjusted value of the set.

(n) Definitions

In this section:

(1) Adjusted value

The term “adjusted value” means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 3511(d)(8) of this title, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation.

(2) CAFTA–DR country

The term “CAFTA–DR country” means—
(A) the United States; and
(B) Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, or Nicaragua, for such time as the Agreement is in force between the United States and that country.

(3) Class of motor vehicles

The term “class of motor vehicle” means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90.

(B) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90.

(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, or motor vehicles provided for in subheading 8704.21 or 8704.31.

(D) Motor vehicles provided for in any of subheadings 8703.21 through 8703.90.

(4) Fungible good or fungible material

The term “fungible good” or “fungible material” means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material.

(5) Generally accepted accounting principles

The term “generally accepted accounting principles” means the recognized consensus or substantial authoritative support in the territory of a CAFTA–DR country with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. The principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

(6) Goods wholly obtained or produced entirely in the territory of one or more of the CAFTA–DR countries

The term “goods wholly obtained or produced entirely in the territory of one or more of the CAFTA–DR countries” means—

(A) plants and plant products harvested or gathered in the territory of one or more of the CAFTA–DR countries;

(B) live animals born and raised in the territory of one or more of the CAFTA–DR countries;

(C) goods obtained in the territory of one or more of the CAFTA–DR countries;

(D) goods obtained from hunting, trapping, fishing or aquaculture conducted in the territory of one or more of the CAFTA–DR countries;

(E) minerals and other natural resources not included in subparagraphs (A) through (D) that are extracted or taken in the territory of one or more of the CAFTA–DR countries;

(F) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside territorial waters, if a CAFTA–DR country has rights to exploit such seabed or subsoil;

(G) goods obtained from outer space, if the goods are obtained by a CAFTA–DR country and not processed in the territory of a country other than a CAFTA–DR country;

(H) goods taken by a CAFTA–DR country or a person of a CAFTA–DR country from the seabed or subsoil outside territorial waters, if a CAFTA–DR country has rights to exploit such seabed or subsoil;

(I) goods taken from outer space, if the goods are obtained by a CAFTA–DR country or a person of a CAFTA–DR country and not processed in the territory of a country other than a CAFTA–DR country;

(J) waste and scrap derived from—

(i) manufacturing or processing operations in the territory of one or more of the CAFTA–DR countries; or

(ii) used goods collected in the territory of one or more of the CAFTA–DR countries, if such goods are fit only for the recovery of raw materials;

(K) recovered goods derived in the territory of one or more of the CAFTA–DR countries from used goods, and used in the territory of a CAFTA–DR country in the production of remanufactured goods; and

(L) goods produced in the territory of one or more of the CAFTA–DR countries exclusively from—

(i) goods referred to in any of subparagraphs (A) through (J), or

(ii) the derivatives of goods referred to in clause (i), at any stage of production.

(7) Identical goods

The term “identical goods” means identical goods as defined in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 3511(d)(8) of this title.

(8) Indirect material

The term “indirect material” means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment or buildings;

(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in-
the production of the good can reasonably be demonstrated to be a part of that production.

(9) Material
The term “material” means a good that is used in the production of another good, including a part or an ingredient.

(10) Material that is self-produced
The term “material that is self-produced” means an originating material that is produced by a producer of a good and used in the production of that good.

(11) Model line
The term “model line” means a group of motor vehicles having the same platform or model name.

(12) Net cost
The term “net cost” means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost.

(13) Nonallowable interest costs
The term “nonallowable interest costs” means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the CAFTA–DR country in which the producer is located.

(14) Nonoriginating good or nonoriginating material
The terms “nonoriginating good” and “nonoriginating material” mean a good or material, as the case may be, that does not qualify as originating under this section.

(15) Packing materials and containers for shipment
The term “packing materials and containers for shipment” means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale.

(16) Preferential tariff treatment
The term “preferential tariff treatment” means the customs duty rate, and the treatment granted under article 3.19.4 of the Agreement, that are applicable to an originating good pursuant to the Agreement.

(17) Producer
The term “producer” means a person who engages in the production of a good in the territory of a CAFTA–DR country.

(18) Production
The term “production” means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

(19) Reasonably allocate
The term “reasonably allocate” means to apportion in a manner that would be appropriate under generally accepted accounting principles.

(20) Recovered goods
The term “recovered goods” means materials in the form of individual parts that are the result of—

(A) the disassembly of used goods into individual parts; and
(B) the cleaning, inspecting, testing, or other processing that is necessary for improvement to sound working condition of such individual parts.

(21) Remanufactured good
The term “remanufactured good” means a good that is classified under chapter 84, 85, or 87, or heading 9026, 9031, or 9032, other than a good classified under heading 8418 or 8516, and that—

(A) is entirely or partially comprised of recovered goods; and
(B) has a similar life expectancy and enjoys a factory warranty similar to such a new good.

(22) Total cost
The term “total cost” means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the CAFTA–DR countries.

(23) Used
The term “used” means used or consumed in the production of goods.

(o) Presidential proclamation authority

(1) In general
The President is authorized to proclaim, as part of the HTS—

(A) the provisions set out in Annex 4.1 of the Agreement; and
(B) any additional subordinate category necessary to carry out this subchapter consistent with the Agreement.

(2) Fabrics and yarns not available in commercial quantities in the United States
The President is authorized to proclaim that a fabric or yarn is added to the list in Annex 3.25 of the Agreement in an unrestricted quantity, as provided in article 3.25.3(e) of the Agreement.

(3) Modifications

(A) In general
Subject to the consultation and layover provisions of section 4014 of this title, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63, as included in Annex 4.1 of the Agreement.

(B) Additional proclamations
Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of section 4014 of this title, the President may proclaim before the end of the 1-year period beginning on August 2, 2005, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63, as included in Annex 4.1 of the Agreement.

(4) Fabrics, yarns, or fibers not available in commercial quantities in the CAFTA–DR countries

(A) In general
Notwithstanding paragraph 3(A), the list of fabrics, yarns, and fibers set out in Annex
3.25 of the Agreement may be modified as provided for in this paragraph.

(B) Definitions

In this paragraph:

(i) The term “interested entity” means the government of a CAFTA–DR country other than the United States, a potential or actual purchaser of a textile or apparel good, or a potential or actual supplier of a textile or apparel good.

(ii) All references to “day” and “days” exclude Saturdays, Sundays, and legal holidays.

(C) Requests to add fabrics, yarns, or fibers

(i) An interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA–DR countries and to add that fabric, yarn, or fiber to the list in Annex 3.25 of the Agreement in a restricted or unrestricted quantity.

(ii) After receiving a request under clause (i), the President may determine whether—

(I) the fabric, yarn, or fiber is available in commercial quantities in a timely manner in the CAFTA–DR countries; or

(II) any interested entity objects to the request.

(iii) The President may, within the time periods specified in clause (iv), proclaim that a fabric, yarn, or fiber that is the subject of a request submitted under clause (i) is added to the list in Annex 3.25 of the Agreement in an unrestricted quantity, or in any restricted quantity that the President determines under clause (ii) that—

(I) the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA–DR countries; or

(II) no interested entity has objected to the request.

(iv) The time periods within which the President may issue a proclamation under clause (iii) are—

(I) not later than 30 days after the date on which the request is submitted under clause (i); or

(II) not later than 44 days after the request is submitted, if the President determines, within 30 days after the date on which the request is submitted, that the President does not have sufficient information to make a determination under clause (ii).

(v) Notwithstanding section 4013(a)(2) of this title, a proclamation made under clause (iii) shall take effect on the date on which the text of the proclamation is published in the Federal Register.

(vi) Not later than 6 months after proclaiming under clause (iii) that a fabric, yarn, or fiber is added to the list in Annex 3.25 of the Agreement in a restricted quantity, the President may eliminate the restriction if the President determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA–DR countries.

(D) Deemed approval of request

If, after an interested entity submits a request under subparagraph (C)(i), the President does not, within the applicable time period specified in subparagraph (C)(iv), make a determination under subparagraph (C)(ii) regarding the request, the fabric, yarn, or fiber that is the subject of the request shall be considered to be added, in an unrestricted quantity, to the list in Annex 3.25 of the Agreement beginning—

(i) 45 days after the date on which the request was submitted; or

(ii) 60 days after the date on which the request was submitted, if the President made a determination under subparagraph (C)(iv)(II).

(E) Requests to restrict or remove fabrics, yarns, or fibers

(i) Subject to clause (ii), an interested entity may request the President to restrict the quantity of, or remove from the list in Annex 3.25 of the Agreement, any fabric, yarn, or fiber—

(I) that has been added to that list in an unrestricted quantity pursuant to paragraph (2) or subparagraph (C)(iii) or (D); or

(II) with respect to which the President has eliminated a restriction under subparagraph (C)(vi).

(ii) An interested entity may submit a request under clause (i) at any time beginning 6 months after the date of the action described in subclause (I) or (II) of that clause.

(iii) Not later than 30 days after the date on which a request under clause (i) is submitted, the President may proclaim an action provided for under clause (i) if the President determines that the fabric, yarn, or fiber that is the subject of the request is available in commercial quantities in a timely manner in the CAFTA–DR countries.

(iv) A proclamation declared under clause (iii) shall take effect no earlier than the date that is 6 months after the date on which the text of the proclamation is published in the Federal Register.

(F) Procedures

The President shall establish procedures—

(i) governing the submission of a request under subparagraphs (C) and (E); and

(ii) providing an opportunity for interested entities to submit comments and supporting evidence before the President makes a determination under subparagraph (C)(ii) or (vi) or (E)(iii).


TERM IN TEXT

This chapter, referred to in subsec. (b), was in the original “‘this Act’, meaning Pub. L. 109–53, Aug. 2, 2005.
after adding the fabric, yarn, or fiber to the list in Annex 3.25 of the Agreement in a restricted quantity; to restrict the quantity of, or remove from the list in Annex 3.25 of the Agreement, certain fabrics, yarns, or fibers; and to establish procedures governing the submission of a request for any such determination and to ensure appropriate public participation in any such determination.

§ 4034. Retroactive application for certain liquidations and reliquidations of textile or apparel goods

(a) In general

Notwithstanding section 1514 of this title or any other provision of law, and subject to subsection (c), an entry—

(1) of a textile or apparel good—

(A) of a CAFTA–DR country that the United States Trade Representative has designated as an eligible country under subsection (b), and

(B) that would have qualified as an originating good under section 4033 of this title if the good had been entered after the date of entry into force of the Agreement for that country,

(2) that was made on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to that country or any other CAFTA–DR country, and

(3) for which customs duties in excess of the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement were paid,

shall be liquidated or reliquidated at the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement, and the Secretary of the Treasury shall refund any excess customs duties paid with respect to such entry.

(b) Eligible country

The United States Trade Representative shall determine, in accordance with article 3.20 of the Agreement, which CAFTA–DR countries are eligible countries for purposes of this section, and shall publish a list of all such countries in the Federal Register.

(c) Requests

Liquidation or reliquidation may be made under subsection (a) with respect to an entry of a textile or apparel good only if a request therefor is filed with the Bureau of Customs and Border Protection, within such period as the Bureau of Customs and Border Protection shall establish by regulation in consultation with the Secretary of the Treasury, that contains sufficient information to enable the Bureau of Customs and Border Protection—

(1)(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located; and

(2) to determine that the good satisfies the conditions set out in subsection (a).

(d) Definition

As used in this section, the term “entry” includes a withdrawal from warehouse for consumption.

§ 4035. Enforcement relating to trade in textile or apparel goods

(a) Action during verification

(1) In general

If the Secretary of the Treasury requests the government of a CAFTA–DR country to conduct a verification pursuant to article 3.24 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(2) Determination

A determination under this paragraph is a determination—

(A) that an exporter or producer in that country is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, or

(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 1033 of this title, or

(ii) is a good of a CAFTA–DR country,

is accurate.

(b) Appropriate action described

Appropriate action under subsection (a)(1) includes—

(1) suspension of preferential tariff treatment under the Agreement with respect to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), if the Secretary determines there is insufficient information to determine the country of origin of any such good; and

(B) the textile or apparel good for which a claim of preferential tariff treatment has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B), if the Secretary determines there is insufficient information to support that claim;

(2) denial of preferential tariff treatment under the Agreement with respect to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), if the Secretary determines that the person has provided incorrect information to support any claim for preferential tariff treatment that has been made with respect to any such good; or

(B) the textile or apparel good for which a claim of preferential tariff treatment has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B), if the Secretary determines there is insufficient

(c) Action on completion of a verification

On completion of a verification under subsection (a), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make the determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) Appropriate action described

Appropriate action under subsection (c) includes—

(1) denial of preferential tariff treatment under the Agreement with respect to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), if the Secretary determines there is insufficient information to support, any claim for preferential tariff treatment that has been made with respect to any such good; or

(B) the textile or apparel good for which a claim of preferential tariff treatment has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B), if the Secretary determines there is insufficient
information to support, or that a person has provided incorrect information to support, that claim; and

(2) denial of entry into the United States of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A) or a claim described in subsection (a)(2)(B), if the Secretary determines there is insufficient information to determine, or that the person has provided incorrect information as to, the country of origin of any such good.

(e) Publication of name of person
The Secretary may publish the name of any person that the Secretary has determined—

(1) is engaged in intentional circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or

(2) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.


§ 4036. Regulations

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (n) of section 4033 of this title;

(2) the amendment made by section 204; and

(3) any proclamation issued under section 4033(o) of this title.


SUBCHAPTER III—RELIEF FROM IMPORTS

§ 4051. Definitions

In this subchapter:

(1) CAFTA–DR article

The term “CAFTA–DR article” means an article that qualifies as an originating good under section 4033(b) of this title.

(2) CAFTA–DR textile or apparel article

The term “CAFTA–DR textile or apparel article” means a textile or apparel good (as defined in section 4002(5) of this title) that is a CAFTA–DR article.

(3) De minimis supplying country

(A) Subject to subparagraph (B), the term “de minimis supplying country” means a CAFTA–DR country whose share of imports of the relevant CAFTA–DR article into the United States does not exceed 3 percent of the aggregate volume of imports of the relevant CAFTA–DR article in the most recent 12-month period for which data are available that precedes the filing of the petition under section 4061(a) of this title.

(B) A CAFTA–DR country shall not be considered to be a de minimis supplying country if the aggregate share of imports of the relevant CAFTA–DR article into the United States of all CAFTA–DR countries that satisfy the conditions of subparagraph (A) exceeds 9 percent of the aggregate volume of imports of the relevant CAFTA–DR article during the applicable 12-month period.

(4) Relevant CAFTA–DR article

The term “relevant CAFTA–DR article” means the CAFTA–DR article with respect to which a petition has been filed under section 4061(a) of this title.


REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title” meaning title III of Pub. L. 109–53, Aug. 2, 2005, 119 Stat. 488, which enacted this subchapter and amended section 2252 of this title. For complete classification of title III to the Code, see Tables.

Effective and Termination Dates

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

Effective and Termination Dates

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.
any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

PART A—RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

§ 4061. Commencing of action for relief

(a) Filing of petition

A petition requesting action under this part for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(b) Investigation and determination

Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a CAFTA–DR article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the CAFTA–DR article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) Applicable provisions

The following provisions of section 2252 of this title apply with respect to any investigation initiated under subsection (b):

(1) Paragraphs (1)(B) and (3) of subsection (b),

(2) Subsection (c),

(3) Subsection (i).

(d) Articles exempt from investigation

No investigation may be initiated under this section with respect to any CAFTA–DR article if, after the date that the Agreement enters into force, import relief has been provided with respect to that CAFTA–DR article under this part.


Termination of Section

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

References in Text

This part, referred to in subssecs. (a) and (d), was in the original “this subtitle”, meaning subtitle A (§§ 311–316) of title III of Pub. L. 109–53, Aug. 2, 2005, 119 Stat. 488, which enacted this part and amended section 2252 of this title. For complete classification of subtitle A to the Code, see Tables.

Effective and Termination Dates

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

§ 4062. Commission action on petition

(a) Determination

Not later than 120 days after the date on which an investigation is initiated under section 4061(b) of this title with respect to a petition, the Commission shall make the determination required under that section. At that time, the Commission shall also determine whether any CAFTA–DR country is a de minimis supplying country.

(b) Applicable provisions

For purposes of this part, the provisions of paragraphs (1), (2), and (3) of section 1330(d) of this title shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 2252 of this title.

(c) Additional finding and recommendation if determination affirmative

If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 1330(d) of this title, the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to the relief described in section 4063(c) of this title. Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) Report to President

Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).
(e) Public notice

Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.


TERMINATION OF SECTION

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

REFERENCES IN TEXT


EFFECTIVE AND TERMINATION DATES

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

§ 4063. Provision of relief

(a) In general

Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 4062(a) of this title is affirmative, or which contains a determination under section 4062(a) of this title that the President considers to be affirmative under paragraph (1) of section 1330(d) of this title, the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate adjustment by the domestic industry to make a positive adjustment to import competition.

(b) Exception

The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) Nature of relief

(1) In general

The import relief that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex 3.3 of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) Progressive liberalization

If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 8.2.3 of the Agreement) of such relief at regular intervals during the period of its application.

(d) Period of relief

(1) In general

Subject to paragraph (2), any import relief that the President is authorized to provide under this section may not, in the aggregate, be in effect for more than 4 years.

(2) Extension

(A) In general

If the initial period for any import relief provided under this section is less than 4 years, the President, after receiving a determination from the Commission under subparagraph (B) that is affirmative, or which the President considers to be affirmative under paragraph (1) of section 1330(d) of this title, may extend the effective period of any import relief provided under this section, subject to the limitation under paragraph (1), if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) Action by Commission

(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date on which any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under
(e) Rate after termination of import relief

When import relief under this section is terminated with respect to an article—
(1) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States to Annex 3.3 of the Agreement would have been in effect 1 year after the provision of relief under subsection (a); and
(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—
(A) the applicable rate of duty for that article set out in the Schedule of the United States to Annex 3.3 of the Agreement; or
(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 3.3 of the Agreement for the elimination of the tariff.

(f) Articles exempt from relief

No import relief may be provided under this section on—
(1) any article subject to import relief under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.); or
(2) imports of a CAFTA–DR article of a CAFTA–DR country that is a de minimis supplying country with respect to that article.

(b) Exception

If an article for which relief is provided under this part is an article for which the period for tariff elimination, set out in the Schedule of the United States to Annex 3.3 of the Agreement, is greater than 10 years, no relief under this part may be provided for that article after the date on which that period ends.


TERM EXTENSION OF SECTION

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle A (§§ 311–316) of title III of Pub. L. 109–53, Aug. 2, 2005, 119 Stat. 488, which enacted this part and amended section 2252 of this title.

For complete classification of subtitle A to the Code, see Tables.

EFFECTIVE AND TERMINATION DATES

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

§ 4065. Compensation authority

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 4063 of this title shall be treated as action taken under chapter 1 of title II of such Act (19 U.S.C. 2251 et seq.).


TERM EXTENSION OF SECTION

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

REFERENCES IN TEXT


EFFECTIVE AND TERMINATION DATES

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

§ 4064. Termination of relief authority

(a) General rule

Subject to subsection (b), no import relief may be provided under this part after the date that is 10 years after the date on which the Agreement enters into force.

(b) Exception

If an article for which relief is provided under this part is an article for which the period for
President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) Publication of request

If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.


**TERMINATION OF SECTION**

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

**Effective and Termination Dates**

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

PROC. NO. 7987. TO IMPLEMENT THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT

Proc. No. 7987, Feb. 28, 2006, 71 F.R. 10829, provided in par. (b) that the Committee for the Implementation of Textile Agreements is authorized to exercise the President’s authority under sections 4061 to 4068 of this title to review requests and to determine whether to commence consideration of such requests; to cause to be published in the Federal Register a notice of commencement of consideration of a request and notice seeking public comment; and to determine whether imports of a textile or apparel article of an Agreement country are causing serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

§ 4082. Determination and provision of relief

(a) Determination

(1) In general

If a positive determination is made under section 4081(b) of this title, the President shall determine whether, as a result of the elimination of a duty under the Agreement, a CAFTA–DR textile or apparel article of a specified CAFTA–DR country is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) Serious damage

In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(3) Deadline for determination

The President shall make the determination under paragraph (1) no later than 30 days after the completion of any consultations held pursuant to article 3.23.4 of the Agreement.

(b) Provision of relief

(1) In general

If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as provided in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry.

(2) Nature of relief

The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.


**TERMINATION OF SECTION**

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

**Effective and Termination Dates**

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force.

§ 4083. Period of relief

(a) In general

Subject to subsection (b), any import relief that the President provides under subsection (b) of section 4082 of this title may not, in the aggregate, be in effect for more than 3 years.

(b) Extension

If the initial period for any import relief provided under section 4082 of this title is less than
3 years, the President may extend the effective period of any import relief provided under that section, subject to the limitation set forth in subsection (a), if the President determines that—

(1) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(2) there is evidence that the industry is making a positive adjustment to import competition.


§ 4084. Articles exempt from relief

The President may not provide import relief under this part with respect to any article if—

(1) import relief previously has been provided under this part with respect to that article; or

(2) the article is subject to import relief under—

(A) part A; or

(B) chapter 1 of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.].


§ 4085. Rate after termination of import relief

When import relief under this part is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief.


TERMINATION OF SECTION

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

EFFECTIVE AND TERMINATION DATES

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

§ 4086. Termination of relief authority

No import relief may be provided under this part with respect to any article after the date that is 5 years after the date on which the Agreement enters into force.


TERMINATION OF SECTION

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

EFFECTIVE AND TERMINATION DATES

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as a note under section 4001 of this title.

§ 4087. Compensation authority

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this part shall be treated as action taken under chapter 1 of title II of that Act [19 U.S.C. 2251 et seq.].


TERMINATION OF SECTION

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

EFFECTIVE AND TERMINATION DATES

Section effective on the date the Dominican Republic-Central America-United States Free Trade Agree-
§ 4088. Confidential business information

The President may not release information received in connection with a review under this part which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information, it shall also provide a nonconfidential version of the information in which the confidential business information is summarized or, if necessary, deleted.


Termination of Section

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

Effective and Termination Dates

Section effective on the date the Dominican Republic–Central America–United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country.


§ 4101. Findings and action on goods of CAFTA–DR countries

(a) Effect of imports

If, in any investigation initiated under chapter I of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 1330(d) of this title), the Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether imports of the article of each CAFTA–DR country that qualify as originating goods under section 4033(b) of this title are a substantial cause of serious injury or threat thereof.

(b) Presidential determination regarding imports of CAFTA–DR countries

In determining the nature and extent of action to be taken under chapter I of title II of the Trade Act of 1974 [19 U.S.C. 2251 et seq.], the President may exclude from the action goods of a CAFTA–DR country with respect to which the Commission has made a negative finding under subsection (a).


Termination of Section

For termination of section by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates note below.

Effective and Termination Dates

Section effective on the date the Dominican Republic–Central America–United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on the date the Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country.

(Pub. L. 109–53, see Effective and Termination Dates note below.)

SUBCHAPTER IV—MISCELLANEOUS

§ 4111. Periodic reports and meetings on labor obligations and labor capacity-building provisions

(a) Reports to Congress

(1) In general

Not later than the end of the 2-year period beginning on the date the Agreement enters into force, and not later than the end of each 2-year period thereafter during the succeeding 14-year period, the President shall report to the Congress on the progress made by the CAFTA–DR countries in—

(A) implementing Chapter Sixteen and Annex 16.5 of the Agreement; and

(B) implementing the White Paper.

(2) White Paper

In this section, the term “White Paper” means the report of April 2005 of the Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic entitled “The Labor Dimension in Central America and the Dominican Republic - Building on Progress: Strengthening Compliance and Enhancing Capacity”.

(3) Contents of reports

Each report under paragraph (1) shall include the following:

(A) A description of the progress made by the Labor Cooperation and Capacity Building Mechanism established by article 16.5 and Annex 16.5 of the Agreement, and the Labor Affairs Council established by article 16.4 of the Agreement, in achieving their stated goals, including a description of the capacity-building projects undertaken, funds received, and results achieved, in each CAFTA–DR country.

(B) Recommendations on how the United States can facilitate full implementation of the recommendations contained in the White Paper.
(C) A description of the work done by the CAFTA–DR countries with the International Labor Organization to implement the recommendations contained in the White Paper, and the efforts of the CAFTA–DR countries with international organizations, through the Labor Cooperation and Capacity Building Mechanism referred to in subparagraph (A), to advance common commitments regarding labor matters.

(D) A summary of public comments received on—

(i) capacity-building efforts by the United States envisaged by article 16.5 and Annex 16.5 of the Agreement;
(ii) efforts by the United States to facilitate full implementation of the White Paper recommendations; and
(iii) the efforts made by the CAFTA–DR countries to comply with article 16.5 and Annex 16.5 of the Agreement and to fully implement the White Paper recommendations, including the progress made by the CAFTA–DR countries in affording to workers internationally-recognized worker rights through improved capacity.

(4) Solicitation of public comments

The President shall establish a mechanism to solicit public comments for purposes of paragraph (3)(D).

(b) Periodic meetings of Secretary of Labor with labor ministers of CAFTA–DR countries

(1) Periodic meetings

The Secretary of Labor should take the necessary steps to meet periodically with the labor ministers of the CAFTA–DR countries to discuss—

(A) the operation of the labor provisions of the Agreement;
(B) progress on the commitments made by the CAFTA–DR countries to implement the recommendations contained in the White Paper;
(C) the work of the International Labor Organization in the CAFTA–DR countries, and other cooperative efforts, to afford to workers internationally-recognized worker rights; and
(D) such other matters as the Secretary of Labor and the labor ministers consider appropriate.

(2) Inclusion in biennial reports

The President shall include in each report under subsection (a), as the President deems appropriate, summaries of the meetings held pursuant to paragraph (1).


§ 4112. Earned import allowance program

(a) Preferential treatment

(1) In general

Eligible apparel articles wholly assembled in an eligible country and imported directly from an eligible country shall enter the United States free of duty, without regard to the source of the fabric or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate that reflects the amount of credits equal to the total square meter equivalents of fabric in such apparel articles, in accordance with the program established under subsection (b).

(2) Determination of quantity of SME

For purposes of determining the quantity of square meter equivalents under paragraph (1), the conversion factors listed in “Correlation: U.S. Textile and Apparel Industry Category System with the Harmonized Tariff Schedule of the United States of America, 2008”, or its successor publications, of the United States Department of Commerce, shall apply.

(b) Earned import allowance program

(1) Establishment

The Secretary of Commerce shall establish a program to provide earned import allowance certificates to any producer or entity controlling production of eligible apparel articles in an eligible country for purposes of subsection (a), based on the elements described in paragraph (2).

(2) Elements

The elements referred to in paragraph (1) are the following:

(A) One credit shall be issued to a producer or entity controlling production for every two square meter equivalents of qualifying fabric that the producer or entity controlling production can demonstrate that it has purchased for the manufacture in an eligible country of articles like or similar to any article eligible for preferential treatment under subsection (a). The Secretary of Commerce shall, if requested by a producer or entity controlling production, create and maintain an account for such producer or entity controlling production, into which such credits may be deposited.

(B) Such producer or entity controlling production may redeem credits issued under subparagraph (A) for earned import allowance certificates reflecting such number of earned credits as the producer or entity may request and has available.
(C) Any textile mill or other entity located in the United States that exports qualifying fabric to an eligible country may submit, upon such export or on request, the Shipper's Export Declaration, or successor documentation, to the Secretary of Commerce—

(i) verifying that the qualifying fabric was exported to a producer or entity controlling production in an eligible country; and

(ii) identifying such producer or entity controlling production, and the quantity and description of qualifying fabric exported to such producer or entity controlling production.

(D) The Secretary of Commerce may require that a producer or entity controlling production submit documentation to verify purchases of qualifying fabric.

(E) The Secretary of Commerce may make available to each person or entity identified in the documentation submitted under subparagraph (C) or (D) information contained in such documentation that relates to the purchase of qualifying fabric involving such person or entity.

(F) The program shall be established so as to allow, to the extent feasible, the submission, storage, retrieval, and disclosure of information in electronic format, including information with respect to the earned import allowance certificates required under subparagraph (A).

(G) The Secretary of Commerce may reconcile discrepancies in the information provided under subparagraph (C) or (D) and verify the accuracy of such information.

(H) The Secretary of Commerce shall establish procedures to carry out the program under this section by September 30, 2008, and may establish additional requirements to carry out the program.

(c) Definitions

For purposes of this section—

(1) the term “appropriate congressional committees” means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate;

(2) the term “eligible apparel articles” means the following articles classified in chapter 62 of the HTS (and meeting the requirements of the rules relating to chapter 62 of the HTS contained in general note 29(a) of the HTS) of cotton (but not of denim): trousers, bib and brace overalls, breeches and shorts, skirts and divided skirts, and pants;

(3) the term “eligible country” means the Dominican Republic; and

(4) the term “qualifying fabric” means woven fabric of cotton wholly formed in the United States from yarns wholly formed in the United States and certified by the producer or entity controlling production as being suitable for use in the manufacture of apparel items such as trousers, bib and brace overalls, breeches, and shorts, skirts and divided skirts or pants, all the foregoing of cotton, except that—

(A) fabric otherwise eligible as qualifying fabric shall not be ineligible as qualifying fabric because the fabric contains nylon filament yarn with respect to which section 2703(b)(2)(A)(vi)(IV) of this title applies;

(B) fabric that would otherwise be ineligible as qualifying fabric because the fabric contains yarns not wholly formed in the United States shall not be ineligible as qualifying fabric if the total weight of all such yarns is not more than 10 percent of the total weight of the fabric, except that any elastomeric yarn contained in an eligible apparel article must be wholly formed in the United States; and

(C) fabric otherwise eligible as qualifying fabric shall not be ineligible as qualifying fabric because the fabric contains yarns or fibers that have been designated as not commercially available pursuant to—

(i) article 3.25(4) or Annex 3.25 of the Agreement;

(ii) Annex 401 of the North American Free Trade Agreement;

(iii) section 3722(b)(5) of this title;

(iv) section 3203(b)(3)(B)(i)(III) or (ii) of this title;

(v) section 2703(b)(2)(A)(v) or 2703a(b)(5)(A) of this title; or

(vi) any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement entered into by the United States that is in effect at the time the claim for preferential treatment is made.

(d) Review and report

(1) Review

The United States International Trade Commission shall carry out a review of the program under this section annually for the purpose of evaluating the effectiveness of, and making recommendations for improvements in, the program.

(2) Report

The United States International Trade Commission shall submit to the appropriate congressional committees annually a report on the results of the review carried out under paragraph (1).

(e) Effective date and applicability

(1) Effective date

The program under this section shall be in effect for the 10-year period beginning on the date on which the President certifies to the appropriate congressional committees that sections A, B, C, and D of the Annex to Presidential Proclamation 8213 (December 20, 2007) have taken effect.

(2) Applicability

The program under this section shall apply with respect to qualifying fabric exported to an eligible country on or after August 1, 2007.


Termination of Section

For termination of section by section 107(d) of Pub. L. 109–53, see Termination Date note below.
For Nov. 25, 2008, as the date on which the President certified to the appropriate congressional committees that sections A, B, C, and D of the Annex to Presidential Proclamation 8213 (December 20, 2007) had taken effect, referred to in subsec. (e)(1), see Proc. No. 8223, Nov. 25, 2008, 73 F.R. 72677. Presidential Proclamation 8213 is Proc. No. 8213, Dec. 20, 2007, 72 F.R. 73555, which is not set out in the Code.

Section to cease to have effect on the date the Dominican Republic-Central America-United States Free Trade Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as an Effective and Termination Dates note under section 4001 of this title.